

City of Santa Clara

Revised Joint Meeting Agenda of the Council and Authorities Concurrent and Santa Clara Stadium Authority



Tuesday, March 22, 2022

3:30 PM

Virtual Meeting
3:30 PM Closed Session
7:30 PM Open Session

****REVISION:** Updated Item I.D to reflect the listing of name of negotiating party(ies).

Pursuant to Government Code Section 54953(e) and City of Santa Clara Resolution 22-9058, the City Council meeting will be held by teleconference only. No physical location will be available for this meeting; however, the City of Santa Clara continues to have 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.

3:30 PM CLOSED SESSION

Call to Order

Roll Call

- | | | |
|------------|---------------|--|
| 1.A | 22-250 | <u>Public Employee Appointment (Gov. Code §§ 54957, 54954.5, subd. (e).)</u>
<u>Title: Interim City Attorney</u> |
| 1.B | 22-416 | <u>Public Employee Discipline/Dismissal/Release (Government Code § 54957, (b)(1))</u> |
| 1.C | 22-417 | <u>Public Employment Appointment (Government Code §§ 54957, 54954.5, subd. (e))</u>
<u>Title: Acting City Manager</u> |

- 1.D 22-377** [Conference with Real Property Negotiators \(CC\)](#)
[Pursuant to Gov. Code § 54956.8](#)
[Property: Please see below listing for APNs and addresses](#)
[City/Authority Negotiator: Assistant City Manager, Director of](#)
[Parks & Recreation](#)
[Negotiating Parties: Please see below listing for names of](#)
[negotiating party\(ies\)](#)
[Under Negotiation: Purchase/Sale/Exchange/Lease of Real](#)
[Property \(provisions, price and terms\)](#)

	APN	Property Address	Property Owner (Name)/Negotiating Party
1	216-05-009	Youth Activity Center, Teen Center, Skate Park 2450 Cabrillo Avenue, Santa Clara, CA 95051	Santa Clara Unified School District/Stella M Kemp, PhD Superintendent

- 1.E 22-408** [Conference with Legal Counsel-Anticipated Litigation \(CC\)](#)
[Pursuant to Gov. Code § 54956.9\(a\) - Exposure to litigation](#)
[Number of potential cases: 1](#)
[\(Facts and Circumstances\)](#)
[City as potential defendant: Demand letter from Abramson Labor](#)
[Group, representing Leo Valdez, dated February 22, 2022](#)
- 1.F 22-427** [Conference with Legal Counsel-Existing Litigation \(CC, SARDA\)](#)
[Pursuant to Gov. Code § 54956.9\(d\)\(1\)](#)
[County of Santa Clara, et al., v. City of San Jose, et al.](#)
[Santa Clara County Superior Court Master Case Number](#)
[\(consolidated\) 105CV046005](#)

- 1.G 22-431** [Conference with Labor Negotiators \(CC\)](#)
[Pursuant to Gov. Code § 54957.6](#)
[City representative: City Manager's designee](#)
[Employee Organization\(s\):](#)
[Unit #1-Santa Clara Firefighters Association, IAFF, Local 1171](#)
[Unit #2-Santa Clara Police Officer's Association](#)
[Unit #3-IBEW Local 1245 \(International Brotherhood of Electrical Workers\)](#)
[Unit #4-City of Santa Clara Professional Engineers](#)
[Units #5, 7 & 8-City of Santa Clara Employees Association](#)
[Unit #6-AFSCME Local 101 \(American Federation of State, County and Municipal Employees\)](#)
[Unit #9-Miscellaneous Unclassified Management Employees](#)
[Unit #9A-Unclassified Police Management Employees](#)
[Unit #9B-Unclassified Fire Management Employees](#)
[Unit #10-PSNSEA \(Public Safety Non-Sworn Employees Association\)](#)

Public Comment

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

Convene to Closed Session

7:30 PM JOINT COUNCIL AND STADIUM AUTHORITY MEETING

**Open Session to begin at 7:30 PM or shortly thereafter*

Call to Order

Pledge of Allegiance and Statement of Values

REPORTS OF ACTION TAKEN IN CLOSED SESSION MATTERS

CONTINUANCES/EXCEPTIONS/RECONSIDERATIONS

SPECIAL ORDER OF BUSINESS

- 2.A 22-03** [Proclaim March 2022 as Red Cross Month](#)
- 2.B 22-279** [Proclaim March 2022 as Youth Arts Month](#)

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 22-400 [Action on December 14, 2021 Council and Authorities Concurrent & Stadium Authority Meeting and January 5, 2022 Special City Council Meeting Minutes](#)

Recommendation: Approve the December 14, 2021 Council and Authorities Concurrent & Stadium Authority Meeting and January 5, 2022 Special City Council Meeting minutes.

3.B 22-15 [Board, Commissions and Committee Minutes](#)

Recommendation: Note and file the Minutes of:
Historical and Landmarks Commission - February 3, 2022
Cultural Commission - February 7, 2022
Youth Commission - February 8, 2022
Audit Committee - November 30, 2021

3.C 22-305 [Action on Monthly Financial Status and Investment Report for December 2021 and Approve Related Budget Amendments](#)

Recommendation: Note and file the Monthly Financial Status and Investment Reports for November 2021 as presented and Approve Related Budget Amendments in various funds requiring five affirmative votes and consistent with **City Charter Section 1305**, *“At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the **affirmative votes of at least five members** so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget,”* as noted for each individual item in Attachment 3.

3.D 22-306 [Action on the Single Audit Report for Fiscal Year 2020-21](#)

Recommendation: Note and file the City of Santa Clara Single Audit Report for the year ended June 30, 2021, as recommended by the Council Audit Committee.

3.E 22-356 [Action on the Integrated Goose Management Plan \(IGMP\) for Central Park](#)

Recommendation: Recommend that Council approve the Santa Clara Central Park Integrated Goose Management Plan and its implementation.

3.F 22-1704 Action on a Substation Agreement with CoreSite Real Estate SV9, L.P. for Stender Way Junction Substation, Related Budget Amendment, Addition of 4.0 Full Time Positions and Delegation of Authority to the Office of the City Manager to Negotiate and Execute Substation Agreements for Silicon Valley Power (SVP) with the following customers:

1. 651 Walsh Partners, LLC for Laurelwood Junction Substation;
2. 1220 Santa Clara Propco, LLC for Memorex Junction Substation; and
3. C-1 Santa Clara LLC, for Martin Avenue Junction Substation Agreement

- Recommendation:**
1. Authorize the Office of the City Manager to execute the Substation Agreement with CoreSite Real Estate SV9, L.P. to allow SVP to design, procure equipment, and construct 60kV facilities to serve the Stender Way Junction Substation to meet an ultimate capacity of 49 MVA of permanent electric service to 2905 Stender Way, subject to the appropriation of funds;
 2. Authorize the Office of the City Manager to negotiate and execute a Substation Agreement with 651 Walsh Partners, LLC to allow SVP to design, procure equipment, and construct 60kV facilities to serve the Laurelwood Junction Substation to meet an ultimate capacity of up to 99 MVA of permanent electric service to 651 Walsh Avenue, subject to the appropriation of funds;
 3. Authorize the Office of the City Manager to negotiate and execute a Substation Agreement with 1220 Santa Clara Propco, LLC to allow SVP to design, procure equipment, and construct 60kV facilities to serve the Memorex Junction Substation to meet an ultimate capacity of up to 60 MVA of permanent electric service to 1220 Memorex Drive, subject to the appropriation of funds;
 4. Authorize the Office of the City Manager to negotiate and execute a substation agreement with C-1 Santa Clara LLC to allow SVP design, procure equipment, and construct 60kV facilities to serve for Martin Avenue Junction Substation to meet an

ultimate capacity of up to 99 MVA of permanent electric service to 2600 De La Cruz, subject to the appropriation of funds;

5. Authorize the Office of the City Manager to make minor modifications to the substation agreements and execute any and all associated documents;
6. Delegate authority to the Office of the City Manager to approve long lead time material procurement agreements and associated purchase orders for these Substation Agreements;
7. Consistent with City Charter Section 1305, *“At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the **affirmative votes of at least five members** so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget,”* approve the following FY 2021/22 budget amendments:
 - A. In the Electric Utility Capital Fund, recognize developer contributions of \$885,166, and increase the Stender Way Junction project appropriation by \$885,166, and recognize developer contributions of \$4,016,000, and increase the Memorex Junction Substation project appropriation by \$4,016,000 (**five affirmative Council votes required to appropriate additional revenue**); and
8. Approve the addition of two (2) Senior Electric Utility Engineers, one (1) Senior Instrument and Controls Technician, and one (1) Electric Water System Operator in the Electric Utility Department.

3.G 22-1748 [Action on an Agreement with Iteris, Inc. for Design Professional Services for the Great America Parkway and Tasman Drive Traffic Signal Interconnect Project](#)

- Recommendation:**
1. Approve and authorize the City Manager to execute an agreement for Design Professional Services with Iteris, Inc. for the Great America Parkway and Tasman Drive Traffic Signal Interconnect Project in the amount not-to-exceed \$158,000; and
 2. Authorize the City Manager to make minor modifications to the agreement, if needed.

3.H 22-103 [Action on Agreements with Axon Enterprise, Inc. for the Purchase of Body Worn Cameras, Conducted Energy Weapons, and Evidence.com](#)

- Recommendation:**
1. Authorize the City Manager's Office to execute an agreement with Axon Enterprise, Inc. for the bundled purchase of Body Worn Cameras, Conducted Energy Weapons and Evidence.com for the Santa Clara Police Department with a five-year term starting on April 1, 2022 and ending on March 31, 2027, with maximum compensation not-to-exceed \$2,276,714, and subject to the appropriation of funds;
 2. Authorize the Executive Director's Office to execute an agreement with Axon Enterprise, Inc. for the purchase of Body Worn Cameras and Evidence.com for the Santa Clara Stadium Authority with a five-year term starting on April 1, 2022 and ending on March 31, 2027, with maximum compensation not-to-exceed \$439,294, and subject to the appropriation of funds;
 3. Authorize staff to purchase additional body worn cameras, conducted energy weapons and software services as may be required, subject to the same terms and conditions and the appropriation of funds; and
 4. Authorize the City Manager and the Executive Director Offices to extend the agreements for up to five additional years, at the discretion of the SCPD and subject to the appropriation of funds.

3.I 22-112 [Action on an Agreement with R3 Consulting Group, Inc. for Solid Waste Consulting Services](#)

- Recommendation:**
1. Authorize the City Manager's Office to execute an Agreement with R3 Consulting Group, Inc. for solid waste consulting services, with a five-year term starting on or around April 1, 2022, and ending on June 30, 2027, with maximum compensation not-to-exceed \$754,915 subject to the appropriation of funds;
 2. Authorize the City Manager's Office to execute amendments to the Agreement for additional solid waste consulting services that may be required during the five-year term, subject to the appropriation of funds; and
 3. Authorize the City Manager's Office to execute up to two, one-year options to extend the Agreement through June 30, 2029, subject to the appropriation of funds.

- 3.J 22-153** Action on Various Agreements for Silicon Valley Power (SVP), Authorizing the Office of the City Manager to:
1. Exercise options to renew an Enterprise Program Agreement with OSIsoft, LLC for up to five years and increase funding authorization to include additional services or addition of assets to the existing licenses;
 2. Negotiate and Execute Amendment No. 2 to an Agreement for Services with Efficiency Services Group, LLC to administer the Commercial Parking Lot & Exterior Lighting Program to Silicon Valley Power's (SVP) small and mid-sized business customers;
 3. Negotiate and execute additional amendments to add or delete services or licenses consistent with the scopes of the subject agreements, and allow future rate adjustments including associated increases to maximum compensation, subject to request and justification by contractor, approval by the City, and the appropriation of funds; and
 4. Execute long lead-time material agreements and purchase orders for the South Loop Reconfiguration Project

- Recommendation:**
1. Authorize the Office of the City Manager to exercise options to renew the Enterprise Program Agreement with OSIsoft, LLC for up to five years through April 23, 2027 and increase funding authorization by \$911,930 to include additional services or addition of assets to the existing licenses for a total maximum authorization of \$1,400,000, subject to annual appropriation of funds;
 2. Authorize the Office of the City Manager to negotiate and execute Amendment No. 2 to an Agreement for Services with Efficiency Services Group, LLC to administer the Commercial Parking Lot & Exterior Lighting Program to Silicon Valley Power's (SVP) small and mid-sized business customers extending the term through June 30, 2023 and increasing maximum compensation by \$527,000 for a total maximum authorization of \$1,527,000, subject to annual appropriation of funds;
 3. Authorize the Office of the City Manager to negotiate and execute additional amendments to add or delete services or licenses consistent with the scope of the agreements and allow future rate

adjustments including associated increases in maximum compensation subject to request and justification by contractor, approval by the City, and the appropriation of funds; and

4. Delegation of authority to the Office of the City Manager to purchase long lead-time materials for South Loop Reconfiguration Project.

3.K 22-96 [Action on Agreements with C2R Engineering, Inc. and West Valley Construction Company, Inc. for On Call Emergency Water & Sewer Utility Repairs](#)

Recommendation: Authorize the City Manager's Office to execute Master Agreements with C2R Engineering, Inc. and West Valley Construction Company for On Call Emergency Water & Sewer Utility Repairs, for a five-year term starting on or about April 1, 2022, and ending on or about March 31, 2027, with a maximum aggregate compensation not-to-exceed \$5,000,000 for the two Master Agreements.

3.L 22-119 [Action on a Resolution Acknowledging Receipt by City Council of a State-Mandated Compliance Report on Required Annual Fire Inspections of Certain Occupancies](#)

Recommendation: Adopt a Resolution acknowledging receipt of a report made by the Fire Chief of the Santa Clara Fire Department regarding the inspection of certain occupancies requiring annual inspections in such occupancies pursuant to sections 13146.2 and 13146.3 of the California Health and Safety Code.

3.M 22-262 [Accept the 2021 General Plan Annual Progress Report](#)

Recommendation: Accept the General Plan Annual Progress Report as presented by staff.

3.N 22-304 [Action on Reappointment of Board and Commission Members, Declaring Commissioner Vacancies, and Setting Dates for Recruitment and Interviews](#)

- Recommendation:**
1. Reappoint the six (6) eligible commissioners to serve a four-year term each ending June 30, 2026;
 2. Declare five (5) vacancies on the following commissions for four (4) full terms each ending June 30, 2026 and one partial term ending June 30, 2025:
 - Two (2) on the Parks and Recreation Commission (full terms);
 - One (1) on the Planning Commission (full term); and
 - Two (2) on the Senior Advisory commission (one full term and one partial term);
 3. Open the recruitment period on March 23, 2022;
 4. Set April 27, 2022 by 5:00 p.m. as the application deadline; and
 5. Set May 16, 2022 to conduct interviews.

- 3.O 22-1777** [Action to Waive First Reading and Introduce an Ordinance of the City of Santa Clara, California, Defining the Composition of the Membership of the Bicycle and Pedestrian Advisory Committee and the Scope of the Bicycle and Pedestrian Advisory Committee's Jurisdiction, Adding a New Section 2.120.170 \("Bicycle and Pedestrian Advisory Committee"\) and Amending Section 2.120.010 \(Names, Membership, Qualifications, and Terms of Office\) of Chapter 2.120 \("Boards and Commissions"\) of Title 2 \("Administration and Personnel"\) of the Santa Clara City Code and Adopt Changes to the Bicycle and Pedestrian Advisory Committee Policy Guidelines](#)

Recommendation: 1. Waive First Reading and Introduce an Ordinance of the City of Santa Clara, California, Defining the Composition of the Membership of the Bicycle and Pedestrian Advisory Committee and the Scope of the Bicycle and Pedestrian Advisory Committee's Jurisdiction, Adding a New Section 2.120.170 ("Bicycle and Pedestrian Advisory Committee") and Amending Section 2.120.010 (Names, Membership, Qualifications, and Terms of Office) of Chapter 2.120 ("Boards and Commissions") of Title 2 ("Administration and Personnel") of "The Code of the City of Santa Clara, California"; and
2. Adopt Changes to the Bicycle and Pedestrian Advisory Committee Policy Guidelines.

- 3.P 22-352** [Action to Waive Second Reading and Adopt Ordinance No. 2041 to Amend Section 18.80.210 of the Zoning Code to Increase the Permissible Height of Digital Billboards](#)

Recommendation: Waive Second Reading and Adopt Ordinance No. 2041 to Amend Section 18.80.210 of the Zoning Code to allow for increased sign height in conjunction with a Billboard Relocation Agreement.

- 3.Q 22-409** [Action to Waive Second Reading and Adopt Ordinance No. 2042 Approving a Military Equipment Funding, Acquisition and Use Policy Pursuant to Assembly Bill 481](#)

Recommendation: Waive Second Reading and Adopt Ordinance No. 2042 Approving a Military Equipment Funding, Acquisition and Use Policy Pursuant to Assembly Bill 481.

SANTA CLARA STADIUM AUTHORITY CONSENT CALENDAR

- 4.A 22-309** [Informational Report on Dates and Purpose of Stadium Authority and Stadium Manager Meetings and Corresponding Minutes for the Period of October 1 to December 31, 2021](#)

Recommendation: Note and file the quarterly report on Stadium Authority and Stadium Manager meetings and corresponding minutes for the period of October 1 to December 31, 2021.

- 4.B 22-272** [Action on Stadium Authority Bills and Claims for the Month of December 2021](#)

Recommendation: Approve the list of Stadium Authority Bills and Claims for December 2021.

- 4.C Action on Request Submitted by the Stadium Manager to Exercise Option to Extend Term of Agreement with Landmark Event Staffing Services, Inc. for Levi's Stadium Event Security Services**

- 1. 22-414** [Request from the Stadium Manager to Exercise Option to Extend Term of Agreement with Landmark Event Staffing Services, Inc. for Levi's Stadium Event Security Services](#)

- 2. 22-415** [Report from Stadium Authority for Action on the Stadium Manager's Request to Exercise Option to Extend Term of Agreement with Landmark Event Staffing Services, Inc. for Levi's Stadium Event Security Services](#)

Recommendation: Approve the Stadium Manager's request to exercise its option to extend the term of the agreement with Landmark by one additional two-year period through March 31, 2024, and authorize staff to approve and process the reimbursement of such costs upon receiving final invoices and supporting documentation from the Stadium Manager.

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

5. 22-358 [Report and Presentation from the Independent Redistricting Commission on the 2020 Census Redistricting Process and its Adoption of a Final Map; Action on the Introduction of an Ordinance Adopting the New Council District Map - TO BE HEARD AT 8:00 PM or SHORTLY THEREAFTER](#)

Recommendation: Approval of the introduction of an ordinance adopting a new City Council District map describing the district boundaries for the City of Santa Clara's By-District elections.

6. 22-1757 [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 2021-2022](#)

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

7. 22-69 [Action on the Patrick Henry Drive Specific Plan Including: Determination of the Adequacy of the Environmental Impact Report \(EIR\) and Adoption of a Statement of Overriding Considerations and an Associated Mitigation Monitoring and Reporting Program \(MMRP\); Adoption of the Patrick Henry Drive Specific Plan; Adoption of General Plan Amendments to Create New General Plan Land Use Designations and Change the General Plan Land Use Diagram from Light Industrial to Various Residential Designations; Waive First Reading and Introduce an Ordinance to Add a New Chapter 18.27 to the Zoning Code to Create Zoning Regulations for the Patrick Henry Drive Area Specific Plan and Rezoning of the Patrick Henry Drive Specific Plan Area](#)

Recommendation: Alternatives 1-4:

1. Adopt a resolution approving and certifying the Final EIR prepared for the Patrick Henry Drive Specific Plan (SCH # 2019120515), including CEQA Findings and a statement of overriding considerations;
2. Adopt a resolution approving the PHD Specific Plan, a specific plan consistent with Government Code Sections 65450-65457 that incorporates text in the Alternate Circulation Diagram (4.6.2-ALT: CIRCULATION) "Subject to the Approval of the Mission College Board of Trustees"; and incorporates affordable housing language as follows: 15% affordable units split equally between three affordability levels of 50%, 80%, and 120% AMI;
3. Adopt a resolution approving General Plan text amendments creating the following land use designations: Village Residential (60-149 DU/AC), Urban Village (100-149 DU/AC), Urban Center (120-250 DU/AC), and High Density Flex (60-149 DU/AC, or up to 2.0 FAR), updating the Climate Action Plan to recognize those Land Use Designations, and amending the General Plan Land Use diagrams for Phases II and III to reflect the land use designations in the Patrick Henry Drive Specific Plan; and
4. Waive first reading and introduce an ordinance amending the Zoning Code to create a new Chapter 18.27 of the Zoning Code, Regulations for

the Patrick Henry Drive Area (PHD) Zoning Districts, including development standards, allowed uses and parking requirements for the following zoning districts: R5 - Very High Density Residential, VR - Village Residential, UV - Urban Village, UC - Urban Center, and HD Flex - High Density Flex, and rezoning the Project Site using the new districts as indicated in the Patrick Henry Drive zoning map, incorporating affordable housing language as follows: 15% affordable units split equally between three affordability levels of 50%, 80%, and 120% AMI.

8. 22-90 [Public Hearing: Action to Waive First Reading and Introduce an Ordinance Amending Chapter 17.15 “Property Developments” of Title 17 “Development” of the Santa Clara City Code to Add Section 17.15.360 “Patrick Henry Drive Infrastructure Improvement Fee”; and Approve a Resolution Approving the Findings from the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study, Adopting the Nexus Study, Setting the Rates for the Infrastructure Impact Fee, and Establishing the Patrick Henry Drive Infrastructure Improvement Fund](#)

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

1. Waive First Reading and Approve the Introduction of an Ordinance Amending Chapter 17.15 “Property Development” of Title 17 “Development” of the Santa Clara City Code to Add Section 17.15.360 “Patrick Henry Drive Infrastructure Improvement Fee”;
2. Adopt a Resolution Approving the Findings from the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study, Adopting the Nexus Study, and Setting the Rates for the Infrastructure Impact Fee;
3. Approve the Patrick Henry Drive Specific Plan Infrastructure Impact Fee; and adjust fees annually in line with the latest Construction Cost Index for San Francisco, as published by Engineering News Record or equivalent, to keep up with construction costs and inflation; and
4. Approve the establishment of the Patrick Henry Drive Infrastructure Improvement Fund (Fund 542) to account for the impact fee revenues and project expenditures.

REPORTS OF MEMBERS AND SPECIAL COMMITTEES

CITY MANAGER/EXECUTIVE DIRECTOR REPORT

- 22-419 [Update on City Council and Stadium Authority Staff Referrals](#)

ADJOURNMENT

The next regular scheduled meeting is on Tuesday, April 5, 2022.

MEETING DISCLOSURES

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

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

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

LEGEND: City Council (CC); Stadium Authority (SA); Sports and Open Space Authority (SOSA); Housing Authority (HA); Successor Agency to the City of Santa Clara Redevelopment Agency (SARDA); Bayshore North Project Enhancement Authority (BNPEA); Public Facilities Financing Corporation (PFFC)

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

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

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.



City of Santa Clara

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

Agenda Report

22-250

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Public Employee Appointment (Gov. Code §§ 54957, 54954.5, subd. (e).)

Title: Interim City Attorney



City of Santa Clara

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

Agenda Report

22-416

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Public Employee Discipline/Dismissal/Release (Government Code § 54957, (b)(1))



City of Santa Clara

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

Agenda Report

22-417

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Public Employment Appointment (Government Code §§ 54957, 54954.5, subd. (e))

Title: Acting City Manager



City of Santa Clara

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

Agenda Report

22-377

Agenda Date: 3/22/2022

SUBJECT

Conference with Real Property Negotiators (CC)

Pursuant to Gov. Code § 54956.8

Property: Please see below listing for APNs and addresses

City/Authority Negotiator: Assistant City Manager, Director of Parks & Recreation

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

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

	APN	Property Address	Property Owner (Name)/Negotiating Party
1	216-05-009	Youth Activity Center, Teen Center, Skate Park 2450 Cabrillo Avenue, Santa Clara, CA 95051	Santa Clara Unified School District/Stella M Kemp, PhD Superintendent



City of Santa Clara

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

Agenda Report

22-408

Agenda Date: 3/22/2022

SUBJECT

Conference with Legal Counsel-Anticipated Litigation (CC)

Pursuant to Gov. Code § 54956.9(a) - Exposure to litigation

Number of potential cases: 1

(Facts and Circumstances)

City as potential defendant: Demand letter from Abramson Labor Group, representing Leo Valdez, dated February 22, 2022



3580 Wilshire Boulevard, Suite 1260
Los Angeles, California 90010

t | 213.493.6300
f | 213.336.3704

zev@abramsonlabor.com
www.AbramsonLaborGroup.com

February 22, 2022

Via Email:

City of Santa Clara
Attention: Legal Department
CityAttorney@santaclaraca.gov

Re: Leo Valdez v. City of Santa Clara

This correspondence is protected by California Evidence Code § 1154 regarding settlement discussions.

Legal Department:

Abramson Labor Group has been retained to represent Leo Valdez ("Plaintiff") in his claims against City of Santa Clara ("Defendant") for (1) Employer Liability for Harassment and Hostile Work Environment; (2) Liability for Unsafe Working Conditions; (3) Failure to Provide Overtime Wages; and (4) Failure to Issue Accurate and Itemized Wage Statements.

Our office conducted a thorough and extensive interview with Mr. Valdez and determined that the facts provided below clearly support these causes of action. After conferring with our client, we are committed to moving forward with the following claims. However, in the interest of efficient resolution for all parties, this letter includes an offer for settlement of the above-referenced claims before incurring the costs of litigation.

Factual Background

Defendant hired Mr. Valdez on or around December 4, 2015 as a Water Pump Technician. Primarily, Mr. Valdez was responsible for working with water operations and maintenance. Mr. Valdez was compensated \$47.00 an hour and is currently employed with Defendant.

Mr. Valdez is Hispanic and throughout the course of his employment, Defendant subjected Mr. Valdez to disparate and discriminatory treatment on the basis of his race. Specifically, Defendant assigned Mr. Valdez a heavier workload than Caucasian employees. Additionally, Defendant's employees made discriminatory comments regarding Mr. Valdez's race. Defendant also failed to provide a safe working environment as Defendant required employees to perform job duties without fall protection.

As detailed below, Defendant is clearly liable to Mr. Valdez for the following violations of California law.

Employer Liability for Harassment and Hostile Work Environment

In order to prevail on a hostile work environment claim, plaintiff must show that his “workplace was permeated with discriminatory intimidation . . . that was sufficiently severe or pervasive to alter the conditions of his employment and create an abusive working environment.” Harris, 510 U.S. at 21, 114 S.Ct. 367 (internal quotation marks and citations omitted). “The working environment must both be subjectively and objectively be perceived as abusive.” Fuller v. City of Oakland, 47 F.3d 1522, 1527 (9th Cir. 1995).

Furthermore, courts evaluate the totality of the circumstances test to determine whether a plaintiff’s allegations make out a colorable claim of hostile work environment. In Harris, the court listed frequency, severity and the level of interference with work performance among the factors particularly relevant to the inquiry. When assessing the objective portion of a plaintiff’s claim, courts assume the perspective of the reasonable victim. See Ellison v. Brady, 924 F.2d 872, 879 (9th Cir. 1991).

Every individual is entitled to work in a harassment-free environment and an employer’s failure or refusal to provide this, in and of itself, is the denial of “terms, conditions, privileges of employment” and is a violation of the law. (Government Code Sections 12940, et seq.; 2 Cal. Admin. Code 7287.6; DFEH v. Fresno Hilton Hotel, (1984) FEHC Dec. No. 84-03, p. 29; and see also Harris v. Forklift Systems, Inc. (1993) 114 S.Ct. 367.

Although FEHA Section 12940(j)(1) prohibits any “person” from harassing an employee, FEHA Section 12940(k) imposes on the employer the duty to take all reasonable steps to prevent this harassment (as well as discrimination) from occurring in the first place and to take immediate and appropriate action when it is or it should be aware of the unlawful conduct. Carrisales v. Department of Corrections (1999) 21 Cal.4th 1132, 1140. As discussed above, not only did Defendant not prevent harassment from occurring, they committed and perpetuated the harassment.

To establish harassment under FEHA, an employee must demonstrate: (1) membership in a protected group, (2) that she was subjected to harassment because she belonged to this group, and (3) the alleged harassment was so severe that it created a hostile work environment.

Here, Mr. Valdez satisfies the prima facie case because: (1) Mr. Valdez is a member of a protected class because he is Hispanic; (2) he was subjected to harassment specifically because he is Hispanic; and (3) the harassment was both severe and pervasive that it created a hostile work environment for our client. The harassment was severe in nature as Defendant’s employees made discriminatory comments and assigned Mr. Valdez a heavier workload. Furthermore, the harassment was pervasive because it occurred throughout his employment. Thus, Mr. Valdez has a prima facie case for a hostile work environment.

Liability for Unsafe Working Conditions

Employers have a general duty under the Occupational Safety and Health Act (OSHA) to provide a workplace free from “recognized” hazards. To protect workers from unsafe conditions,

California Labor Code Section 6400 provides, "[e]very employer shall furnish employment and a place of employment that is safe and healthful for the employees therein."

California Labor Code Section 6311 provides that, "[n]o employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or his or her fellow employees".

Furthermore, "[a]ny employee who is laid off or discharged in violation of this section or is otherwise not paid because he or she refused to perform work in the performance of which this code, any occupational safety or health standard or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or his or her fellow employees shall have a right of action for wages for the time the employee is without work as a result of the layoff or discharge."

Here, Defendant required employees to perform jobs without proper safety equipment such as fall protection.

Labor Code Violations

A) Unpaid Wages/Overtime Wages

An employer is required to pay an employee for all hours worked. "Hours worked" means the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

Pursuant to the applicable IWC Wage Orders, and California Code of Regulations, Title 8, Section 11010 no employee shall be employed for more than eight hours in any workday or forty hours in any workweek unless the employee receives overtime wages. Employment beyond eight hours in any workday or more than six days in any workweek is permissible provided the employee is compensated for such overtime at not less than: 1) One and one-half times the hourly rate of pay for all hours worked in excess of eight (8) hours per day, forty (40) hours per week, and/or the first eight (8) hours of the seventh consecutive workday; and twice times the rate of pay for all hours worked in excess of twelve (12) hours per day and/or eight (8) hours on the seventh consecutive workday; and 2) Double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a workweek. Labor Code § 510.

Mr. Valdez was required to work after Mr. Valdez had clocked out for the day and was never paid for those hours worked.

Labor Code § 1194.2 provides that in an action "to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully paid and interest thereon."

Though § 1194.2 states liquidated damages may not be recovered for failure to pay overtime, in *Sillah v. Command Int'l Sec. Servs.*, 154 F.Supp.3d 891 (N.D. Cal. 2015), the court found plaintiffs suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage. Citing *Cruz v. Quang*, No. 13-cv-00181 VC, 2015 WL 348869, at *6 (N.D. Cal. Jan. 23, 2015). Under federal law, an employer violating 29 U.S.C. § 207 is liable to the affected employee not only for the unpaid minimum wages or overtime, but also "in an additional equal amount" in liquidated damages. 29 U.S.C. § 216(b).

Defendant failed to pay overtime wages when Mr. Valdez worked over 8 hours in a day or over 40 hours in a week. These hours were not paid at all. Defendant owes Mr. Valdez Mr. Valdez' overtime rate of pay for those hours worked.

B) Noncompliant Wage Statements

California Labor Code § 226(a) requires that employers, when paying their non-exempt employees' wages, include an "itemized statement in writing showing" the "total hours worked by the employee," and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate."

California wage orders require that every employer must keep accurate records for each non-exempt employee for at least two years identifying: (1) when he/she begins and ends work each period; (2) when he/she takes a meal period, unless all work at the location ceases; (3) his/her total daily hours worked; and (4) the total hours he/she worked in the payroll period and all applicable rates of pay.

Defendant failed to maintain an itemized wage statement that accurately reports total hours worked, which includes Plaintiff's work off-the-clock during lunch and before and after clock-in and out. Defendant failed to accurately account for all overtime hours worked and instead inaccurately recorded them or did not record them at all.

Violation of Labor Code § 226 entitles Mr. Valdez to an award of penalties amounting to \$50 for the initial violation and \$100 for each subsequent pay period that Defendant failed to provide accurate records, not to exceed \$4,000. Here, Defendant failed to correctly itemize our clients accrued work hours. Defendant's liability is outlined below.

Punitive Damages

California Civil Code §3294 provides, in part, "In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." "Punitive damages are to be assessed in an amount which, depending upon the defendant's financial worth and other factors, will deter him and others from committing similar misdeeds." *College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 712.

For corporate punitive damages liability, §3294(b) requires that the wrongful act giving rise to the exemplary damages be committed by an "officer, director, or managing agent." *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572. Importantly, "malice does not require actual intent to harm." *Angie M v. Sup. Ct.* (1995) 37 Cal.App.4th 1217, 1228.

Even "[n]onintentional conduct comes within the definition of malicious acts punishable by the assessment of punitive damages when a party intentionally performs an act from which he knows, or should know, it is highly probable that harm will result." *Ford Motor Co. v. Homes Ins. Co.* (1981) 116 Cal.App.3d 374,381; *Angie M*, 37 Cal.App.4th at 1228.

California Attorney's Fees Provisions

In a wage and hour employment law claim, specifically for claims brought under Labor Code §226, §203 and §2802, Plaintiffs are entitled to mandatory attorneys' fees. In claims for discrimination and retaliation under California law, specifically for claims brought under FEHA, attorney's fees are generally awarded to prevailing plaintiffs (Gov. Code, § 12965, subd. (b)). In whistleblower actions, prevailing plaintiffs are also entitled to attorneys' fees. As such, please note that my hourly rate for this employment-related action has been court approved at \$650 per hour.

Defendant's full liability is calculated below.

Damages

Harassment/Hostile Work Environment

\$60,000.00 = Emotional distress damages

Unpaid Wages/Overtime

\$1,410.00 = (20 hours) x (\$70.50 overtime rate)

\$1,410.00 = Liquidated damages

Noncompliant Wage Statements

\$4,000.00 = (\$50 for first violation) + (\$100 penalty x 39.5 additional pay periods)

Attorney fees/costs

\$8,000.00

Punitive Damages, to be determined

TOTAL: \$74,820.00

Conclusion

At this stage of the case, and in the interest of trying to resolve prior to costly and timely litigation, Mr. Valdez has authorized our office to offer the settlement of his claims for **a one-time payment of \$74,820.00**. As liability becomes clarified and witnesses' testimony solidifies, this case's value will inevitably increase significantly with associated attorneys' fees and liability paving the way to larger demands as time progresses.

If I do not hear from your office by **March 8, 2022** with a serious proposal of settlement, our demand is off the table permanently.

I hope we can have a productive conversation before this case goes into active litigation and look forward in resolving this matter together.

Sincerely,



W. Zev Abramson, Esq.
ABRAMSON LABOR GROUP



City of Santa Clara

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Agenda Report

22-427

Agenda Date: 3/22/2022

SUBJECT

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

Pursuant to Gov. Code § 54956.9(d)(1)

County of Santa Clara, et al., v. City of San Jose, et al.

Santa Clara County Superior Court Master Case Number (consolidated) 105CV046005



City of Santa Clara

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Agenda Report

22-431

Agenda Date: 3/22/2022

SUBJECT

Conference with Labor Negotiators (CC)

Pursuant to Gov. Code § 54957.6

City representative: City Manager's designee

Employee Organization(s):

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

Unit #2-Santa Clara Police Officer's Association

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

Unit #4-City of Santa Clara Professional Engineers

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

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

Unit #9-Miscellaneous Unclassified Management Employees

Unit #9A-Unclassified Police Management Employees

Unit #9B-Unclassified Fire Management Employees

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



City of Santa Clara

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Agenda Report

22-03

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Proclaim March 2022 as Red Cross Month

DISCUSSION

On March 22, 2022, the Santa Clara City Council will proclaim the Month of March 2022 as Red Cross Month in the City of Santa Clara.

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>>.

Reviewed by: Melissa Lee, Executive Assistant to the Mayor and Council

Approved by: City Manager's Office



City of Santa Clara

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Agenda Report

22-279

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Proclaim March 2022 as Youth Arts Month

DISCUSSION

On March 22, 2022, the Santa Clara City Council will proclaim the month of March 2022 as Youth Arts Month in the City of Santa Clara.

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>>.

Reviewed by: Melissa Lee, Executive Assistant to the Mayor and Council

Approved by: City Manager's Office



City of Santa Clara

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Agenda Report

22-400

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action on December 14, 2021 Council and Authorities Concurrent & Stadium Authority Meeting and January 5, 2022 Special City Council Meeting Minutes

COUNCIL PILLAR

Enhance Community Engagement and Promote Transparency

RECOMMENDATION

Approve the December 14, 2021 Council and Authorities Concurrent & Stadium Authority Meeting and January 5, 2022 Special City Council Meeting minutes.



City of Santa Clara

Draft

Joint Meeting Minutes

Council and Authorities Concurrent and Santa Clara Stadium Authority Meeting

12/14/2021

2:30 PM

Virtual Meeting
2:30 PM Closed Session
5:30 PM Open Session

Pursuant to the provisions of Government Code Section 54953(e) and City of Santa Clara Resolution 21-9023, the City Council meeting will be held by teleconference only. No physical location will be available for this meeting; however, the City of Santa Clara continues to have 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.

2:30 PM CLOSED SESSION

Call to Order

Mayor Gillmor called the meeting to order at 2:30 PM.

Roll Call

Present: 7 - Council/Boardmember Kathy Watanabe, Vice Mayor/Chair Raj Chahal, Council/Boardmember Karen Hardy, Council/Boardmember Kevin Park, Council/Boardmember Suds Jain, Council/Boardmember Anthony Becker, and Mayor/Chair Lisa M. Gillmor

Public Comment

Public Speaker(s): Lala Vérité (eComment)

- 1.A** [21-1737](#) Public Employee Appointment (Gov. Code §§ 54957, 54954.5, subd. (e).)
Title: Executive Recruiter for City Attorney

1.B [21-1716](#) Conference with Real Property Negotiators (CC)

Convene to Closed Session

Council convened to Closed Session at 2:34 PM and recovered the meeting at 5:31 PM.

5:30 PM JOINT COUNCIL/STADIUM MEETING

Pledge of Allegiance and Statement of Values

Council/Board recited the Pledge of Allegiance.

Council/Boardmember Hardy recited the Statement of Values.

Assistant City Clerk/Secretary Pimentel recited the AB23 announcement and Statement of Behavioral Standards and reminded any registered lobbyist providing testimony to identify themselves as a Lobbyist.

REPORTS OF ACTION TAKEN IN CLOSED SESSION MATTERS

Chief Assistant City Attorney Reuter noted that there was no reportable action from Closed Session Item 1.B.

Mayor Gillmor noted that there was no reportable action from Closed Session Item 1.A.

CONTINUANCES/EXCEPTIONS/RECONSIDERATIONS

City Manager Santana noted that the Task Force on Diversity, Equity, and Inclusion requested to defer Items 2.A and Item 11 to the January 25, 2022 Council and Authorities Concurrent Meeting.

2.A [21-174](#) Task Force on Diversity, Equity, and Inclusion Update (October-December 2021)

A motion was made by Councilmember Jain, seconded by Councilmember Park, to defer Items 2.A and Item 11 to the January 25, 2022 Council and Authorities Concurrent Meeting.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

11. [21-1629](#) Action on Whether to Accept a Formal Recommendation from the Task Force on Diversity, Equity, and Inclusion Regarding the City's Model for Electing its Chief of Police

Recommendation: Provide direction on whether to accept the formal letter of recommendation from the Task Force on Diversity, Equity, and Inclusion in support of the City's model of electing its Chief of Police and hold harmless on this topic the City Manager from any and all actions that may violate the Political Reform Act or FPPC regulations.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to defer Items 2.A and Item 11 to the January 25, 2022 Council and Authorities Concurrent Meeting.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

City Manager Santana noted that the following items must be heard this evening for continuity of City Business: Items 7.C, 7.D, 7.E, 7.F, 7.G, 7.H, 7.I, 7.K, 7.M, 7.O, 4 and 9.

SPECIAL ORDER OF BUSINESS

2.B [21-1673](#) Verbal Report from City Manager regarding COVID-19 Pandemic

City Manager Santana announced that the Santa Clara County Emergency Managers' Association honored **Chief Emergency Services Officer Schoenthal** as the recipient of the 2021 Emergency Manager of the Year award.

City Manager Santana provided the following PowerPoint presentation regarding COVID-19 Pandemic:

- CDC noted that Santa Clara County has a substantial COVID-19 transmission rate and California has a high transmission rate;
- 7-Day average of COVID-19 cases was over 240;
- Santa Clara County has high vaccination rates;
- Omicron Variant has the most mutations so far;
- County of Santa Clara encourages multilayer protections;
- County of Santa Clara encourages to continue to have remote public meetings; and
- COVID-19 Testing available on December 22, 2021 at Central Park Library.

Council comments followed.

2.C [21-1717](#) Verbal Report Update from City Manager Regarding the Local Drought Emergency

City Manager Santana gave a PowerPoint presentation regarding the Local Drought Emergency.

AGENDA ITEMS CONTINUED/DEFERRED FROM DECEMBER 7, 2021

3. [21-1736](#) Action on Adoption of a Resolution Approving 2022 Salary Plans for Classified and Unclassified Employees, Including City Manager, Pursuant to Council's Approved Cost of Living Increases effective December 26, 2021 (Continued from December 7, 2021)

Recommendation: Adopt a Resolution approving the updated and amended salary plans for various classified and unclassified positions including the position of City Manager to satisfy the requirements of California Code of Regulations Section 570.5 effective December 26, 2021.

City Manager Santana made opening remarks regarding this item.

Director of Human Resources Azevedo gave a PowerPoint presentation.

Council comments and questions followed.

Outside Legal Counsel Sakai addressed **Council** comments.

Council comments and questions continued.

A motion was made by **Vice Mayor Chahal**, seconded by **Councilmember Becker**, to adopt a Resolution approving the updated and amended salary plans for various classified and unclassified positions including the position of City Manager to satisfy the requirements of California Code of Regulations Section 570.5 effective December 26, 2021.

Outside Legal Counsel Sakai addressed **Council** comments.

A substitute motion was made by **Councilmember Watanabe**, seconded by **Mayor Gillmor**, to bring this discussion to Closed Session or other setting in order to obtain a legal opinion on the discussion and have Outside Counsel provide the necessary information to further understand what needs to be done.

Council comments and questions followed.

A second substitute motion was made by **Councilmember Park**, seconded by **Councilmember Jain**, to (1) adopt a Resolution approving the updated and amended salary plans for various classified and unclassified positions including the position of City Manager to satisfy the requirements of California Code of Regulations Section 570.5 effective December 26, 2021 and (2) schedule a Closed Session to address Paragraph 3.2 of the City Manager's agreement.

Council comments and questions followed.

Outside Legal Counsel Sakai and **Chief Assistant City Attorney Reuter** addressed **Council** comments.

Council comments and questions followed.

A third substitute motion was made by **Vice Mayor Chahal**, seconded by **Councilmember Becker**, to adopt a Resolution approving the updated and amended salary plans for various classified and unclassified positions including the position of City Manager to satisfy the requirements of California Code of Regulations Section 570.5 effective December 26, 2021.

A fourth substitute motion was made by **Councilmember Becker**, seconded by **Vice Mayor Chahal**, to continue this item to January 2022.

Council comments and questions followed.

Outside Legal Counsel Sakai addressed **Council** questions.

A motion was made by Councilmember Becker, seconded by Vice Chair Chahal, on whether Council wants to consider to vote on 4th substitute motion: a fourth substitute motion was made by Councilmember Becker, seconded by Vice Mayor Chahal, to continue this item to January 2022.

Aye: 3 - Vice Mayor Chahal, Councilmember Becker, and Mayor Gillmor

Nay: 4 - Councilmember Watanabe, Councilmember Hardy, Councilmember Park, and Councilmember Jain

Motion Fails.

A motion was made by Vice Mayor Chahal, seconded by Councilmember Becker, on whether Council wants to vote on 3rd substitute motion: A third substitute motion was made by Vice Mayor Chahal, seconded by Councilmember Becker, to adopt a Resolution approving the updated and amended salary plans for various classified and unclassified positions including the position of City Manager to satisfy the requirements of California Code of Regulations Section 570.5 effective December 26, 2021.

Aye: 2 - Vice Mayor Chahal and Councilmember Becker

Nay: 5 - Councilmember Watanabe, Councilmember Hardy,
Councilmember Park, Councilmember Jain, and Mayor Gillmor

Motion Fails.

A motion was made by Councilmember Park, seconded by Councilmember Jain, on whether Council wants to vote on the 2nd substitute motion: A second substitute motion was made by Councilmember Park, seconded by Councilmember Jain, to (1) adopt a Resolution approving the updated and amended salary plans for various classified and unclassified positions including the position of City Manager to satisfy the requirements of California Code of Regulations Section 570.5 effective December 26, 2021 and (2) schedule a Closed Session to address Paragraph 3.2 of the City Manager's agreement.

Aye: 5 - Councilmember Watanabe, Councilmember Hardy,
Councilmember Park, Councilmember Jain, and Mayor Gillmor

Nay: 2 - Vice Mayor Chahal, and Councilmember Becker

Motion Passes.

A motion was made by Councilmember Park, seconded by Councilmember Jain, to (1) adopt Resolution No. 21-9036 approving the updated and amended salary plans for various classified and unclassified positions including the position of City Manager to satisfy the requirements of California Code of Regulations Section 570.5 effective December 26, 2021 and (2) schedule a Closed Session to address Paragraph 3.2 of the City Manager's agreement.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Mayor Gillmor called a recess at 7:25 PM and reconvened the meeting 7:31 PM.

4. [21-1731](#) Action on Amendment No. 1 for the Agreement with Accela, Inc. for Land Management Software and Related Budget Amendment (Continued from December 7, 2021)

Recommendation:

1. Authorize the City Manager to execute Amendment No. 1 to the Agreement and order documents with Accela, Inc. to purchase additional software licenses for Land Management Software and increase the maximum compensation by \$1,420,640 for a total maximum contract compensation of \$2,639,300, subject to the appropriation of funds; and
2. Consistent with City Charter Section 1305, "*At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the **affirmative votes of at least five members** so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget,*" approve a FY 2021/22 budget amendment in the General Fund to increase the Non-Departmental Citywide Programs Budget by \$48,197 and decrease the technology fee reserve by \$48,197 **(five affirmative Council votes required for use of unused balances)**.

City Manager Santana made a few remarks regarding this item.

Director of Community Development Crabtree gave a PowerPoint presentation.

Council comments followed.

A motion was made by Councilmember Jain, seconded by Councilmember Hardy, to (1) authorize the City Manager to execute Amendment No. 1 to the Agreement and order documents with Accela, Inc. to purchase additional software licenses for Land Management Software and increase the maximum compensation by \$1,420,640 for a total maximum contract compensation of \$2,639,300, subject to the appropriation of funds; and (2) consistent with City Charter Section 1305, "At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the affirmative votes of at least five members so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget," approve a FY 2021/22 budget amendment in the General Fund to increase the Non-Departmental Citywide Programs Budget by \$48,197 and decrease the technology fee reserve by \$48,197 (five affirmative Council votes required for use of unused balances).

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

CONSENT CALENDAR

Councilmember Jain pulled Items 7.H and 7.J.

Assistant City Clerk Pimentel noted an error on Councilmember Jain's recusal that will be corrected on the September 8, 2021 meeting minutes (Item 7.B).

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to approve the balance of the Consent Calendar (except Items 7.H, 7.J, and noting the correction to the September 8, 2021 minutes - Item 7.B).

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

7.A [21-25](#) Board, Commissions and Committee Minutes

Recommendation: Note and file the Minutes of:
Audit Committee - September 16, 2021
Cultural Commission - November 1, 2021
Planning Commission - November 17, 2021

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to approve staff recommendation.

- 7.B** [21-1742](#) Action on August 24, 2021 Joint Council and Authorities Concurrent & Stadium Authority Meeting; September 1, 2021 Special City Council Meeting; September 7, 2021 Joint Council and Authorities Concurrent & Stadium Authority Meeting, and September 8, 2021 Joint Special Meeting City Council, Planning Commission, and Downtown Community Task Force

Recommendation: Approve the Meeting Minutes of:
August 24, 2021 Joint Council and Authorities Concurrent & Stadium Authority Meeting;
September 1, 2021 Special City Council Meeting
September 7, 2021 Joint Council and Authorities Concurrent & Stadium Authority Meeting; and
September 8, 2021 Joint Special Meeting City Council, Planning Commission, and Downtown Community Task Force

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to approve staff recommendation.

- 7.C** [21-931](#) Action on the City of Santa Clara Audited Annual Comprehensive Financial Report (ACFR) and Audited Silicon Valley Power (SVP) Financial Statements for Fiscal Year Ended June 30, 2021, as Recommended by the City Council Audit Committee

Recommendation: Note and file, as recommended by the City Council Audit Committee:
1. The audited City of Santa Clara Annual Comprehensive Financial Report (ACFR) for fiscal year ended June 30, 2021; and
2. The audited City of Santa Clara Electric Utility Enterprise Fund (Silicon Valley Power) Financial Statements for fiscal year ended June 30, 2021.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to approve staff recommendation.

- 7.D [21-1260](#) Action on Award of Purchase Orders with Grand Electric & Construction Company and True Blue Automation Services for Electrical Maintenance and Repair Services

Recommendation:

1. Authorize the City Manager to execute a Purchase Order with True Blue Automation Services for as-needed electrical maintenance and repair services Citywide including Maintenance District #183, and for an initial three-year term, with maximum compensation not-to-exceed \$309,000, subject to the appropriation of funds;
2. Authorize the City Manager to execute a Purchase Order with Grand Electric and Construction Company for as-needed electrical repair services Citywide including Maintenance District #183 for an initial three-year term, with maximum compensation not-to-exceed \$234,000 and subject to the appropriation of funds;
3. Authorize the City Manager to adjust maximum compensation during the initial three-year term if the demand for services exceeds the forecasted amount, subject to the appropriation of funds; and
4. Authorize the City Manager to exercise up to two one-year options to extend the term of both purchase orders, subject to the appropriation of funds.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to approve staff recommendation.

- 7.E [21-1550](#) Action on an Agreement with Black & Veatch Management Consulting, LLC for Consulting Services for the Setting of Water, Sewer, and Recycled Water Rates Charged to Santa Clara Customers

Recommendation:

1. Authorize the City Manager to execute an agreement with Black & Veatch Management Consulting, LLC to prepare rate and fee study reports for the City's water, sewer, and recycled water rates for a five-year term starting January 1, 2022 and ending on December 31, 2026, with maximum compensation not-to-exceed \$184,975 and subject to the appropriation of funds; and
2. Authorize the City Manager to negotiate and execute amendments to the Agreement for additional related services that may be required, subject to the appropriation of funds.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to approve staff recommendation.

- 7.F [21-1419](#) Action on an Agreement for Services with Mesa Energy Systems, Inc. for As-Needed Heating, Ventilation, Air Conditioner and Chiller Inspection, Maintenance, and Repair Services

- Recommendation:**
1. Authorize the City Manager to execute the proposed Agreement for Services with Mesa Energy Systems, Inc. for as-needed heating, ventilation, air conditioner and chiller inspection, maintenance, and repair services, in an amount not-to-exceed \$750,000 during the initial five-year term, ending December 2026, subject to the annual appropriation of funds;
 2. Authorize the City Manager to make minor changes to the proposed Agreement for Services subject to approval by the City Attorney as to form;
 3. Authorize the City Manager to execute up to five one-year options to extend the term of the proposed Agreement for Services after the initial term, ending December 2031, assuming all options are exercised, and subject to the annual appropriation of funds; and
 4. Authorize the City Manager to take actions to add or delete services consistent with the scope of the proposed Agreement for Services and allow future rate adjustments subject to request and justification by contractor, approval by the City, and the appropriation of funds.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to approve staff recommendation.

- 7.G [21-1562](#) Action on Delegation of Authority to the City Manager to Negotiate and Execute the Third Phase Agreement with the Northern California Power Agency for a Power Purchase Agreement with South Sutter Water District

- Recommendation:**
1. Authorize the City Manager to negotiate and execute the Third Phase Agreement with Northern California Power Agency for a Power Purchase Agreement with South Sutter Water District; and
 2. Authorize the City Manager to execute administrative amendments to the Third Phase Agreement with Northern California Power Agency as may be needed from time to time during the term of the Power Purchase Agreement.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to approve staff recommendation.

- 7.I [21-1045](#) Action on Amendment No. 1 to the Agreement for Design Professional Services with Electrical Consultants Inc.

Recommendation: 1. Authorize the City Manager to execute Amendment No. 1 to the Agreement with Electrical Consultants Inc to extend the term of the Agreement by two years, ending on December 31, 2023, with no change in the maximum compensation;
2. Authorize the City Manager to make minor changes to the attached Amendment subject to approval of the City Attorney as to form; and
3. Authorize the City Manager to add or delete services consistent with the scope of the agreements subject to request and justification by contractor, approval by the City, and the appropriation of funds and extend the term, if necessary, for a total term not to exceed five years.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to approve staff recommendation.

- 7.K [21-1627](#) Action on Amendment No. 3 to the Exclusive Negotiation Agreement with Habitat for Humanity East Bay / Silicon Valley for 3575 De La Cruz Boulevard

Recommendation: Approve and authorize the City Manager to execute Amendment No. 3 to the Exclusive Negotiation Agreement (ENA) with Habitat for Humanity East Bay / Silicon Valley for the development 3575 De La Cruz Boulevard.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to approve staff recommendation.

- 7.L [21-1620](#) Adoption of a Resolution Recognizing and Supporting the Amah Mutsun Tribal Band in Protecting Their Sacred Lands of Juristac from Development by Public or Private Entities, and Instruct the Mayor to Send a Letter to Santa Clara County

Recommendation: Adopt a Resolution Recognizing and Supporting the Amah Mutsun Tribal Band in Protecting Their Sacred Lands of Juristac from Development by Public or Private Entities, and Instruct the Mayor to Send a Letter to Santa Clara County.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to adopt Resolution No. 21-9037 recognizing and supporting the Amah Mutsun Tribal Band in protecting their Sacred Lands of Juristac from development by Public or Private entities, and instruct the Mayor to send a letter to Santa Clara County.

- 7.M [21-1674](#) Action on a Resolution Extending AB 361 Implementation to Allow City Legislative Bodies to Hold Public Meetings Solely by Teleconference or Otherwise Electronically During the Governor's Proclaimed COVID State of Emergency

Recommendation: Adopt a Resolution finding the continued existence of the need to extend AB 361 implementation to allow the City's legislative bodies to hold public meetings solely by teleconference or otherwise electronically pursuant to AB 361.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to adopt Resolution No. 21-9038 finding the continued existence of the need to extend AB 361 implementation to allow the City's legislative bodies to hold public meetings solely by teleconference or otherwise electronically pursuant to AB 361.

- 7.N [21-1464](#) Action on Appointment of Members to the Bicycle and Pedestrian Advisory Committee

Recommendation: Appoint Jane Casamajor, Bruce Donoghue, and Sukrit Ganesh to serve three-year terms on the Bicycle and Pedestrian Advisory Committee, expiring on December 31, 2024. Appoint Cecily Cox to serve a one-year term on the Bicycle and Pedestrian Advisory Committee, expiring on December 31, 2022.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to approve staff recommendation.

- 7.O [21-1659](#) Action to Waive First Reading and Introduce an Ordinance Amending Chapter 13.10 "Sewers" of Title 13 "Public Services" of the City of Santa Clara Code to Modify Regulations Regarding Pretreatment Programs to Conform with Recent Updates to the Regional Wastewater Facility Requirements

Recommendation: Waive first reading and introduce the ordinance amending City of Santa Clara Code Section 13.10 (Sewers)

A motion was made by Councilmember Becker seconded by Councilmember Jain, to pass to print Ordinance No. 2039, amending City of Santa Clara Code Section 13.10 (Sewers).

SANTA CLARA STADIUM AUTHORITY CONSENT CALENDAR

- 8.A [21-1459](#) Action on Stadium Authority Bills and Claims for the Month of August 2021

Recommendation: Approve the list of Stadium Authority Bills and Claims for August 2021.

A motion was made by Boardmember Becker, seconded by Boardmember Jain, to approve staff recommendation.

- 8.B [21-1596](#) Action on Stadium Authority Bills and Claims for the Month of September 2021

Recommendation: Approve the list of Stadium Authority Bills and Claims for September 2021.

A motion was made by Boardmember Becker, seconded by Boardmember Jain, to approve staff recommendation.

PUBLIC PRESENTATIONS

Lee Broughman (E-Mail) expressed concern regarding **Council** participation in City events.

City Manager Santana noted that **Councilmember Becker** may speak as a member of the public. **Councilmember Becker** deferred his comments to Reports of Members & Special Committees.

CONSENT ITEMS PULLED FOR DISCUSSION

- 7.H [21-1636](#) Action on a Resolution Delegating Authority to the City Manager to Execute Natural Gas Purchase Contracts and Related Documents for Delivery Through 2034

Recommendation: Adopt a Resolution delegating authority to the City Manager, or designee, to execute on behalf of the City any and all natural gas purchase contracts (not to exceed the total of 40,000 MMBtu per day) and related documents for delivery through 2034.

Councilmember Jain pulled this item for further discussion.

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

Council questions followed.

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

A motion was made by Councilmember Jain, seconded by Vice Mayor Chahal, to adopt Resolution No. 21-9039 delegating authority to the City Manager, or designee, to execute on behalf of the City any and all natural gas purchase contracts (not to exceed the total of 40,000 MMBtu per day) and related documents for delivery through 2034.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

9. [21-930](#) Action on FY 2020/21 Budget Year-End Report and Approve the Related Budget Amendments

Recommendation:

1. Note and file the FY 2020/21 Budget Year-End Report;
2. Consistent with City Charter Section 1305, “*At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the **affirmative votes of at least five members** so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget,*” approve the FY 2020/21 Budget Amendments to address necessary budget ratifications as set forth in Attachment 1 of this report (**five affirmative Council votes required for revenue actions and the use of unused balances as noted for each item in Attachment 1**);
3. Consistent with City Charter Section 1305, “*At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the **affirmative votes of at least five members** so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget,*” Approve the FY 2021/22 Budget Amendments as set forth in Attachment 2 of this report (**five affirmative Council votes required for revenue actions and the use of unused balances as noted for each item in Attachment 2**); and
4. Direction, if any, by the City Council regarding initiatives to be funded by the \$400,000 allocation included in this report.

Director of Finance Lee and **City Manager Santana** gave a PowerPoint presentation on FY 2020/21 Budget Year-End Report and Related Budget Amendments.

Council comments and questions followed.

City Manager Santana addressed **Council** questions.

A motion was made by **Vice Mayor Chahal**, seconded by **Councilmember Watanabe**, (1) note and file the FY 2020/21 Budget Year-End Report; (2) consistent with City Charter Section 1305, “*At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the affirmative votes of at least five members so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget,*” approve the FY 2020/21 Budget Amendments to address necessary budget ratifications as set forth in Attachment 1 of this report (five affirmative Council votes required for

revenue actions and the use of unused balances as noted for each item in Attachment 1); (3) consistent with City Charter Section 1305, "At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the affirmative votes of at least five members so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget," Approve the FY 2021/22 Budget Amendments as set forth in Attachment 2 of this report (five affirmative Council votes required for revenue actions and the use of unused balances as noted for each item in Attachment 2); and (4) direction, if any, by the City Council regarding initiatives to be funded by the \$400,000 allocation included in this report.

Councilmember Hardy requested a friendly amendment to include an allocation for \$75,000 for short term of the Homelessness project.

Vice Mayor Chahal accepted the friendly amendment.

A motion was made by Vice Mayor Chahal, seconded by Councilmember Watanabe, to (1) note and file the FY 2020/21 Budget Year-End Report; (2) consistent with City Charter Section 1305, "At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the affirmative votes of at least five members so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget," approve the FY 2020/21 Budget Amendments to address necessary budget ratifications as set forth in Attachment 1 of this report (five affirmative Council votes required for revenue actions and the use of unused balances as noted for each item in Attachment 1); (3) consistent with City Charter Section 1305, "At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the affirmative votes of at least five members so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget," Approve the FY 2021/22 Budget Amendments as set forth in Attachment 2 of this report (five affirmative Council votes required for revenue actions and the use of unused balances as noted for each item in Attachment 2); and (4) allocate \$75,000 for short term of the Homelessness project.

Aye: 7- Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

5. Action on Approval of Various Board, Commissions and Committees Governance Items

- A. [21-1733](#) Information and Update on the Ad Hoc Committee on the Apology Letter Relating to the City's California Voting Rights Act Litigation (Deferred from November 9, 16, and December 7, 2021)

Recommendation:

1. Review expanded scope and provide direction on staff resources to support the committee; and
2. Review the provided history and background and provide feedback on what should be posted on the Open City Hall survey as a history.

City Manager Santana provided an overview of the item.

Councilmember Becker and **Councilmember Park** provided an overview on the request to expand the scope of the Ad-Hoc Committee.

Chief Assistant City Attorney Reuter addressed **Council** questions.

Council comments and questions followed.

City Manager Santana addressed **Council** questions.

Council comments followed.

A motion was made by **Councilmember Becker**, seconded by **Vice Mayor Chahal**, to expand the scope of the Ad-Hoc committee by the following:

- scheduling another Ad-Hoc Committee meeting with full city staff support, including live-streaming and advertisement of the meeting as a Council Meeting;
- set the Ad-Hoc Committee Meeting for 7:00 PM;
- promote the Ad-Hoc Committee and the survey on social media;
- have the Task Force on Diversity, Equity, and Inclusion provide input on the draft letter;
- host a community workshop;
- place a survey on the city's website seeking feedback on the draft apology letter with the following materials for reference: draft apology letter from Councilmember Becker, an unbiased background history on the CVRA lawsuit (to be developed and approved by the Council), and the recent City of San Jose resolution apologizing to the Chinese Immigrants and their descendants for Acts of Fundamental Injustice and Discrimination Seeking forgiveness and committing to the rectification of past policies and misdeeds; and
- schedule a Closed Session to discuss waiving legal confidentiality.

Aye: 5 - Councilmember Chahal, Councilmember Hardy, Councilmember Park, Vice Mayor Jain, and Councilmember Becker

Nay: 2 - Councilmember Watanabe and Mayor Gillmor

- B. [21-1734](#) Action on Formalization of the Bicycle and Pedestrian Advisory Committee (Deferred from November 9, 16 and December 7, 2021)

Recommendation: Alternatives 1, 3, 5, 8 and 9:

1. Modify BPAC membership eligibility to require that applicants must be at least 18 years of age and live or work in the City;
3. Reduce the number of BPAC members from the current maximum of nine members to seven members and phase in this change so no current member loses their position during the current term;
5. Modify how BPAC members are interviewed and appointed similar to other Boards and Commissions by having Council interview applicants and make selections;
8. Remove the requirement that a Councilmember chair the BPAC and allow the BPAC to select its own chair in July 2025 once all members of the BPAC are comprised of those who were interviewed by Council; and
9. Direct staff to bring an ordinance and revised BPAC Policy Guidelines formalizing the BPAC for Council consideration.

Director of Public Works Mobeck provided a verbal report on the Action on Formalization of the Bicycle and Pedestrian Advisory Committee.

Council comments and questions followed.

Director of Public Works Mobeck addressed **Council** questions.

A motion was made by Councilmember Watanabe, seconded by Councilmember Hardy, to Alternatives 1, 3, 5, 8 and 9: (1) modify BPAC membership eligibility to require that applicants must be at least 18 years of age and live or work in the City; (3) reduce the number of BPAC members from the current maximum of nine members to seven members and phase in this change so no current member loses their position during the current term; (5) modify how BPAC members are interviewed and appointed similar to other Board and Commissions by having Council interview applicants and make selections; (8) remove the requirement that a Councilmember chair the BPAC and allow the BPAC to select its own Chair in July 2025 once all members of the BPAC are comprised of those who were interviewed by Council; and (9) direct staff to bring an ordinance and revised BPAC Policy Guidelines formalizing the BPAC for Council consideration.

Aye: 7 - Councilmember Watanabe, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Vice Mayor Jain, Councilmember Becker, and Mayor Gillmor

Mayor Gillmor called for a recess at 9:24 PM and reconvened the meeting at 9:30 PM.

- C. [21-1735](#) Action to Waive First Reading and Introduce an Ordinance to Amend Chapter 2.120, Entitled Boards and Commissions, to Update Boards and Commission Members Qualifications (Deferred from November 9, 16 and December 7, 2021)

Recommendation: Waive First Reading and Introduce an Ordinance to amend Chapter 2.120, entitled Boards and Commissions, to update Boards and Commissions qualifications to be residents of the City instead of qualified electors.

Assistant City Attorney Klotz provided a verbal report.

Council comments and questions followed.

A motion was made by **Councilmember Jain**, seconded by **Councilmember Park**, to waive the First Reading and introduce Ordinance to amend Chapter 2.120, entitled Boards and Commissions, to update Boards and Commissions qualifications to be residents of the City instead of qualified electors.

Council questions followed.

Chief Assistant City Attorney Reuter addressed **Council** questions.

Councilmember Becker requested a friendly amendment to the motion to direct Staff to include language to encourage applicants to complete all fields of the Board and Commissions application.

Councilmember Jain accepted the friendly amendment.

A motion was made by **Councilmember Jain**, seconded by **Councilmember Park**, to (1) waive the First Reading and introduce Ordinance No. 2040 to amend Chapter 2.120, entitled Boards and Commissions, to update Board and Commissions qualifications to be residents of the City instead of qualified electors, and (2) direct staff to include language to encourage applicants to complete all fields of the Board and Commissions application.

Aye: 7 - Councilmember Watanabe, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Vice Mayor Jain, Councilmember Becker, and Mayor Gillmor

6. [21-1732](#) Update on Sustainability Program and Provide Feedback on 2022 Program Focus Areas (Deferred from December 7, 2021)

Recommendation: Note and file the Update on Sustainability Program and Provide Feedback on 2022 Program Focus Areas.

Sustainability Manager Templeton gave a PowerPoint presentation.

Council comments and questions followed.

Sustainability Manager Templeton, City Manager Santana, and **Assistant City Manager Pineda** addressed **Council** questions.

A motion was made by Councilmember Hardy, seconded by Councilmember Becker, to note and file the Update on Sustainability Program and Provide Feedback on 2022 Program Focus Areas.

Aye: 7 - Councilmember Watanabe, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Vice Mayor Jain, Councilmember Becker, and Mayor Gillmor

- 7.J [21-1543](#) Action on Amendment No. 1 to the Agreement for the Performance of Services with Wilson, Ihrig & Associates for Noise Monitoring Services at Vantage CA2 Data Center and Owens Corning Facility and Related Budget Amendment

Recommendation:

1. Authorize the City Manager to execute Amendment No. 1 with Wilson, Ihrig & Associates to expand the Scope of Services, and increase maximum compensation by \$76,600 for a total not to exceed amount of \$86,600; and
2. Consistent with City Charter Section 1305, "At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the affirmative votes of at least five members so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget," approve the related FY 2021/22 budget amendment in the General Fund to increase the Community Development Department appropriation by \$76,600 and decrease the Land Sale Reserve by \$76,600. **(five affirmative Council votes required for the use of unused balances).**

Councilmember Jain pulled this item for further clarification.

Council comments and questions followed.

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

A motion was made by **Councilmember Jain**, seconded by **Councilmember Hardy**, to (1) allocate the budget appropriation, (2) modify the contract to have noise monitoring service performed when there are three noise complaints, and (3) add more analytical clauses.

Councilmember Jain withdrew his original motion and proposed a new motion (seconded by **Vice Mayor Chahal**) to continue this item to January 2022 and get more information about the broadcasting, moving of the noise monitoring equipment, and the timeline.

A motion was made by Councilmember Jain, seconded by Vice Mayor Chahal, to continue this item to January 2022 and get more information about the broadcasting, the moving of the noise monitoring equipment and the timeline.

Aye: 5 - Councilmember Chahal, Councilmember Hardy, Councilmember Park, Vice Mayor Jain, and Councilmember Becker

Nay: 2 - Councilmember Watanabe, and Mayor Gillmor

PUBLIC HEARING/GENERAL BUSINESS

10. [21-1251](#) Action on the Warburton Avenue - Civic Center Drive Area Parking Analysis

Recommendation: Alternative 1: Approve the Warburton Avenue - Civic Center Drive Area Parking Analysis and direct the City Manager to include a budget proposal for Council consideration to fund a new project for installing diagonal parking on Civic Center Drive between Lincoln Street and Warburton Avenue as part of the Biennial 2022/23 and 2023/24 Capital Improvement Program budget process.

Vice Mayor Chahal recused himself from discussion at 10:27 PM due to potential conflict of interest due to his property being in close proximity to this item.

Assistant Director of Public Works Liw gave a PowerPoint presentation.

Council comments and questions followed.

Assistant Director of Public Works Liw addressed **Council** questions.

Public Speaker(s): Jamie	Deepa
Pikliza	Morteza Shafiei (e-Comment)
Sunil B	BV (e-Comment)
Keyhan Sinai	JL (e-Comment)

Assistant Director of Public Works Liw addressed public questions and comments.

Council comments ensued.

Assistant Director of Public Works Liw addressed **Council** questions.

A motion was made by Councilmember Hardy, seconded by Councilmember Watanabe, to approve the Warburton Avenue - Civic Center Drive Area Parking Analysis.

Aye: 6 - Councilmember Watanabe, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Recused: 1 - Vice Mayor Chahal

12. [21-1577](#) Discussion and Possible Direction on Consideration of the Sale of the Loyalton Ranch Property (Continued from October 26, 2021)

Recommendation: Staff has no recommendation and is seeking Council direction on whether additional steps toward the sale of the Loyalton Ranch Property should be implemented.

Assistant City Manager Pineda provided a brief verbal report on this item.

A motion was made by **Councilmember Becker**, seconded by **Councilmember Hardy**, to approve Alternative 1: direct staff to develop a strategy for the sale of the Loyalton Ranch Property and present it to the Council at a future meeting.

Council comments followed.

Chief Assistant City Attorney Reuter and **Assistant City Manager Pineda** addressed **Council** questions.

Public Speaker(s): Joshua Bush

Edward Strine

Mojgan Mahdizadeh (e-Comment)

A motion was made by Councilmember Becker, seconded by Councilmember Hardy, to approve Alternative 1: direct staff to develop a strategy for the sale of the Loyalton Ranch Property and present it to the Council at a future meeting.

Aye: 4 - Councilmember Chahal, Councilmember Hardy, Vice Mayor Jain, and Councilmember Becker

Nay: 3 - Councilmember Watanabe, Councilmember Park, and Mayor Gillmor

Assistant City Clerk Pimentel noted that there were additional e-Comments for Item 10 (RTC 21-1251) and read the following comments into the record:

Public Speaker(s): Caitlin Frates (e-Comment)

Serkan Serkan (e-Comment)

Kevin Wang (e-Comment)

James Kim (e-Comment)

Orit Skorka (e-Comment)

Ryan Luciano (e-Comment) Duanya

Tu (e-Comment)

C F (e-Comment)

Flora Kho (e-Comment)

Venee Cruz (e-Comment)

Shirley Deng (e-Comment)

Leon Li (e-Comment)

Maria Espinosa (e-Comment)

RA Aa (e-Comment)

Anshul Jindal (e-Comment)

Keyhan Sinai (e-Comment)

Property Manager (e-Comment)

Sim Ye (e-Comment)

REPORTS OF MEMBERS AND SPECIAL COMMITTEES

Councilmember Becker expressed comments of concern regarding a news story printed by Robert Haugh and provided clarification on the statements made in the story.

Councilmember Park expressed comments regarding Robert Haugh's blog.

Vice Mayor Chahal expressed comments of concern regarding Robert Haugh's blog.

Councilmember Becker expressed gratitude for the year with the Council and appreciates the work throughout the year.

Mayor Gillmor expressed comments of concern regarding Council's comments on Robert Haugh's blog.

CITY MANAGER/EXECUTIVE DIRECTOR REPORT

None.

ADJOURNMENT

The meeting was adjourned at 11:48 PM in memory of **Hardyal Kaur, Mother-In-Law of Vice Mayor Chahal**.

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

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

[21-79245](#)

Adjournment of the December 14, 2021 City Council and Stadium Authority Meeting Post Meeting Material

The next regular scheduled meeting is on Tuesday, January 11, 2022.

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); Bayshore North Project Enhancement Authority (BNPEA); Public Facilities Financing Corporation (PFFC)

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.



City of Santa Clara

Meeting Minutes

Special City Council Meeting

01/05/2022

5:30 PM

Virtual Meeting
Special Study Session

Pursuant to the provisions of Government Code Section 54953(e) and City of Santa Clara Resolution 21-9038, the City Council meeting will be held by teleconference only. No physical location will be available for this meeting; however, the City of Santa Clara continues to have 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 Mayor calls for a Special Meeting of the City Council of the City of Santa Clara, to commence and convene on January 5, 2022 at 5:00 pm for a Special Meeting to be held virtually via Zoom, to consider the following matter(s) and to potentially take action with respect to them.

5:30 PM STUDY SESSION

Call to Order

Mayor Gillmor called the meeting to order at 5:31 PM.

Pledge of Allegiance and Statement of Values

Council recited the Pledge of Allegiance.

Councilmember Hardy recited the Statement of Values.

Assistant City Clerk Pimentel read the Statement of Behavioral Standards.

Roll Call

Present: 7 - Councilmember Kathy Watanabe, Vice Mayor Raj Chahal, Councilmember Karen Hardy, Councilmember Kevin Park, Councilmember Suds Jain, Councilmember Anthony Becker, and Mayor Lisa M. Gillmor

[22-1342](#)

Update on the Santa Clara Valley Transportation Authority's BART Silicon Valley Phase II Extension Project

Recommendation: There is no staff recommendation.

Assistant Director of Public Works Liw made some opening remarks on Santa Clara County's Valley Transportation Authority (VTA) Bart Station and introduced the VTA staff to make their presentation.

Takis Salpeas (Chief BART Delivery Officer - VTA), Bernice Alaniz (Director of Communications and Public Affairs - VTA), Erica Wilks (Santa Clara Station Lead - VTA), and Greg Teeball (Project Manager - VTA) gave a PowerPoint presentation.

Council comments and questions followed.

Bernice Alaniz, Takis Salpeas, and Assistant Director of Public Works Liw addressed **Council** questions.

Public Speaker(s): Dan Ondrasek	Patricia Leung
Rob Mayer	Jeff Houston
Eugene Bradley	#7059
Jonathan E	Adrian Brandt
cfulhorst	
Mary Grizzle	

Bernice Alaniz, Erica Wilks, Assistant Director of Public Works Liw, and Assistant City Manager Pineda addressed public comments and questions.

Council comments followed.

Councilmember Park left the meeting at 7:50 PM.

PUBLIC PRESENTATIONS

DY Jung (E-Mail) expressed comments of concern regarding neighborhood safety and security.

REPORTS OF MEMBERS AND SPECIAL COMMITTEES

None.

CITY MANAGER/EXECUTIVE DIRECTOR REPORT

None.

ADJOURNMENT

The meeting was adjourned at 7:56 PM.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to adjourn the meeting.

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Absent: 1 - Councilmember Park

The next regular scheduled meeting is on Tuesday, January 11, 2022.

MEETING DISCLOSURES

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

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

LEGEND: City Council (CC); Stadium Authority (SA); Sports and Open Space Authority (SOSA); Housing Authority (HA); Successor Agency to the City of Santa Clara Redevelopment Agency (SARDA); Bayshore North Project Enhancement Authority (BNPEA); Public Facilities Financing Corporation (PFFC)

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.

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City of Santa Clara

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

Agenda Report

22-15

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Board, Commissions and Committee Minutes

COUNCIL PILLAR

Enhance Community Engagement and Transparency

RECOMMENDATION

Note and file the Minutes of:

Historical and Landmarks Commission - February 3, 2022

Cultural Commission - February 7, 2022

Youth Commission - February 8, 2022

Audit Committee - November 30, 2021



City of Santa Clara

Meeting Minutes

Historical & Landmarks Commission

02/03/2022

6:00 PM

Virtual Meeting

Pursuant to California Government Code section 54953(e) and City of Santa Clara Resolution 22-9042, the Historical and Landmarks Commission meeting will be held by teleconference only. No physical location will be available for this meeting; however, the City of Santa Clara continues to provide methods for the public to participate remotely:

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

Public Comments prior to meeting may be submitted via email to PlanningPublicComment@santaclaraca.gov no later than noon on the day of the meeting. Clearly indicate the project address, meeting body, and meeting date in the email.

PUBLIC PARTICIPATION IN ZOOM WEBINAR:

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

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

CALL TO ORDER AND ROLL CALL

Chair Leung called the meeting to order at 6:02 p.m.

Present 5 - Commissioner Amy Kirby, Chair Patricia Leung, Vice Chair Ana Vargas-Smith, Commissioner Kathleen Romano, and Commissioner Ed Stocks

Absent 2 - Commissioner Michael Celso , and Commissioner Megan Swartzwelder

Commissioner Swartzwelder later joined the meeting at 6:45 p.m.

A motion was made by Commissioner Vargas-Smith, seconded by Commissioner Romano to excuse Commissioner Celso's and Commissioner Swartzwelder's absence.

Aye: 5 - Commissioner Kirby, Chair Leung, Vice Chair Vargas-Smith, Commissioner Romano, and Commissioner Stocks

Excused: 2 - Commissioner Celso, and Commissioner Swartzwelder

CONSENT CALENDAR

1. [22-146](#) Historical and Landmarks Commission Minutes of January 6, 2022

Recommendation: Approve the Historical and Landmarks Commission Minutes of January 6, 2022.

A motion was made by Commissioner Romano, seconded by Commissioner Vargas-Smith to approve the consent calendar.

Aye: 5 - Commissioner Kirby, Chair Leung, Vice Chair Vargas-Smith, Commissioner Romano, and Commissioner Stocks

Excused: 2 - Commissioner Celso, and Commissioner Swartzwelder

PUBLIC PRESENTATIONS

None.

GENERAL BUSINESS

2. [22-1724](#) Significant Property Alteration to allow minor interior alterations to an historic residence located at 1525 Franklin Street

Recommendation: Recommend that the Historical and Landmarks Commission find that the proposed project located at 1525 Franklin Street does not destroy or have a significant adverse effect on the integrity of the historically designated property; that the alterations are compatible with the existing structure and meets the Secretary of Interior Standards, and recommend approval of the SPA Permit to the Director of Community Development.

Associate Planner Debby Fernandez provided the staff presentation. **Homeowner Percival Roque** and **Applicant Tom Chan** spoke regarding the project.

A motion was made by Commissioner Romano, seconded by Commissioner Kirby to close public hearing.

Aye: 5 - Commissioner Kirby, Chair Leung, Vice Chair Vargas-Smith, Commissioner Romano, and Commissioner Stocks

Excused: 2 - Commissioner Celso, and Commissioner Swartzwelder

A motion was made by Commissioner Romano, seconded by Commissioner Vargas-Smith to approve staff recommendation.

Aye: 5 - Commissioner Kirby, Chair Leung, Vice Chair Vargas-Smith, Commissioner Romano, and Commissioner Stocks

Excused: 2 - Commissioner Celso, and Commissioner Swartzwelder

STAFF REPORT

1. Berryessa Adobe Maintenance

Staff Liaison Jeff Schwilk stated that there weren't any updates to share at this time.

COMMISSIONERS REPORT

1. Subcommittee Reporting - 20 minutes

Commissioners present reported on subcommittee activities.

2. Board and Committee Assignments - 15 minutes

Commissioners present reported on assignments.

Board/Committee

Lead/Alternate

Santa Clara Arts and Historic Consortium	Leung / Romano
Historic Preservation Society of Santa Clara	Vargas-Smith / Leung
Old Quad Residents Association	Leung / Romano
Development Review Hearing	Romano / Vargas-Smith
BART/ High Speed Rail/ VTA BRT Committee	Vargas-Smith / Swartzwelder
Zoning Ordinance Update	Romano / Swartzwelder
El Camino Real Specific Plan Community Advisory Committee	Leung
Downtown Revitalization	Vargas-Smith / Romano

3. Announcements and Other Items - 10 minutes

Staff Liaison Jeff Schwilk referenced an announcement received from a member of the public, Bill Hare, regarding ideas and plans underway in Santa Clara County for the upcoming celebration of National Preservation Month in May. The Commission requested that staff place discussion of National Preservation Month on the March meeting agenda.

4. Commissioner Travel and Training Requests - 10 minutes

None.

ADJOURNMENT

A motion was made by Commissioner Vargas-Smith, seconded by Commissioner Romano to adjourn the meeting.

The meeting adjourned at 6:49 p.m.

The next regular scheduled meeting is on Thursday, March 3, 2022.

Aye: 6 - Commissioner Kirby, Chair Leung, Vice Chair Vargas-Smith, Commissioner Swartzwelder, Commissioner Romano, and Commissioner Stocks

Excused: 1 - Commissioner Celso

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City of Santa Clara

Meeting Minutes

Cultural Commission

02/07/2022

7:00 PM

Virtual Meeting

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Via Zoom:

<https://santaclaraca.zoom.us/j/98272283531>

Webinar ID: 982 7228 3531

Or join by phone: 1-669-900-6833

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Chair von Huene at 7:04 p.m.

Present 7 - Commissioner Siddarth Sundaram, Commissioner Louis Samara, Chair Debra von Huene, Vice Chair Candida Diaz, Commissioner Jonathan Marinaro, Commissioner Paul McNamara, and Commissioner Jennifer Vega

CONSENT CALENDAR

1. [22-122](#) Cultural Commission Regular Meeting Minutes of January 10, 2022

Recommendation: Approve the Cultural Commission Regular Meeting Minutes of January 10, 2022

A motion was made by Commissioner Marinaro, seconded by Commissioner Sundaram that this item be approved. The motion passed with the following vote:

Aye: 7 - Commissioner Sundaram, Commissioner Samara, Chair von Huene, Vice Chair Diaz, Commissioner Marinaro, Commissioner McNamara, and Commissioner Vega

PUBLIC PRESENTATIONS

None.

GENERAL BUSINESS

2. [22-124](#) Discussion of Cultural Commission Work Plan Goals and Activities for FY 2021/22 and FY 2022/23

Recommendation: Provide updates to Cultural Commission Work Plan goals and activities for FY 2021/22 and FY 2022/23.

Commissioners reported the following updates to the Work Plan goals and Activities. The work plan is updated to reflect the reports on each goal:

Goal 1-Host and enhance multicultural events to encourage and acquaint Santa Clara residents with Cultural diversity.

The committee received the list of bands for the summer concert series. Diverse set of bands. First concert is July 22-Live Oak Park; July 29 and Aug 12-Central Park; Oct 7 and save the date for June 23, 2033-no band. Pop Fiction is confirmed for the Street Dance on Aug. 5. The team will continue to work on the marketing strategies to promote events. Discussed working with possible vendors. Discussed possible sponsorship opportunities.

Goal 2- Develop and encourage interactive, art opportunities to provide temporary, performing, cultural, and public art in the City.

There is no Public Art recommendation to City Council at this time.
Utility Box Art Project is completed for this year.
Halloween and Home Decorating projects are completed.
Map-is being updated as projects arise.
Surviving Covid-Artist agreements have been submitted. Voting will occur once agreements are returned.

Goal 3- Raise visibility of Commemorative months.
Committee met with the Portuguese community and wants to reach out to other communities in Santa Clara. wants to share the coloring book pages with additional groups. **Commissioner Garcia** is working on the content for coloring book promotion and is collaborating with the library.

Goal 4-Enhance communication and media strategy to increase community awareness of the Cultural Commission.

Committee members will meet with **Recreation Manager Castro** regarding events and marketing. Need to pick a date report to Council. Commissioners discussed the Google Drive and will meet about retention.

Goal 5-Prepare for Citywide Master plan Process

No change in the Master Plan. Applications are accepted in August.

STAFF REPORT

Recreation Manager Castro mentioned the potential Art Center on Patrick Henry Drive will be on the agenda for the March Commission Meeting. There was discussion about the project on the Dec. 7 City Council Meeting. Staff is working on the 40th Anniversary Art & Wine Festival scheduled for Sept. 17-18. Staff is planning spring and summer classes. She mentioned that the Commemorative months coloring book is in the City Hall News.

COMMISSIONERS REPORT

Commissioner Marinaro mentioned that he is attending the opera this month and will report back next month.

ADJOURNMENT

A motion was made by Vice Chair Diaz, seconded by Commissioner Marinaro that the meeting be adjourned at 7:40 p.m..

Aye: 7 - Commissioner Sundaram, Commissioner Samara, Chair von Huene, Vice Chair Diaz, Commissioner Marinaro, Commissioner McNamara, and Commissioner Vega

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City of Santa Clara

Meeting Minutes

Youth Commission

02/08/2022

6:00 PM

Virtual Meeting

Pursuant to California Government Code Section 54953(e) and City of Santa Clara Resolution 22-9042, the Youth Commission meeting will be held by teleconference only. No physical location will be available for this meeting; however, the City of Santa Clara continues to have 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/84220118204>

Or One tap mobile:

+16699006833,,84220118204# US (San Jose)

CALL TO ORDER AND ROLL CALL

Chair Ismail called the meeting to order at 6:10 p.m.

Present 13 - Commissioner Aarav Gupta , Commissioner Ahmad Ismail, Commissioner Hiranya Parekh, Commissioner Jasmine Kelly-Tanti, Commissioner Kaitlyn Butcher, Commissioner Khadeejah Khan, Commissioner Malia Martin, Commissioner Mitali Gaidhani, Commissioner Mitchell Blanda, Commissioner Rajvi Khanjan Shroff, Commissioner Rishith Gopiseti, Commissioner Samarth Suresh, and Commissioner Sarah Zuo

Absent 2 - Commissioner Palak Parikh , and Commissioner Riya Mehta

A motion was made by Commissioner Blanda, seconded by Commissioner Martin, to excuse Commissioners Mehta and Parikh from the February 8, 2022 meeting. The motion carried by the following vote:

Aye: 13 - Commissioner Gupta, Commissioner Ismail, Commissioner Parekh, Commissioner Kelly-Tanti, Commissioner Butcher, Commissioner Khan, Commissioner Martin, Commissioner Gaidhani, Commissioner Blanda, Commissioner Shroff, Commissioner Gopiseti, Commissioner Suresh, and Commissioner Zuo

Excused: 2 - Commissioner Parikh, and Commissioner Mehta

CONSENT CALENDAR

1.A [22-120](#) Youth Commission Minutes of January 11, 2022

Recommendation: Approve the Youth Commission Minutes of January 11, 2022.

A motion was made by Commissioner Gupta, seconded by Commissioner Parekh, that this item be recommended for approval. The motion carried by the following vote:

Aye: 13 - Commissioner Gupta, Commissioner Ismail, Commissioner Parekh, Commissioner Kelly-Tanti, Commissioner Butcher, Commissioner Khan, Commissioner Martin, Commissioner Gaidhani, Commissioner Blanda, Commissioner Shroff, Commissioner Gopisetti, Commissioner Suresh, and Commissioner Zuo

Excused: 2 - Commissioner Parikh, and Commissioner Mehta

PUBLIC PRESENTATIONS

None

GENERAL BUSINESS

2. [22-121](#) Youth Commission Committee Reports on Work Plan Goals for FY2021/22

The Youth Commission's FY2021/22 work plan will include themes of community building, youth empowerment, and youth outreach. Each theme will have a committee comprised of Youth Commissioners to plan activities to deliver to the community.

Community Building Committee: Discussed shifting from a large, in-person event to compiling video segments from local, cultural community groups and organizations to share. Segments may focus on traditional performances and food. The next committee meeting will be held on Wednesday, February 16 at 6:00 p.m.

Youth Empowerment Committee: Discussed creating a podcast covering multiple, youth-centric topics hosted by committee members. Members are researching best practices on creating podcasts and which platform(s) to host episodes. The next committee meeting will be held on Monday, February 14 at 6:30 p.m.

Youth Outreach Committee: Will be creating packages of gratitude to share with local teachers comprised of donated items from local businesses. Members hope to have packages ready for distribution by the end of February. The next meeting will be held on Thursday, February 17 at 6:00 p.m.

STAFF REPORT

Jon Kawada, Staff Liaison: The 2022/23 term applications for Youth Commission will be available on February 14 and will be due on March 14, 2022. Reminder that the April monthly meeting of the Youth Commission will be on Tuesday, April 5. Approximately three to four Commissioners will be asked to volunteer at the Breakfast with the Bunny activity at the Senior Center on Saturday, April 9.

Gayle Ichiho, Recreation Supervisor: Roberta Jones Junior Theatre's production of Seussical will be held on March 18, 19, 25 and 26, Kids Rock at the Walter E. Schmidt Youth Activity Center will be on Friday, February 11, and the Parks & Recreation Department is hiring Recreation Leaders for various positions. Visit www.SantaClaraCA.gov/ParksandRec for more info on activities and classes.

Rachel Hughes, Librarian: Shel Grinstead is the new Teen Librarian at Central Library and will be attending Youth Commission meetings, Library branches are currently closed, 'zine making from March 1-13 will be offered for drop-in at Central Library or for take-home, and teen volunteer opportunities are available in various areas. Visit www.SCLibrary.org for more information on current services and volunteer openings.

COMMISSIONERS REPORT

None

ADJOURNMENT

A motion was made by Commissioner Martin, seconded by Commissioner Blanda, that this meeting be adjourned at 6:38 p.m.

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City of Santa Clara

Meeting Minutes

Audit Committee

11/30/2021

3:00 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:

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

Please click this URL to join: <https://santaclaraca.zoom.us/j/99199624617>

Webinar ID: 991 9962 4617

Or join by phone:

US: +1 669 900 6833

CALL TO ORDER AND ROLL CALL

Chairperson Watanabe called the meeting to order at 3:05 P.M.

Present 3 - Chair Kathy Watanabe, Member Sudhanshu Jain, and Member Kevin Park

CONSENT CALENDAR

1. [21-1516](#) Audit Committee Minutes

Recommendation: Approve the Audit Committee minutes of September 16, 2021.

A motion was made by Member Jain, seconded by Member Park, to approve staff recommendation. The motion carried by the following vote:

Aye: 3 - Chair Watanabe, Member Jain, and Member Park

PUBLIC PRESENTATIONS

None.

GENERAL BUSINESS

2. [21-1518](#) Overview of the Draft City of Santa Clara Audited Annual Comprehensive Financial Report (ACFR) and Audited Silicon Valley Power (SVP) Financial Statements for Fiscal Year Ended June 30, 2021

Recommendation: Accept the City of Santa Clara Audited Annual Comprehensive Financial Report and Silicon Valley Power Financial Statements for Fiscal Year Ended June 30, 2021 and recommend that the reports are forwarded for note and file to the full Council at the December 14, 2021 Council and Authorities Concurrent meeting.

A motion was made by Member Jain, seconded by Member Park, to approve staff recommendation. The motion carried by the following vote:

Aye: 3 - Chair Watanabe, Member Jain, and Member Park

ADJOURNMENT

Chairperson Watanabe adjourned the meeting at 3:54 P.M.

Future Audit Committee Meetings will be scheduled at a later date.

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City of Santa Clara

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

Agenda Report

22-305

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action on Monthly Financial Status and Investment Report for December 2021 and Approve Related Budget Amendments

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

In compliance with the Charter of the City of Santa Clara and the adopted Investment Policy, the monthly financial report and monthly investment report for December 2021 are submitted for your information. The financial review as of December 31, 2021 provides a year-to-date financial update to the City Council for the current fiscal year. The analysis of the revenues collected and all expenditures measures the level of adherence to the established resource allocation plan and allows the City to monitor and project revenues and expenditures throughout the year.

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

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

DISCUSSION

Monthly Financial Status Report (Attachment 1)

The attached report summarizes the City's financial performance as of December 31, 2021. Financial analysis for the report is provided for the General Fund, select Special Revenue Funds, Enterprise Operating Funds, and Capital Improvement Funds.

Attachment 1 shows that General Fund revenues were trending below budget at 31.1% through December 2021. While revenue collections are tracking slightly below the budgeted estimate, collections are higher when compared to collections last fiscal year. Concerns remain regarding longer term impacts of COVID-19 on City revenues, particularly Transient Occupancy Tax collections.

As shown in Attachment 1, General Fund departmental expenditures were at 44.7% of budget

through December 2021. Several cost-control measures that were implemented in FY 2019/20 remain in place to generate expenditure savings to partially offset the drop in revenues associated with COVID-19. These measures include a hiring freeze and controls around overtime, as-needed staff, marketing, travel, technology, and vehicle purchases. Expenditure savings are expected by year-end.

As shown in Attachment 1, total revenues through December 2021 for Enterprise Funds (Electric, Water, Sewer, Cemetery, Solid Waste, and Water Recycling) were at 43.5% of the budget while total expenses were at 46.7% of the budget.

In the month of December, the City received \$1,100 in donations, for total donations of \$89,590.

Many economic indicators have improved significantly since the start of the pandemic, but some have not returned to pre-pandemic levels. On a national level, the unemployment rate slightly increased to 4.0% in January 2022 from 3.9% in December 2021. This rate was well below the record setting high of 14.7% in April 2020, but above the pre-pandemic unemployment rate of 3.5%. In December, the number of unemployed persons rose slightly from 6.3 million to 6.5 million in January. This unemployment figure continues to remain above the pre-pandemic level of 5.7 million. In the fourth quarter 2021 advance estimate, the Gross Domestic Product (GDP) increased by 6.9%, following a GDP increase of 2.3% in the third quarter. While GDP has now surpassed the pre-COVID peak in the second quarter 2021, it has not yet reached the pre-pandemic trend. Per the December 2021 UCLA Anderson Forecast, GDP is not expected to reach the pre-COVID trend until the third quarter 2022. The December 2021 UCLA Forecast also assumed continued strong economic growth and labor market recovery with a lessening of supply constraints and inflation. There was caution with the Omicron variant that may temporarily derail the forecast; however, it was too early to tell.

Improvement continues at the State and local level. After the State's largest increase in the unemployment rate in April 2020, the California unemployment rate dropped to 6.5% in December 2021. California has now regained 1.95 million jobs, or 72% of the 2.71 million jobs lost due to COVID-19 in March and April 2020. The unemployment rate in this region continues to outperform the State and the nation. The unadjusted unemployment rate in the San Jose-Sunnyvale-Santa Clara Metropolitan Statistical Area (MSA) was 3.0% in December 2021, down from a revised 3.2% in November 2021 and 6.0% in December 2020 but above the February 2020 level of 2.6%.

Staff will continue to closely monitor the General Fund revenues and the City's overall financial performance as the fiscal year progresses.

Monthly Investment Report (Attachment 2)

All securities held by the City of Santa Clara as of December 31, 2021 were in compliance with the City's Investment Policy Statement regarding current market strategy and long-term goals and objectives. All securities held are rated "A" or higher by two nationally recognized rating agencies. There is adequate cash flow and maturity of investments to meet the City's needs for the next six months.

The City's investment strategy for December 2021 was to invest funds not required to meet current obligations in securities listed in the prevailing Investment Policy Statement, with maturities not to exceed five years from the date of purchase. This strategy ensures safety of the City's funds, provides liquidity to meet the City's cash needs, and with a reasonable portfolio return of 1.21% in

December.

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

From time to time, adjustments to the budget are required to reflect new information, align budgets with actual revenues and expenses, and correct for inadvertent errors. As detailed in Attachment 3, budget amendments are recommended in the General Fund as well as other operating and capital funds. Following are some highlights:

- In the General Fund, amendments correct a position allocation in the Department of Public Works (DPW) and adjust transfer amounts for the General Government Capital Fund, Public Works Capital Project Management Fund, Storm Drain Capital Fund, and the Parks and Recreation Capital Fund.
- In the General Fund, Public Donations Fund, and Cemetery Fund, additional revenue is appropriated.
- The internal service allocations for DPW in the Convention Center Maintenance District Fund and the Information Technology Services Fund are adjusted.
- In the Fire Department Capital Fund, a revenue estimate and corresponding project appropriation is eliminated, as these funds were received and expended in the Fire Department Operating Grant Trust Fund.
- In the Public, Education and Governmental (PEG) Fee Fund, amendments fund equipment replacement.
- In the Parks and Recreation Capital Fund, the fee revenue estimates are adjusted as well as the associated loan repayment to the General Fund Land Sale Reserve to move from budgeting estimated Mitigation Fee Act and Quimby Act revenue to budgeting actual revenue; revenues and the associated loan repayment for the Reed Street - Grant Street Sports Park project will be appropriated at the end of the year based on actual receipts. Amendments are also included to allocate additional revenue to the Park Improvements project and shift the funding source for the Warburton Park Playground project.
- In the Gas Tax, Streets and Highways Capital, Traffic Mitigation, and Traffic Fair Share Funds, actions are included to shift the funding allocations for the Multimodal Improvement Plan Phase 1 project, the Multimodal Improvement Plan Phase 2 project, and the HAWK Beacon on Scott and Harrison project.
- In the Streets and Highways Capital Fund, funding is added to the Pedestrian and Bicycle Enhancement Facilities project to reflect the return of unused funds to this project. Balances from unused project funds are also returned to the Gas Tax Fund.

FY 2021/22 Budget Amendments		
Fund	Source of Funds	Use of Funds
General Fund	(\$2,323,955)	(\$2,323,955)
Convention Center Maintenance District Fund	\$0	\$0
Fire Department Capital Fund	(\$15,208)	(\$15,208)
Gas Tax Fund	\$174,297	\$174,297
General Government Capital Fund	\$0	\$0
Information Technology Services Fund	(\$22,371)	(\$22,371)
Parks and Recreation Capital Fund	(\$10,705,084)	(\$10,705,084)
Public Donations Fund	\$2,500	\$2,500
Public, Educational and Governmental (PEG) Fee Fund	\$0	\$0
Public Works Capital Project Management Fund	\$0	\$0
Storm Drain Capital Fund	\$0	\$0
Streets and Highways Capital Fund	\$946,000	\$946,000
Traffic Fair Share Fund	\$1,816,220	\$1,816,220
Traffic Mitigation Fund	\$459,780	\$459,780
Total Net Budget Change	(\$9,667,821)	(\$9,667,821)

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.

RECOMMENDATION

Note and file the Monthly Financial Status and Investment Reports for November 2021 as presented and Approve Related Budget Amendments in various funds requiring five affirmative votes and consistent with City Charter Section 1305, "At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the affirmative votes of at least five members so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget," as noted for each individual item in Attachment 3.

Reviewed by: Kenn Lee, Director of Finance

Approved by: City Manager's Office

ATTACHMENTS

1. Monthly Financial Status Report December 2021
2. Monthly Investment Report December 2021
3. FY 2021/22 Budget Amendments



City of Santa Clara

The Center of What's Possible

MONTHLY FINANCIAL STATUS REPORT

December 2021

This report summarizes the City's financial performance for the month ended December 31, 2021. Financial analysis for the report is provided for the General Fund, select Special Revenue Funds, Enterprise Operating Funds, and Capital Improvement Funds. Financial information included in this report is unaudited.

General Fund

The General Fund is the major operating fund for the City and includes multiple programs, services, and activities for the residents and businesses of the City. The adopted budget for operating revenues and expenditures for fiscal year 2021/22 was \$289.3 million. The amended budget for revenues and expenditures was amended to \$295.4 million to reflect carryover appropriations from fiscal year 2020/21 and various budget amendments approved by the City Council through December 2021.

Halfway through the fiscal year, General Fund revenues are currently tracking below estimated levels. Concerns remain regarding continued impacts of COVID-19 as the Omicron variant and vaccine hesitancy may impact the speed of recovery. Through December, expenditures are tracking below budget and this trend is expected to continue as departments continue to control expenditures through various cost control measures.

Many economic indicators have improved significantly since the start of the pandemic, but some have not returned to pre-pandemic levels. On a national level, the unemployment rate remained relatively flat, increasing from 3.9% in December 2021 to 4.0% in January 2022. This rate was well below the record setting high of 14.7% in April 2020, but slightly above the pre-pandemic unemployment rate of 3.5%. In January, the number of unemployed persons slightly increased from 6.3 million in December 2021 to 6.5 million. This unemployment figure remains above the pre-pandemic level of 5.7 million.¹

Chart 1. Unemployment rate, seasonally adjusted, January 2020 – January 2022

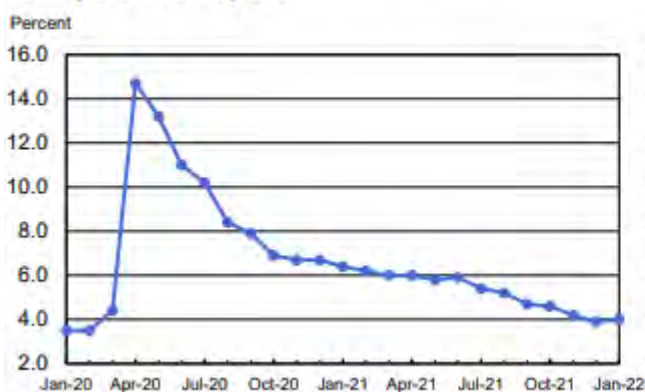


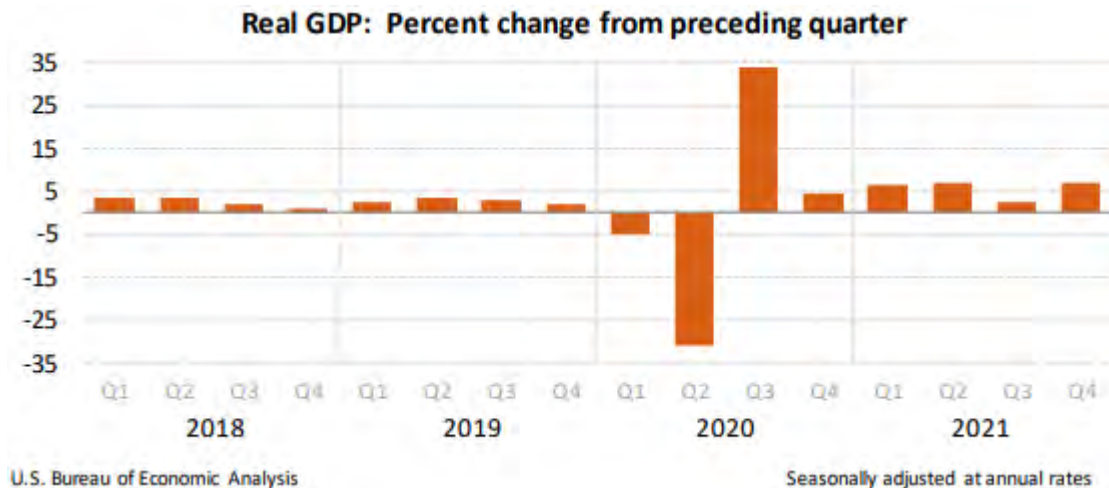
Chart 2. Nonfarm payroll employment, seasonally adjusted, January 2020 – January 2022



In the fourth quarter 2021 advance estimate, the Gross Domestic Product (GDP) increased by 6.9%, following a GDP increase of 2.3% in the third quarter. In calendar year 2021, the GDP increase in the

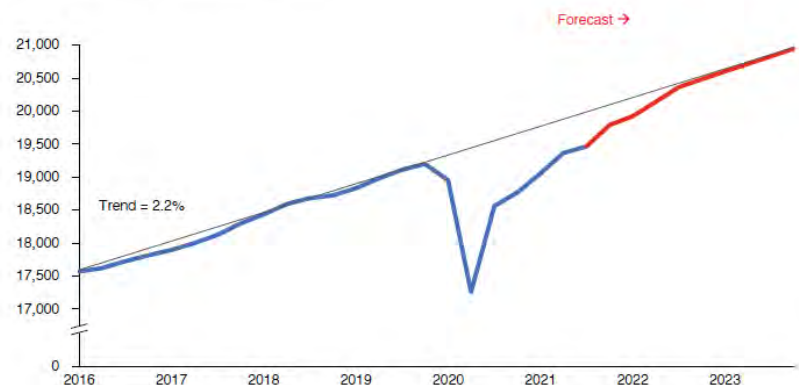
¹ <https://www.bls.gov/news.release/pdf/empsit.pdf>

first quarter reflected efforts to reopen businesses and resume some activities amidst COVID-19 safety precautions. The second quarter reflected increases in consumer spending, exports and local and State government spending. In the third quarter, the resurgence of COVID-19 cases resulted in new restrictions and delays in reopening businesses in some parts of the country. The fourth quarter estimate reflects increases in exports, private inventory investments, and personal consumption expenditures.²



While GDP has now surpassed the pre-COVID peak in the second quarter 2021, it has not yet reached the pre-pandemic trend. Per the December 2021 UCLA Anderson Forecast, GDP is not expected to reach the pre-COVID trend until the third quarter 2022. On an annual basis, the UCLA Forecast projects GDP growth of 5.6% in 2021, 4.2% in 2022, and 2.7% in 2023.

Exhibit 3: Real GDP Levels, Annual Rates, Billions of Chained 2012\$



Source: UCLA Anderson Forecast and Oxford Economics

Improvement continues at the State and local level. After the State's largest increase in the unemployment rate in April 2020, the California unemployment rate dropped slightly to 6.5% in

² https://www.bea.gov/sites/default/files/2022-01/gdp4q21_adv.pdf

³ UCLA Anderson Forecast, December 2021

December 2021. With the continued addition of jobs, California has now regained 1.95 million jobs, or nearly 72% of the 2.71 million jobs lost due to COVID-19 in March and April 2020.⁴

The unadjusted unemployment rate in the San José-Sunnyvale-Santa Clara Metropolitan Statistical Area (MSA) was 3.0% in December 2021, down from a revised 3.2% in November 2021 and the December 2020 level of 6.0% but higher than the February 2020 level of 2.6%. Between December 2020 and December 2021, employment in this region increased by 64,000 jobs, or 6.0%. The largest increases were in leisure and hospitality (up 24,300 jobs), professional and business services (up 12,700 jobs), and private educational and health services (up 9,700 jobs).⁵

Staff will continue to closely monitor the economic environment and the City's financial performance and provide updates through the Monthly Financial Reports.

⁴ <https://www.edd.ca.gov/newsroom/unemployment-december-2021.htm>

⁵ [https://www.labormarketinfo.edd.ca.gov/file/lfmonth/sjos\\$pds.pdf](https://www.labormarketinfo.edd.ca.gov/file/lfmonth/sjos$pds.pdf)

Financial Status Report as of December 31, 2021

General Fund Revenues

As of December 31, 2021, \$78.0 million or 31.1% of the General Fund estimated revenue (excluding transfers) was received. Transfers and use of reserves of \$44.4 million have occurred as budgeted. While revenue collections are tracking below the budgeted estimate, collections are higher when compared to collections last fiscal year (excluding various permits collections that are now deposited into the new Building Development Services Fund and transfers).

CITY OF SANTA CLARA GENERAL FUND REVENUES OVERVIEW AND COMPARISON BY TYPE

Function	FISCAL YEAR 2021/22				PY REVENUE COMPARISON		
	Adopted Budget	Amended Budget	Actual Through 12/31/2021	Percentage Received	Actual Through 12/31/2020	Change From Prior Year	Percentage Change
TAXES							
Sales Tax	\$ 58,183,000	\$ 58,183,000	\$ 18,592,585	31.96%	\$ 19,640,576	\$ (1,047,991)	-5.34%
Property Tax	71,559,000	71,559,000	19,061,389	26.64%	18,393,872	667,517	3.63%
Transient Occupancy Tax	9,000,000	9,000,000	2,497,314	27.75%	907,660	1,589,654	175.14%
Other Taxes	6,080,000	6,080,000	1,714,502	28.20%	1,667,942	46,560	2.79%
Total Taxes	144,822,000	144,822,000	41,865,790	28.91%	40,610,050	1,255,740	3.09%
LICENSES & PERMITS							
Business Licenses	900,000	900,000	414,741	46.08%	423,191	(8,450)	-2.00%
Fire Operation Permits	2,200,000	2,200,000	930,380	42.29%	892,848	37,532	4.20%
Building Permits	-	-	-	N/A	3,777,049	(3,777,049)	-100.00%
Electric Permits	-	-	-	N/A	715,617	(715,617)	-100.00%
Plumbing Permits	-	-	-	N/A	484,042	(484,042)	-100.00%
Mechanical Permits	-	-	-	N/A	549,309	(549,309)	-100.00%
Miscellaneous Permits	60,000	60,000	36,200	60.33%	29,162	7,038	24.13%
Total Licenses & Permits	3,160,000	3,160,000	1,381,321	43.71%	6,871,218	(5,489,897)	-79.90%
FINES & PENALTIES	1,496,135	1,496,135	166,995	11.16%	206,359	(39,364)	-19.08%
INTERGOVERNMENTAL	26,205,801	26,535,801	157,731	0.59%	116,751	40,980	35.10%
CHARGES FOR SERVICES	30,003,443	30,003,443	14,226,218	47.42%	14,576,902	(350,684)	-2.41%
SILICON VALLEY POWER TRANSFER	24,700,000	24,700,000	12,886,688	52.17%	12,171,743	714,945	5.87%
USE OF MONEY & PROPERTY							
Interest	2,600,000	2,600,000	567,271	21.82%	447,933	119,338	26.64%
Rent	9,115,722	9,298,022	4,811,471	51.75%	4,100,831	710,640	17.33%
Total Use of Money & Property	11,715,722	11,898,022	5,378,742	45.21%	4,548,764	829,978	18.25%
MISCELLANEOUS REVENUES	198,000	198,000	308,331	155.72%	187,537	120,794	64.41%
LAND PROCEED	-	-	-	N/A	-	-	N/A
OTHER FINANCING SOURCES							
Operating Transfer In - Storm Drain	1,454,000	1,454,000	1,454,000	100.00%	1,460,000	(6,000)	-0.41%
Operating Transfer In - Reserves	32,390,871	32,742,785	32,742,785	100.00%	39,468,333	(6,725,548)	-17.04%
Operating Transfer In - Fund Balances ⁽¹⁾	-	4,817,658	4,817,658	100.00%	4,273,692	543,966	12.73%
Operating Transfer In - Miscellaneous	5,005,399	5,427,399	5,427,399	100.00%	3,547,419	1,879,980	53.00%
Total Other Financing Sources	38,850,270	44,441,842	44,441,842	100.00%	48,749,444	(4,307,602)	-8.84%
STADIUM OPERATION							
Charges for Services	7,466,069	7,466,069	1,616,734	21.65%	1,453,524	163,210	11.23%
Rent and Licensing	717,500	717,500	39,691	5.53%	26,451	13,240	50.05%
Total Stadium Operation	8,183,569	8,183,569	1,656,425	20.24%	1,479,975	176,450	11.92%
TOTAL GENERAL FUND	\$ 289,334,940	\$ 295,438,812	\$ 122,470,084	41.45%	\$ 129,518,744	\$ (7,048,660)	-5.44%

(1) The Operating Transfer In - Fund Balances includes the carryover encumbrances of open purchase orders as of June 30, 2021 and mid year budget amendment from reserves.

General Fund Revenues

Sales Tax: The City of Santa Clara sales tax rate is 9.0%, of which the City receives 1.0%. As of December 31, 2021, \$18.6 million has been collected, which is down \$1.0 million or 5.3% from the prior year level and is based on performance through the first quarter of the fiscal year and an advance payment for the second quarter. While not reflected in the collections through December, the City has received information on the cash receipts for second quarter of the fiscal year, which reflects growth of 14.8%. Overall, receipts are up 4.6% through the first two quarters of FY 2021/22. Internet sales represents a sizeable amount of the City's sales tax revenue. The County pool, which includes internet sales, accounts for approximately 20% of the sales tax the City receives. Overall, annual Sales Tax growth of 3.6% is needed to meet the budgeted estimate of \$58.2 million. Based on collections to date, receipts are projected to meet the budget.

Property Tax: Through December, 26.6% of the property tax budgeted estimate has been received. The majority of property tax revenue is collected in February and April each year. Based on information from the County of Santa Clara, property tax receipts are projected to end the year at or slightly above the Adopted Budget estimate of \$71.6 million.

Transient Occupancy Tax (TOT): TOT is calculated as a percentage of City hotel/motel room charges. The City's current TOT rate is 9.5%. This rate increased to 11.5% in January 2022. Through December 31, 2021, approximately \$2.5 million has been received, which is significantly higher than receipts through the same period last fiscal year of only \$0.9 million. However, receipts remain 66% below the pre-COVID 19 level of \$7.3 million received through December 2019. As businesses continue to reopen, it is anticipated that TOT will continue to increase compared to last fiscal year. To meet the budgeted estimate, collections will need to triple from just under \$3.0 million in FY 2020/21 to \$9.0 million in FY 2021/22. With the January 2022 rate increase, TOT receipts are projected to end the year close to the budgeted estimate.

Other Taxes: Includes franchise tax and documentary transfer tax. The City has collected \$1.7 million through December, which is 2.8% above receipts received through the same period last fiscal year. While receipts in the documentary transfer tax are tracking above levels collected through the same period last fiscal year, receipts in the franchise tax category are lower than prior year levels. Growth of 4.4% is needed to meet the budgeted estimate of \$6.1 million. Collections are projected to end the year close to the budgeted estimate.

Licenses & Permits: Includes business licenses, fire operation permits, and miscellaneous permits and fees. Effective FY 2021/22, building, electric, plumbing and mechanical permits have all been budgeted in the new Building Development Services Fund, which is reflected in the Special Revenue section of this report. Licenses and permits revenue collections total \$1.4 million, or 43.7% of the budget of \$3.2 million. Receipts are tracking slightly below estimated levels through December and may end the year slightly below the budgeted estimate.

Fines & Penalties: Includes vehicle, parking, court fines, and miscellaneous penalty fines. The revenue of \$0.2 million collected in this category through December is tracking to end the year well

below the budgeted estimate of \$1.5 million largely due to the waiving of late fees on utility billing in response to COVID-19. The City will be applying for the California Arrearage Payment Program in order to alleviate the arrearages accrued as a result of the City's bill relief period.

Intergovernmental: Includes federal stimulus funds, motor vehicle fees, state homeowner tax relief, state mandated reimbursement and redistribution of land sale proceeds and ground leases from the Successor Agency. Through December 31, 2021, \$0.2 million has been received, which is higher than receipts through the same period last year and reflects differences in planned payments. The federal stimulus funds (\$26 million) have been moved to a separate American Rescue Plan Act Fund and that shift will be reflected in future Financial Status Reports.

Charges for Services: Includes various engineering fees, administrative fees, and community service revenue from various recreational activities. Through December 31, 2021, collections totaled approximately \$14.2 million or 47.4% of the budget. This reflects a 2.4% decrease compared to last year's collections through the same period of \$14.6 million. The decrease is mainly attributable to the plan check and sign fees now being recorded in the newly established Building Development Services Fund. This decrease is partially offset by higher collections in the planning and zoning fees, fire construction permits, and miscellaneous charges for services categories. Collections are tracking close to the budgeted estimate.

Silicon Valley Power Transfer: In accordance with the City's charter, Silicon Valley Power pays 5.0% of gross revenues to the General Fund. As of December 31, 2021, \$12.9 million has been received which is on par for this time of year. This collection level, however, is based on the budgeted estimate and will be trued up at the end of the fiscal year. Growth of less than 1% from the prior year is needed to meet the budgeted estimate of \$24.7 million.

Use of Money & Property: Includes realized investment income and rental income. Interest income and rent revenue collections totaled \$5.4 million, or 45.2% of the budget. This reflects a \$0.8 million increase from prior year collection levels. The increase was primarily in the rent category.

Miscellaneous Revenues: Includes developer fees, donations, damage recovery, sale of surplus, and one-time miscellaneous revenues. Through December 31, 2021, collections of \$0.3 million have exceeded the budgeted estimate of \$0.2 million and are approximately 64.4% higher than collections through the same period last year.

Stadium Operation: As of December 31, 2021, charges for services collected through the Stadium totaled \$1.7 million, which is below par for this time of year. This is due in part to the timing of when the City receives reimbursements. Current year collections are approximately 12% higher than collections through the same period last year resulting from the reopening of Stadium for events.

Financial Status Report as of December 31, 2021

General Fund Expenditures

As of December 31, 2021, \$156.3 million or 52.9% of the General Fund operating budget had been expended. Overall, expenditures in the General Fund are within budgeted levels through December. Departmental expenditures totaled \$109.8 million, or 44.7% of the budget, which is below the par level of 50% of the budget. Transfers of \$42.5 million have occurred as budgeted.

Several cost-control measures that were implemented in FY 2019/20 remain in place to generate expenditure savings to partially offset the drop in revenues associated with COVID-19. These measures include a hiring freeze and controls around overtime, as-needed staff, marketing, travel, technology and vehicle purchases. With these measures, expenditures are expected to end the year below budget.

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

Function	FISCAL YEAR 2021/22				PY EXPENDITURES COMPARISON		
	Adopted Budget	Amended Budget	Actual Through 12/31/2021	Percentage Used	Actual Through 12/31/2020	Change From Prior Year	Percentage Change
GENERAL GOVERNMENT							
Non-Departmental	\$ 6,824,333	\$ 7,055,121	\$ 2,421,655	34.32%	\$ 1,971,629	\$ 450,026	22.83%
City Council	829,205	829,205	407,898	49.19%	344,432	63,466	18.43%
City Clerk	1,470,231	1,718,169	703,916	40.97%	713,879	(9,963)	-1.40%
City Manager	5,442,069	6,276,486	2,405,646	38.33%	2,509,815	(104,169)	-4.15%
City Attorney	3,097,380	3,119,380	1,144,623	36.69%	1,047,021	97,602	9.32%
Human Resources	4,133,810	4,389,886	1,750,963	39.89%	1,552,999	197,964	12.75%
Finance	17,439,442	18,273,518	7,670,152	41.97%	7,666,733	3,419	0.04%
Total General Government	39,236,470	41,661,765	16,504,853	39.62%	15,806,508	698,345	4.42%
PUBLIC WORKS	23,201,356	24,198,161	10,858,986	44.88%	11,180,519	(321,533)	-2.88%
COMMUNITY DEVELOPMENT	5,070,207	6,581,680	2,264,899	34.41%	7,048,009	(4,783,110)	-67.86%
PARKS AND RECREATION	20,982,990	21,433,077	8,901,614	41.53%	8,533,735	367,879	4.31%
PUBLIC SAFETY							
Fire	60,581,403	61,011,002	30,530,572	50.04%	29,832,054	698,518	2.34%
Police	79,870,137	79,983,531	36,552,061	45.70%	37,050,987	(498,926)	-1.35%
Total Public Safety	140,451,540	140,994,533	67,082,633	47.58%	66,883,041	199,592	0.30%
LIBRARY	10,764,727	10,895,605	4,181,209	38.38%	4,392,033	(210,824)	-4.80%
DEPARTMENTAL TOTAL	239,707,290	245,764,821	109,794,194	44.67%	113,843,845	(4,049,651)	-3.56%
OTHER FINANCING USES							
Operating Transfer Out - Miscellaneous	23,250,142	23,250,142	23,250,142	100.00%	1,013,778	22,236,364	2193.42%
Operating Transfer Out - Debt Services	2,501,439	2,501,439	2,501,439	100.00%	2,500,344	1,095	0.04%
Operating Transfer Out - Maintenance Dtrct	771,349	771,349	771,349	100.00%	926,920	(155,571)	-16.78%
Operating Transfer Out - Cemetery	850,000	850,000	850,000	100.00%	771,769	78,231	10.14%
Operating Transfer Out - CIP	11,773,925	11,773,925	11,773,925	100.00%	19,678,672	(7,904,747)	-40.17%
Operating Transfer Out - Reserves	3,309,009	3,309,009	3,309,009	100.00%	1,065,850	2,243,159	210.46%
Total Other Financing Uses	42,455,864	42,455,864	42,455,864	100.00%	25,957,333	16,498,531	63.56%
STADIUM OPERATION	7,171,786	7,218,126	4,039,345	55.96%	950,860	3,088,485	324.81%
TOTAL GENERAL FUND	\$ 289,334,940	\$ 295,438,812	\$ 156,289,403	52.90%	\$ 140,752,038	\$ 15,537,365	11.04%

General Fund Expenditures

Below is an explanation of certain budget to actual expenditure variances by department.

Non-Departmental: Includes expenditures that are not attributable to a single department, but a function of the City in general. As of December 31, 2021, expenditures totaled \$2.4 million, or 34.3% of the budget. These expenditures are well below the par level of 50%, but above the prior year level of \$2.0 million. This is a result of the reallocation of City memberships from the City Manager's Office to the Non-Departmental budget. Additionally, contractual services are higher than last fiscal year due to an increase in the permitting system licensing costs.

City Attorney: As of December 31, 2021, actual expenditures totaled approximately \$1.1 million, which is 36.7% of the budget, which is below par. This is mainly attributable to lower salary and as-needed spending. Spending is above the total expenditures through the same time last fiscal year by 9.3%. This is a result of the reallocation of contractual services from the Special Liability Insurance Fund to the City Attorney's Office operating budget.

City Clerk: Through December, actual expenditures were tracking below budget at \$0.7 million or approximately 41% of the budget. This reflects a decrease of 1.4% over last year's spending through the same period. The primary driver for the decrease in spending is the Granicus costs which are paid every other year.

City Council: Through December, expenditures were at 49.2% of budget, which is at par. Compared to the same period through last fiscal year, this reflects a spending increase of approximately 18.4% which is a result of higher as-needed expenditures compared to last fiscal year.

City Manager: The actual expenditures through December 31, 2021 totaled \$2.4 million, or 38.3% of the budget, which is below par for this time of the year. Expenditures are 4.2% lower compared with the spending level through the same period last fiscal year. This decrease in expenditures is related to the reallocation of City memberships and mandated costs from the City Manager's Office budget to Non-Departmental in addition to lower advertising and contractual services expenditures.

Community Development Department: This department consists of three divisions: Planning, Building, and Housing and Community Services. Effective this fiscal year, the Building division of this department has been moved to the newly established Building Development Services Fund, which falls under the special revenue section of this report. Through December, departmental expenditures for the Planning and Housing and Community Services divisions totaled \$2.3 million, or approximately 34.4%, which is below the par level of 50%. This is a result of vacancies in the department. Expenditures were also well below the spending through the same period last fiscal year due to the change in funding for the Building Division.

Finance Department: Through December, the Department's expenditures totaled \$7.7 million, or 42% of the budget, which is below par. This is mainly attributable to lower expenditures in the operating

supplies and contractual services categories. This expenditure level was in line with levels from last fiscal year.

Fire Department: As of December 31, 2021, actual expenditures in the General Fund totaled \$30.5 million, or 50% of the budget, which is on par. These expenditures reflect a 2.3% increase from expenditures through the same period last fiscal year. All COVID-19 related expenditures have been charged centrally to the Other City Departments Operating Grant Trust Fund. The Fire Department has charged approximately \$0.2 million to this fund, bringing total expenditures, including the General Fund, to approximately \$30.7 million. Overtime expenditures are tracking at 94.5%, which is above par for this time of year. While this overtime figure is high, it is important to note that overtime is used to backfill for vacant positions and the vacancy savings offset a portion of the overtime costs. Fire Department expenditures have also been impacted by mutual aid deployments to address wildland fires (Caldor, Dixie, River and Beckwourth complex fires), for which the City will receive reimbursement. Once those reimbursements are received and allocated to the Fire Department, expenditures will be tracking within estimated levels. Budget actions will be brought forward later in the fiscal year to recognize and budget those revenues.

Library Department: Through December, actual expenditures totaled \$4.2 million, or 38.4% of the budget, which is below par and lower than expenditure levels through the same period last fiscal year. COVID-19 precautions have continued to impact Library operations this year, resulting in lower expenditures. A phased reopening is in progress, but this schedule has been delayed due to the increase in COVID-19 cases resulting from the latest Omicron variant.

Parks and Recreation Department: Through December, actual expenditures totaled approximately \$8.9 million, or 41.5% of the budget, which is below par, and is slightly higher than the prior year actuals of \$8.5 million. The department has resumed most activities that were previously impacted by COVID-19 restrictions. However, some programming continues to be impacted by the staff vacancies.

Police Department: Expenditures as of December 31, 2021 are tracking slightly below expected levels at \$36.6 million, or 45.7% of the budget. Expenditures are consistent with the spending levels last fiscal year. Similar to the Fire Department, Police Department expenditures related to COVID-19 have also been charged to the Other City Departments Operating Grant Trust Fund. Through December, charges to this fund totaled approximately \$0.06 million. Accounting for the General Fund and Other City Departments Operating Grant Trust Fund, department expenditures are still tracking below par.

Stadium Operation: Stadium operating expenditures are incurred first and billed on a reimbursement basis creating a timing difference in revenue recognition. Through December, stadium expenditures totaled \$4.0 million, or 56% of the budget. This is significantly higher than expenditures through the same period last year, as a direct result of the reopening of the Stadium for events.

Special Revenue Funds

The table below is a summary of revenues and expenditures of select Special Revenue Funds as of December 31, 2021. The amended budget for both reflects carryover appropriations from fiscal year 2021/22 in addition to budget amendments approved by the City Council through December 2021. Effective July 1, 2021, all Building Division revenues and expenditures are now budgeted and accounted for in the new Building Development Services Fund, which is included in the table below. Revenues totaled approximately \$10.8 million, while expenditures totaled approximately \$7.4 million through the end of December. Overall, revenues are tracking above par while expenditures are tracking below budgeted levels.

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

Fund Description	REVENUES - FISCAL YEAR 2021/22				PRIOR YEAR REVENUE COMPARISON		
	Adopted Budget	Amended Budget	Actual Through 12/31/2021	Percentage received	Actual Through 12/31/2020	\$ Change From Prior Year	Percent Change
Housing Authority Fund	\$ 261,000	\$ 261,000	\$ 220,990	84.67%	\$ 322,411	\$ (101,421)	-31.46%
City Affordable Housing Fund	657,000	657,000	1,027,194	156.35%	491,235	535,959	109.10%
Housing Successor Fund	350,000	350,000	374,483	107.00%	616,409	(241,926)	-39.25%
Housing and Urban Development	1,957,103	1,956,086	1,331,527	68.07%	1,168,070	163,457	13.99%
Building Development Services Fee Fund	13,630,000	13,630,000	7,817,065	57.35%	0	7,817,065	100.00%
TOTAL	\$ 16,855,103	\$ 16,854,086	\$ 10,771,259	63.91%	\$ 2,598,125	\$ 8,173,134	314.58%

Fund Description	EXPENDITURES - FISCAL YEAR 2021/22				PRIOR YEAR EXPENDITURE COMPARISON		
	Adopted Budget	Amended Budget	Actual through 12/31/2021	Percentage used	Actual through 12/31/2020	\$ Change From Prior Year	Percent Change
Housing Authority Fund	\$ 363,099	\$ 483,099	\$ 61,853	12.80%	\$ 70,332	\$ (8,479)	-12.06%
City Affordable Housing Fund	1,431,111	2,852,650	485,686	17.03%	383,784	101,902	26.55%
Housing Successor Fund	915,640	1,260,001	391,199	31.05%	338,536	52,663	15.56%
Housing and Urban Development	3,684,839	5,429,455	1,440,356	26.53%	1,490,859	(50,503)	-3.39%
Building Development Services Fee Fund	12,256,059	12,256,059	5,011,011	40.89%	0	5,011,011	100.00%
TOTAL	\$ 18,650,748	\$ 22,281,264	\$ 7,390,105	33.17%	\$ 2,283,511	\$ 5,106,594	223.63%

Governmental Capital Improvement Funds

The table below lists the total amended budget amounts for the Capital Improvement Funds, which consist of current year appropriations, prior year carryover balances in Governmental Capital Improvement Funds, and budget amendments approved through December 2021. As of December 31, 2021, these capital fund expenditures totaled \$14.4 million, or 9.8% of the amended budget. As part of the adoption of the FY 2021/22 and FY 2022/23 operating budget, some capital funds were carried over for projects that were not anticipated to be completed by June 30, 2021. Necessary additional adjustments to the capital carryover amounts were included as part of the Budgetary Year-End Report for FY 2020/21, approved at the December 14, 2021 Council meeting. These adjustments will be reflected in later Monthly Financial Status Reports.

The carryover of prior year budget amounts is necessary when services or projects are started but not completed at the end of the fiscal year. This is especially true for the Capital Improvement Program (CIP) that typically spans several years. The table below displays the expenditure budget for the General Government capital funds excluding transfers.

CITY OF SANTA CLARA GOVERNMENTAL CAPITAL IMPROVEMENT FUNDS SUMMARY OF EXPENDITURES

Fund Description	EXPENDITURES - FISCAL YEAR 2021/22				
	Current Year Appropriation	Prior Year Carryforward	Total Amended Budget	Actual Through 12/31/2021	Percentage Used
Parks & Recreation	\$ 7,085,289	\$ 15,478,055	\$ 22,563,344	\$ 1,022,497	4.53%
Streets & Highways	26,869,803	62,313,089	89,182,892	9,412,143	10.55%
Storm Drain	592,169	10,471,505	11,063,674	1,794,933	16.22%
Fire	837,110	1,017,587	1,854,697	47,655	2.57%
Library	7,872	246,601	254,473	15,234	5.99%
Public Buildings	397,953	7,547,118	7,945,071	634,612	7.99%
General Gov't - Other	1,555,000	10,228,593	11,783,593	1,110,671	9.43%
Related Santa Clara Developer	968,103	1,326,191	2,294,294	367,693	16.03%
Tasman East Specific	23,757	-	23,757	802	3.38%
Infrastructure Improvement Fund					
TOTAL	\$ 38,337,056	\$ 108,628,739	\$ 146,965,795	\$ 14,406,240	9.80%

Financial Status Report as of December 31, 2021

Enterprise Funds

The table below is a summary of revenues and expenses for the Enterprise Operating Funds as of December 31, 2021. Overall, revenues and expenditures are tracking below budgeted levels with revenues tracking at 43.5% of the budget and expenditures tracking at 46.7% of the budget.

Both revenues and expenditures are tracking above last fiscal year levels reflecting current activity levels. The increase in expenditures in the Electric Utility is primarily due to the higher debt retirement costs as well as higher resource costs related to transmission and wheeling (transportation of electric energy from within an electrical grid to an electrical load outside the grid boundaries). In the Solid Waste Utility Fund, expenditures are up primarily in the garbage collections, disposal and recycling accounts resulting from higher contractual services costs.

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

Fund Description	REVENUES - FISCAL YEAR 2021/22				PRIOR YEAR REVENUE COMPARISON		
	Adopted Budget	Amended Budget	Actual Through 12/31/2021	Percentage received	Actual Through 12/31/2020	\$ Change From Prior Year	Percent Change
Electric Utility Fund	\$ 555,810,147	\$ 555,810,147	\$ 245,381,152	44.15%	\$ 210,670,997	\$ 34,710,155	16.48%
Water Utility Fund	49,489,630	49,489,630	23,625,102	47.74%	24,928,824	(1,303,722)	-5.23%
Sewer Utility Fund	58,344,697	58,344,697	18,569,928	31.83%	19,815,030	(1,245,102)	-6.28%
Cemetery Fund	600,000	600,000	331,620	55.27%	237,930	93,690	39.38%
Solid Waste Utility Fund	33,610,000	33,764,000	15,139,208	44.84%	11,179,682	3,959,526	35.42%
Water Recycling Fund	5,703,831	5,703,831	3,269,040	57.31%	2,973,867	295,173	9.93%
TOTAL REVENUE	\$ 703,558,305	\$ 703,712,305	\$ 306,316,050	43.53%	\$ 269,806,330	\$ 36,509,720	13.53%

Fund Description	EXPENSES - FISCAL YEAR 2021/22				PRIOR YEAR EXPENSE COMPARISON		
	Adopted Budget	Amended Budget	Actual through 12/31/2021	Percentage Used	Actual through 12/31/2020	\$ Change From Prior Year	Percent Change
Electric Utility Fund	\$ 511,251,732	\$ 515,132,550	\$ 244,227,199	47.41%	\$ 196,576,946	\$ 47,650,253	24.24%
Water Utility Fund	47,197,617	47,580,260	21,105,473	44.36%	21,175,916	(70,443)	-0.33%
Sewer Utility Fund	30,565,333	30,707,268	14,343,157	46.71%	12,989,846	1,353,311	10.42%
Cemetery Fund	1,480,235	1,480,235	714,955	48.30%	660,286	54,669	8.28%
Solid Waste Utility Fund	33,323,675	37,135,208	14,138,060	38.07%	10,410,629	3,727,431	35.80%
Water Recycling Fund	5,709,582	5,709,582	2,982,662	52.24%	3,322,087	(339,425)	-10.22%
TOTAL - Operating Appropriations	\$ 629,528,174	\$ 637,745,103	\$ 297,511,506	46.65%	\$ 245,135,710	\$ 52,375,796	21.37%

Revenues in the electric (which also includes the Electric Debt Service Fund), water, and sewer utility (which also includes the Sewer Debt Service Fund) and water recycling funds are primarily from customer service charges. The activity levels for these customer service charges also impact the resource and production costs on the expenditure side for these funds. The lower the revenue from customer service charges, the lower the expenditures in the resource and production category.

Financial Status Report as of December 31, 2021

A summary of expenses in the Enterprise Capital Improvement Funds is detailed in the table below. Actuals through December 2021 totaled approximately \$58.5 million, or 22.6% of the amended budget. Expenditures in the Sewer Utility Capital Fund were significantly higher as a result of the Regional Wastewater Facility project, which is managed alongside the City of San José. Similar to the general government capital funds, capital funds were carried over into next fiscal year as part of the FY 2021/22 and FY 2022/23 budget adoption process for those projects that have not yet been completed. Adjustments to the capital carryover amounts based on actual year-end expenditures were included as part of the Budgetary Year-End Report for FY 2020/21, approved at the December 14, 2021 Council meeting. These adjustments will be reflected in later Monthly Financial Status Reports.

CITY OF SANTA CLARA ENTERPRISE CAPITAL IMPROVEMENT FUNDS SUMMARY OF EXPENSES

Fund Description	EXPENSES - FISCAL YEAR 2021/22					Prior Year
	Current Year Appropriation	Prior Year Carryforward	Total Amended Budget	Actual Through 12/31/2021	Percentage Used	Actual Through 12/31/2020
Electric Utility Fund	\$ 67,868,989	\$ 94,324,423	\$ 162,193,412	\$ 20,368,436	12.56%	\$ 21,407,086
Street Lighting ⁽¹⁾	-	5,953,560	5,953,560	67,666	1.14%	6,854
Water Utility Fund	6,285,000	5,815,672	12,100,672	4,186,071	34.59%	3,305,745
Sewer Utility Fund	47,536,944	25,449,390	72,986,334	32,446,011	44.45%	7,434,254
Cemetery Fund	8,409	351,635	360,044	19,004	5.28%	-
Solid Waste Utility Fund	623,700	46,677	670,377	457,113	68.19%	154,259
Water Recycling Fund	50,000	-	50,000	-	0.00%	2,063
Convention Center Capital Fund	1,724,000	3,500,000	5,224,000	972,463	18.62%	-
TOTAL - CIP Appropriations	\$ 124,097,042	\$ 135,441,357	\$ 259,538,399	\$ 58,516,764	22.55%	\$ 32,310,261

(1) Street Lighting fund is part of Electric Capital Improvement Funds

Fund Reserves

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

- Budget Stabilization Reserve is set aside for weathering economic downturns, emergency financial crisis, or disaster situations. The reserve target is equal to the expenditures of the City's General Fund operations for three months (90-day or 25% General Fund Adopted Operating Budget). In FY 2021/22, the City Council approved an exception to the policy to allow the Reserve to drop below the 25% level.
- Capital Projects Reserve earmarks funds for the Capital Improvement Program.

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

- Technology Fee Reserve is set aside to update and/or replace the City's aging technology and to ensure internal controls are in compliance with current business standard and legal requirements.
- Land Sale Reserve is net proceeds from the sale of City-owned land, with interest earned on these funds available to be appropriated for General Fund operating expenditures. This reserve is available for appropriation by City Council action.
- The Electric Utility Reserve assures sufficient operating cash is available to ensure debt service coverage.
- The Replacement and Improvement Reserve in the Water and Sewer Utility Funds is for future capital improvement.

The table below summarizes select reserve balances.

CITY OF SANTA CLARA
RESERVE BALANCES
December 31, 2021

DETAIL OF SELECTED FUND RESERVE BALANCES:			
	GENERAL FUND	ELECTRIC	WATER
Budget Stabilization Reserve	\$ 52,884,375		
Capital Projects Reserve	7,630,016		
Land Sale Reserve	22,739,828		
Technology Fee Reserve	1,426,174		
Rate Stabilization Fund Reserve		\$ 44,898,011	
Cost Reduction Fund Reserve		112,838,357	
DVR Power Plant Contracts Reserve		78,163	
Replacement & Improvement			\$ 303,090
TOTALS	\$ 84,680,392	\$ 157,814,531	\$ 303,090

Note: The Capital Projects Reserve includes funding of \$3.2 million set aside for projects programmed in FY 2022/23 through FY 2024/25 in the prior CIP.

Long-Term Interfund Advances

The funds below have made advances/loans which are not expected to be repaid within the next year. The balances reflected in the table are through December 2021. The loan from the General Fund to Parks and Recreation Facilities reflects proceeds from the Land Sale Reserve for the purchase of property at the Reed and Grant Sports Park. This loan is anticipated to be repaid by 25% of future Mitigation Fee Act revenue until the loan is paid in full.

DETAIL OF LONG TERM INTERFUND ADVANCE BALANCES:

Fund Receiving Advance/Loan	Fund Making Advance/Loan	Type	Amount of Advance/Commitment
Cemetery	General Fund	Advance	\$ 7,961,149
Parks and Recreation Facilities	General Fund	Loan	8,761,865
TOTALS			\$ 16,723,014

Donations to the City of Santa Clara

Donations received by department during the month of December 2021 and for fiscal year 2021/22 are shown in the table below.

Department	Dec-21	Fiscal Year 2021/22 Year To Date	Designated Use
City Manager's Office	\$ -	\$ 115	Help Your Neighbor
Parks & Recreation	-	12,750	Case Management
Parks & Recreation	1,050	1,675	Wade Brummal
Parks & Recreation	50	50	Roberta Jones Jr. Theater
Police	-	75,000	PD Team 200
TOTALS	\$ 1,100	\$ 89,590	



City of Santa Clara

The Center of What's Possible

MONTHLY INVESTMENT REPORT

December 2021

City of Santa Clara

Monthly Investment Report

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CITY OF SANTA CLARA **SUMMARY OF INVESTMENT PORTFOLIO**

All securities held by the City of Santa Clara as of December 31, 2021 were in compliance with the City's Investment Policy Statement regarding current market strategy and long-term goals and objectives. All securities held are rated "A" or higher by two nationally recognized rating agencies. There is adequate cash flow and maturity of investments to meet the City's needs for the next six months.

The following table provides the breakdown of the total portfolio among the City, the Sports and Open Space Authority (SOSA), and the Housing Authority (HA) as of December 31, 2021.

	<u>COST VALUE</u>	<u>PERCENTAGE</u>
City	\$788,930,211	99.49%
SOSA	9,107	0.00%
HA	<u>4,049,367</u>	<u>0.51%</u>
Unrestricted	\$792,988,685	<u>100.00%</u>
Restricted Bond Proceeds	<u>2,146,361</u>	
Total Investments	<u>\$795,135,046</u>	

On December 31, 2021 the cost value and market value of the City's unrestricted pooled investment portfolio were \$792,988,685 and \$795,433,635 respectively.

Investment Strategy and Market Update

The City's investment strategy for December 2021 was to invest funds not required to meet current obligations, in securities listed in the prevailing Investment Policy Statement, with maturities not to exceed five years from date of purchase. This strategy ensures safety of the City's funds, provides liquidity to meet the City's cash needs, and earns a reasonable portfolio return.

On July 14, 2020, City Council approved entering into a contract with PFM Asset Management LLC ("PFM") for the management of the City's investment portfolio. The City has leveraged PFM's extensive investment management experience and dedicated credit and risk management personnel to further diversify the portfolio and enhance returns. PFM began actively managing the City's securities portfolio on September 1, 2020.

As of December 31, 2021, 47.85% of the City's portfolio consists of U.S. Treasury Notes, 27.73% consists of Federal Agencies, 5.64% consists of Local Agency Investment Fund (LAIF), 11.72% consists of investment grade Corporate Notes, 2.31% consists of investment grade Supranational Obligations, 1.45% consists of investment grade Asset-Back Securities, 2.31% consists of Negotiable Certificates of Deposit, and 0.52% consists of investment grade Municipal Bonds. In addition, City bond proceeds are invested in separate funds and are not included in the calculation of the City's portfolio yield.

The City's portfolio yield, including LAIF and money market accounts, was 1.21% and the average maturity of the City's portfolio was 2.02 years.

Traditionally the City has compared the portfolio yield to the 24-month moving average yield of the two-year Treasury Note (Benchmark Yield*). During 2021 annual Investment Policy review, the City evaluated alternate portfolio performance benchmarks in order to establish an independent standard to serve as a measure of the performance of the portfolio and to help guide the maturity structure of the portfolio. The City began using the 24-Month moving average yield of the ICE BaML 0-5 US Treasury Index as benchmark, effective March 23, 2021.

The City's securities portfolio compared to the ICE BaML 0-5 US Treasury Index (Benchmark) as of December 31, 2021 was as follows:

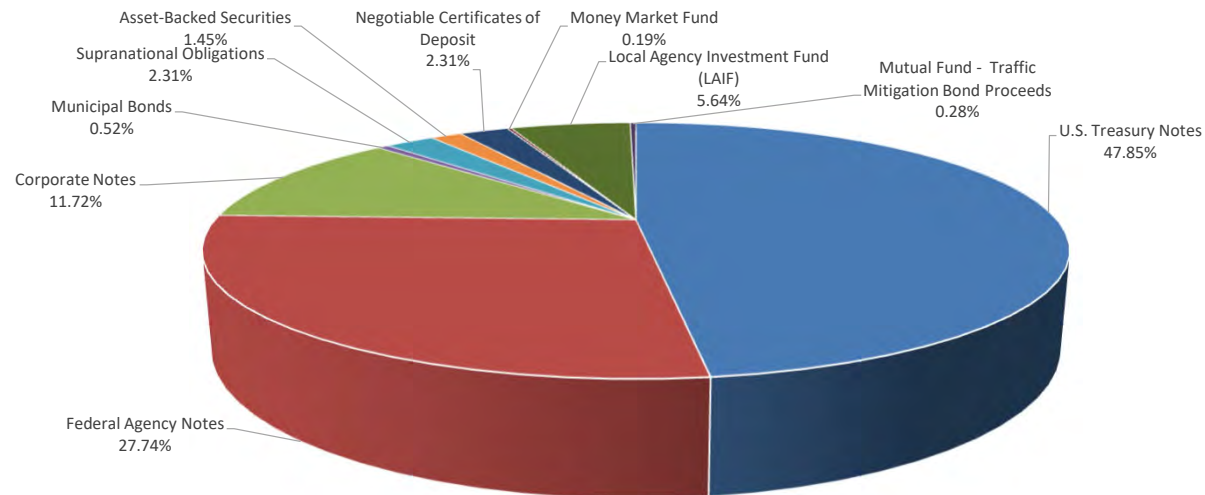
Description	Average Maturity (Years)	Yield to Maturity (At Cost) ¹
Santa Clara Portfolio	2.13	1.29%
Benchmark	2.24	0.36%

1. *Yield to Maturity at Cost: The expected rate of return based on the original cost, annual interest receipts, maturity value, and the time period from purchase date to maturity, stated as a percentage on an annualized basis.*

The Benchmark yield represents the 24-month moving average yield of the ICE BaML 0-5 US Treasury Index.

**CITY OF SANTA CLARA
SUMMARY OF INVESTMENTS DECEMBER 31, 2021**

<u>INVESTMENT TYPE</u>	<u>COST VALUE</u>	<u>% OF PORTFOLIO</u>	<u>PER INVESTMENT POLICY</u>
U.S. Treasury Notes	380,453,570	47.85%	No Limit
Federal Agency Notes	220,551,755	27.73%	80%
Corporate Notes	93,184,390	11.72%	15%
Municipal Bonds	4,145,000	0.52%	20%
Supranational Obligations	18,376,628	2.31%	10%
Asset-Backed Securities	11,553,044	1.45%	20%
Negotiable Certificates of Deposit	18,360,000	2.31%	25%
Money Market Fund	1,502,713	0.19%	10% Per Fund
Local Agency Investment Fund (LAIF)	44,861,585	5.64%	\$75 M
Mutual Fund - Traffic Mitigation Bond Proceeds	2,146,361	0.28%	10% Per Fund
TOTAL INVESTMENTS	<u>\$ 795,135,046</u>	<u>100.00%</u>	



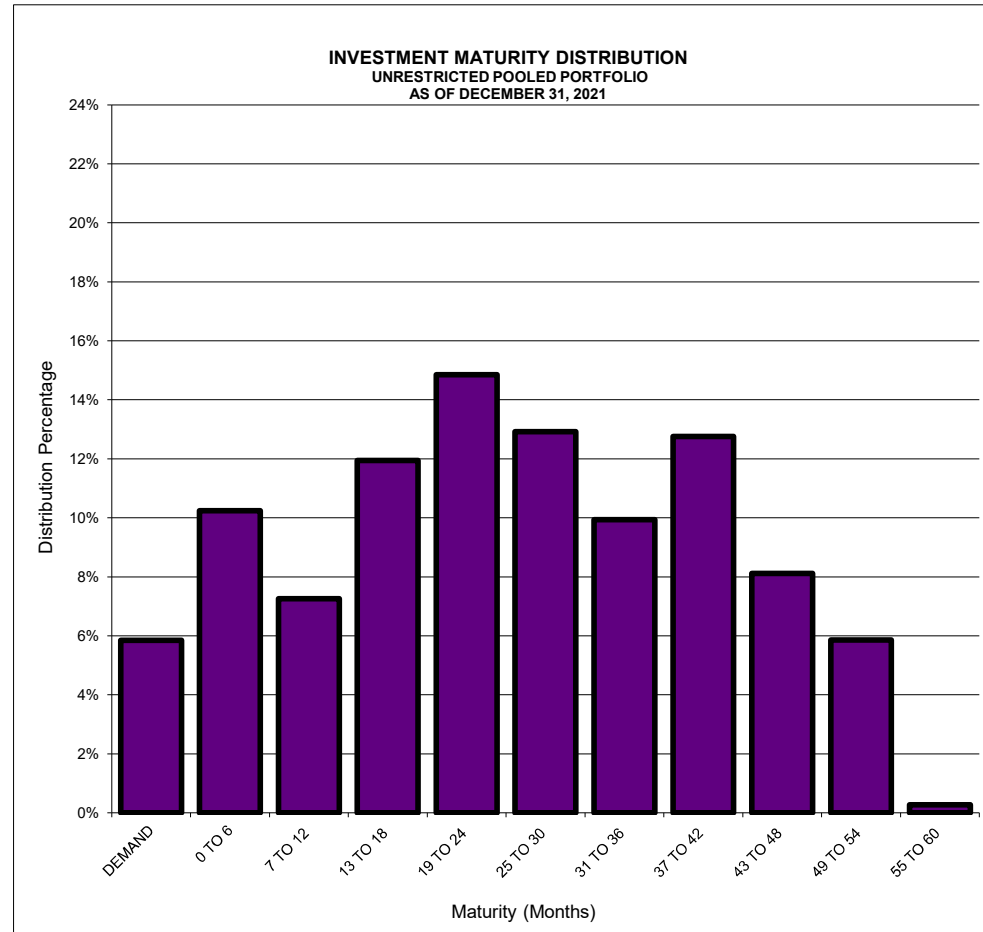
CITY OF SANTA CLARA

**INVESTMENT MATURITY DISTRIBUTION
AS OF DECEMBER 31, 2021
UNRESTRICTED POOLED PORTFOLIO**

MATURITY (IN MONTHS)	COST VALUE	NUMBER OF INVESTMENTS	DISTRIBUTION
DEMAND	\$ 46,364,298 (a)	2	5.85%
0 TO 6	81,240,615	11	10.24%
7 TO 12	57,594,662	13	7.26%
13 TO 18	94,662,573	13	11.94%
19 TO 24	117,786,031	22	14.85%
25 TO 30	102,418,971	19	12.92%
31 TO 36	78,840,814	12	9.94%
37 TO 42	101,198,000	15	12.76%
43 TO 48	64,337,813	11	8.11%
49 TO 54	46,445,358	10	5.86%
55 TO 60	2,099,550	1	0.27%
TOTAL	\$ 792,988,685	129	100.00%

Average Maturity of Unrestricted Pool: 2.02 Years

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



City of Santa Clara Monthly Report

12/31/2021

Description	Issue Date	Coupon Rate	Maturity Date	CUSIP	Par Value	S&P Rating	Settle Date	Cost Value	YTM at Cost	Market Value	Unrealized G/L
UNITED STATES TREASURY	1/31/2017	1.875%	1/31/2022	912828V72	5,000,000.00	AA+	2/23/2018	4,878,125.00	2.53%	5,006,900.00	128,775.00
UNITED STATES TREASURY	3/2/2015	1.750%	2/28/2022	912828J43	2,800,000.00	AA+	3/3/2017	2,735,687.50	2.24%	2,807,336.00	71,648.50
UNITED STATES TREASURY	3/31/2017	1.875%	3/31/2022	912828W89	5,000,000.00	AA+	1/24/2018	4,902,343.75	2.37%	5,021,300.00	118,956.25
UNITED STATES TREASURY	5/1/2017	1.875%	4/30/2022	912828X47	5,000,000.00	AA+	1/19/2018	4,901,757.81	2.36%	5,028,400.00	126,642.19
UNITED STATES TREASURY	6/1/2015	1.875%	5/31/2022	912828XD7	5,000,000.00	AA+	6/8/2017	5,024,218.75	1.77%	5,035,350.00	11,131.25
UNITED STATES TREASURY	6/30/2015	2.125%	6/30/2022	912828XG0	25,000,000.00	AA+	12/21/2018	25,448,046.88	1.60%	25,232,500.00	-215,546.88
UNITED STATES TREASURY	7/31/2017	1.875%	7/31/2022	9128282P4	5,000,000.00	AA+	3/26/2018	4,853,515.63	2.59%	5,046,900.00	193,384.37
UNITED STATES TREASURY	8/31/2015	1.875%	8/31/2022	912828L24	5,000,000.00	AA+	9/28/2017	4,991,015.00	1.91%	5,052,350.00	61,335.00
UNITED STATES TREASURY	10/2/2017	1.875%	9/30/2022	9128282W9	5,000,000.00	AA+	4/19/2018	4,820,117.19	2.74%	5,057,600.00	237,482.81
UNITED STATES TREASURY	9/30/2015	1.750%	9/30/2022	912828L57	5,000,000.00	AA+	10/5/2017	4,950,781.25	1.96%	5,053,300.00	102,518.75
UNITED STATES TREASURY	11/2/2015	1.875%	10/31/2022	912828M49	5,000,000.00	AA+	10/25/2017	4,953,515.63	2.07%	5,062,300.00	108,784.37
UNITED STATES TREASURY	11/30/2015	2.000%	11/30/2022	912828M80	5,000,000.00	AA+	12/15/2017	4,960,546.88	2.17%	5,072,450.00	111,903.12
UNITED STATES TREASURY	12/31/2015	2.125%	12/31/2022	912828N30	1,300,000.00	AA+	5/14/2018	1,260,187.50	2.84%	1,321,580.00	61,392.50
UNITED STATES TREASURY	1/15/2020	1.500%	1/15/2023	912828Z29	2,850,000.00	AA+	4/20/2020	2,947,968.75	0.24%	2,881,065.00	-66,903.75
UNITED STATES TREASURY	2/1/2016	1.750%	1/31/2023	912828P38	5,000,000.00	AA+	2/13/2018	4,810,937.50	2.57%	5,070,100.00	259,162.50
UNITED STATES TREASURY	2/29/2016	1.500%	2/28/2023	912828P79	10,000,000.00	AA+	2/27/2018	9,450,000.00	2.68%	10,118,400.00	668,400.00
UNITED STATES TREASURY	3/31/2016	1.500%	3/31/2023	912828Q29	10,000,000.00	AA+	4/10/2018	9,479,290.00	2.62%	10,122,300.00	643,010.00
UNITED STATES TREASURY	3/31/2021	0.125%	3/31/2023	91282CBU4	5,000,000.00	AA+	6/29/2021	4,992,187.50	0.21%	4,976,950.00	-15,237.50
UNITED STATES TREASURY	5/2/2016	1.625%	4/30/2023	912828R28	10,000,000.00	AA+	5/8/2018	9,446,875.00	2.82%	10,144,100.00	697,225.00
UNITED STATES TREASURY	5/31/2016	1.625%	5/31/2023	912828R69	10,000,000.00	AA+	7/16/2018	9,484,375.00	2.76%	10,150,800.00	666,425.00
UNITED STATES TREASURY	7/2/2018	2.625%	6/30/2023	9128284U1	5,030,000.00	AA+	8/26/2021	5,252,616.80	0.22%	5,182,258.10	-70,358.70
UNITED STATES TREASURY	6/30/2016	1.375%	6/30/2023	912828S35	20,000,000.00	AA+	1/17/2019	20,053,710.95	1.31%	20,237,600.00	183,889.05
UNITED STATES TREASURY	7/31/2018	2.750%	7/31/2023	912828Y61	10,000,000.00	AA+	9/18/2018	9,918,710.94	2.93%	10,335,600.00	416,889.06
UNITED STATES TREASURY	8/31/2016	1.375%	8/31/2023	912828D1	5,000,000.00	AA+	9/12/2018	4,657,031.25	2.87%	5,059,200.00	402,168.75
UNITED STATES TREASURY	9/30/2016	1.375%	9/30/2023	912828T26	7,500,000.00	AA+	11/13/2018	6,947,167.97	3.01%	7,590,825.00	643,657.03
UNITED STATES TREASURY	10/15/2020	0.125%	10/15/2023	91282CAP6	5,260,000.00	AA+	3/26/2021	5,248,288.28	0.21%	5,207,400.00	-40,888.28
UNITED STATES TREASURY	10/31/2016	1.625%	10/31/2023	912828T91	5,000,000.00	AA+	1/25/2019	4,787,695.31	2.58%	5,084,000.00	296,304.69
UNITED STATES TREASURY	11/30/2018	2.875%	11/30/2023	9128285P1	9,745,000.00	AA+	6/23/2021	10,349,875.20	0.32%	10,143,960.30	-205,914.90
UNITED STATES TREASURY	11/30/2016	2.125%	11/30/2023	912828U57	10,000,000.00	AA+	2/28/2019	10,251,562.50	1.57%	10,268,400.00	16,837.50
UNITED STATES TREASURY	1/3/2017	2.250%	12/31/2023	912828V23	5,000,000.00	AA+	3/13/2019	4,957,812.50	2.44%	5,149,800.00	191,987.50
UNITED STATES TREASURY	1/15/2021	0.125%	1/15/2024	91282CBE0	5,000,000.00	AA+	3/26/2021	4,981,445.31	0.26%	4,936,900.00	-44,545.31
UNITED STATES TREASURY	1/15/2021	0.125%	1/15/2024	91282CBE0	2,510,000.00	AA+	3/31/2021	2,497,744.14	0.30%	2,478,323.80	-19,420.34
UNITED STATES TREASURY	1/15/2021	0.125%	1/15/2024	91282CBE0	11,000,000.00	AA+	6/11/2021	10,972,500.00	0.22%	10,861,180.00	-111,320.00
UNITED STATES TREASURY	1/15/2021	0.125%	1/15/2024	91282CBE0	5,525,000.00	AA+	7/14/2021	5,497,375.00	0.33%	5,455,274.50	-42,100.50
UNITED STATES TREASURY	1/31/2019	2.500%	1/31/2024	9128285Z9	5,000,000.00	AA+	4/14/2020	5,407,421.88	0.34%	5,178,900.00	-228,521.88
UNITED STATES TREASURY	2/28/2017	2.125%	2/29/2024	912828W48	1,625,000.00	AA+	4/15/2021	1,637,941.42	0.31%	1,671,653.75	33,712.33
UNITED STATES TREASURY	4/15/2021	0.375%	4/15/2024	91282CBV2	5,415,000.00	AA+	10/15/2021	5,397,443.55	0.51%	5,360,633.40	-36,810.15
UNITED STATES TREASURY	5/1/2017	2.000%	4/30/2024	912828X70	5,000,000.00	AA+	5/16/2019	4,952,734.38	2.20%	5,135,550.00	182,815.62
UNITED STATES TREASURY	5/15/2014	2.500%	5/15/2024	912828WJ5	6,050,000.00	AA+	8/16/2019	6,332,174.65	1.48%	6,284,921.50	-47,253.15
UNITED STATES TREASURY	6/30/2019	1.750%	6/30/2024	9128286Z8	7,250,000.00	AA+	12/12/2019	7,253,398.44	1.74%	7,408,050.00	154,651.56
UNITED STATES TREASURY	6/30/2017	2.000%	6/30/2024	912828XX3	5,000,000.00	AA+	8/29/2019	5,136,328.13	1.41%	5,139,650.00	3,321.87
UNITED STATES TREASURY	7/15/2021	0.375%	7/15/2024	91282CCL3	5,250,000.00	AA+	9/10/2021	5,246,718.75	0.40%	5,185,215.00	-61,503.75
UNITED STATES TREASURY	7/31/2017	2.125%	7/31/2024	9128282N9	5,000,000.00	AA+	9/10/2019	5,133,315.75	1.56%	5,158,800.00	25,484.25
UNITED STATES TREASURY	8/31/2017	1.875%	8/31/2024	9128282U3	2,985,000.00	AA+	3/10/2020	3,149,640.66	0.62%	3,060,908.55	-88,732.11
UNITED STATES TREASURY	8/31/2019	1.250%	8/31/2024	912828YE4	4,750,000.00	AA+	1/5/2021	4,928,867.19	0.21%	4,793,605.00	-135,262.19
UNITED STATES TREASURY	10/31/2017	2.250%	10/31/2024	9128283D0	10,000,000.00	AA+	11/18/2019	10,290,625.00	1.64%	10,365,600.00	74,975.00
UNITED STATES TREASURY	11/30/2017	2.125%	11/30/2024	9128283J7	5,000,000.00	AA+	1/6/2020	5,118,945.31	1.62%	5,166,800.00	47,854.69

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Description	Issue Date	Coupon Rate	Maturity Date	CUSIP	Par Value	S&P Rating	Settle Date	Cost Value	YTM at Cost	Market Value	Unrealized G/L
UNITED STATES TREASURY	1/2/2018	2.250%	12/31/2024	9128283P3	10,000,000.00	AA+	1/7/2020	10,300,781.25	1.62%	10,375,800.00	75,018.75
UNITED STATES TREASURY	1/31/2020	1.375%	1/31/2025	912828Z52	5,000,000.00	AA+	4/22/2020	5,238,671.88	0.37%	5,057,050.00	-181,621.88
UNITED STATES TREASURY	1/31/2020	1.375%	1/31/2025	912828Z52	1,950,000.00	AA+	5/7/2021	2,013,146.48	0.50%	1,972,249.50	-40,896.98
UNITED STATES TREASURY	2/28/2018	2.750%	2/28/2025	9128283Z1	6,200,000.00	AA+	3/6/2020	6,850,757.82	0.61%	6,533,994.00	-316,763.82
UNITED STATES TREASURY	8/31/2020	0.250%	8/31/2025	91282CAJ0	16,330,000.00	AA+	8/2/2021	16,153,942.19	0.52%	15,819,034.30	-334,907.89
UNITED STATES TREASURY	10/31/2020	0.250%	10/31/2025	91282CAT8	5,400,000.00	AA+	10/7/2021	5,285,882.81	0.78%	5,219,208.00	-66,674.81
UNITED STATES TREASURY	11/30/2020	0.375%	11/30/2025	91282CAZ4	4,450,000.00	AA+	11/4/2021	4,327,625.02	1.07%	4,315,654.50	-11,970.52
UNITED STATES TREASURY	12/31/2020	0.375%	12/31/2025	91282CBC4	3,820,000.00	AA+	5/3/2021	3,751,956.25	0.76%	3,702,726.00	-49,230.25
UNITED STATES TREASURY	1/31/2021	0.375%	1/31/2026	91282CBH3	8,025,000.00	AA+	11/30/2021	7,817,478.52	1.01%	7,763,545.50	-53,933.02
UNITED STATES TREASURY	2/28/2021	0.500%	2/28/2026	91282CBQ3	8,100,000.00	AA+	8/31/2021	8,027,226.56	0.70%	7,869,960.00	-157,266.56
UNITED STATES TREASURY	2/28/2021	0.500%	2/28/2026	91282CBQ3	5,175,000.00	AA+	12/7/2021	5,035,517.58	1.15%	5,028,030.00	-7,487.58
U.S. Treasury Bond / Note					Subtotal			381,295,000.00		380,453,570.14	841,429.86
FANNIE MAE	1/9/2017	2.000%	1/5/2022	3135G0S38	5,000,000.00	AA+	10/10/2018	4,845,050.00	3.01%	5,000,550.00	155,500.00
FANNIE MAE	10/6/2017	2.000%	10/5/2022	3135G0T78	5,000,000.00	AA+	1/26/2018	4,890,750.00	2.50%	5,063,400.00	172,650.00
FANNIE MAE	11/25/2020	0.250%	11/27/2023	3135G06H1	4,950,000.00	AA+	11/25/2020	4,944,357.00	0.29%	4,906,588.50	-37,768.50
FANNIE MAE	11/25/2020	0.250%	11/27/2023	3135G06H1	5,225,000.00	AA+	1/22/2021	5,230,799.75	0.21%	5,179,176.75	-51,623.00
FANNIE MAE	7/8/2019	1.750%	7/2/2024	3135G0V75	15,000,000.00	AA+	12/18/2019	15,566,089.75	0.90%	15,328,650.00	-237,439.75
FANNIE MAE	1/10/2020	1.625%	1/7/2025	3135G0X24	7,500,000.00	AA+	1/22/2020	7,499,025.00	1.63%	7,635,600.00	136,575.00
FANNIE MAE	4/24/2020	0.625%	4/22/2025	3135G03U5	10,000,000.00	AA+	5/7/2020	10,050,600.00	0.52%	9,861,800.00	-188,800.00
FANNIE MAE	11/12/2020	0.500%	11/7/2025	3135G06G3	1,860,000.00	AA+	12/29/2020	1,864,929.00	0.44%	1,814,764.80	-50,164.20
FNMA Medium Term Note					Subtotal			54,535,000.00		54,891,600.50	356,600.50
FEDERAL FARM CREDIT BANKS	10/14/2016	1.400%	4/14/2022	3133EGYS8	5,000,000.00	AA+	2/4/2020	4,994,485.00	1.45%	5,017,000.00	22,515.00
FEDERAL FARM CREDIT BANKS	7/19/2019	1.850%	7/19/2022	3133EKVE3	5,000,000.00	AA+	7/17/2019	4,994,300.00	1.89%	5,047,200.00	52,900.00
FEDERAL FARM CREDIT BANKS	8/5/2019	1.850%	8/5/2022	3133EKYJ9	5,000,000.00	AA+	8/13/2019	5,029,800.00	1.64%	5,047,400.00	17,600.00
FEDERAL FARM CREDIT BANKS	11/1/2017	2.080%	11/1/2022	3133EHM91	1,800,000.00	AA+	10/7/2019	1,834,398.00	1.44%	1,829,286.00	-5,112.00
FEDERAL FARM CREDIT BANKS	3/16/2018	2.710%	12/16/2022	3133EJGU7	5,000,000.00	AA+	3/28/2018	5,015,935.00	2.64%	5,123,150.00	107,215.00
FEDERAL FARM CREDIT BANKS	6/19/2018	2.890%	6/19/2023	3133EJSD2	5,000,000.00	AA+	11/28/2018	4,980,250.00	2.98%	5,185,850.00	205,600.00
FEDERAL FARM CREDIT BANKS	1/17/2020	1.600%	7/17/2023	3133ELHZ0	5,000,000.00	AA+	1/16/2020	4,998,200.00	1.61%	5,094,650.00	96,450.00
FEDERAL FARM CREDIT BANKS	8/14/2018	2.900%	8/14/2023	3133EJWV7	5,000,000.00	AA+	9/17/2018	4,977,050.00	3.00%	5,201,750.00	224,700.00
FEDERAL FARM CREDIT BANKS	10/2/2018	3.050%	10/2/2023	3133EJD48	7,575,000.00	AA+	11/27/2018	7,583,620.35	3.02%	7,919,283.75	335,663.40
FEDERAL FARM CREDIT BANKS	11/1/2017	2.200%	11/1/2023	3133EHN25	2,965,000.00	AA+	6/26/2019	3,006,094.90	1.87%	3,058,723.65	52,628.75
FEDERAL FARM CREDIT BANKS	2/27/2019	2.610%	2/27/2024	3133EKBW5	5,000,000.00	AA+	3/20/2019	5,033,150.00	2.47%	5,218,000.00	184,850.00
FEDERAL FARM CREDIT BANKS	4/22/2019	2.450%	7/22/2024	3133EKHV1	5,000,000.00	AA+	9/4/2019	5,250,650.00	1.38%	5,221,400.00	-29,250.00
FEDERAL FARM CREDIT BANKS	11/1/2019	1.650%	11/1/2024	3133EK4Y9	5,000,000.00	AA+	11/8/2019	4,962,850.00	1.81%	5,120,300.00	157,450.00
FEDERAL FARM CREDIT BANKS	1/23/2020	1.650%	1/23/2025	3133ELJM7	7,320,000.00	AA+	5/18/2020	7,689,367.20	0.56%	7,492,825.20	-196,542.00
FEDERAL FARM CREDIT BANKS	5/14/2020	0.500%	5/14/2025	3133ELZM9	10,000,000.00	AA+	5/15/2020	9,982,800.00	0.53%	9,842,600.00	-140,200.00
FEDERAL FARM CREDIT BANKS	6/9/2020	0.500%	6/9/2025	3133ELH23	10,000,000.00	AA+	6/12/2020	9,997,540.00	0.50%	9,831,300.00	-166,240.00
FFCB Medium Term Note					Subtotal			89,660,000.00		90,330,490.45	670,490.45
FEDERAL FARM CREDIT BANKS	7/2/2020	0.500%	7/2/2025	3133ELR71	10,000,000.00	AA+	7/14/2020	10,017,640.00	0.46%	9,820,500.00	-197,140.00
FFCB Coupon Note					Subtotal			10,000,000.00		9,820,500.00	-197,140.00
FEDERAL HOME LOAN BANKS	2/17/2012	2.250%	3/11/2022	313378CR0	5,000,000.00	AA+	3/13/2020	5,150,900.00	0.72%	5,020,250.00	-130,650.00
FEDERAL HOME LOAN BANKS	8/15/2013	3.125%	9/9/2022	313383WD9	5,000,000.00	AA+	12/12/2018	5,039,800.00	2.90%	5,097,150.00	57,350.00

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FEDERAL HOME LOAN BANKS	10/17/2014	2.375%	9/8/2023	3130A3DL5	5,000,000.00	AA+	9/5/2019	5,164,135.00	1.53%	5,146,150.00	-17,985.00
FEDERAL HOME LOAN BANKS	12/9/2013	3.375%	12/8/2023	3130A0F70	5,000,000.00	AA+	1/8/2019	5,147,870.00	2.73%	5,252,900.00	105,030.00
FEDERAL HOME LOAN BANKS	1/16/2015	2.250%	12/8/2023	3130A3VC5	5,000,000.00	AA+	3/12/2020	5,282,425.00	0.72%	5,145,450.00	-136,975.00
FEDERAL HOME LOAN BANKS	5/8/2014	2.875%	6/14/2024	3130A1XJ2	5,000,000.00	AA+	11/20/2019	5,270,205.00	1.64%	5,242,450.00	-27,755.00
FEDERAL HOME LOAN BANKS	11/6/2014	2.750%	12/13/2024	3130A3GE8	5,000,000.00	AA+	3/12/2020	5,461,300.00	0.77%	5,257,600.00	-203,700.00
FHLB Medium Term Note				Subtotal	35,000,000.00			36,516,635.00		36,161,950.00	-354,685.00
FREDDIE MAC	5/7/2020	0.375%	5/5/2023	3137EAER6	5,000,000.00	AA+	5/8/2020	5,014,545.00	0.28%	4,988,800.00	-25,745.00
FREDDIE MAC	9/4/2020	0.250%	9/8/2023	3137EAEW5	1,640,000.00	AA+	9/4/2020	1,640,761.21	0.24%	1,628,864.40	-11,896.81
FREDDIE MAC	9/4/2020	0.250%	9/8/2023	3137EAEW5	4,295,000.00	AA+	9/4/2020	4,293,582.65	0.26%	4,265,836.95	-27,745.70
FREDDIE MAC	10/16/2020	0.125%	10/16/2023	3137EAEY1	3,270,000.00	AA+	10/16/2020	3,257,802.90	0.25%	3,237,659.70	-20,143.20
FREDDIE MAC	2/14/2020	1.500%	2/12/2025	3137EAEP0	5,000,000.00	AA+	5/20/2020	5,226,960.00	0.53%	5,072,200.00	-154,760.00
FREDDIE MAC	9/25/2020	0.375%	9/23/2025	3137EAEX3	9,390,000.00	AA+	9/25/2020	9,361,736.10	0.44%	9,135,718.80	-226,017.30
FHLMC Medium Term Note				Subtotal	28,595,000.00			28,795,387.86		28,329,079.85	-466,308.01
INTER-AMERICAN DEVELOPMENT BANK	9/23/2021	0.500%	9/23/2024	4581X0DZ8	11,065,000.00	AAA	9/23/2021	11,056,811.90	0.52%	10,916,065.10	-140,746.80
INTL BANK OF RECONSTRUCTION AND DEV	4/20/2021	0.126%	4/20/2023	459058JV6	7,335,000.00	AAA	4/20/2021	7,319,816.55	0.23%	7,289,229.60	-30,586.95
Supranational				Subtotal	18,400,000.00			18,376,628.45		18,205,294.70	-171,333.75
CALIFORNIA EARTHQUAKE AUTHORITY	11/24/2020	1.477%	7/1/2023	13017HAK2	1,430,000.00	NR	11/24/2020	1,430,000.00	1.48%	1,442,698.40	12,698.40
LOS ANGELES COMMUNITY COLLEGE DISTRICT C	11/10/2020	0.773%	8/1/2025	54438CYK2	2,715,000.00	AA+	11/10/2020	2,715,000.00	0.77%	2,675,904.00	-39,096.00
Municipals				Subtotal	4,145,000.00			4,145,000.00		4,118,602.40	-26,397.60
3M COMPANY	9/14/2018	3.250%	2/14/2024	88579YBB6	5,000,000.00	A+	11/29/2021	5,241,250.00	1.03%	5,226,350.00	-14,900.00
ALPHABET INC	4/27/2016	3.375%	2/25/2024	02079KAB3	5,330,000.00	AA+	11/23/2021	5,642,444.60	0.75%	5,615,794.60	-26,650.00
AMAZON.COM INC	5/12/2021	0.450%	5/12/2024	023135BW5	4,245,000.00	AA	5/12/2021	4,238,802.30	0.50%	4,202,974.50	-35,827.80
APPLE INC	11/13/2017	2.750%	1/13/2025	037833DF4	5,000,000.00	AA+	3/9/2021	5,340,100.00	0.94%	5,223,500.00	-116,600.00
APPLE INC	11/13/2017	2.750%	1/13/2025	037833DF4	5,000,000.00	AA+	3/29/2021	5,355,200.00	0.84%	5,223,500.00	-131,700.00
BANK OF AMERICA	7/23/2013	4.100%	7/24/2023	06053FAA7	4,070,000.00	A-	9/15/2020	4,482,494.50	0.52%	4,278,261.90	-204,232.60
BANK OF NY MELLON CORP	1/28/2021	0.750%	1/28/2026	06406RAQ0	9,000,000.00	A	2/10/2021	9,025,920.00	0.69%	8,741,430.00	-284,490.00
BRISTOL-MYERS SQUIBB CO	11/13/2020	0.750%	11/13/2025	110122DN5	5,725,000.00	A+	6/30/2021	5,672,673.50	0.96%	5,575,463.00	-97,210.50
HONEYWELL INTERNATIONAL	5/18/2020	1.350%	6/1/2025	438516CB0	5,000,000.00	A	9/8/2021	5,097,900.00	0.82%	5,020,200.00	-77,700.00
JOHN DEERE CAPITAL CORP	6/17/2021	1.050%	6/17/2026	24422EVR7	5,000,000.00	A	12/8/2021	4,908,600.00	1.47%	4,914,000.00	5,400.00
JOHNSON & JOHNSON	8/25/2020	0.550%	9/1/2025	478160CN2	5,000,000.00	AAA	9/3/2020	5,023,550.00	0.45%	4,894,500.00	-129,050.00
JPMORGAN CHASE & CO	9/16/2020	0.653%	9/16/2024	46647PBS4	2,675,000.00	A-	9/16/2020	2,675,000.00	0.65%	2,662,427.50	-12,572.50
JPMORGAN CHASE & CO	8/10/2021	0.768%	8/9/2025	46647PCM6	2,340,000.00	A-	8/10/2021	2,340,000.00	0.77%	2,302,911.00	-37,089.00
MASTERCARD INC	12/3/2019	2.000%	3/3/2025	57636QAN4	5,000,000.00	A+	3/9/2021	5,213,450.00	0.91%	5,126,150.00	-87,300.00
MERCK & CO INC	3/7/2019	2.900%	3/7/2024	58933YAU9	5,375,000.00	A+	11/23/2021	5,623,916.25	0.85%	5,608,006.25	-15,910.00
MICROSOFT CORP	2/6/2017	2.875%	2/6/2024	594918BX1	5,000,000.00	AAA	11/29/2021	5,202,600.00	1.00%	5,204,100.00	1,500.00
MICROSOFT CORP	2/12/2015	2.700%	2/12/2025	594918BB9	5,000,000.00	AAA	3/9/2021	5,341,700.00	0.92%	5,229,700.00	-112,000.00
TOYOTA MOTOR CREDIT CORP	1/11/2021	0.450%	1/11/2024	89236THU2	6,100,000.00	A+	1/11/2021	6,099,634.00	0.45%	6,048,272.00	-51,362.00
UNILEVER CAPITAL CORP	9/14/2020	0.375%	9/14/2023	904764BJ5	660,000.00	A+	9/14/2020	659,155.20	0.42%	655,822.20	-3,333.00
Corporate Note				Subtotal	90,520,000.00			93,184,390.35		91,753,362.95	-1,431,027.40

City of Santa Clara Monthly Report

12/31/2021

Description	Issue Date	Coupon Rate	Maturity Date	CUSIP	Par Value	S&P Rating	Settle Date	Cost Value	YTM at Cost	Market Value	Unrealized G/L
CARMAX AUTO OWNER TRUST DISCOVER CARD EXECUTION NOTE TRUST	4/21/2021	0.520%	2/17/2026	14314QAC8	2,375,000.00	AAA	4/21/2021	2,374,488.19	0.52%	2,361,391.25	-13,096.94
HONDA AUTO RECEIVABLES OWNER T	9/27/2021	0.580%	9/15/2026	254683CP8	2,100,000.00	AAA	9/27/2021	2,099,550.39	0.58%	2,067,030.00	-32,520.39
HYUNDAI AUTO RECEIVABLES TRUST	11/24/2021	0.880%	1/21/2026	43815GAC3	1,615,000.00	NR	11/24/2021	1,614,659.56	0.89%	1,611,075.55	-3,584.01
HYUNDAI AUTO RECEIVABLES TRUST	4/28/2021	0.380%	9/15/2025	44933LAC7	1,575,000.00	AAA	4/28/2021	1,574,834.31	0.38%	1,563,219.00	-11,615.31
TOYOTA AUTO RECEIVABLES OWNER	11/17/2021	0.740%	5/15/2026	44935FAD6	1,245,000.00	AAA	11/17/2021	1,244,722.12	0.75%	1,236,434.40	-8,287.72
	9/27/2021	0.430%	1/15/2026	89239BAC5	2,645,000.00	AAA	9/27/2021	2,644,789.19	0.43%	2,617,042.35	-27,746.84
Asset-Backed Security				Subtotal	11,555,000.00			11,553,043.76		11,456,192.55	-96,851.21
BARCLAYS BANK PLC	2/12/2021	0.290%	2/4/2022	06742TWL6	11,000,000.00	A-1	2/12/2021	11,000,000.00	0.29%	11,001,760.00	1,760.00
HSBC BANK USA NA	2/26/2021	0.250%	2/25/2022	40435RKU4	7,360,000.00	A-1	2/26/2021	7,360,000.00	0.25%	7,361,104.00	1,104.00
Certificate of Deposit				Subtotal	18,360,000.00			18,360,000.00		18,362,864.00	2,864.00
WELLS FARGO PUBLIC INSTITUTION			1/1/2022	992995944	1,502,712.62		9/1/2020	1,502,712.62	0.07%	1,502,712.62	-
LOCAL AGENCY INVESTMENT FUND			1/1/2022		44,861,585.11		9/30/1997	44,861,585.11	0.62%	44,861,585.11	-
DREYFUS TREASURY			1/1/2022		2,146,361.46		10/31/1997	2,146,361.46	0.03%	2,146,361.46	-
Cash Equivalent				Subtotal	48,510,659.19			48,510,659.19		48,510,659.19	-
Grand Total			Count	130	790,575,659.19			795,135,045.70		797,579,995.99	2,444,950.29

FY 2021/22 Budget Amendments

General Fund (001)			
Department/Item	Source of Funds	Use of Funds	Explanation
Other Fees for Services/Department of Public Works Salaries and Benefits (Overtime)	5,000	5,000	Increases the Other Fees for Services revenue estimate by \$5,000 to account for developer funding for City staff work for the Mission Tech lot line (2421, 2431, and 2441 Mission College Boulevard) adjustment. This action also increases the Public Works Department Salaries and Benefits budget by \$5,000 for the associated overtime work completed by the department (five affirmative Council votes required to appropriate additional revenue) .
Transfer in from the Public Works Capital Project Management Fund/Department of Public Works Salaries and Benefits	166,518	166,518	Establishes a Transfer In from the Public Works Capital Project Management Fund and increases the Public Works Department Salaries and Benefits budget by \$166,518 to correct the funding allocation for 1.0 Design Division Associate Engineer position that was eliminated as part of the Phase 1 budget reductions in March 2021. The funding for this position was eliminated from the General Fund; however, it should have been partially reduced from the Public Works Capital Project Management Fund that is substantially supported by the General Fund. This technical adjustment corrects the alignment of staffing costs to the budget (five affirmative Council votes required to appropriate additional revenue) .
Transfer to the General Government Capital Fund		1,000	Establishes a transfer to the General Government Capital Fund to pay for the Storm Drain portion of the Utility Management Information System (UMIS) Enhancements project in the General Government Capital Fund. Funding for the Utility Management Information System should be funded from the General Fund rather than the storm drain outlet impact fee in the Storm Drain Capital Fund (five affirmative Council votes required to for the use of unused balances) .
Capital Projects Reserve		(1,000)	Decreases the Capital Projects Reserve to offset the transfer to the General Government Capital Fund (five affirmative Council votes required to for the use of unused balances) .

FY 2021/22 Budget Amendments

General Fund (001) (Cont'd.)

Department/Item	Source of Funds	Use of Funds	Explanation
Transfer from the Parks and Recreation Capital Fund/Capital Projects Reserve	3,274	3,274	Recognizes a transfer from the Parks and Recreation Capital Fund and increases the Capital Projects Reserve by \$3,274 to account for the return to fund of the remaining Ullstac Natural Area Maintenance project savings (five affirmative Council votes required to appropriate additional revenue) .
Transfer from the Parks and Recreation Capital Fund/Land Sale Reserve	(2,498,747)	(2,498,747)	Decreases the Transfer from the Parks and Recreation Capital Fund and the Land Sale Reserve by \$2,498,747 to reflect a reduction in the loan repayment for the Reed Street-Grant Street Sports Park Project from 3,026,782 to \$528,035 (- \$2,498,747). The loan repayment is a calculation based on 25% of Mitigation Fee Act (MFA) revenue. With the reduction in the MFA revenue estimate based on actual year-to-date collections, the loan repayment allocation is also recommended to be reduced. The remaining transfer amount of \$528,035 reflects the interest on the Youth Soccer Fields & Athletic Facilities Project balance. An adjustment to the transfer amount may also be brought forward at year-end based on actual MFA revenue received. (majority affirmative Council votes required) .
	(2,323,955)	(2,323,955)	

Convention Center Maintenance District Fund (026)

Department/Item	Source of Funds	Use of Funds	Explanation
Department of Public Works Interfund Services		(22,371)	Eliminates the internal service charge for Information Technology Services in the Convention Center Maintenance District Fund to align with actual IT services that are provided to this program (majority affirmative Council votes required) .
Department of Public Works Materials/Services/Supplies		22,371	Increases the Materials/Services/Supplies budget to offset the action recommended above (majority affirmative Council votes required) .
	-	-	

FY 2021/22 Budget Amendments

Fire Department Capital Fund (536)

Department/Item	Source of Funds	Use of Funds	Explanation
Emergency Operations Center Capital Refurbishment Project	(15,208)	(15,208)	Decreases the revenue estimate and appropriation of the Emergency Management Performance Grant 2019 as the grant revenue was recognized and expended in the Fire Operating Grant Trust Fund (majority affirmative council votes required) .
	(15,208)	(15,208)	

Gas Tax Fund (121)

Department/Item	Source of Funds	Use of Funds	Explanation
Transfer from the Streets and Highways Capital Fund	174,297		Recognizes a transfer of \$174,297 from the Streets and Highways Capital Fund for returned unused funds, \$68,258 for the Agnew Road/De La Cruz Blvd Signal Timing Project and \$106,039 for the Lafayette Street Signal Timing Project. The projects were closed as of FY 2020/21 but were omitted from the Year End Close Report. This action returns remaining funding back to the original funding source, the Gas Tax Fund (five affirmative Council votes required to appropriate additional revenue) .
Unrestricted Ending Fund Balance		174,297	Increases the Unrestricted Ending Fund Balance to offset the actions above (five affirmative Council votes required to appropriate additional revenue) .
	174,297	174,297	

General Government Capital Fund (539)

Department/Item	Source of Funds	Use of Funds	Explanation
Transfer from the Storm Drain Capital Fund	(1,000)		Eliminates the transfer from the Storm Drain Capital Fund to pay for the Utility Management Information System (UMIS) Enhancements project. Funding for the Utility Management Information System should be provided from the General Fund rather than the storm drain outlet impact fee (majority affirmative council votes required) .

FY 2021/22 Budget Amendments

General Government Capital Fund (539) (Cont'd.)

Department/Item	Source of Funds	Use of Funds	Explanation
Transfer from the General Fund - Capital Project Reserve	1,000		Establishes a transfer from the General Fund Capital Project Reserve to pay for Storm Drain portion of the Utility Management Information System (UMIS) Enhancements project. Funding for the Utility Management Information System should be provided from the General Fund rather than the storm drain outlet impact fee (five affirmative Council votes required to appropriate additional revenue) .
	-	-	

Information Technology Services Fund (045)

Department/Item	Source of Funds	Use of Funds	Explanation
Interdepartmental Services / Information Technology	(22,371)	(22,371)	Decreases the interdepartmental services revenue and the Information Technology Department's operating budget to reflect the actual services provided to the Department of Public Works' Convention Center Maintenance District program (majority affirmative Council votes required) .
	(22,371)	(22,371)	

Parks and Recreation Capital Fund (532)

Department/Item	Source of Funds	Use of Funds	Explanation
Mitigation Fee Act Revenue	(11,627,569)		Eliminates the Mitigation Fee Act revenue estimate from \$11,627,569 to \$0 as no revenue has been received to date in FY 2021/22. At year-end, a reconciliation will be done in order to appropriate actual revenue received (majority affirmative Council votes required) .
Quimby Act Fees	863,240		Increases the Quimby Act Fees revenue estimate by \$863,240 from \$479,557 to \$1,342,797 to reflect and appropriate revenues received year-to-date in FY 2021/22. At year-end, a reconciliation will be done in order to appropriate additional revenue received (five affirmative Council votes required to appropriate additional revenue) .

FY 2021/22 Budget Amendments

Parks and Recreation Capital Fund (532) (Cont'd.)

Department/Item	Source of Funds	Use of Funds	Explanation
Transfer to the General Fund - Land Sale Reserve (Loan Repayment for Reed and Grant Sports Park)		(2,498,747)	Decreases the Transfer to the General Fund - Land Sale Reserve to reflect a reduction in the loan repayment for the Reed Street-Grant Street Sports Park Project from 3,026,782 to \$528,035 (- \$2,498,747). The loan repayment is a calculation based on 25% of Mitigation Fee Act (MFA) revenue. With the reduction in the MFA revenue estimate, the loan repayment allocation is also recommended to be reduced. The remaining transfer amount of \$528,035 reflects the interest on the Youth Soccer Fields & Athletic Facilities Project balance. An adjustment to the transfer amount may also be brought forward at year-end based on actual MFA revenue received. (majority affirmative Council votes required) .
Revenue from Other Agencies/Park Improvements Project	59,245	59,245	Recognizes Measure Q 2018 Grant funding and increases the Parks Improvement Project by \$59,245. The grant funds supported the Bowers Park walking loop project, which includes a pathway and low water planting and points of interest along the pathway. The reimbursement funding will be used to support future parks improvement projects (five affirmative Council votes required to appropriate additional revenue) .
Warburton Park Playground Rehabilitation Project			This technical adjustment updates the funding source for the Warbuton Park Playground Rehabilitation Project from Mitigation Fee Act Revenue to Quimby Act Fees of \$1,270,505 based on available Quimby fund balance. No changes to appropriation amount.
Transfer to General Fund - Capital Project Reserve		3,274	Increases the Transfer to the General Fund/Capital Projects Reserve by \$3,274 to reflect the return of savings from the Ullstac Natural Area Maintenance project. (five affirmative Council votes required for the use of unused balances) .
Ending Fund Balance		(8,268,856)	Decreases the Unrestricted Ending Fund Balance to offset the actions above (five affirmative Council votes required for the use of unfunded balances) .
	(10,705,084)	(10,705,084)	

FY 2021/22 Budget Amendments

Public Donations Fund (067)

Department/Item	Source of Funds	Use of Funds	Explanation
Donations / Police Department	2,500	2,500	Recognizes and appropriates an anonymous donation to the Police Department. This donation will be used for personal protective equipment during training (five affirmative Council votes required to appropriate additional revenue) .
	2,500	2,500	

Public, Educational and Governmental (PEG) Fee Fund (221)

Department/Item	Source of Funds	Use of Funds	Explanation
Information Technology - Materials/Services/Supplies		400,000	Increases the Information Technology Department's materials/services/supplies allocation to provide funding for projector screen and projector replacement in both the Council chambers and various library sites throughout the City. Additionally, this will also fund upgrades to the Council chambers broadcast booth (five affirmative Council votes required for the use of unused balances) .
Ending Fund Balance		(400,000)	Decreases the ending fund balance to offset the action recommended above (five affirmative Council votes required for the use of unused balances) .
	-	-	

Public Works Capital Project Management Fund (044)

Department/Item	Source of Funds	Use of Funds	Explanation
Department of Public Works Salaries and Benefits		(166,518)	Decreases the Public Works Department Salaries and Benefits budget by \$166,518 to correct the funding allocation for 1.0 Design Division Associate Engineer position that was eliminated as part of the Phase 1 budget reductions in March 2021. The funding for this position was eliminated from the General Fund; however, it should have been partially reduced from the Public Works Capital Project Management Fund where this position was budgeted (majority Council approval required) .
Transfer to the General Fund		166,518	Establishes a transfer to the General Fund to correct the funding allocation for 1.0 Design Division Associate Engineer position that was eliminated as part of the Phase 1 budget reductions in March 2021 as discussed above (majority Council approval required) .
	-	-	

FY 2021/22 Budget Amendments

Storm Drain Capital Fund (535)

Department/Item	Source of Funds	Use of Funds	Explanation
Transfer to the General Government Capital Fund		(1,000)	Eliminates the transfer to the General Government Capital Fund that was budgeted to pay for a portion of the Utility Management Information System (UMIS) Enhancements project. Funding for the storm drain portion of the project should be provided from the General Fund rather than the storm drain outlet impact fee (majority affirmative council votes required) .
Unrestricted Ending Fund Balance		1,000	Increases the Unrestricted Ending Fund Balance to offset the action above (majority affirmative council votes required) .
	-	-	

Streets and Highways Capital Fund (533)

Department/Item	Source of Funds	Use of Funds	Explanation
Other Revenue - Developer Contributions	(590,000)		Decreases the revenue estimate for Other Revenue - Developer Contributions by \$590,000 to reflect a funding shift for the Multimodal Improvement Plan Phase 2 Project. Funding will instead be provided by Traffic Mitigation Fees collected from Related Santa Clara in the Traffic Mitigation Fund (\$60,000) and Regional Traffic Mitigation Fees (Regional TMF) collected from Related Santa Clara in the Traffic Fair Share Fund (\$530,000) (majority Council vote required) .
Transfer from the Traffic Fair Share Fund (Regional TMF - Related Santa Clara for Multimodal Improvement Plan Phase 2 Project)	530,000		Establishes a transfer of \$530,000 from the Traffic Fair Share Fund for Regional TMF collected from Related Santa Clara for the Multimodal Improvement Plan Phase 2 Project. This reflects a shift in funding from Developer Contributions to Regional TMF from Related Santa Clara (five affirmative Council votes required to appropriate additional revenue) .
Transfer from the Traffic Mitigation Fund (TMF - Related Santa Clara for Multimodal Improvement Plan Phase 2 Project)	60,000		Establishes a transfer of \$60,000 from the Traffic Mitigation Fund for TMF collected from Related Santa Clara for the Multimodal Improvement Plan Phase 2 Project. This reflects a shift in funding sources from Developer Contributions to TMF from Related Santa Clara (five affirmative Council votes required to appropriate additional revenue) .

FY 2021/22 Budget Amendments

Streets and Highways Capital Fund (533) (Cont'd.)

Department/Item	Source of Funds	Use of Funds	Explanation
Transfer from the Traffic Fair Share Fund (Regional TMF - Related Santa Clara for Multimodal Improvement Plan Phase 1 Project)	578,500		Establishes a transfer of \$578,500 from the Traffic Fair Share Fund for Regional TMF collected from Related Santa Clara for the Multimodal Improvement Plan Phase 1 Project. This reflects a shift in funding sources from Regional TMF to Regional TMF from Related Santa Clara. A previously received transfer in of Regional TMF not from Related (\$501,720) will be returned to the Traffic Fair Share Fund in a separate action in this attachment (five affirmative Council votes required to appropriate additional revenue) .
Transfer from the Traffic Mitigation Fund (TMF - Related Santa Clara for Multimodal Improvement Plan Phase 1 Project)	161,500		Establishes a transfer of \$161,500 from the Traffic Mitigation Fund for TMF collected from Related Santa Clara for the Multimodal Improvement Plan Phase 1 Project. This reflects a shift in funding sources from TMF to TMF from Related Santa Clara. A previously received transfer in of TMF not from Related (\$238,820) will be returned to the Traffic Mitigation Fund in a separate action in this attachment (five affirmative Council votes required to appropriate additional revenue) .
Transfer to the Traffic Mitigation Fund (Multimodal Improvement Plan Phase 1 Project)		238,280	Transfers \$238,280 to the Traffic Mitigation Fund to return a previously received transfer in for the Multimodal Improvement Plan Phase 1 Project. This action reflects a funding shift for the Project from TMF to TMF from Related Santa Clara (five affirmative Council votes required for the use of unused balances) .
Transfer to the Traffic Fair Share Fund (Regional TMF - Multimodal Improvement Plan Phase 1 Project)		501,720	Transfers \$501,720 to the Traffic Fair Share Fund to return a previously received transfer in of Regional TMF for the Multimodal Improvement Plan Phase 1 Project. This action reflects a funding shift from Regional TMF to Regional TMF from Related Santa Clara (five affirmative Council votes required for the use of unused balances) .

FY 2021/22 Budget Amendments

Streets and Highways Capital Fund (533) (Cont'd.)

Department/Item	Source of Funds	Use of Funds	Explanation
Transfer from the Traffic Mitigation Fund (HAWK Beacon on Scott and Harrison Project)	206,000		Recognizes a transfer of \$206,000 from the Traffic Mitigation Fund for the HAWK Beacon on Scott and Harrison Project and reflects a shift in funding sources from Regional TMF in the Traffic Fair Share Fund to Traffic Mitigation Fee from the Traffic Mitigation Fund. A previously received transfer in of Regional TMF (\$206,000) will be returned to the Traffic Fair Share Fund in a separate action in this attachment (five affirmative Council votes required to appropriate additional revenue) .
Transfer to the Traffic Fair Share Fund (Regional TMF - HAWK Beacon on Scott and Harrison Project)		206,000	Transfers \$206,000 to the Traffic Fair Share Fund to return a previously received transfer in of Regional TMF for the HAWK Beacon on Scott and Harrison Project. This action reflects a funding shift from Regional TMF in the Traffic Fair Share Fund to Traffic Mitigation Fee in the Traffic Mitigation Fund (five affirmative Council votes required for the use of unused balances) .
Transfer to the Gas Tax Fund		174,297	Transfers \$174,297 to the Gas Tax Fund to return unused funds, \$68,258 for the Agnew Road/De La Cruz Blvd Signal Timing Project and \$106,039 for the Lafayette Street Signal Timing Project. The projects were closed as of FY 2020/21 but were omitted from the Year End Close Report. This action returns remaining funding back to the original funding source, the Gas Tax Fund (five affirmative Council votes required for the use of unused balances) .
Pedestrian and Bicycle Enhancement Facilities		27,921	Increases the Pedestrian and Bicycle Enhancement Facilities Project by \$27,921 to return the unused funding for the Pedestrian Master Plan. The Pedestrian Master Plan Project was closed as of FY 2020/21 but was omitted from the Year End Close Report. This action returns unused contingency to the original funding source, the Pedestrian and Bicycle Enhancement Facilities Project (five affirmative Council votes required for the use of unused balances) .
Unrestricted Ending Fund Balance		(202,218)	Decreases the Unrestricted Ending Fund Balance to offset the actions above (five affirmative Council votes required for the use of unused balances) .
	946,000	946,000	

FY 2021/22 Budget Amendments

Traffic Fair Share Fund (124)

Department/Item	Source of Funds	Use of Funds	Explanation
Other Revenue (Regional Traffic Mitigation Fee - Related Santa Clara)	1,108,500		Increases the Other Revenue estimate for regional traffic mitigation fees anticipated from Related Santa Clara for the Multimodal Improvement Plan Phase 1 and Multimodal Improvement Plan Phase 2 Projects (five affirmative Council votes required to appropriate additional revenue) .
Transfer to the Streets and Highways Capital Fund (Related Santa Clara)		1,108,500	Establishes a transfer to the Streets and Highways Capital Fund to fund \$578,500 for the Multimodal Improvement Plan Phase 1 Project for a shift in funding sources from to Regional TMF to Regional TMF from Related Santa Clara, and \$530,000 for the Multimodal Improvement Plan Phase 2 Project to reflect a shift in funding from Developer Contributions to Regional TMF from Related Santa Clara (five affirmative Council votes required to appropriate additional revenue) .
Transfer from the Streets and Highways Capital Fund	707,720		Recognizes a transfer in from the Streets and Highways Capital Fund to return \$501,720 for the Multimodal Improvement Plan Phase 1 Project to reflect a shift in funding sources from Regional TMF to Regional TMF from Related Santa Clara and \$206,000 for the HAWK Beacon on Scott and Harrison Project to reflect a shift in funding sources from Regional TMF to TMF (five affirmative Council votes required to appropriate additional revenue) .
Restricted Ending Fund Balance		707,720	Increases the Restricted Ending Fund Balance for Regional TMF to offset the actions above (five affirmative Council votes required to appropriate additional revenue) .
	1,816,220	1,816,220	

FY 2021/22 Budget Amendments

Traffic Mitigation Fund (123)			
Department/Item	Source of Funds	Use of Funds	Explanation
Other Fees for Services (Traffic Mitigation Fee - Related Santa Clara)	221,500		Increases the Other Fees for Services revenue estimate for traffic mitigation fees anticipated from Related Santa Clara for the Multimodal Improvement Plan Phase 1 and Multimodal Improvement Plan Phase 2 Projects (five affirmative Council votes required to appropriate additional revenue) .
Transfer to the Streets and Highways Capital Fund (Related Santa Clara)		221,500	Increases the transfer to the Streets and Highways Capital Fund to fund \$161,500 for the Multimodal Improvement Plan Phase 1 Project to reflect a shift in funding sources from to TMF to TMF from Related Santa Clara and \$60,000 for the Multimodal Improvement Plan Phase 2 Project to reflect a shift in funding sources from Developer Contributions to TMF from Related Santa Clara (five affirmative Council votes required to appropriate additional revenue) .
Transfer from the Streets and Highways Capital Fund	238,280		Recognizes a transfer in from the Streets and Highways Capital Fund to return funding for the Multimodal Improvement Plan Phase 1 Project to reflect a shift in funding sources from TMF to TMF from Related Santa Clara (five affirmative Council votes required to appropriate additional revenue) .
Transfer to the Streets and Highways Capital Fund		206,000	Increases the transfer to the Streets and Highways Capital Fund to fund \$206,000 for the HAWK Beacon on Scott and Harrison. This action reflects a shift in funding sources from Regional TMF in the Traffic Fair Share Fund to TMF (five affirmative Council votes required for the use of unused balances) .
Unrestricted Ending Fund Balance		32,280	Increases the Unrestricted Ending Fund Balance to offset the actions above (five affirmative Council votes required to appropriate additional revenue) .
	459,780	459,780	



Agenda Report

22-306

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action on the Single Audit Report for Fiscal Year 2020-21

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

The City's annual financial statement audit also includes the federally mandated "Single Audit" which is designed to meet the special reporting requirements of federal granting agencies, specifically Office of Management and Budget (OMB) Uniform Guidance 2.CFR.200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (formerly OMB A-133). The standards governing Single Audit engagements require that agencies expending more than \$750,000 in federal monies in a fiscal year have an independent audit not only on the fair presentation of the financial statements, but also on internal controls for compliance with the administrative requirements of federal awards. The Single Audit was performed by the City's financial statement auditor, Maze & Associates. The Single Audit report is attached.

City staff and Maze & Associates met with the City Council Audit Committee on March 14, 2022. Present were Committee members Watanabe, Jain, and Park. During the Committee meeting, Maze & Associates gave a presentation about the audit process and scope of work, as well as the auditor's opinion. City staff and Maze & Associates answered questions from Committee members.

The Audit Committee unanimously accepted the Single Audit Report presented at the Committee meeting and recommended that the City Council note and file the reports at the March 22, 2022 Council meeting. After the Council meeting, the Single Audit Report will be published on the City's website.

DISCUSSION

Based on their audit, Maze & Associates issued an unmodified opinion with regard to the fair presentation of the financial statements and that the City is in compliance with internal control over financial reporting. For Fiscal Year 2020-21, Maze & Associates identified three major programs to audit: Housing and Urban Development (HUD) - Community Development Block (CDBG) - Entitlement Grant; Department of Treasury - State of California pass-through - Covid 19 - Coronavirus Relief Fund; and Department of Transportation - Highway Planning and Construction Grant. The audit yielded one finding related to the Federal Funding Accountability and Transparency Act (FFATA) reporting requirement for the CDBG program. The City subsequently provided documentation that showed the correct reporting data on March 10, 2022 and resolved the reporting discrepancy. As part of the attached Corrective Action Plan, Staff has revised the policies and procedures manual and developed a review process to ensure the compliance with the FFATA

reporting requirement.

Additionally, part of the annual requirements for the Single Audit is to report on the status of any audit findings that were identified during the previous year. The Single Audit for FY 2018-19 resulted in a finding related to monitoring the CDBG program activities for compliance with program rules and regulations. The actions staff have taken, and the status of the prior year finding are outlined in the attached summary schedule of prior year audit findings.

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

The staff and the external auditor costs associated with the audit and financial reports production are included in the annual appropriations.

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.

RECOMMENDATION

Note and file the City of Santa Clara Single Audit Report for the year ended June 30, 2021, as recommended by the Council Audit Committee.

Reviewed by: Kenn Lee, Director of Finance

Approved by: City Manager’s Office

ATTACHMENTS

1. Single Audit Report June 30, 2021
2. Single Audit Current Year Finding - Corrective Action Plan
3. Summary Schedule of Prior Audit Findings

CITY OF SANTA CLARA
SINGLE AUDIT REPORT
FOR THE YEAR ENDED JUNE 30, 2021

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CITY OF SANTA CLARA
SINGLE AUDIT REPORT
For The Year Ended June 30, 2021

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CITY OF SANTA CLARA

**SCHEDULE OF FINDINGS AND QUESTIONED COSTS
For The Year Ended June 30, 2021**

SECTION I – SUMMARY OF AUDITOR’S RESULTS

Financial Statements

Type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP Unmodified

Internal control over financial reporting:

- Material weakness(es) identified? Yes X No
- Significant deficiency(ies) identified? Yes X None Reported

Noncompliance material to financial statements noted? Yes X No

Federal Awards

Internal control over major federal programs:

- Material weakness(es) identified? Yes X No
- Significant deficiency(ies) identified? Yes X None Reported

Type of auditor’s report issued on compliance for major federal programs: Unmodified

Any audit findings disclosed that are required to be reported in accordance with 2 CFR 200.516(a)? X Yes No

Identification of major program(s):

Assistance Listing (AL) #(s)	Name of Federal Program or Cluster
<u>21.019</u>	<u>Coronavirus Relief Fund</u>
<u>20.205</u>	<u>Department of Transportation – Highway Planning and Construction Grant</u>
<u>14.218</u>	<u>Community Development Block – Entitlement Grants</u>

Dollar threshold used to distinguish between type A and type B programs: \$750,000

Auditee qualified as low-risk auditee? X Yes No

SECTION II – FINANCIAL STATEMENT FINDINGS

Our audit did not disclose any significant deficiencies, material weaknesses or instances of noncompliance material to the basic financial statements. We have also issued a separate Memorandum on Internal Control dated November 30, 2021, which is an integral part of our audits and should be read in conjunction with this report.

SECTION III – FEDERAL AWARD FINDINGS AND QUESTIONED COSTS

Our audit disclosed the following findings and questioned costs required to be reported in accordance with Uniform Guidance.

Finding Reference Number: SA2021-001 Federal Funding Accountability and Transparency Act (FFATA) Reporting

Assistance Listing Number: 14.218

Assistance Listing Title: Community Development Block Grant – Entitlement Grant

Name of Federal Agency: Department of Housing and Urban Development

Federal Award Identification Number: B-20-MC-06-0022
COVID-19 - B-20-MW-06-0022

Criteria: Under the requirements of the Federal Funding Accountability and Transparency Act (FFATA) (Pub. L. No. 109-282), as amended by Section 6202 of Public Law 110-252 that are codified in 2 CFR Part 170, direct recipients of grants are required to report first-tier subawards of \$30,000 or more to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS). Subawards that are entered into the FSRS System should be maintained so that any amendments to the subawards are also reflected in the system.

Condition: We selected two of the City’s subawards for testing of the reporting on the FSRS. The two subawards tested were comprised of four contracts that were all more than \$30,000. Although we noted that all four of the contracts tested were included in the FSRS, one of the contracts in the amount of \$1,300,000 was reported in FSRS in the amount of \$691,380.

Cause: We understand that program staff had initially input the contract in the FSRS in the amount of \$691,380 based on the original funding estimate and did not update the FSRS to reflect the final contract amount of \$1,300,000.

Effect: The City is not in compliance with the FFATA reporting requirements.

Recommendation: Although the City provided documentation that the FSRS was updated on March 10, 2022 to reflect the final contract amount of \$1,300,000, the City should develop procedures to ensure that FFATA reporting is accurate at all times and reflects any contract amendments and final subaward funding amounts.

View of Responsible Officials and Planned Corrective Actions: Please see Corrective Action Plan separately prepared by the City.

CITY OF SANTA CLARA
SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
For the Fiscal Year Ended June 30, 2021

Federal Grantor/ Pass-Through Grantor/Program or Cluster Title	Federal Assistance Listing Number	Pass-Through Identifying Number	Pass-Through To Subrecipients	Federal Expenditures
U.S. Department of Housing and Urban Development Direct Programs				
Community Development Block Grant - Entitlement Grants	14.218			
Program expenditures			\$828,238	\$1,580,814
COVID-19 - Emergency Rental Assistance Program and Administration			730,831	1,020,771
Program subtotal			1,559,069	2,601,585
Home Investment Partnerships Program	14.239		994,599	1,090,636
Total U.S. Department of Housing and Urban Development			2,553,668	3,692,221
U.S. Department of Justice Direct Programs				
COVID 19 - Coronavirus Emergency Supplemental Funding	16.034			29,956
Bureau of Justice Statistics and Federal Bureau of Investigation				
National Incident Based Reporting System				
Special Data Collections and Statistical Studies	16.734			2,988
Edward Byrne Memorial Justice Assistance Grant Program	16.738			3,791
Equitable Sharing Program	16.922			139,173
Total U.S. Department of Justice				175,908
U.S. Department of Transportation Pass-Through Programs From:				
Highway Planning and Construction				
State of California Department of Transportation				
Safe Routes to School Education Program	20.205	CML-5019 (033)		84,993
Santa Clara Streets and Roads Preservation	20.205	STPL-5019 (034)		2,356,000
Metropolitan Transportation Commission				
Priority Development Area Planning Grant	20.205	1812		137,583
Program subtotal				2,578,576
State of California Office of Traffic Safety				
National Priority Safety Programs	20.616	TR21062		24,800
Total U.S. Department of Transportation				2,603,376
U.S. Department of Treasury Pass-Through Program From:				
State of California Department of Finance				
COVID-19 - Coronavirus Relief Fund	21.019	295		1,594,064
U.S. Department of Homeland Security				
Direct Program:				
Federal Emergency Management Agency				
Assistance to Firefighters Grant	97.044			75,121
Pass-Through Programs From:				
California Task Force 3 Urban Search and Rescue				
National Urban Search and Rescue Response System	97.025	CA-TF3		11,734
County of Santa Clara Office of Emergency Services				
2019 Emergency Management Performance Grants	97.042	2019-003 / 085-00000		15,208
County of Santa Clara Office of Emergency Services				
Homeland Security Grant Program (HSGP)	97.067	SHSGP		171,148
City and County of San Francisco				
2019 Bay Area Urban Areas Security Initiative Grant	97.067	2019-0035 / 075-95017		185,000
Program subtotal				356,148
Total U.S. Department of Homeland Security				458,211
Total Expenditures of Federal Awards			\$2,553,668	\$8,523,780

See Accompanying Notes to Schedule of Expenditures of Federal Awards

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CITY OF SANTA CLARA

NOTES TO THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS For The Year Ended June 30, 2021

NOTE 1 – REPORTING ENTITY

The Schedule of Expenditure of Federal Awards (the Schedule) includes expenditures of federal awards for the City of Santa Clara, California, and its component units as disclosed in the notes to the Basic Financial Statements, except for federal awards of the Santa Clara Stadium Authority (Stadium Authority). Federal awards expended by the Stadium Authority, if any, are excluded from the Schedule and are subject to a separate Single Audit performed by other auditors.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of accounting refers to *when* revenues and expenditures or expenses are recognized in the accounts and reported in the financial statements, regardless of the measurement focus applied. All governmental funds and fiduciary funds are accounted for using the modified accrual basis of accounting. All proprietary funds are accounted for using the accrual basis of accounting. Expenditures of Federal Awards reported on the Schedule are recognized when incurred.

NOTE 3 – INDIRECT COST ELECTION

The City has not elected use the 10% de minimis indirect cost rate allowed under the Uniform Guidance.

NOTE 4 – CORONAVIRUS RELIEF PROGRAM (AL# 21.019)

The Schedule for the year ended June 30, 2021 includes expenditures for the Coronavirus Relief Program (AL# 21.019) for the period of March 1, 2020 to December 31, 2020. The period of performance for the grant was March 1, 2020 to December 31, 2020, but to receive the funding, the City was required to file a certification with the State Department of Finance by July 10, 2020 that the City would use the funds consistent with federal requirements, adhere to health orders and directives, return unspent funds, and repay any disallowed costs, among other compliance certifications. The City's certification was filed on July 7, 2020.

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**INDEPENDENT AUDITOR'S REPORT ON
INTERNAL CONTROL OVER FINANCIAL REPORTING
AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN
AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE
WITH GOVERNMENT AUDITING STANDARDS**

To the Honorable Members of the City Council
City of Santa Clara, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City as of and for the year ended June 30, 2021, and the related notes to the financial statements, which collectively comprise the City's basic financial statements, and have issued our report thereon dated November 30, 2021. Our report includes a reference to other auditors who audited the financial statements of the City of Santa Clara Stadium Authority for the year ended March 31, 2021 and a reference to other auditors who audited the financial statements the Northern California Power Agency, Transmission Agency of Northern California and San Jose-Santa Clara Regional Wastewater Facility and Clean Water Financing Authority as of and for the year ended June 30, 2020, related to the calculation of the Investments in Joint Ventures, as described in our report on the City's financial statements. This report includes our consideration of the results of the other auditors' testing of internal control over financial reporting and compliance and other matters that are reported on separately by those other auditors. However, this report, insofar as it relates to the results of the other auditors, is based solely on the reports of the other auditors.

Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered the City's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the City's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we and other auditors did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the City's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests and those of the other auditors disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

We have also issued a separate Memorandum on Internal Control dated November 30, 2021, which is an integral part of our audit and should be read in conjunction with this report.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the City's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the City's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

A handwritten signature in black ink that reads "Maye & Associates". The signature is written in a cursive, flowing style.

Pleasant Hill, California
November 30, 2021

**INDEPENDENT AUDITOR'S REPORT ON
COMPLIANCE FOR EACH MAJOR PROGRAM
AND ON INTERNAL CONTROL OVER COMPLIANCE;
AND REPORT ON THE SCHEDULE OF EXPENDITURES OF
FEDERAL AWARDS REQUIRED BY THE UNIFORM GUIDANCE**

To the Honorable Members of the City Council
City of Santa Clara, California

Report on Compliance for Each Major Federal Program

The City of Santa Clara's basic financial statements include the operations of the Santa Clara Stadium Authority (Stadium Authority), which is not included in the Schedule during the year ended June 30, 2021. Our audit, described below, did not include the operations of the Stadium Authority, because the Stadium Authority engaged other auditors.

We have audited City's compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on each of the City's major federal programs for the year ended June 30, 2021. The City's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

Management's Responsibility

Management is responsible for compliance with federal statutes, regulations, and the terms and conditions of its federal awards applicable to its federal programs.

Auditor's Responsibility

Our responsibility is to express an opinion on compliance for each of the City's major federal programs based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about City's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for each major federal program. However, our audit does not provide a legal determination of the City's compliance.

Opinion on Each Major Federal Program

In our opinion, the City complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended June 30, 2021.

Other Matters

The results of our auditing procedures disclosed instances of noncompliance which are required to be reported in accordance with the Uniform Guidance and which are described in the accompanying Schedule of Findings and Questioned Costs as item SA2021-001. Our opinion on each major federal program is not modified with respect to these matters.

The City's response to the noncompliance findings identified in our audit are described in the accompanying Schedule of Findings and Questioned Costs. The City's response was not subjected to the auditing procedures applied in the audit of compliance and, accordingly, we express no opinion on the response.

Report on Internal Control Over Compliance

Management of the City is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered the City's internal control over compliance with the types of requirements that could have a direct and material effect on each major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for each major federal program and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the City's internal control over compliance.

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. *A significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.

Report on Schedule of Expenditures of Federal Awards Required by the Uniform Guidance

We have audited the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City as of and for the year ended June 30, 2021, and the related notes to the financial statements, which collectively comprise the City's basic financial statements. We issued our report thereon dated November 30, 2021, which contained an unmodified opinion on those basic financial statements. Our report includes a reference to other auditors who audited the financial statements of the City of Santa Clara Stadium Authority for the year ended March 31, 2021 and a reference to other auditors who audited the financial statements the Northern California Power Agency, Transmission Agency of Northern California and San Jose-Santa Clara Regional Wastewater Facility and Clean Water Financing Authority as of and for the year ended June 30, 2020, related to the calculation of the Investments in Joint Ventures, as described in our report on the City's financial statements. Our report, insofar as it relates to the results of the other auditors, is based solely on the reports of the other auditors. Our audit was conducted for the purpose of forming an opinion on the financial statements that collectively comprise the basic financial statements. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by the Uniform Guidance and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the schedule of expenditures of federal awards is fairly stated in all material respects in relation to the basic financial statements as a whole.



Pleasant Hill, California
March 10, 2022

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**SINGLE AUDIT
FOR THE YEAR ENDED JUNE 30, 2021**

CORRECTIVE ACTION PLAN

FINANCIAL STATEMENT FINDINGS - CURRENT YEAR

There were no current year financial statement findings.

FEDERAL AWARD FINDINGS - CURRENT YEAR

Finding Reference Number: SA2021-001 Federal Funding Accountability and Transparency Act (FFATA) Reporting

Assistance Listing Number: 14.218

Assistance Listing Title: Community Development Block Grant – Entitlement Grant

Name of Federal Agency: Department of Housing and Urban Development

Federal Award Identification Number: B-20-MC-06-0022
COVID-19 - B-20-MW-06-0022

- **Name(s) of the contact person:** *Eric Calleja, Housing Development Officer*
- **Corrective Action Plan:**
 - The City has taken action and corrected the issues related with this finding. The City has also taken steps to implement improved processes to prevent this issue from occurring again. A checklist has been created for the execution of contracts and the input of federal contracts over \$30,000 into the FFATA database. The steps will require the input of awardee information within 30 days of the City receiving its federal awards, the input of sub-awardee information within 30 days of federal contracts and any subsequent amendments over \$30,000, and a review of amendments to make sure any contracts less than \$30,000 do not cross the \$30,000 threshold with the changes in the amendment.
- **Anticipated Completion Date:**

Finding SA2021-001: March 10, 2022



**SINGLE AUDIT
FOR THE YEAR ENDED JUNE 30, 2021**

SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS

FINANCIAL STATEMENT FINDINGS – PRIOR AUDIT

There were no prior year financial statement findings.

FEDERAL AWARD FINDINGS – PRIOR AUDIT

Finding Reference Number: SA2019-001 Monitoring CDBG and HOME Program Activities
for Compliance with Program Rules and Regulations

CFDA number: 14.218 and 14.239

CFDA Title: Community Development Block Grant – Entitlement Grant
HOME Investment Partnerships Program

Name of Federal Agency: Department of Housing and Urban Development

- **Name(s) of the contact person:** *Eric Calleja, Housing Development Officer*
- **Fiscal Year of Initial Finding:** 2018-2019
- **Current Status:**

The City has yet to receive clearance regarding Findings One, Two and Three from the grantor. The City did take the overarching CDBG guidelines to council on March 23, 2021. These CDBG guidelines were approved. The City submitted the overarching CDBG guidelines to HUD; however, the City never officially received a clearance letter from HUD. The City has not yet submitted the Subrecipient Monitoring and Oversight Manual to HUD. City staff does meet with its HUD representative on a quarterly basis to go over outstanding issues and is currently working on formally closing out these items.

Finding One – The City accepts HUD’s findings on Subrecipient Oversight. The City conducts thorough “desk audit” reviews of submitted reports and supporting documentation for invoices; however, the City is in the process of implementing more thorough on-site monitoring visits. If the City does find consistent anomalies during the “desk review”, staff would complete an on-site visit to further investigate.

Although the City did not complete a formal Risk Assessment, the City does consider funding amounts and performance history with the sub-recipient when determining whether an on-site review would return anything different than a desk review. The documents and supporting documentation that are submitted with invoices are the same documents that would be reviewed during a typical on-site review.

Moving forward, the City will complete the following actions:

- 1) The City has already submitted the overarching CDBG Guidelines to HUD for review per their request on a different program. The City has also formalized a more detailed Subrecipient Monitoring and Oversight Manual which provides policies, procedures, and methodology related to Subrecipient Risk Assessment. The City will be submitting this more detailed manual to HUD on or before June 30, 2022.
- 2) The City has updated its Grant Agreement template for the new program year to include all necessary provisions from 2 CFR 200. The City will submit contract template to HUD for review on or before June 30, 2022.
- 3) The City has also developed a Risk Assessment methodology which is included in the subrecipient manual.

Finding Two – The City agreed that St. Justin’s program intake form was inadequate; however, due to the nature of the primary population served (homeless and seniors), it is likely that the clientele is eligible.

The City has drafted a new intake form with updated income levels, a place for the client and staff to sign, and a place where the client can self-certify their homeless status. Unfortunately, St. Justin’s voluntarily withdrew from the City’s public service funding program in 2020 due to the increased intake requirements; however, the City will continue to use the new intake form where required.

Finding Three – The City disagreed with this finding. In the City’s contract/agreement template that is used with all subrecipients, there is the clause requiring those grantees that expend \$750,000 or more of federal financial assistance in a fiscal year to obtain a Single Audit.

The new policies and procedures detail when single audits are required and how they are reviewed by City staff. The updated contract template also details regulator language related to this concern.

The City has yet to formally receive clearance regarding these findings from the grantor. The City did take the overarching CDBG Guidelines to council in March 23, 2021. They were approved and these overarching CDBG Guidelines were submitted to HUD; however, the City never officially received a clearance letter from HUD. The City has been in conversations with its HUD representative, Meira Barrett, and she has directed the City to email all documents related to HUD’s monitoring visit of 2019 for her review.

Concern – While the City’s current TBRA Guidelines contain verbiage that the TBRA administrator is required to review the lease, staff acknowledges that this requirement could be clarified and further emphasized. Neither the City nor HUD discovered any specific proof that the TBRA administrator was not reviewing the leases.

The City has updated the TBRA Guidelines to make it clearer that the TBRA administrator is required to review leases, and that they need to send subsidy checks by a certain date every month.

In its December 20, 2019 letter to the City, the grantor indicated that this Concern is considered closed.



Agenda Report

22-356

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action on the Integrated Goose Management Plan (IGMP) for Central Park

COUNCIL PILLARS

Enhance Community Sports, Recreational and Arts Assets; Deliver and Enhance High Quality Efficient Services and Infrastructure; Promote Sustainability and Environmental Protection

BACKGROUND

The City of Santa Clara Central Park includes the Central Park Lake, surrounded by planted areas and grass meadows that attract waterfowl. Over the past decade, the Canada Geese population has increased significantly, producing large amounts of fecal waste that exceed the daily grounds maintenance program's capacity to keep pathways, fields, meadows, and recreational amenities clean and sanitary for public use. Each Canada Goose produces a pound of feces per day, resulting in over 175 pounds of accumulating waste per day deposited into the lake and surrounds. In addition, the Central Park Canada Goose population has become non-migratory. The daily foraging, preening and nesting behaviors create added negative impacts year-round to the park.

The management activities of the Canada Geese and Mallards are regulated by the Federal Migratory Bird Treaty Act of 1918 and subsequent revisions, as well as the U.S. Fish and Wildlife Service (USFWS). While the City has used various approved methods to deter geese, including movable predator land decoys (coyote mannequins); floating water decoys (alligator mannequins), geese panic sounds, grass treatments, and physical barriers, additional steps are needed to address the community complaints and concerns, as well as to educate and inform policy and management practices that include the community's understanding and support.

To that end, the City has retained the services of avian biologist, Daniel Edelstein, who has specific Bay Area experience and has developed an Integrated Goose Management Plan (IGMP) (Attachment 1). The IGMP provides research, information and effective strategies to protect wildlife and reduce the increasingly negative and unsustainable impacts of the Canada Goose and Mallard on the Central Park lake water quality, as well as plants, pathways, recreational amenities, ballfields and visitors' park use.

DISCUSSION

The IGMP proposes the four "management actions" below for City consideration and implementation.

- Management Action 1: Conduct community outreach and provide information to Santa Clara residents and media to educate the general public about the current issues at Central Park and the necessary geese and mallard management actions that may be taken. Implementation of Management Action 1 will help the public understand the problems, issues, and options available

to the City to address the Canada Goose and Mallard problem. This includes:

- a) Preparation of information about the current population and effects caused by the Canada Geese at Central Park, and outreach to the local Santa Clara Valley Audubon Society (SCVAS) chapter and the Bay Area chapter of the Sierra Club to engage in discussion of the issues. This may include a request for support from their respective Boards of Directors to communicate with their membership and public, and/or request a formal letter of support for the IGMP.
 - b) Enrollment of the groups' support for various effective management actions through "public scoping and public comment meetings" to ensure ongoing community understanding and support for the City's methodology, plans and actions discussed in the IGMP.
 - c) Work with the City Communications Office to develop and distribute information to the local media, and informational articles and/or videos to help the general public understand the issues and proposed management actions.
- Management Action 2: Develop interpretive signs and materials to educate Central Park visitors. This includes:
 - a) Development of text content and graphic elements for installation along Central park pathways. The purpose is to inform visitors about the Canada Geese, Mallards and other wildlife species, the issues caused by their overpopulation and behaviors, the management strategies available to address the problems, and how and why management plans are implemented.
 - b) Develop other materials and programs, such as educational brochures, onsite meetings, nature walk/bird outings, and virtual components (COVID19 protocol compliant as necessary).
 - Management Action 3: Effectively address the negative effects of the growing population of Canada Geese and Mallards at Central Park. This includes implementation of four permitted management practices in conformance with Federal, State and local laws, regulatory oversight and permits. In priority order, these are:
 - a) Harassment Plan. The development, review and approval of a plan for ongoing, daily, humane harassment and disturbance of Canada Goose and Mallard foraging behavior and presence in Central Park. This may include permit(s) or professional contract(s) for supervised use of dogs.
 - b) Depredation Plan & Permits. Documentation and applications to obtain separate Depredation Order(s) and Permit(s) from the U.S. Fish & Wildlife Service (USFWS). This includes letter(s) of proof describing the impact of each specie, City authorization, and communication with USFWS.
 - c) Habitat Alteration Plan. Design and installation of effective goose and duck barriers around the perimeter of the Central Park lake, and other effective changes.
 - d) Goose Repellant Plan. This includes a written plan for the effective use of goose repellant

products, along with any pros, cons, and public preferences.

- Management Action 4: Adoption of the written IGMP to ensure that careful, precise non-lethal management actions are implemented to manage the onsite Canada Goose and Mallard overpopulations, while protecting other migratory bird species such as the non-resident, non-breeding "winter" season look-alike "Canada goose" subspecies, Small Cackling Goose and Aleutian Cackling Goose. The Plan also contains "success criteria" and milestones that allow City personnel (including technicians/biologists) to monitor conditions, implementation, and success of the management actions.

Parks & Recreation Commission Review, Public Input and Recommendation.

On November 17, 2020, the Parks & Recreation Commission received a presentation by avian biologist, Daniel Edelstein (Attachment 2). The presentation gave the community, Commissioners, and staff the background research, information and a proposed management strategies' framework. The Commission recommended approval of the Integrated Goose Management Plan and its management strategies. The consultant followed up with a census of the goose and mallard populations, impacts and met with staff to develop the strategies into a comprehensive document for the Commission's second review. It should be noted that the City of Santa Clara Central Park IGMP does not recommend use of lasers or methods that have secondary safety issues, in contrast to what an adjacent City used in their efforts to address a bird problem.

On February 15, 2022, the Parks & Recreation Commission reviewed, for a second time, the IGMP (Attachment 1) and the continued negative impact the increased goose and mallard populations are having on Central Park, the lake, and its patrons. The Commission recommended that Council approve the IGMP and begin immediate implementation of its management strategies.

ENVIRONMENTAL REVIEW

The project is categorically exempt from CEQA under the "Class 7" (14 CCR 15307) exemption per the CEQA Guidelines because it is an action taken by the City to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. On the federal level, the action complies with federal regulator code under a valid U.S. Fish and Wildlife (USFWS) permit secured by avian biologist Daniel Edelstein and updated annually by the avian biologist. This USFWS code regulation is 50 CFR 21.52, pertaining to the allowance of non-lethal overpopulation management actions (including addling of Canada Goose eggs) for this year-round bird species present at the Central Park Lake.

FISCAL IMPACT

Park grounds maintenance activities for Central Park are included in the Parks & Recreation Department's annual Operating Budget. The slight increase in cost for implementation of an IGMP is anticipated to be offset by the reduction in maintenance and cleaning expenditures associated with the lake and pathways within the Department's Operating Budget; therefore, there will be no additional General Fund impacts.

COORDINATION

This report has been coordinated with the City Manager's Office, 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, e-mail clerk@santaclaraca.gov.

RECOMMENDATION

Recommend that Council approve the Santa Clara Central Park Integrated Goose Management Plan and its implementation.

Reviewed by: James Teixeira, Director of Parks & Recreation

Approved by: Cynthia Bojorquez, Assistant City Manager

ATTACHMENTS

1. Santa Clara Central Park Integrated Goose Management Plan
2. Presentation to the Parks & Recreation Commission 11-17-2020

INTEGRATED GOOSE MANAGEMENT PLAN (IGMP)
Developed for City of Santa Clara Central Park

By Daniel Edelstein, Consulting Avian Biologist
WarblerWatch.com

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Introduction

The City of Santa Clara Central Park (Site) includes the Central Park Lake, surrounded by planted areas and grass that attract diverse and abundant bird species and waterfowl, including Moffitt's Canada Goose (CAGO (*Branta canadensis moffitti*)) that resides year-round at the Site. Over the past few years, the CAGO population has increased and produced excessive amounts of waste that exceeds the capacity of the daily grounds maintenance program to keep pathways, fields, meadows, and recreational amenities clean and sanitary for public use. This creates apparent physical, aesthetic and park user impacts, habitat and species impacts, and potential community health concerns.

The management activities of the CAGO are regulated by the Federal Migratory Bird Treaty Act of 1918 and subsequent revisions, and the U.S. Fish and Wildlife Service (USFWS). While the City has used various approved methods to deter geese, additional steps are needed to address the community's complaints and concerns, as well as to educate and inform policy and management practices that include the community's understanding and support.

To that end, the City has retained the services of avian biologist, Daniel Edelstein, who has specific Bay Area experience and who has developed this draft Integrated Goose Management Plan (IGMP) in order to provide community, staff and Council with research and information, and to propose effective strategies that protect the wildlife while reducing the increasingly negative and unsustainable impacts the CAGO have on the Central Park water quality, plants, pathways, recreational amenities, fields and visitor's park use.

Chapter 1

1.1 Integrated Goose Management Plan and Its Purpose

The purpose of an IGMP is to:

1. Communicate with the public issues related to the negative impacts associated with an overpopulation of CAGO in the City of Santa Clara (City), and specifically, the Site; and
2. Provide City Council population reduction management tool options for the Site and future sites as needed.

Negative impacts resulting from the CAGO overpopulation at the Site are outlined below. This IGMP provides a “blueprint” of short and long-term management options to decrease the CAGO’s roosting (resting without conducting an action), sheltering, foraging, and nesting success at the Site. More specific, the preventive and deterrent management options are tailored to the environmental, terrestrial/land habitat, and water conditions at the Site.

1.2 Negative Environmental and Aesthetic Impacts

This IGMP was initiated in response to the following problems caused by CAGO individuals present year-round at the Site:

- Degraded water quality at the Site is caused by as much as one pound of feces deposited daily by each CAGO. For perspective, consider a CAGO counting survey on January 10, 2021, that yielded the presence of 176 individual CAGO roosting on the lake or adjacent to it. The fecal load added to the lake can be extrapolated for daily, monthly, and annual totals based on the presence of 176 CAGO at the Site:

Daily: 176 pounds of feces are added to the Site.

Monthly (30-day Month): 5,280 pounds of feces added to the Site.

Annually: 63,360 pounds of feces are added to the Site

- Possible spread of avian diseases to native birds and, potentially, to humans.
- Reduced biological diversity as a direct result of water and habitat degradation due to overutilization of resources by the non-native invasive CAGO population.
- Inability or decreased ability to effectively filter the lake water as its quality degrades, including increased nitrogen and phosphorus levels from CAGO feces deposition stressing the effectiveness of the bio-filtration system, resulting in increased maintenance costs and potential need for replacement or upgrade before its end-of-life prediction.
- CAGO individuals’ instinctive behavior may periodically cause visitors to the Site (especially children) to be fearful when geese display aggressive behavior, sometimes in the form of hissing. In most cases, an aggressive goose will not flog people with their wings, peck with their bills, or bite. However, given the ongoing rise in population at the Site, encounters with CAGO individuals should be expected. Moreover, goose-visitor confrontations in the future are an unfortunate potential reality, if the current overpopulation of CAGO is not successfully reduced. CAGO attacks on Central Park visitors may occur based on reports nationwide where CAGO overpopulation in similar urban area parks have the same overpopulation dynamic.

Chapter 2

2.1 Natural History and Seasonal Migration

CAGO are considered a non-native and invasive species. CAGO populations became established by inadvertently flying to the Bay Area or were introduced here by people in the 1900s, eventually increasing its numbers in the Bay Area concurrent with its population rise throughout the majority of the lower 48 states.

CAGO's year-round residency at the Site is different from the majority of the five other subspecies (that are "first cousins" of CAGO) elsewhere in North America. CAGO that breed in far northern latitudes and may migrate south to "over-wintering" areas from southern Canada to several of the lower 48 states. The CAGO population at the Site may be joined by post-breeding populations that "over-winter" at Central Park before leaving again to breed elsewhere in the spring.

The location and quantity of CAGO at the Site vary by day and time. One reason for the variance is related to the species' seasonal behavior changes in the region, given some CAGO perform short-distance dispersal and migration after the breeding season to San Francisco Bay Area or other northern and central California sites.

The large CAGO seen at the Site are sometimes joined during the non-breeding season by two look-alike geese within the Cackling Goose species: the Aleutian Cackling Goose and the Cackling Cackling Goose (See photos in Appendix B.), both of which are subspecies within the Cackling Goose species. Note the repetitive common name of the Cackling Cackling Goose may falsely cause some readers to believe this is a typographical error.

The two smaller Cackling Goose subspecies are present at the Site only during the non-breeding, "over-wintering" season after which they migrate north to breed as far as Alaska. Thereafter, annually, from mid-March through September, all geese at the Site are the common, abundant CAGO. See Appendix B for more information about distinguishing the three "black and white," look-alike geese from each other at the Site.

Throughout the Site's Lake and its upland vicinity, CAGO is typically the largest bird species to visit the park. It is common to see large, communal gaggles of CAGO foraging or roosting together on the Site's sidewalks and lawn areas. Some gaggles exceed 25 or more individuals, especially after the breeding season. Case in point is the aforementioned 176 CAGO seen at the Site's Lake area on 1/10/21, which is the greatest number of CAGO the Avian Biologist, Daniel Edelstein, has seen since he began visiting the Site in 2019.

In the last few decades, CAGO has become more common as a breeding species in the South Bay, including the Santa Clara region. Although CAGO is not a native breeding species in Santa Clara County, it most likely began nesting on the peninsula at the Site within a few years after its construction, given this species has increasingly bred throughout the South Bay since the late 1970s.

Bird watchers initially began documenting breeding CAGO along several portions of the South Bay by 1988, after only rarely and periodically witnessing this species prior to the late 1970s. Additional details gleaned from William G. Bousman's account in the *Breeding Bird Atlas of Santa Clara County, California* (2007, Santa Clara Valley Audubon Society) state that local CAGO populations increased by about 30% per year in the South Bay since annual breeding began in the region during

the late 1980s. Before CAGO became established at the Site, nesting CAGO individuals were found at several relatively near lakes in the eastern foothills, including Lake Cunningham by 1989 and at Grant Lake by 1990. Breeding farther south occurred at Almaden Lake in 1991, at the Ogier Avenue ponds in 1993, the Parkway Lakes in 1996, and the Los Gatos Creek percolation ponds in 1998.

One of several subspecies (races)¹ within the Giant Canada Goose species, the CAGO at the Site looks like the other look-alike Canada Goose subspecies that occur elsewhere in the lower 48 states. On the West Coast, throughout most of California, and at the Site, the CAGO subspecies exists as a year-round resident. In North America (north of Mexico), numbers of CAGO have risen during the last half-century. Numbers of the CAGO population have increased approximately four-fold to more than 3.9 million in 2008 from 1 million birds in 1990². At the Site, ongoing informal surveys by Department staff and formal surveys by Avian Biologist, Daniel Edelstein, indicate numbers of CAGO continue to rise. A CAGO counting survey at the lake on January 10, 2021, yielded the presence of 176 individual CAGO at the lake area. This is a typical number for recent Central Park CAGO counting surveys; CAGO breed on the peninsula at the Site.

Despite its common presence at the Site, and throughout urban areas where this CAGO subspecies occurs in the USA, CAGO is protected by state and federal regulatory measures. The State of California and federal regulation measures prohibit killing or capturing CAGO or damaging, destroying, removing, or disturbing their nests, except as provided for under the Depredation Order (DO) permit (See Appendix F) obtained on behalf of the City, per the Agreement validated by the City. A DO provides regulatory authorization under the Migratory Bird Treaty Act (MBTA) to conduct specific migratory bird depredation management activities without the need for an individual federal permit.

2.2 Nesting Behavior and Habitat Preference

CAGO nest in diverse natural and urban habitats, choosing nesting sites such as wetlands, reservoirs, industrial park lakes (within which islands occur as prime nesting spots), and saltwater marshes. In most cases, they nest on islands, dikes, and uplands in marshes where vantage points provide them visual protection from ground predators such as marauding raccoons, opossums, striped skunks, gray and red foxes, and bobcats.

Breeding occurs during year number two or three of a CAGO's life, and egg-laying sometimes commences as early as March at the Site with its annual nesting cycle typically complete by no later than mid-June. Often reusing the same nest site from one year to the next, females have one clutch per nesting season and lay between two (2) and twelve (12) creamy white to pale-tannish white eggs in each clutch, with 5.5 eggs the mean per clutch. Eggs are laid throughout the day, with most dropped in the afternoon and evening. Nest vegetation may stain the eggs during an incubation period which lasts 25 days. Within 24 hours after hatching, goslings can walk, swim, feed, and dive. Goslings remain with the parents for approximately one year after birth.

Dames (female) incubate the eggs while ganders (male) primarily stand guard. While tending newborns, both ganders and dames stand nearby in alert postures. Adults without young spend more time resting and preening than do adults tending to young.

¹ See Glossary below.

² U.S. Fish and Wildlife Service. 2000. Waterfowl population status report. Dept. of Interior, Washington, D.C.

From late winter through spring, breeding adult CAGO become more territorial. Many will leave flocks in search of suitable nest sites. After a nest is established, the gander will defend its space in the vicinity of the female.

CAGO form monogamous, stable pair bonds. Long-term pairing is typical, but a new mate may be required for a goose that loses its mate. The timing of pairing is little studied but appears to occur from late winter through spring. Copulation occurs both before and after nest site selection. Multiple, “extra-pair copulation” mating may occur among males and females during the nesting season, though bonding between a single male and female remains intact after they establish a nest site together.

Family bonds (that include the gander, dame, and goslings) are typically maintained throughout the first year of formation, with some yearling contact afterward. Predation is limited at the Site, especially upon nests on the Lake’s peninsula. Elsewhere, egg predation may come from Common Raven, American Crow, Gray Fox, Coyote, Raccoon, and Striped Skunk.

Beyond their strong flying ability, CAGO individuals move throughout the Site as both walkers and runners. In so doing, they easily traverse the variety of challenges that confront them, whether it’s scaling the small waterfall adjacent to the peninsula or leaving and entering the lake. When flying, geese often do so in groups at the Site, though not typically in “V” formation, as seen among the migrating wild Canada Goose. Most often, flight occurs as they move among foraging areas at the Site, in addition to leaving for nearby roosting habitats, such as Central Park Elementary School’s yard across from the Community Recreation Center.

Preening, stretching, bathing, and many other self-maintenance activities are regularly seen in CAGO at the Site. Other behaviors may serve as signaling purposes. As a courtship ritual, geese at the Site shake their body, head, and tail, especially after copulation or bathing. Cleaning movements include scratching of the head, neck, or cheeks with either foot; nibbling feathers and feet; and circulating air or water through a submerged bill. Feather maintenance is achieved by geese spreading oil from a gland onto their feathers via their bill or by rolling their head onto the back, flanks, and feathers. Bathing includes head-dipping, which moves water over head, neck, and back, and, during more intense bathing, wing-beating, and flailing of water and occasionally somersaulting is seen. CAGOs also display diving and dashing habits among flock members.

CAGO sleep and rest standing on one or both legs with neck bent and head held low above their chest, or with it stretched back between their upper back feathers. Often, sleep occurs while a goose is floating (even in deeper lake water) and sometimes in large groups. At night, geese at the Site often retreat to the lake peninsula.

2.3 Understanding Population Increase

Ecological issues related to CAGO in the SF Bay Area are ubiquitous in areas that offer habitat conditions like those present at the Site. In recent years, increased breeding success among CAGO has been documented throughout the Bay Area.

Reasons for this increase relate to the diet of CAGO; it is an herbivore, feeding primarily on plants. Post-fledging and during fall and winter, many CAGO rely primarily on foods higher in carbohydrates such as berries or seeds. More typically, CAGO have become acclimated to nearby habitat sites that are within easy flying distance from the Site and where large groups may return. This results in optimal roosting, foraging, and nesting habitat conditions at the Site.

Equally important, CAGO are attracted to the Site's environs because year-round open water occurs next to the lawns surrounding the park's lake. Beyond serving as a source of grazing, the peninsula hosts plants with blossoms and leaves eaten by the geese.

CAGO have an innate preference for living in open terrain offering good visibility and sightlines to notice any potential approaching predators: The lake peninsula is out of harm's way and fulfills this innate preference. Furthermore, conditions at the Site provide an ideal "nursery" setting for adults to safely foster and nurture newborn CAGO, allowing them to flourish in large numbers at the Site compared to the wild where mortality from predation would limit CAGO presence.

Given the optimum water and food conditions at the site, the majority of the Site's CAGO may never disperse or migrate from the Site. If they leave the Site, it's likely to nearby South Bay and other San Francisco Bay habitat. Individual CAGO that leave may also return, especially during the breeding season when Central Park and its lake serve as safe harbor.

If too much competition from other CAGO occurs within Central Park and on the peninsula, it's possible the newly arrived CAGO may roost/shelter at the Site to forage on vegetation and the lawns but breed elsewhere within or near Santa Clara.

Chapter 3

Seasonal and General Management Techniques to Control the Nesting Habits

The different time periods below serve to remind City staff of recurring annual recommended actions needed to ensure short and long-term reduction of CAGO numbers at the Site. Successful completion of these seasonal techniques ensures short and long-term reduction of CAGO at the Site.

3.1 March: Addling Eggs

Failure to begin addling eggs annually in March will result in more management challenges from April through June because eggs laid by CAGO in March typically hatch within 25 days. Consequently, controlling the goose overpopulation at the Site by punctual addling their eggs during peak egg-laying months is critical to reducing their numbers because adults are reluctant to leave eggs and young behind after newborns hatch.

Regulatory note: The DO permits addling of eggs before they hatch and does not allow for lethal measures to eliminate hatchlings. See Appendix F for details related to how Central Park and the Santa Clara Parks & Recreation Department are registered as an approved site for the addling of CAGO eggs based on its approved status with the US Fish and Wildlife Service.

3.2 March Through June: Nests Removal

The CAGO breeding cycle is to initiate nesting in March and April; it is important to plan so courtship and nesting behavior is altered. Management techniques outlined in Chapters 3 and 4 of the IGMP should be conducted during these months.

3.3 Summer Through Mid-Autumn: Irrigation Monitoring for New Plantings

June through November, CAGO remain at the Site, often roost, and forage in large flocks that include two or more families that “band together.”

It is important for City staff to continue collaboration with an Avian Biologist, to plan, assess and determine if implemented management strategies have succeeded in the previous months. Management actions that have failed or need improvement should be reassessed and revised.

As plantings take root and succeed at the Site, a coordinated irrigation plan must be established and periodically reviewed by the Avian Biologist and City staff. The peninsula is on a separate irrigation zone from the rest of the Site’s irrigation system; therefore, criteria and parameters must be determined to set and monitor irrigation schedules to ensure successful plant establishment.

3.4 Year-Round: Discourage/Prohibit Feeding

Visitors feeding wild birds have been observed at the Site. Such behavior encourages CAGO to remain at the Site year-round. CAGO will be less likely to abandon the Site if visitors continue to feed them. This precept is especially important because when the diets of geese are not supplemented with handouts and they must depend on limited natural food supplies, geese may move elsewhere.

In addition, feeding geese with artificial foods, like bread, can be detrimental to their health. Studies indicate wild birds fed by visitors, even rarely, learn to depend upon handouts. Forced to forage for themselves, some birds are less than able to survive when stressed by the rigors of living in the wild. Other potential negative impacts of feeding wild birds in park settings such as Central Park include the potential for increased disease spread among CAGO and other bird species that associate with them (such as the large population of Mallard that inhabit Central Park year-round)³

City staff may wish to further develop and expand educational messaging to park patrons, so they learn about problems resulting from the feeding birds at the Site.

3.5 Reduce Attractiveness of Foraging and Nesting Habitat

CAGO at the Site become accustomed to feeding in the same spots where they sometimes establish territories and groups. CAGO begin to search for prospective nesting sites in late winter. A bonded pair of geese will seek a flat, open area (such as the lake's peninsula) for nesting as early as March.

City staff may wish to consult and implement one or more portions of the planting plan featured in Appendix A. It is advised that completion of planting recommendations in Appendix A are intended as short-term and long-term solutions to reduce CAGO nesting success, as well as non-breeding season presence of CAGO at the Site.

The Site's Lake peninsula is the focal point of the Site where the IGMP planting plan elements should be implemented. There would be a predictable decrease in documented goose nests at the Site if the prescribed plant options in Appendix A were accepted and installed on the peninsula. Timing of the planting is also addressed in Appendix A.

3.6 Monitor CAGO Behavior for Future Management Action Decisions

Given CAGO typically form large groups after nesting is completed, by mid-summer, management tactics should be enacted as a preemptive response to discourage CAGO from remaining at the Site. Starting in early May, City staff should monitor and review the success of management actions taken in March through June and coordinate with a qualified Avian Biologist to plan management actions and obtain approval for additional site visits with the intent of reducing CAGO presence at the Site.

³ See: <https://www.wildlifeonline.me.uk/questions/answer/is-it-okay-for-me-to-feed-wildlife>

Chapter 4

Introduction to Non-Lethal Options for CAGO Population Reduction

Due to US Fish and Wildlife and regulatory guidelines, non-lethal management options are the only available choice for reducing the CAGO population at the Site. The right to possess a DO permit has been granted to Avian Biologist Daniel Edelstein on behalf of the City so that he is able to help reduce the Site's CAGO population. The DO allows an Avian Biologist to implement the subsequent CAGO management option of addling CAGO eggs by coating the eggs with corn oil or similar product, thereby restricting gas exchange and respiration which results in a non-viable egg.

4.1 Husbandry Methods

Groups of CAGO often are seen in large congregational groups at the Site near the lake. As discussed in Chapter 1, CAGO in urban areas such as Central Park typically gather near bodies of water where easy access to adjacent foraging areas exists.

The number of CAGO at the Site may be reduced by implementing several management tactics. It is advised that City staff reduce or eliminate the fertilizer, applications to the lawns surrounding the lake. Reduction will decrease the growth of grass and, also, reduce the nutritional quality of the grass CAGO consume in a nearly unlimited supply at the Site.

Other techniques for the City to consider include:

- 1) reducing or eliminating all mowing of the lawns within 75 feet of the lake's edge,
- 2) reducing the total amount of lawn area between the sidewalk that surrounds the lake and the foraging area (the lawn),
- 3) limiting irrigation so less growth of the lawn occurs which would in turn make the grass less palatable to CAGO (i.e., "limiting" is offered as a management technique option because "brown lawns" would not be aesthetically pleasing to visitors, and
- 4) reviewing Appendix A that features a planting plan for the Site, including suggested plant species that would reduce the amount of lawn cover at the Site.

4.2 Other Site Specific Non-Lethal Methods

Non-lethal deterrents are divided into two main categories:

- Devices that scare CAGO, and
- Physical deterrents.

Scare devices frighten CAGO so they leave areas such as Central Park's lawn areas (and the lake). Physical deterrents prevent CAGO from gaining access to an area, such as the Central Park Lake. In this case, City staff should note this IGMP limits its recommendations to physical deterrents.

Scare strategies are not considered in this IGMP because some visitors would likely complain to City staff that undue emotional hardship or harassment is not an appropriate CAGO reduction tactic. In fact, in several USA locations where dogs were employed to chase CAGO from foraging in an area, the public commented that this tactic was "cruel", and therefore unacceptable. Equally important, employing dogs to scare CAGO is often merely a temporary deterrent to reduce the number of CAGO visiting a Site; scared off CAGO continue to monitor favorite sites (such as Central Park) and as soon as the dogs are removed

from the area and the threat no longer exists, CAGO are likely to return.

Hazing tactics (such as cannons, whistlers, noise bombs, shellcrackers, banger rockets, or other noisemakers) utilizing repeated loud sounds is another harassment option but is not recommended due to the impact on park visitors.

Visual frightening devices sometimes work, given that CAGO see, recognize, or interpret, and react to an image or object that represents a potential threat to them. Although these devices are typically silent and inexpensive, they often are ignored by CAGO after a while or work best when used in combination with another reinforcement deterrent (such as the DO that permits CAGO addling throughout Central Park during the CAGO breeding season). One example of a visual frightening device is Mylar reflective tape (i.e., tape is often red on one side and shiny silver on the other; it is strung between posts to form a fence or attached to a pole as streamers, thereby creating glints of sunlight that visually flicker in the breeze. As a result, startled CAGO fly away. This tactic is not recommended as an option because the serenity of the Site would be violated.

New CAGO deterrent devices have recently entered the market. One of them utilizes pressurized water sprayers and motion detector technology to deter geese from entering a lake or another water source. These devices are hooked to hoses and activate when the motion detector senses the approach of an animal. Again, this technique is deemed unacceptable for Central Park because people or their pets could potentially activate a sprayer, thereby causing unacceptable commotion.

Physical structures can be put into place that will impede movement of geese from their resting or flocking areas toward feeding areas. Such barriers can be created using vegetation, fencing, or rocks. See Appendix A for a planting plan that would serve as a physical structure option to reduce CAGO's ability to roost and forage amid the lawns at the Site. The addition of plants noted in the Appendix A planting plan would block CAGO walking pathways.

Installing fencing is another management option City staff should utilize as an addition at the Site. See Appendix C for materials that possess a suitable design compatible with the rocky/cobbled shoreline and sidewalks present around the lake's perimeter at the Site.

The Site contains the Central Park Lake which is not a natural body of water and must be continually replenished with water. As part of ongoing management strategies to conserve water, the Central Park Lake may be drained seasonally from early July to mid-September, which is more consistent with reduced water levels in natural bodies of water in the Santa Clara Valley region. Having a dry lake during the middle of the summer would also reduce the number of CAGO at the Site.

Chapter 5

Population Monitoring After Implementation of Management Options

Currently, a monthly, year-round survey of CAGO occurs at Central Park. This survey informs City staff of the CAGO's total numbers at Central Park. This information is crucial to inform management decisions for several reasons:

- Assessing and ensuing management actions are enhanced by knowing CAGO distribution patterns in relation to when they visit the Site.
- Knowing exactly where CAGO roost, forage, and nest; and
- Determining when key CAGO activities commonly occur and when numbers decrease; and the total numbers of CAGO on the Site.

It is advised that a trained, professional Avian Biologist continue to conduct the monthly survey to ensure accurate information is collected. Most important, this information must then be interpreted in terms of presenting City staff management options for review and potential implementation at the Site.

Chapter 6

6.1 Public Outreach

To educate the public about the overpopulation issues and to increase their understanding about why the City is implementing CAGO management actions, the Director of the Parks & Recreation Department may consider authoring research and best practices-based article in local print and/or online media platforms. The article will help ensure transparency when employing non-lethal CAGO overpopulation management actions. Additionally, it will preserve the public's favorable image of the City while providing important information and seeking comments from the public and visitors who frequent the Site. The article perspective may be especially helpful for CAGO enthusiasts to understand issues relating to CAGO overpopulation, such as previously mentioned fecal deposition, encroachment upon the functionality and aesthetic appeal of the Site, and increased maintenance costs to the City.

Public education about CAGO should be initiated by the City before management actions occur for the purpose of:

1. Ensuring an open and transparent communication between the City and the public before one or more non-lethal overpopulation management actions are employed, including habitat alteration management actions.
2. Accommodating an anticipated public reaction to management decisions affecting the welfare of CAGO at the site. More specific, some visitors may provide comments in favor of preserving the extant bird species' populations, even though CAGO is a non-native nesting species whose overpopulation at the Site qualifies it as an invasive species.

It is recommended when developing educational materials/media for the public, that the City staff and the Parks & Recreation Commission know basic facts about CAGO and its natural history, nesting cycle, etc.

6.2 General Education for the Public

- A fact-based article written by the Director of Parks & Recreation, or appropriate designee, should be submitted to local newspapers and appear on the City's web site. The article should be on file with the City and accessible at any time. This informational piece should serve as an update to the public regarding the overpopulation of geese at the Site and the negative impacts they are causing. In turn, with the local Audubon chapters support, it is likely ongoing community awareness and engagement will be fostered with commensurate support for goals related to CAGO reduction efforts
- The article should be sent to the Director of the Santa Clara Valley Audubon Society. In addition, follow-up communications to the Director are recommended to garner support in the form of a resolution in support of the City's IGMP including the addling of CAGO eggs. In turn, this letter should be used in communications to promulgate the City's IGMP to the public including City of Santa Clara commissions, committees, and board etc.
- Letters should be sent to local politicians and community groups notifying them about the problems associated with the overpopulation of geese at the Site and why City staff must respond with management actions.

- On an as-needed basis and to maintain support for efforts to reduce the site's goose population, City staff may host politicians and other important community decision makers to report on the progress. Observation about the progressing planted vegetation would be highlighted during a walking tour, along with "before and after" photo handouts that show the success of the planting program as the site's habitat quality evolves from one year to the next. In so doing, public opinion and local laws and regulations are more likely to remain consistent with the management action goals established for the Site.
- Announcements and information such as signage should be added to visitor entry points at Central Park. A photo montage on the City's web site and on signs at the Site in Central Park will help visitors identify the reasons why the City is addressing the CAGO overpopulation problem with non-lethal management strategies intended to reduce their population. Other signage could alert visitors to the difference among the invasive, non-native CAGO and two look-alike Cackling Goose subspecies/races that visit the Site. In addition, information on signs should alert visitors to reasons why feeding geese may adversely affect their health.
- The City's website should feature ongoing education information about the geese, much of which is included in this IGMP.

6.3 Adult and Youth Education Actions

- Add information to the City's website to help teachers learn about the problems related to CAGO at the site so they can educate their students.
 - When school field trips occur at the Site, provide students with an informational handout that will help them understand the problems associated with geese and how students can help.
 - Ensure the informational signage at the Site is presented at a level that is comprehensible to youth and their parents. Information should be written in a manner that encourages adults to engage in conversation with younger visitors. Graphics should be utilized to facilitate comprehension for all ages, and all visitors regardless of language, fluency, and literacy.
- Public presentations via Zoom are currently advised to alert the public regarding the City's chosen CAGO non-lethal overpopulation reduction methods. After COVID-19 restrictions are relaxed or removed, in-person public presentations should be offered at least once a year, especially during the nesting season when visitors may see an Avian Biologist at the Site adding eggs.

Appendix A

A1 Planting Plan

To reduce the overpopulation of CAGO at the Site, a planting plan is recommended. The plan includes a recommendation of botanical species and corresponding areas for plantings at the Site.

Note: The recommended prescription of botanical species and their placement is subject to change based on potential comments from City staff. This section also highlights post-planting care and erosion control, in addition to suggesting a “Success Criteria.” Planting local native species are recommended.

The species prescribed in this plan are intended to either replace or add vegetation to areas where they will grow at least 24 inches high and dense enough to prevent geese from seeing through. Based on the prescription plan below, each vegetative barrier should be at least 25 feet wide. Most plantings should be arranged as groupings with ample large expanses of existing lawn left intact to account for the annual Art & Wine Festival where exhibits/stages are placed. The chosen metric of 25 feet or more is suggested to reduce the suitability of the lawn areas as roosting/foraging places for geese to “hang out” at the Site, and to reduce their presence at the Site.

A1.1 Locations Designed for Planting at the Site

A1.1a Peninsula Within Central Park’s Lake:

The following plant species are advised to be planted by City staff no later than February 2023 under the supervision of a qualified biologist or an ISA Certified Arborist in the Parks & Recreation Department. Species are chosen because they require minimal irrigation and because they grow wide and dense close to the ground to reduce CAGO’s interest in frequenting the Site’s lawn areas because CAGO individuals prefer open areas where they can see in all directions for the potential presence of nearby approaching predators.

- *Baccharis pilularis* var. *consanguineum* (Coyote Bush)
- *Rhamnus californica* (California Coffeeberry)
- *Quercus agrifolia* (Coast Live Oak)

A1.1b Selected Portions of the Lawn Areas Surrounding the Lake:

A ring of densely planted shrubs consisting of the two species mentioned in A1.1 above should be added to the lawn area where the outside border of the sidewalk exists that surrounds the lake. The shrubs should be five-feet wide and be planted around the entire circumference of the lake except for gaps of four feet every 100 feet so people can enter and leave as they move from lawn areas to the sidewalk and vice-versa. This habitat alteration technique will reduce CAGO’s interest in congregating en masse in the lawn area. In effect, CAGO are unlikely to use the four-foot-wide gaps to walk from the lake into the lawn areas and vice-versa, if all the gaps only occur every 100 feet in the line of shrubs surrounding the lake.

A1.2 Quantity and Percentage for Vegetation Cover

For the Peninsula:

Shrub Species*	Percent to Plant	Size of Container
Coyote Brush	50%	20# “D-pot” buckets (2.5” x 10” deep)
California Coffeeberry	40%	10# “D-pot” buckets (2.5” x 10” deep)

Tree Species	Percent to Plant	Size of Container
Coast Live Oak	100%	3# “Tree pot” buckets (4” square x 14” deep)

For the lawn areas:

Shrub Species*	Percent to Plant	Size of Container
Coyote Brush	70%	20# “D-pot” buckets (2.5” x 10” deep)
California Coffeeberry	30%	10# “D-pot” buckets (2.5” x 10” deep)

* Once established, both above shrub species require only minimal periodic irrigation, thereby reducing maintenance costs. Although no additional irrigation hardware system will need to be added to the lawn area, a watering schedule will need to be created and followed via coordination with Parks & Recreation Department maintenance staff.

A1.3 Quality of Vegetation Stock Purchased

Each plant shall be purchased only after clear verification of species, purity, percent germination, dealer’s guarantee, and dates of test.

A1.4 Spacing of Plant Species Per Acre

All plant species (see above, A1.1) should be planted on 15 ft centers. For every four Coyote Bushes planted, two California Coffeeberry should be planted equidistant and between the two closest Coyote Bush plants. For every five Coyote Bushes planted, Coast Live Oak tree should be planted equidistant from the Coyote Brush and California Coffeeberry. Utilizing this design, the entire planting site will have equal distribution of the three plant species.

A2 Care and Erosion Control

A2.1 Preparation of Planting Areas

Plants shall be installed in a finely graded soil after the designated lawn areas have been adjusted in size to accommodate the new planting. Soil should promptly be planted and not left barren, so the newly exposed soil remains friable and weed-free. If planting area is compacted, loosen the top six inches of soil to create favorable conditions for establishment. Remove soil lumps, ridges, and depressions. Remove deleterious material.

A2.2 Weather Limitations

Preferably, planting shall occur in November and December within five days after a major rain event exceeding 0.5" of rainfall confirmed by utilizing an online weather station source (e.g., weather.com, accuweather.com or the National Oceanic and Atmospheric web site specific to the Santa Clara region).

Soil should be moist within the to the top six inches of the soil profile. If no rain events occur in November or December, supplemental irrigation or manual watering may be necessary during the establishment period. Collaboration with the qualified biologist is suggested to monitor plant establishment and assure a higher survival rate based on knowledge and awareness of the planted species and their water requirements.

A2.3 Equipment

The selection and usage of proper equipment is important in preparing the areas at the Site for planting without causing compaction or compromising soil structure within the revegetation zone.

A2.4 Geotextile Application/Surface

To prevent erosion of ground surrounding plantings, where slope orientation is more than 5%, geotextile material such as rice mats should be placed around and within the planting areas as approved under the supervision of a qualified avian biologist in consultation with appropriate City staff. In addition, the biologist and City staff should mutually agree on which water erosion control devices would be necessary to add to the Site. Options for erosion control include hay bales, rice mats, straw wattles, and other natural erosion control materials. The goal is for the chosen erosion material to limit down-slope loss of soil and mulch that will be applied around each new plant.

A2.5 Protection of Plantings During and After Establishment

Several common, standard plant protection actions should be implemented at the Site after a planting occurs. One option would be for City staff to add dense mulch at the base of shrubs and trees. When appropriate shrubs and trees should be protected at their base by adding wrapping tape and/or creating wire mesh enclosures to an appropriate height to prevent foraging by rodents and brush rabbits. (See photo to the right.)



A2.6 Best Management Practices in Relation to Plantings at The Site

Although it is unlikely a Storm Water Pollution Prevention Plan (SWPPP) will be necessary at the Site, it is advised that the City consider having a qualified biologist or an ISA Certified Arborist create a list of acceptable Best Management Practices (BMPs) intended to prevent erosion at planting sites throughout the Site. This one-time action will serve as a long-term guidance reference for City staff, thereby increasing the chances for plantings to flourish.

A3 Success Criteria

A3.1 Final Success Criteria for Vegetation in Disturbed Soil Areas

Successful criteria for evaluating revegetation zone plantings shall be initiated and developed by a qualified biologist in collaboration with Parks & Recreation Department ISA Certified Arborists for the revegetation zone plant establishment.

After the project, the biologist and ISA Certified Arborist would determine if plantings completed under a planting plan were properly established (see 4.2-4.4.4, below), and confirm that any further maintenance or alteration to the vegetation would be subject to mutually agreed upon criteria established by the qualified biologist and the City.

A3.2 Monitoring Vegetation in Newly Planted Areas and Disturbed Soil Areas

The successful evaluation of the revegetation zone planting based on established criteria shall be assessed regularly by the qualified biologist in consultation with City staff. Evaluations should take place eight months after the initial planting, and as needed to evaluate the health and vigor of the plantings after the first inspection.

The biologist should develop conclusions and recommendations based on periodic visits to the Site and submit written appraisals for each site visit. The appraisal should include suggested budget items that may need approval by the City (e.g., replacement plant purchases for mortality of initial plantings and additional equipment City maintenance staff may need to obtain).

A3.3 Time Limits for Final Success Appraisal of Plantings

Criteria to evaluate the final success of revegetation zone plantings shall be provided by the qualified biologist in consultation with City staff. Final success time-limits are addressed in section A3.4 below, along with advisory actions the City should consider implementing based on the level of successful plant establishment at the Site.

A3.4 Criteria to Evaluate the Successful Establishment of Plantings at the Site

It is anticipated that initial short-term successful establishment of plantings will yield timely benefits for the immediate reduction in CAGO numbers based on:

- Decreasing the lawn area (food source) footprint so fewer CAGO visit the Site to roost and forage in contrast to the currently expansive lawn along the circumference of the lake.
- Creating a visual barrier with shrub plantings that changes the behavior of CAGO as they are less likely to move around the lawn areas surrounding the lake. It is expected that fewer large groups of CAGO would roost while sitting on the grass together. Ultimately, the addition of shrubs throughout several portions of the lawn would potentially cause CAGO to reduce their presence from roosting near shrubs and prevent them from easily entering the lake unimpeded via lawn roosting areas.

- CAGO vacating entire sections of the lawn where shrub plantings are added and “bunched” closely together to form a maze-like, circuitous pathways. CAGO individuals and groups may no longer have open sight lines to detect potential predators such as coyotes and gray foxes although none have been seen at the Site. Instead, it’s the “perceived threat” and inborn, innate behavior of CAGO to avoid areas where no easy escape exists and where obstructed visual sight lines occur.

Long-term benefits of adding plantings to the periphery of the lake area are more challenging to predict. If successful reduction of CAGO at the Site requires a longer time frame than anticipated by City staff, it’s important to continue ongoing addling of remaining CAGO that create nests at the Site. Throughout the process of managing CAGO, annual maintenance and repair must continue until successful progress occurs in reducing CAGO’s presence at the Site.

A4 Monitoring and Evaluation Requirements

To ensure the increased survival success rate of the plantings, a qualified biologist should visit the Site to evaluate the planting areas three times a year upon final approval and implementation of the IGMP:

Site Visit #1) An April site visit to assess whether plants are exhibiting new growth.

Site Visit #2) A June visit to evaluate the results of irrigation strategies and practices on planting areas. All plants shall receive sufficient water to promote vigorous root and canopy growth, as well as plant health, according to the normal growth habit for each species as judged by the biologist or Parks & Recreation Department staff who are ISA certified arborists

Site Visit #3) An October visit to assess the vigor of plants after the summer when potential stresses (drought/no rain, wind, erosion, etc.) may have impacted revegetation zone plants. The qualified biologist or ISA Certified Arborist may recommend corrective measures to mitigate plant loss because of poor vigor or stress, such as manually watering. Individual plants should receive sufficient water to hydrate the soil and stimulate healthy root and corresponding canopy growth.

All visits by the biologist should include a quantified number of replacement plants needed to mitigate plant loss. The budget established and allocated by the City for the planting plan should account for a 10% mortality rate, which is common within the landscape industry.

At each site visit, the biologist will submit a “Monitoring Report” that will track the success or failure of the planting effort. The biologist visiting the site must assess the effectiveness of the erosion materials according to their performance specifications. All procedures recommended by the biologist to address problems in the planting areas should be evaluated collaboratively with City staff, ensuring both parties are aware of the planting effort’s success and necessary future actions to safeguard ongoing, long-term success of the planting endeavor.

The annual due date of report submittals should be by no later than October 31 after the final approval and implementation of the IGMP. The cover letter transmitted for each report shall include a site summary and appropriate comments, in addition to a figure that corresponds to numbered individual plantings so that successfully established and thriving plants are identified as well as dead plants that must be replaced.

Ongoing procedures should include photographic documentation to support the assessment. The biologist shall determine if any maintenance, repair, or revegetation actions are required to meet final success criteria. The assessment shall determine whether maintenance or repair work is required. Final success evaluation (see section 4.4, above) shall be determined by the biologist in collaboration with the City.

A5 Maintenance and Repair of

Revegetated Areas

The City will maintain and repair the new vegetation and mitigate erosion based on recommendations made by the biologist. During this period, the site should not require significant maintenance measures. Adequate water is anticipated from normal rainfall. Weed control is not anticipated because each planting should be planted with three inches of organic mulch that will help reduce moisture loss from the soil in addition to reducing weed emergence and growth. However, if weed coverage exceeds 20% of the area surrounding an individual plant at the Site, then the biologist's report should recommend appropriate response actions for City maintenance staff.

A6 Contingency Measures - Natural Disasters and vandalism

During the period prior to achievement of final plant establishment success of the new vegetation, City staff shall make a thorough site inspection following any flood, earthquake, fire, or act of vandalism that may adversely affect the integrity of the planting areas at the Site. An inspection report with photographs and required repairs, and a schedule to complete them, should be prepared City staff.

Appendix B—Photos of the Three Look-alike Geese Species



Moffitt's Canada Goose
(Branta canadensis moffitti)

Common in Central Park, often present. Year-round resident.

Large body (30-43"), big bill, often in large groups; present year-round at the Site in large numbers.

Watch for Moffitt's Canada Goose on the lake peninsula in Central Park where most nests producing newborns appear from as early as March (& through June annually), thereby adding to the overpopulation load that already exists from immigrant and past year's Moffitt's Canada Goose births at the Site.



Aleutian Cackling Goose
(Branta hutchinsii leucopareia)

Rare to absent at Site. Most are larger bodied than Cackling Cackling Goose (22-30"), with paler breast usually gray-brown to dark brownish; white collar usually complete and thick with blackish feathering at base of neck; square head; bill short, tapering to narrow tip and somewhat pointed; white cheek patches; usually with black throat stripe. Only at the Site during the winter/non-breeding season.



Cackling Cackling Goose
(Branta hutchinsii minima)

Rare to absent at Site. Smallest body of the three look-alike geese (23-26"); small bill is stubby; short neck; and white cheeks. Only visits Central Park during the winter/non-breeding season.

Appendix C

C1 Satellite view of the Central Park Lake

Image 1.



C2 CAGO and Mallard species co-existing at the Site. Photos taken by the author.

Image 1. CAGO and Mallard are the two most common bird species to see at the Central Park Lake area.



Image 2. CAGO in front of the bio-filtration system at the Central Park Lake area.

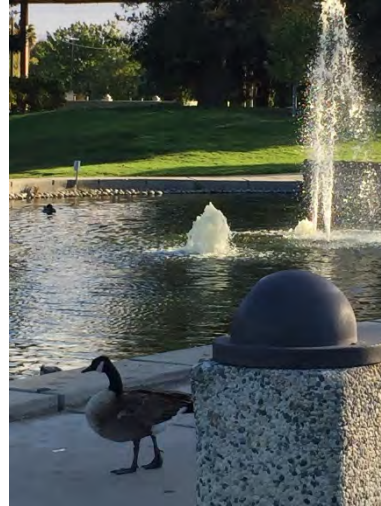


Image 3. CAGO overpopulate the Central Park area for several reasons, including the abundance of lawn areas that offer plentiful, year-round foraging resources — with green grass always present and growing profusely due to its excellent health.



Image 4. Mallards are another nesting, invasive bird species in the Central Park Lake area. Its numbers at the Site sometimes total more than 100 individuals, with a recent high of 127 Mallard individuals counted on November 8, 2020. It's likely this large number is adding large amounts of feces to the lake's water, thereby impacting the performance of the bio-filtration system.



Appendix D—Fencing Options as a Barrier in Central Park’s Lake Area

Santa Clara Parks Canada Goose Project’s goal is to add 1,516 linear feet of fencing to the circumference of Central Park Lake.

Fencing Options:	Company Name	Contact Information	Cost and Comments
<p>1. Monofilament Fencing Style</p> <p>(Photo of this product)</p> <p>This option is the cheapest of those noted here. See the “Cost/Comments” column.</p>	Deer Busters		<p>Cost: 28.95 per 333’ on spool.</p> <p>20 spools will be needed for four rows on fence: $28.95 \times 20 = 579 \times 4 = \\$2,316$.</p> <p>Other items associated with the monofilament spool are shown here: Scroll down the “Frequently bought together” section.</p> <p>Alternatively: Posts associated supplies will need to be purchased locally.</p>
<p>2. Critter fence Black Steel 2 Inch Square Grid 4 x 100</p>	Critter Fence	John: 800-881-5327, ET john@critterfence.com	<p>Cost: \$5,124 for four items, incl. fencing material. Free S&H.</p> <p>This purchase would supply 1800’ fence line at 4’ height, featuring 2” steel welded mesh with black vinyl coating, without ground overlap.</p>

Appendix E—Glossary

Addling

Goose egg addling is a wildlife management method of population control for the Moffitt's Canada Goose that overpopulate Central Park. The process of addling involves temporarily removing fertilized eggs from the nest, testing for embryo development, terminating embryo development by spraying oil on the eggs to prevent respiration of the egg, and placing the egg back in the nest. The result: eggs do not hatch because the respiration (i.e., "breathing") process stops because the oil coats an egg's pores.

Depredation Order (DO)

A depredation order (DO) is a permit applied for by a qualified, experienced Avian Biologist who obtains it from the US Fish and Wildlife Service on behalf of an organization that hosts an overpopulation of a species that requires reduction via non-lethal management. A DO provides regulatory authorization under the Migratory Bird Treaty Act (MBTA) to conduct specific migratory bird depredation management activities without the need for a qualified Avian Biologist to obtain an individual federal permit.

Friable

The condition of being friable, describes the tendency of a solid substance to break into smaller pieces under duress or contact, especially by rubbing. The opposite of friable is indurate.

Gander

A gander is an adult male goose.

Gosling

A gosling is a young goose.

ISA Certified Arborist

An International Society of Arboriculture (ISA) Certified Arborist® is a tree care professional who has attained a knowledge of tree identification, tree biology, diagnosis, maintenance practices, safety, and other subject and practice areas within the tree care profession.

Short Distance Dispersal

Birds disperse from their natal, breeding grounds after being born. In so doing, they disperse either short distances or long distances to find breeding grounds as they mature to breed. In some cases, such as Moffitt's Canada Goose in Central Park, newborn geese may disperse short distances to breed elsewhere in Santa Clara or elsewhere in the South Bay. Other bird species in the Santa Clara region (e.g., Bullock's Oriole) may disperse long distances as adults to breeding territories, in addition to completing annual migration patterns over long distances as far as South America before returning by spring to the San Francisco Bay Area.

Subspecies (or race)

In biological taxonomy, race is an informal rank in the taxonomic hierarchy for which various definitions exist. Sometimes it is used to denote a level below that of subspecies, while at other times it is used as a synonym for subspecies. Subspecies may be genetically distinct populations of individuals within the same species, or they may be defined in other ways, e.g., geographically, or physiologically.

Vegetation Management Plan

A Vegetation Management Plan (VMP) is a report-type document that addresses the on-going management requirements of native vegetation (trees, shrubs, and ground cover) within a proposed site such as Central Park, in the City of Santa Clara.

Appendix F – Depredation Order Data Form

Depredation Order Data Form for the Annual Submittal to the US Fish and Wildlife Service

Note: Central Park is registered as a legal, approved site for addling Moffitt's Canada eggs via the US Fish and Wildlife Service web site where addling results would be submitted at the following web site at the completion of each goose nesting season when addling occurs:

<https://epermits.fws.gov/eRCGR/>



Parks & Recreation Commission

Central Park Integrated Goose Management Plan

November 17, 2020



Presentation Outline

- Central Park Lake
- Work Plans and Improvement Projects 2014-2020
- Canada Goose and Mallard Overpopulation
- Impact of Goose Dropping on Lake and Pathways
- Daniel Edelstein, Avian Biologist
- Proposed Integrated Goose Management Plan (IGMP)



Central Park Lake

Iconic Feature of Central Park

- 1 Million gallons reclaimed water
- Aesthetic focal point in park
- Community Wide Special Event Location
 - Art & Wine Festival, July 4th, SVBBQ, etc.
- Place for family & community recreation





Work Plans and Improvements 2014-2020

- Prior to 2014
 - Annual Lake cleanup
 - Limited short-term water quality improvement
- 2014 Biofiltration CIP Project
 - Improved lake water quality
 - Improved the aesthetics of the lake area
- Lake Cleanup every five years
- Bi-annual treatment to reduce algae blooms



Central Park Pond Bio-filtration



Using Wetland Plants to Clean the Pond

How is the pond water cleaned? Pond water is cleavned when water flows from the surface skimmers in the lower pond into bio-filtration cells filled with rounded stones. Microorganisms form a biotic zone around each stone, and serve to process the pond water that flows around them.

The pond water entering the cells typically has a high level of suspended solids and nutrients primarily generated by resident mallards and Canada geese. In addition, the remaining nutrients are absorbed by the wetland plants that cover the surface of the entire wetland.

After the pond water passes through the cells and the roots of the wetland plants, it flows to the upper pond and then down the waterfall to the lower pond thereby completing the cycle.



Canna x generalis 'Pretoria'
Bengal Tiger Canna



Thalia dealbata
Alligator Flag



Bacopa monnieri
Water Hyssop



Sagittaria latifolia
Broadleaf Arrowhead



City of Santa Clara Water & Sewer Utilities and Parks & Recreation Department



Impact of Goose Dropping on Lake and Pathways





Canada Goose & Mallard Overpopulation

Negative Impact on Central Park & Lake

- Reduced habitat for native species
- Decreased water quality of lake
- Increased “Dirty Pathways”
- Potential disease transmission to other species
- Reduced recreational enjoyment





How to Address the Issue?

- Agreement with an Avian Biologist
- Develop an Integrated Goose Management Plan (IGMP)
- Present IGMP to the Parks & Recreation Commission
- Present IGMP to Council for Approval
- Implement IGMP's Management Action Steps
 - Short-Term
 - Long-Term



Daniel Edelstein, Avian Biologist

- **Certified Wildlife Biologist**
 - 25+ years field survey experience
 - 16 Years of Regulatory/Permitting Knowledge
- **Community College Birding/Wildlife Instructor**
- **Birding Guide since 1986**
- **Authored over 100 regulatory compliance documents**



Moffitt's Canada Goose (*Branta canadensis moffitti*)





Moffitt's Canada Goose

(*Branta canadensis moffitti*)

Large body 30-43", big bill, often in large groups; this species nests in late winter &/or spring, with baby geese typically hatching at the lake from May – June annually.

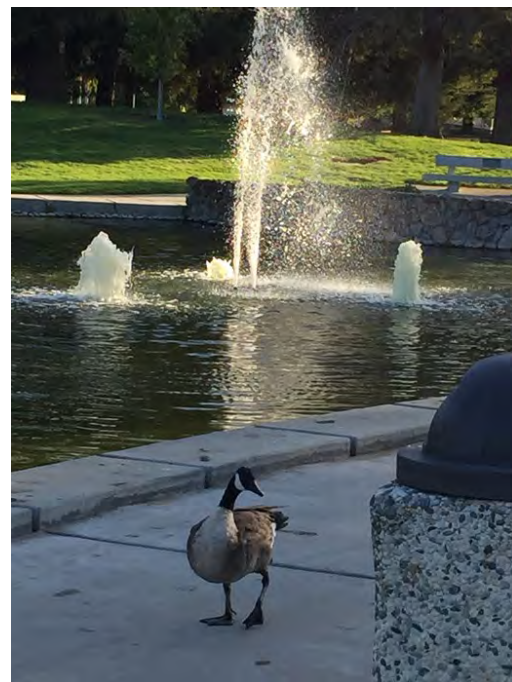
Nesters joined by nearby geese geese families join together as large groups after the breeding season, thereby causing an overpopulation at the lake and surrounding lawn areas in the park and nearby.







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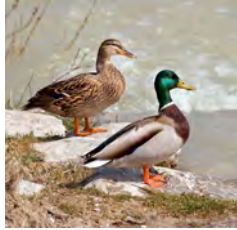
Problems Associated with the Growing Number of Geese

- **“Dirty” pathways**
- **Increased maintenance time and cost with same daily result**
- **Park patrons deserve a clean and “less-odiferous” outdoor experience**
- **Poor water quality in the Lake (each adult goose drops ~1/2 lb feces per day)**
- **Decreased habitat quality for other wildlife species that compete at the lake for**
 - **Roosting sites**
 - **Foraging resources**
 - **Nesting areas**
- **Potential avian disease spread to other bird species**
- **Reduced biological diversity as the large, naturally-aggressive geese out-compete dozens of other bird species for food and nesting areas**
 - **geese always prevail**



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CENTRAL PARK CANADA GOOSE & MALLARD SURVEYS (2020)

Date Of Survey	Number of Canada Goose Counted	Newborn Goose Seen?	Number of Mallard Observed
7/7/20	88	No	59
8/13/20	95	No	71
9/30/20	80	No	64
10/22/20	158	No	87



Integrated Goose Management Plan

SHORT-TERM SOLUTION STRATEGIES:

The following management goals and actions in the IGM are short and long-term strategies to gradually reduce the overpopulation of geese at Central Park Lake and its surrounding areas.

GOAL #1: Educate The Public About The Need To Reduce Geese Overpopulation

• ACTIONS TO SATISFY GOAL:

- Advise visitors to stop feeding geese (and Mallard ducks) at the lake
- Add friendly, educational information signs at the park benches where people often feed the geese (and Mallard ducks)
- Add information signage at access trail places where visitors enter the park

Informational Signs





SHORT-TERM SOLUTION STRATEGIES:

GOAL #2: Prevent geese from walking into the lake.

- **ACTION TO SATISFY GOAL:**
 - Add fencing to the lake's entire perimeter
 - Result: Geese will not have walk in access to lake

Functional Fencing





Usage of Functional Fencing





Integrated Goose Management Plan Implementation

SHORT-TERM SOLUTION STRATEGIES:

GOAL #3: Reduce Success Of Geese Breeding At The Lake:

- **ACTION TO SATISFY GOAL:**
- **Begin the Following Non-lethal Management Action:**
 - **Addling Geese Eggs Prevents Hatching,**
 - **No Newborn Geese Occur at the Lake**



Addling of Geese Eggs







Integrated Goose Management Plan Implementation

SHORT-TERM SOLUTION STRATEGIES:

GOAL #4: Educate the public about the need to reduce geese overpopulation

- **ACTION TO SATISFY GOAL:**
 - Inform Santa Clara residents, park visitors, wider community about the need to reduce the goose overpopulation problem
 - Ensure public has a “voice” and is informed
 - Allowing public input/comments via:
 - Educational public meeting (remote “Zoom” or in person)
 - City’s website
 - News release about the goose overpopulation problem



Public Community Outreach



- Parks & Recreation Commission
- Virtual Meeting(s)
- Community Site Visit(s)
- City Council Meeting







Integrated Goose Management Plan Implementation

SHORT-TERM SOLUTION STRATEGIES:

GOAL #4 (continued): Educate the public about the need to reduce geese overpopulation

- **ACTION TO SATISFY GOAL:**
- Inform Santa Clara community members about the need to reduce the goose overpopulation problem via:
 - articles for public to read local print/online media
 - Request Resolution from Santa Clara Audubon Society
 - Continue to ensure public has a “voice” and is informed
 - Public scoping/educational meetings (via Zoom or in person)
 - Add public notice on the City’s website, so comments may be submitted



Integrated Goose Management Plan Implementation

LONG-TERM SOLUTION STRATEGIES

GOAL 1: Reduce the nesting success and presence of geese at the lake

- **ACTIONS TO SATISFY GOAL:**
- Implement one or more of the management strategies highlighted in the IGM:
 - Continue ongoing, annual goose addling to prevent egg hatching = few to no newborn geese born at lake area



Integrated Goose Management Plan Implementation

LONG-TERM SOLUTION STRATEGIES (cont'd)

GOAL 2: Reduce the nesting success and presence of geese at the lake

- **ACTIONS TO SATISFY GOAL:**
- **Modify the lake's habitat to reduce goose immigration presence AND to encourage geese to leave the lake area via:**
 - **Implement habitat modifications, such as:**
 - A) Fencing addition around the Lake**
 - B) Vegetation Plantings:**
 - 1) Around the lake**
 - 2) On the Island (to reduce nesting success)**



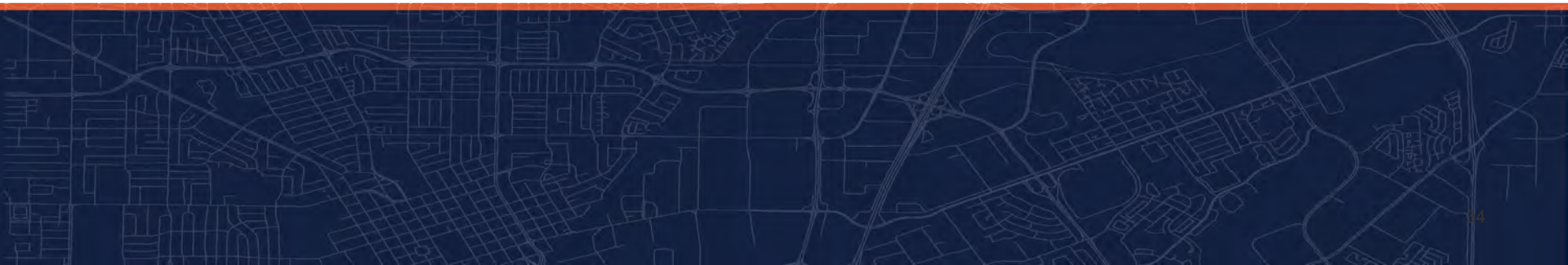
Community & Commission Input

- **Commission Questions**
- **Community Input**
- **Commission Discussion**
- **Commission Recommendation**



City of Santa Clara

The Center of What's Possible





Agenda Report

22-1704

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action on a Substation Agreement with CoreSite Real Estate SV9, L.P. for Stender Way Junction Substation, Related Budget Amendment, Addition of 4.0 Full Time Positions and Delegation of Authority to the Office of the City Manager to Negotiate and Execute Substation Agreements for Silicon Valley Power (SVP) with the following customers:

1. 651 Walsh Partners, LLC for Laurelwood Junction Substation;
2. 1220 Santa Clara Propco, LLC for Memorex Junction Substation; and
3. C-1 Santa Clara LLC, for Martin Avenue Junction Substation Agreement

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

CoreSite Real Estate SV9, L.P. (CoreSite) is currently constructing a new data center at 2905 Stender Way. The City Council approved the rezoning of the project on June 15, 2021. CoreSite anticipates that the maximum energy demand for its data center will be 49 megavolt-amps (MVA) and has requested the City's Electric Utility, Silicon Valley Power (SVP), to provide the required 60kV electric service to the site through a 60kV single customer substation (Stender Way Junction).

Three additional data center projects with 651 Walsh Partners, LLC, 1220 Santa Clara Propco, LLC, and C-1 Santa Clara LLC have completed environmental review, City land use approval, and some are at various stages of construction with active building permits.

DISCUSSION

Under the proposed Stender Way Junction Substation Agreement, CoreSite will construct, at its own expense, the Stender Way Junction Substation with a capacity of 49 megavolt-amps (MVA) to serve its data center. Costs incurred by SVP related to the design, procurement, construction, inspection, and testing associated with Stender Way Junction will be paid in full by CoreSite as Developer Contributions. Once completed, the Stender Way Junction will be owned, operated, and maintained by SVP at SVP's sole cost and expense with costs recovered through electric rates.

The new data center facility will be served by SVP from Stender Way Junction under the terms of the Substation Agreement with CoreSite. SVP will design the control building and related 60kV protection and communication equipment. CoreSite will procure and construct all substation equipment necessary and required per SVP's specifications to provide electric service to the data center facility. SVP will design and construct the 60kV transmission line interconnection to Stender Way Junction in accordance with the City's design and procurement standards. SVP will perform testing and commissioning activities on the completed 60kV station.

Due to the expedited time frame associated with the data center projects, staff is also requesting that Council delegate the authority to the Office of the City Manager to negotiate and execute separate Substation Agreements with 651 Walsh Partners, LLC for Laurelwood Junction Substation; 1220 Santa Clara Propco, LLC for Memorex Junction Substation; and C-1 Santa Clara LLC for Martin Avenue Junction Substation Agreement. Terms and conditions of these Substation Agreements will be similar to those for the Substation Agreement with CoreSite.

These Substation Agreements require the City to design the 60kV transmission line interconnection, with related conductor and steel pole structures. The conductor and steel poles (long lead materials) typically have a long lead time between procurement ordering and delivery of the conductor and poles to the site. Staff is requesting that Council delegate authority to the Office of the City Manager to approve the purchase of the long lead materials for the aforementioned Substation Agreements. Such purchases will be made according to the Purchasing Ordinance and Policy. As discussed in the Background section, all these projects have completed environmental review, City land use approval, and some are at various stages of construction with active building permits.

New Positions

As presented to Council on April 6, 2021, and September 28, 2021, SVP is in the midst of significant growth that will approximately double the size of the Electrical System capacity and revenues. The number of substations is projected to grow from twenty-three (23) to thirty-three (33) by 2026. The addition of the four substations discussed in this RTC represents an increase of 280MW to Santa Clara's current Electrical System capacity of 600MW. This growth creates present-day and long-term challenges with SVP's current staffing levels.

In order to continue to support the growing Operations and Maintenance, and Compliance activities with SVP's system load growth including the four new substations, staff recommends increasing staff Full Time Employee headcount with the following positions: two (2) Senior Electric Utility Engineers, one (1) Senior Instrument and Controls Technician, and one (1) Electric Water System Operator. Additional positions will be required in the future to align with utility infrastructure and load growth.

ENVIRONMENTAL REVIEW

The environmental consultant firm Circlepoint prepared a Mitigated Negative Declaration for the CoreSite Real Estate SV9, L.P. (Stender Way Junction Substation) data center project in accordance with the California Environmental Quality Act (CEQA). The Mitigated Negative Declaration was adopted by City Council on June 8, 2021.

The lead agency for the 651 Walsh Partners, LLC (Laurelwood Junction Substation) data center project is the California Energy Commission, which adopted a Mitigated Negative Declaration and granted a Small Power Plant Exemption on August 12, 2020. The City, as a responsible agency, adopted the Mitigated Negative Declaration at a publicly noticed Development Review Hearing on August 16, 2020.

The environmental consultant firm David J. Powers & Associates prepared an Environmental Impact Report for the 1220 Santa Clara Propco, LLC (Memorex Junction Substation) data center project in accordance with the California Environmental Quality Act (CEQA). The Environmental Impact Report (EIR) was adopted by City Council on November 9, 2021.

The lead agency for the C-1 Santa Clara LLC (Martin Avenue Junction Substation) data center

project is the California Energy Commission, which adopted a Mitigated Negative Declaration and granted a Small Power Plant Exemption on June 25, 2021. The City, as a responsible agency, adopted the Mitigated Negative Declaration at a publicly noticed Development Review Hearing on July 28, 2021.

FISCAL IMPACT

Budget adjustments are not required in FY 21/22 for the Martin Avenue Junction Project or the Laurelwood Junction Project. Funding for those projects will be included in the biennial budget process.

Staff recommends the following budget actions associated with the Stender Way Junction Project and the Memorex Junction Project.

Appropriations needed in future years will be requested as part of the regular biennial budget process.

		Budget FY 2021/2022	
	Current	Increase/ (Decrease)	Revised
Electric Utility Capital Fund (591)			
<u>Revenues</u>			
Developer Contributions (Stender Way Junction Project)	\$0	\$885,166	\$885,166
Developer Contributions (Memorex Junction Project)	\$150,000	\$4,016,000	\$4,166,000
<u>Expenditures</u>			
Stender Way Junction Project	\$567,649	\$885,166	\$1,452,815
Memorex Junction Project	\$526,158	\$4,016,000	\$4,542,158

Each customer will be responsible for paying all actual costs related to the design, procurement, installation, construction, fabrication, inspection and testing of the associated substation.

For Coresite, the Stender Way Substation cost is expected to be \$ 8,586,379 with three payment milestones, as detailed in Exhibit D of the Substation Agreement. Payment milestone number one will cover scheduled activities through FY 2021/22 in the amount of \$1,585,166. Of the \$1,585,166, \$700,000 was budgeted and received in FY 2020/21, leaving a remaining balance of \$885,166 to fund this fiscal year. The funding for payments in future fiscal years will be factored into the biennial

budget process.

For 1220 Santa Clara Propco, LLC, the Memorex Junction Substation cost is expected to be \$10,271,000 with payment milestones detailed in the Substation Agreement. The first milestone payment will cover engineering and material orders in the amount of \$4,566,000. Of this amount, \$550,000 was budgeted and received in FY 2020/21, leaving a remaining balance of \$4,016,000 to fund this fiscal year.

The funding for payments in future fiscal years including the two additional Substation Agreements will be requested as part of the biennial budget process.

In addition to the actual costs associated with construction of each junction, each customer will also be charged the applicable Load Development Fee listed in the Municipal Fee Schedule. The Load Development Fee recovers the portion of the Bulk Electric System reinforcement work that SVP will need to do as a result of the additional load. Fees and related costs for future budget years will be requested in future financial plans.

Staffing

The annual cost to add two (2) Senior Electric Utility Engineers, one (1) Senior Instrument and Controls Technician, and one (1) Electric Water System Operator is \$1,250,000 including salaries and benefits.

These costs will be funded by the Electric Utility Operating Fund using increased customer services revenue from SVP's load growth to support ongoing operations and maintenance. In addition, staffing costs directly supporting these new capital improvement projects will be funded through developer contributions with no impact to the General Fund. No budget action is requested for FY 21/22 as SVP does not anticipate that recruitments will be completed before the end of the Fiscal Year. Budget allocations for future years will be included in the biennial budget process.

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. Authorize the Office of the City Manager to execute the Substation Agreement with CoreSite Real Estate SV9, L.P. to allow SVP to design, procure equipment, and construct 60kV facilities to serve the Stender Way Junction Substation to meet an ultimate capacity of 49 MVA of permanent electric service to 2905 Stender Way, subject to the appropriation of funds;
2. Authorize the Office of the City Manager to negotiate and execute a Substation Agreement with 651 Walsh Partners, LLC to allow SVP to design, procure equipment, and construct 60kV facilities to serve the Laurelwood Junction Substation to meet an ultimate capacity of up to 99 MVA of

- permanent electric service to 651 Walsh Avenue, subject to the appropriation of funds;
3. Authorize the Office of the City Manager to negotiate and execute a Substation Agreement with 1220 Santa Clara Propco, LLC to allow SVP to design, procure equipment, and construct 60kV facilities to serve the Memorex Junction Substation to meet an ultimate capacity of up to 60 MVA of permanent electric service to 1220 Memorex Drive, subject to the appropriation of funds;
 4. Authorize the Office of the City Manager to negotiate and execute a substation agreement with C-1 Santa Clara LLC to allow SVP design, procure equipment, and construct 60kV facilities to serve for Martin Avenue Junction Substation to meet an ultimate capacity of up to 99 MVA of permanent electric service to 2600 De La Cruz, subject to the appropriation of funds;
 5. Authorize the Office of the City Manager to make minor modifications to the substation agreements and execute any and all associated documents;
 6. Delegate authority to the Office of the City Manager to approve long lead time material procurement agreements and associated purchase orders for these Substation Agreements;
 7. Consistent with City Charter Section 1305, "At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the affirmative votes of at least five members so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget," approve the following FY 2021/22 budget amendments:
 - A. In the Electric Utility Capital Fund, recognize developer contributions of \$885,166, and increase the Stender Way Junction project appropriation by \$885,166, and recognize developer contributions of \$4,016,000, and increase the Memorex Junction Substation project appropriation by \$4,016,000 (five affirmative Council votes required to appropriate additional revenue); and
 8. Approve the addition of two (2) Senior Electric Utility Engineers, one (1) Senior Instrument and Controls Technician, and one (1) Electric Water System Operator in the Electric Utility Department.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: City Manager's Office

ATTACHMENTS

1. Stender Way Substation Agreement

**SUBSTATION AGREEMENT
BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
CORESITE REAL ESTATE SV9, L.P.**

PREAMBLE

This Substation Agreement ("Agreement") is made and entered into on this 4th day of March, 2022 ("Effective Date") by and between the City of Santa Clara, California, a chartered California municipal corporation ("City") and CoreSite Real Estate SV9, L.P., a Delaware limited partnership ("Customer"). The City and Customer may be referred to in this Agreement individually as a "Party" or collectively as the "Parties".

RECITALS

- A. The City of Santa Clara owns and operates an electric utility, doing business as Silicon Valley Power ("SVP"), and currently provides electric service to Customer at 2915 Stender Way, parcel number 216-29-108, in the City of Santa Clara, California ("Premises"), which is shown on Exhibit A attached hereto and incorporated herein, pursuant to standard electric rate schedules authorized by the City Council of the City of Santa Clara;
- B. City has determined that a new single customer electric substation, which is shown as the area and equipment marked as the Substation Facilities on Exhibit C attached hereto and incorporated herein with a capacity of 49 MVA, to be known as the Stender Way Junction (SWJ) ("Substation Facilities"), is required to be built to fulfill its obligations to Customer;
- C. City has determined that the Substation Facilities require new 60kV transmission line extensions ("Transmission Facilities") to connect the Substation Facilities to SVP's electrical system.
- D. The Parties acknowledge that significant system capacity improvement facilities will be required to provide the capacity of 49 MVA to the Customer. The Parties further acknowledge these system capacity improvements are not fully within their control and may impact the Customer's load ramp schedule. SVP will use commercially reasonable efforts to provide the Customer with the requested total available capacity as described in the Total Available Capacity Schedule in Exhibit E attached hereto and this will be the Customer's obligation to utilize the total available capacity based upon the Total Available Capacity Schedule in Table E1.
- E. The purpose of this Agreement is to set forth the mutual obligations of the Parties with respect to supplying Customer with initial interim electric power and then with permanent capacity and transmission infrastructure for the Premises.

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

AGREEMENT PROVISIONS

1. PROJECT OVERVIEW

The Proposed Project, (PLN2019-14128), was approved at the Development Review Hearing on August 8, 2020. On June 22, 2021, City Council approved the resolution to adopt the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the 2905 Stender Way project; and approved a rezoning from Planned Development (PD) to Planned Development (PD) to allow development of a 250,000 square-foot four-story data center, a new substation, equipment yards and onsite improvements (SV9).

A four-story, 250,000 square-foot data center (SV9) would replace the existing uses on the site. The SV9 data center would be approximately 87 feet in height and would house computer servers and supporting equipment for private clients. Sixteen standby option, backup diesel generators (backup generators) would be added to the site to provide backup power to the SV9 data center in the event of an emergency. At full buildout, the SV9 data center and substation would be interconnected to the SVP electric system. The 49 megavolt amps (MVA) service requirement for the SV9 data center would be met by the improvements made to SVP's transmission system. A substation would be constructed on the SV9 data center site. The site is bounded by Central Expressway to the south, Stender Way to the west, adjacent buildings to the north, and San Tomas Aquino Creek to the east.

Customer will construct electrical Substation Facilities with a capacity of 49 megavolt amps (MVA) on the southwest corner of the Premises near Stender Way and Central Expressway.

Customer is also requesting electric power capacity of up to 12 MVA from SVP prior to completion of the Substation Facilities ("Interim Phase"). "Capacity" as used in this Agreement is defined as the amount of energy that can be received for Customer's use.

City and Customer have agreed that Customer will fund the development and construction of the Substation Facilities and Transmission Facilities ("Substation Development Phase") to serve the Premises.

In the course of the development of the Premises, City and Customer will finalize requirements for the interconnection facilities necessary for supplying electrical power within the project ("Connection Phase").

The layout of and requirements for the interconnection facilities shall be complete and agreed upon by the Parties prior to commencement of any construction on the Substation Facilities.

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

2. INTERIM PHASE

A. SVP OBLIGATIONS

To enable Customer to begin construction and operate without interruption until the Substation Facilities are fully constructed and begin operation, Customer shall construct the infrastructure in order to utilize up to 12 MVA of capacity of "Electric Service" as defined in SVP Rules and Regulations No. 1 ("Interim Service"). Interim Service will be provided from two (2) 12 kV distribution feeders at or near the location set forth in the Interim Service diagram attached as Exhibit B.

B. CUSTOMER OBLIGATIONS

Customer shall provide written notification of its load ramp schedule and planned usage of the Interim Service until such time as the Interim Service is transferred to the Substation Facilities.

Customer acknowledges that up to 12 MVA Interim Service requested for the site is the combined allocation for the Premises. Customer shall pay all costs associated with the construction and removal of the Interim Service. Customer shall work with SVP to transfer Customer's existing load from the Interim Service to the new Substation Facilities within three (3) months after energization of the Substation Facilities.

3. SUBSTATION DEVELOPMENT PHASE

A. SVP OBLIGATIONS

SVP will provide 49 MVA of capacity for Customer's use ("Total Available Capacity") as detailed in Exhibit E, to the Premises, upon completion of, and served by, the Substation Facilities, Transmission Facilities and required System Capacity Improvement Facilities which include projects on SVP's 230kV, 115kV, and 60kV transmission lines, receiving stations, and Pacific Gas & Electric Bulk Electric System Improvements ("System Capacity Improvement Facilities"). As the Capacity Improvement Facilities completion schedules are not fully controlled by SVP, SVP at its reasonable discretion may limit Customer and Customer's tenants Load Ramp Schedule until the capacity is made available. The Parties agree that the capacity from the Station will also be provided pursuant to the Rules and Regulations, applicable Silicon Valley Power Rate Schedules, current load development fees and subject to the completion of any system upgrades necessary to serve the load at the time the load capacity increase is initiated. The 49 MVA of capacity shall be provided to the Customer at the cost of the load development fee applicable at that time.

The Total Available Capacity will be made available to the Customer, at the Utility Connection Point, from the Substation Facilities and connected to the Premises through the Transmission Facilities. The Utility Connection Point for a SVP junction facility is the Customer side of the 60kV disconnect switches located within the Substation Facilities as shown in Exhibit C.

SVP will use commercially reasonable efforts to test and commission the Substation Facilities to be able to deliver the Capacity per the Total Available Capacity Schedule (inclusive of any Interim Service that is transferred to the Substation Facilities) in Table E1 of Exhibit E, at 60 kV, within thirty (30) months after the Effective Date of this Agreement.

SVP shall use commercially reasonable efforts to design, construct, test and commission the Transmission Facilities to be able to deliver the Capacity per the Total Available Capacity Schedule (inclusive of any Interim Service that is transferred to the Premises) in Table E1 of Exhibit E, within thirty (30) months after the Effective Date of this Agreement.

Completion of the Substation Facilities and Transmission Facilities is subject to the following terms:

1. SVP shall own, operate, and maintain all City-owned Substation Facilities and Transmission Facilities, to the Customer's point of connection with SVP.
2. SVP shall own, operate and maintain all City-owned Substation Facilities and Transmission Facilities, SVP control building and all equipment therein, as shown in Exhibit C.
3. The Parties agree to coordinate the design and construction of the Substation Facilities and Transmission Facilities in accordance with the Project Schedule and Costs attached hereto as Exhibit D, to ensure timely completion.
4. SVP shall design the City-owned control building within the Substation Facilities.
5. SVP shall keep Customer informed on a regular ongoing basis as to the costs it is incurring associated with the design, construction, testing, commissioning, and completion of the Substation and Transmission Facilities, including periodic updates to Exhibit D as appropriate. Once preliminary engineering review is complete, SVP will provide Customer with a detailed estimate of SVP project cost to fully complete the control building with the Substation Facilities. SVP shall provide Customer with reasonable access to SVP's books and records that substantiate any costs SVP proposes to bill to Customer related to the Substation Facilities and Transmission Facilities.

6. In no way will City be liable for any damages for failure to complete the Project by Customer's anticipated or proposed energization date
7. The Substation Facilities shall be substantially complete before SVP begins testing and commissioning activities. For purposes of this Agreement, "substantially complete" means that Substation Facilities construction is complete, in accordance with SVP's standards and requirements, and no Customer contractors remain working within the perimeter wall of the Substation Facilities. See Exhibit C for location of perimeter wall. SVP is not obligated to compress its testing and commissioning schedule to meet Customer's anticipated service date.
8. SVP acknowledges that the required interconnection study has been completed and it reflects development and load ramp schedules known at that time. SVP will update the customer on projects and schedules that may impact the load ramp schedule feasibility as they become available

B. CUSTOMER OBLIGATIONS

The Customer shall design (with the exception of the City-owned control building), procure, and construct Substation Facilities, as shown in Exhibit C (Station Plan), to provide 60kV service to the Premises, at its own financial risk, per SVP's standards and requirements.

The substation would consist of two (2) 50 MVA transformers. In the event one transformer fails, then the load, not to exceed 49 MVA, would be transferred to the redundant transformer.

Completion of the Substation and Transmission Facilities is subject to the following terms:

1. The Substation Facilities shall be for exclusive use of the Customer's building(s) to be constructed on the parcel 216-29-108, as shown on Exhibit A.
2. Substation Facilities 60kV bus will be a breaker and half scheme with the complete 60kV junction being constructed to serve the Premises.
3. Customer shall obtain all land use entitlements, and provide any property rights, including easements, to the City, necessary to construct, complete and maintain the Substation Facilities.
4. Customer shall be responsible for all costs associated with the acquisition of any additional easements, directly adjacent to the parcel 216-29-108, necessary for the Transmission Facilities, if any.
5. Customer shall construct a perimeter wall, marked as "Perimeter Wall" on Exhibit C, which shall create a physical boundary around the Substation Facilities and which is for ensuring the Substation Facilities' security ("Station Perimeter Wall"). The Station Perimeter Wall shall be for the exclusive use of SVP. Only SVP approved signage is permitted on the

Station Perimeter Wall. The substation shall have an all-weather asphalt surface underlain by an aggregate base.

6. The Customer shall procure the Substation Facilities control building to comply with SVP's design specifications and requirements. Any changes or substitutions to SVP's design package for the control building must have SVP approval prior to implementation, which approval shall not be unreasonably delayed or withheld. SVP, or SVP's designated representative shall oversee factory acceptance testing of the control building and inspect the control building prior to shipment of the building to the Premises. All deficiencies identified by SVP during the factory inspection visits shall be corrected prior to shipment of the control building to the Premises.
7. Customer-owned Control, communication, and protection wiring from the Customer's control building to the marshalling termination cabinet located on customer side of demarcation fence, and related equipment, will be owned and maintained by Customer. All control and protection wiring must be clearly identified by Customer per SVP direction to avoid confusion when troubleshooting, maintaining, or repairing city-owned equipment to avoid possible misoperation of any SVP equipment.
8. Customer shall pay the City actual costs per Payment Milestones set forth in Exhibit D. These costs shall include but not be limited to all travel expenses incurred by SVP to perform factory inspections, oversee testing for any equipment purchased by Customer to be turned over for SVP's ownership, and all punch list items necessary to fully integrate the Substation Facilities into SVP's network. Invoiced costs by City shall be due within thirty (30) days of receipt of invoice. Invoices from City shall describe in detail the costs to Customer.

If Customer desires to use Total Available Capacity, Customer must pay a "Load Development Fee" in the amount set forth in Exhibit D. The Load Development Fee will be payable 30 days prior to the energization of the additional Electric Service.

4. CONNECTION PHASE

A. SVP OBLIGATIONS

Upon completion of the Substation Facilities, Transmission Facilities and System Capacity Improvement Facilities, SVP shall provide the Total Available Capacity (inclusive of any Interim Service that is transferred to the Substation Facilities) as detailed in Exhibit E. Such capacity shall include primary and, as necessary, secondary, services to the Premises.

All electrical equipment, installed by Customer upon the Premises for the purpose of, but not limited to, delivery and metering of Customer's Electric Service, shall become the property of SVP. SVP shall own, operate, and maintain the Substation Facilities

(including the City-owned control building and all other City-owned equipment) and the Transmission Facilities at its sole cost and expense, in accordance with good utility practices and SVP Rules and Regulations as they may be updated.

SVP will monitor the Customer's demand at the end of each loading phase as described in Exhibit E. SVP shall notify the Customer of any capacity reduction by means of a Capacity Reduction Notice as shown in Exhibit F. Any unused capacity reduced shall be refunded to the customer at the rate the Customer paid for such capacity.

B. CUSTOMER OBLIGATIONS

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

Customer shall work with SVP to transfer Customer's existing load from the Interim Service to the new Substation Facilities within three (3) months after energization of the Substation Facilities.

Customer shall be responsible to operate within the Total Available Capacity and in the event of exceedance, the Customer shall pay their pro rata share of any penalties, damages, or any other cost directly associated with their load exceeding the Total Available Capacity as detailed in Table E1. Such costs include the de-energization of SVP electric system for asset inspection and pass through of any penalties assessed to SVP by the California Independent System Operator (CAISO) relating to Resource Adequacy forecasted capacity based on the Customer's excess load above the Total Available Capacity.

If the Total Available Capacity has been reduced through a Capacity Reduction Notice, and the City issues a refund of Load Development Fees, the Customer acknowledges and agrees that they shall have no right to any interest accrued by the entire payment or any amount refunded. If the Total Available Capacity has been subject to the above mentioned capacity reduction at any time during the term of the Agreement and if the Customer's Demand is expected to increase above the reduced Total Available Capacity, then the Customer may request an amendment to the Agreement and Load Ramp Schedule. Such amendment to the Agreement is not to be unreasonably withheld or delayed.

5. NON-INTERFERENCE

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

6. FORCE MAJEURE

Neither Party shall be considered to be in default in performance of any of its obligations under this Agreement when a failure of performance is due to an Uncontrollable Force. The term "Uncontrollable Force" as used in this Agreement, shall mean any cause beyond the reasonable control of the Party affected, and which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefore. Such Uncontrollable Force includes the failure or threat of failure of facilities, Act of God, flood, drought, earthquake, storm, tornado, fire, explosion, lightning, epidemic, public emergency, war, riot, civil disobedience, labor strike, labor dispute, labor or materials shortage (however labor or materials shortage does not include the mere inability to obtain that labor or material at a particular price), sabotage, restraint by court order, restraint by public authority, or action or non-action by governmental authority or accident.

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

7. NO ASSIGNMENT OF AGREEMENT/SUCCESSORS IN INTEREST

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

8. NO THIRD PARTY BENEFICIARY

Except permitted assignees per Section 7 above, this Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

9. HOLD HARMLESS/INDEMNIFICATION

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

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

Customer's obligation under this section shall apply through a period of three years after the commissioning of substation by City.

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

10. AMENDMENTS

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

11. SEVERABILITY CLAUSE

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

12. WAIVER

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

13. NOTICES

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

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

And to Customer addressed as follows:

CoreSite Real Estate SV9, L.P.
1001 17th Street, Suite 500
Denver, CO 80202
Attention: General Counsel
Email: General.Counsel@coresite.com

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

14. CAPTIONS

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

15. GOVERNING LAW AND VENUE

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

16. COMPLIANCE WITH LAWS

The Parties shall comply with all laws, ordinances, codes and regulations of the federal, state and local governments applicable to their respective obligations and activities contemplated by this Agreement, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Customer's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC

section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Customer has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

17. DISPUTE RESOLUTION

- A.** Unless otherwise mutually agreed to by the Parties, any controversies between the Parties regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B.** The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement
- C.** The costs of mediation shall be borne by the Parties equally.
- D.** Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation or mediation that arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

18. OTHER AGREEMENTS

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

19. TERMINATION OF AGREEMENT

A. TERMINATION FOR CAUSE

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

B. OPPORTUNITY TO CURE DEFAULT

Upon receipt of a Notice of Termination by a Party arising from its default under this Agreement, the defaulting Party shall have thirty (30) days from the receipt

of such notice to cure the default by making such payment or performing the required obligation (or additional time, if any that is reasonably necessary to promptly and diligently cure the default). If the default is cured to the reasonable, mutual satisfaction of the Parties, the Agreement shall remain in effect upon written acceptance of the cure by the Party who issued the Notice of Termination for cause.

C. TERMINATION WITHOUT CAUSE

At any time, Customer may elect to terminate construction of the Substation Facilities upon delivery of (30) days written notice thereof to the City. If Customer chooses to terminate construction of the Substation Facilities and Transmission Facilities, Customer will reimburse any and all City expenses, termination fees, and cancellation fees reasonably incurred by the City related to the Substation Facilities and Transmission Facilities prior to the delivery of such termination notice. Customer shall not be entitled to a refund of any load development fees that have been paid prior to the written notice of termination.

20. COUNTERPARTS

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

21. INTEGRATED DOCUMENT - TOTALITY OF AGREEMENT

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

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

Office of the City Attorney
City of Santa Clara

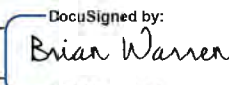

Office of the City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax (408) 241-6771

“CITY”

CORESITEL REAL ESTATE SV9, L.P.
a Delaware limited partnership,

By: CoreSite Real Estate SV9 GP, L.L.C.
a Delaware limited liability company and its general partner

3/4/2022 | 10:12 AM PST

Dated: _____
By (Signature):  _____
Name:  _____
Title: SVP, Development and Product Engineering
Principal Place of Business Address: 1001 17th Street, Suite 500, Denver, CO, 80202
Telephone: 303-405-1000

“CUSTOMER”

EXHIBIT B

Interim Service Diagram

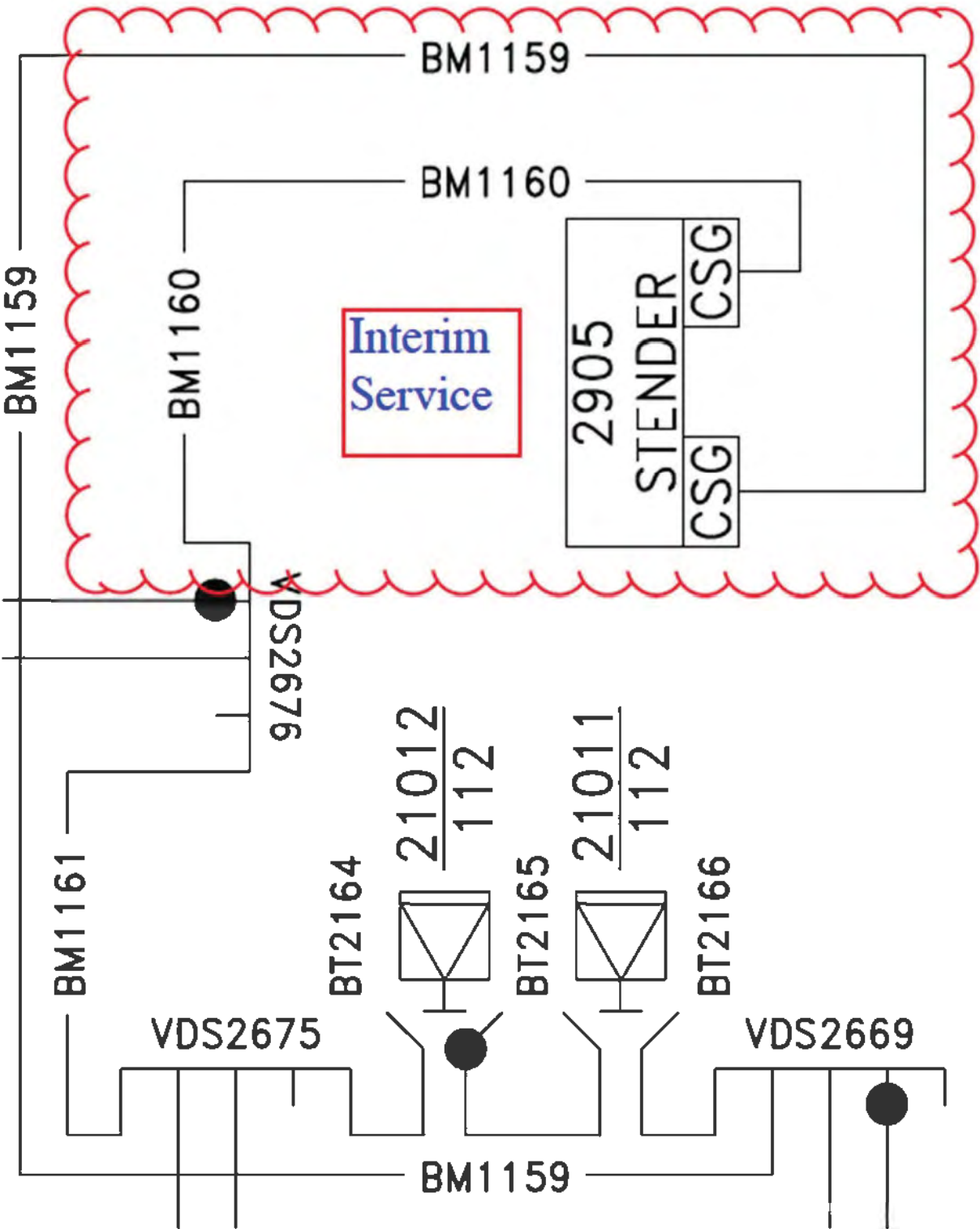


EXHIBIT C

Station Plan

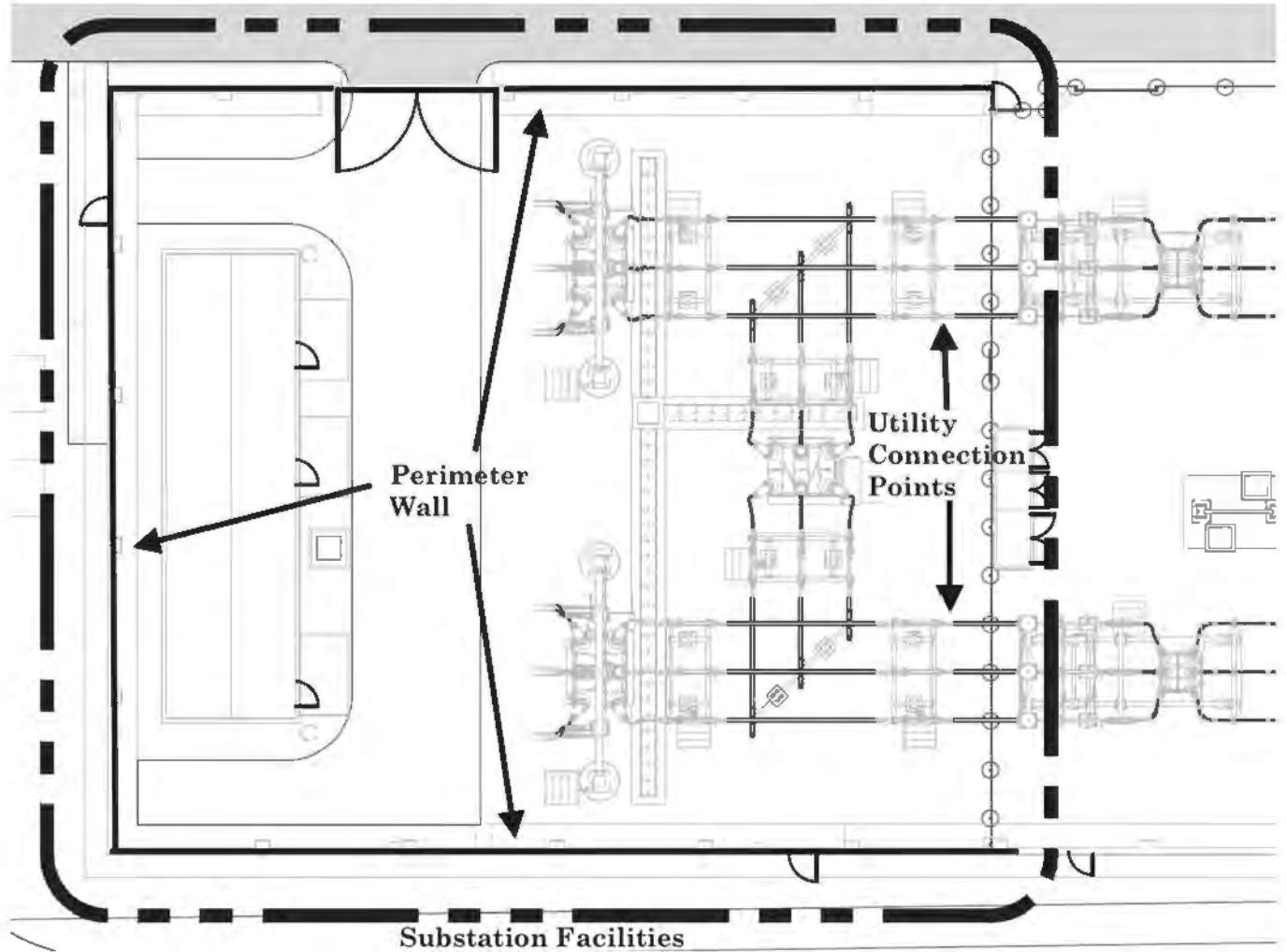


EXHIBIT D

Project Schedule and Costs

Payment Rates

Customer pays the load development fee as based on the current published fee in the Municipal Fee Schedule adopted by the City Council of the City of Santa Clara and amended from time to time. Commercial Facilities Customer Dedicated 60 kV fees are based on current Municipal fee schedule at time of invoice and will hereto be referred to in this Agreement as “Load Development Fee”. Since Customer is not taking permanent service from the electric utility's general distribution system or a dedicated 12 kV substation, other fee group costs are not applicable. The Load Development Fee represents the cost of improvements to the System Capacity Improvement Facilities required to serve the increased load. Customer shall also be responsible for actual costs for Substation Facilities and Transmission Facilities.

Payment Schedule

Milestone	SVP Invoice Date (payment due 30 days after invoicing)	SVP's Estimated Amount
1	30 Days following City Council Approval of Agreement (includes 12MVA Interim Phase Load Development Fees)	\$5,773,046
2	30 Days before Public Works contract is approved by Council	\$5,902,338
3	Within 30 Days after energization of substation	\$1,098,875
4	30 Days after energization of Substation Facilities, City to invoice customer for the difference between estimated and actual costs	\$TBD
5	Interim Phase Load Development Fee; 1 year following substation facilities energized; 8 MVA block	\$2,791,920
6	Phase 0 Load Development Fee; 1 year following substation facilities energized; 10 MVA block	\$3,489,900
7	Phase 0 Load Development Fee; 2 years following substation facilities energized; 10 MVA block	\$3,489,900
8	Phase 0 Load Development Fee; 3 years following substation facilities energized; 9 MVA block	\$3,140,910

EXHIBIT D

Project Schedule & Costs

Substation Design & Construction Elements Transmission Interconnection Process to run concurrent with Substation Design, Build and Test process				
Substation Design & Construction Elements	Duration Time Frame of work	SVP's Estimated Cost	Payment Milestone	Comments
Council Approval of Substation Agreement	4 Months		PM #1 Includes the \$700,000 SVP already collected in the Funding Agreement. City to invoice 30 days after City Council approves Substation agreement. Payment due in 30 days. Work to comence once City receives payment in full.	Includes all work for Substation Design and Transmission Design elements. Also includes Interim Phase load development fee.
Control Building Procurement Drawings & Contract Specification Preparation	6 Months	\$ 501,790	PM #1 \$501,790 -. City to invoice 30 days after City Council approves Substation agreement. Payment due in 30 days. Work to comence once City receives payment in full.	Concurrent with Substation Drawing Preparation (to be billed in Payment Milestone #1).
Substation Construction	8 Months	\$ -		
Substation Commissioning & Testing	4 Months	\$ 579,122	PM #2 \$579,122 -City to invoice 30 days before Public Works contract is approved by City Council. Payment due 30 days from invoice date. Work will commence once Public Works Contract is approved and payment is received in full.	Begins after completion of Substation (to be billed with award of Public Works Contract Payment Milestone #2).
Transmission Interconnection Process				Concurrent with Substation Design, Build and Test process
Transmission Line Consultant	3 months			
Transmission Line Interconnection Design	6 months	\$ 357,800	PM #1 \$357,800 -. City to invoice 30 days after City Council approves Substation agreement. Payment due in 30 days. Work to comence once City receives payment in full.	To be billed in Payment Milestone #1.

Steel Transmission Pole and Materials Procurement	6 months	\$ 725,576	PM #1 \$725,576 -. City to invoice 30 days after City Council approves Substation agreement. Payment due in 30 days. Work to comence once City receives payment in full.	To be billed in Payment Milestone #1.
Public Works Bidding T-line construction	8 Months			

EXHIBIT D

Project Schedule & Costs

Transmission Line Construction Elements	Duration Time Frame of work	SVP's Estimated Cost	Payment Milestone	Comments
Council Award of Public Works Contract	3 months	\$ 5,323,216	PM #2 \$5,323,216 - City to invoice 30 days before Public Works contract is approved by City Council. Payment due 30 days from invoice date. Work will commence once Public Works Contract is approved and payment is received in full.	This includes the t-line construction associated with connecting the substation to the SVP 60kV loop as well as the Substation Commissioning and Testing. It includes all work necessary at adjacent stations for relay panel replacement or upgrades necessary for the new interconnection. This does not include any work associated with capacity increases on the loop.
Transmission Line Interconnection & City Labor	6 Months			
Transmission Interconnection process complete best case	26 months			
Miscellaneous costs including potential permit costs, property impacts, Haz Mat soil disposal, land rights, etc.		\$ 1,098,875	PM #3 \$1,098,875 - City to invoice within 30 days after energization of substation. Payment due in full 30 days after date of invoice.	Potential miscellaneous costs could include: Encroachment permits from City of Santa Clara, Santa Clara County Department of Roads and Airports and Santa Clara Valley Water District; utility relocation work; costs for soil remediation or disposal of hazardous materials not previously identified; SWPPP permit fees, 5% in lieu transfer to CSC General Fund.
City invoices actual costs for Project			PM #4 - City to invoice customer difference between estimated and actual costs for Project. Payment due 30 days after invoice date.	City to invoice Customer difference between estimated and actual costs at the end of project. Payment due 30 days after invoice date.
Estimated Total for Substation and Transmission Line Design & Construction Elements	30 Months	\$ 8,586,379		Net time with schedule overlaps included. Schedule assumes no

				delays due to unforeseen events such as weather
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Load Development Fee (based on 49MVA)				
Additional Fees to be paid by the Customer	Time Frame from Effective Date	Estimated Cost	Payment Milestone	Comments
Interim Phase – Substation Agreement approved by Council - Load Development Fee (based on 12MVA)	30 days after Substation Service Agreement approved by Council	\$4,187,880	PM #1 - City to invoice first 12MVA of Interim Service based on current municipal fee schedule rate at time of invoice date. City will issue invoice for first payment milestone 30 days after substation service agreement approved by Council. Payment due in full 30 days after date of invoice.	Customer Load Development Fee = \$348.99/kVA. Load Development Fees are based on Municipal fee schedule in effect at time of capacity request from Customer. Load Development Fee represents the cost of improvements to the SVP bulk electric system required to serve the increased load.
Interim Phase – Substation Agreement approved by Council - Load Development Fee (based on 8MVA)	Substation Facilities Energization Date	\$2,791,920	PM #5 - City to invoice 8 MVA of Interim Phase load ramp schedule, per Table E1, when substation service energized based on current municipal fee schedule rate at time of invoice date. Payment must be received in full before capacity will be made available to Customer.	Customer Load Development Fee = \$348.99/kVA. Load Development Fees are based on Municipal fee schedule in effect at time of capacity request from Customer. Load Development Fee represents the cost of improvements to the SVP bulk electric system required to serve the increased load.

Load Development Fee (based on 49MVA)				
Phase 0 – Substation Facilities Energization Date - Load Development Fee (based on 10MVA)	+1 year after Substation Facilities Energization Date	\$3,489,900	PM #6 - City to invoice 10 MVA of Phase 0 ramp schedule, per Table E1, 1 year after substation service energized based on current municipal fee schedule rate at time of invoice date. Payment must be received in full before capacity will be made available to Customer..	Customer Load Development Fee = \$348.99/kVA. Load Development Fees are based on Municipal fee schedule in effect at time of capacity request from Customer. Load Development Fee represents the cost of improvements to the SVP bulk electric system required to serve the increased load.
Phase 0 – Load Development Fee (based on 10MVA)	+2 years Substation Facilities Energization Date	\$3,489,900	PM #7 - City to invoice 10 MVA of Phase 0 ramp schedule, per Table E1, 2 years after substation service energized based on current municipal fee schedule rate at time of invoice date. Payment must be received in full before capacity will be made available to Customer..	Customer Load Development Fee = \$348.99/kVA. Load Development Fees are based on Municipal fee schedule in effect at time of capacity request from Customer. Load Development Fee represents the cost of improvements to the SVP bulk electric system required to serve the increased load.

Phase 0 – Load Development Fee (based on 9MVA)	+3 years Substation Facilities Energization Date	\$3,140,910	PM #8 - City to invoice 9 MVA of Phase 0 ramp schedule, per Table E1, 3 years after substation service energized based on current municipal fee schedule rate at time of invoice date. Payment must be received in full before capacity will be made available to Customer..	Customer Load Development Fee = \$348.99/kVA. Load Development Fees are based on Municipal fee schedule in effect at time of capacity request from Customer. Load Development Fee represents the cost of improvements to the SVP bulk electric system required to serve the increased load.
Total for Load Development Fees		\$17,100,510		
Estimated Grand Total for Entire Project		\$25,686,889		

EXHIBIT E

Total Available Capacity Schedule

The Total Available Capacity shall be made available for Customer's use based on the timeline shown in Table E1 ("Total Available Capacity"). Total Available Capacity is divided into phases that are three (3) years in duration. The start date of the Total Available Capacity is the July 1st following the energization date of the Substation Facilities ("Total Available Capacity Start Date").

Table E1 – Total Available Capacity Schedule

Phase	Phase Start Date	Phase End Date	Year	Load Ramp Schedule	Purchase Capacity	Total Available Capacity (Max 49 MW)
Interim	Substation Agreement	Substation Facilities Energization	2023	5	12	12
			2024	9	8	20
0	Substation Facilities Energization Date +1	3 years after Facilities Energization Date	2025	14	0	20
			2026	19	10	30
			2027	24	0	30
1	Substation Facilities Energization date +4 years	5 years after Phase 1 Start Date	2028	29	10	40
			2029	34	0	40
			2030	35	0	40
			2031	36	0	40
			2032	37	0	40
2 - Final	Substation Facilities Energization date +9 years	5 years after Phase 2 Start Date	2031	38	9	49
			2032	39	0	49
			2033	40	0	49
			2034	41	0	49
			2035	42	0	49

- The Total Available Capacity – Table E1 is the agreed upon total available capacity

schedule where the customer shall pay the load development fees.

- Customer shall be responsible for providing an annual 10-Year load forecast by month, due June 30. A template will be provided annually by SVP to complete this process. This forecast will be used to determine applicable capacity available for use and incorporated into SVP's Transmission Planning Process. SVP will provide approved load forecast by October 1st of each year.
- Load development fees are determined based on the approved annual load forecast. Following execution of this agreement, a total of 20 MVA is due; once load exceeds the amount of capacity paid, it will be billed in 10 MVA increments calculated based on the current municipal fee schedule rate at time of invoice date.

After the end of Phase 1, SVP at its reasonable discretion may reduce the Total Available Capacity based on Customer's peak demand during the last completed year. The Customer's peak demand is calculated as the highest demand average over three (3) consecutive monthly billing periods within each phase. This reduced Total Available Capacity is calculated as the Customer's peak demand plus 10%. The subsequent Phases Total Available Capacity will adhere to the Total Available Capacity Schedule. Any increase the Total Available Capacity, in the year following a reduction in Total Available Capacity will require SVP approval in writing.

The Final Total Available Capacity, including any capacity reductions, shall persist after Final Phase End Date through the term of this Agreement. SVP may continue to issue Capacity Reduction Notices by evaluating the highest demand average over (3) three consecutive monthly billing periods during a 5-year window beginning with Final Phase End Date.

If the monthly (nominally 30 day period) energy in kilowatt-hours to kVA demand ratio does not exceed 500:1 during each of the same three monthly periods in the above referenced consecutive period, then SVP may reduce the amount to be refunded to recuperate losses due to power purchases based on the Customer's stated energy needs. Periods when Customer is performing maintenance or commissioning shall be excluded from the 500:1 calculation. Customer shall provide at least 14-day advance notice of any maintenance or commissioning activities.

If the Total Available Capacity has been subject to the above mentioned capacity reduction at any time during the term of the Agreement and the Customer's Demand is expected to increase above the reduced Total Available Capacity, then the Customer may request an amendment to the Agreement and Total Available Capacity Schedule. Such amendment to the Agreement is not to be unreasonably withheld or delayed.

EXHIBIT F Capacity Reduction Notice

This Capacity Reduction Notice is made pursuant to the [INSERT SUBSTATION NAME] Substation Agreement (the "Agreement"), between the City of Santa Clara, California, a chartered California municipal corporation ("City") and [INSERT NAME OF ENTITY], [INSERT TYPE OF ENTITY] ("Customer") dated _____, 20____. This Capacity Reduction Notice is governed by the provisions of the Agreement, and this Capacity Reduction Notice is incorporated into that Agreement.

Customer is hereby notified that the Total Available Capacity per the Total Available Capacity Schedule (Exhibit E) of the Agreement has been reduced according to the below calculations:

1. Capacity Reduction Notice pursuant to Phase #: [INSERT SUBJECT YEAR]
2. Total Available Capacity per Total Available Capacity Schedule for year: _____ MVA
3. Peak demand for [INSERT FIRST MONTH], 20____ during evaluation period [INSERT PHASE YEAR STATED IN STEP 1]: _____ MVA
4. Peak demand for [INSERT SECOND MONTH], 20____ during evaluation period [INSERT YEAR STATED IN STEP 1]: _____: _____ MVA
5. Peak demand for [INSERT THIRD MONTH], 20____ during evaluation period [INSERT YEAR STATED IN STEP 1]: _____: _____ MVA
6. Peak demand average of the 3 months: [INSERT AVERAGE OF STEPS 3, 4, AND 5] MVA
7. Peak demand average with Additional 10%: [INSERT MVA FROM STEP 6 MULTIPLIED BY 1.1] MVA

The new Total Available Capacity for Phase # [INSERT YEAR STATED IN STEP 1] is [INSERT MVA CALCULATED IN STEP 7] MVA.

Based on the above reduction calculation, Table E1- Total Available Capacity Schedule in Exhibit E of the Agreement has been reduced as shown below:

Revised Table E1 – Total Available Capacity Schedule

Phase	Phase Start Date	Phase End Date	Phase's Added Capacity	Total Available Capacity
1				
2				
3				
4				

This Capacity Reduction Notice is effective 30 days from the date signed by the SVP official below.

The Revised Table E1 Total Available Capacity Schedule shown above supercedes previous Capacity Reduction Notice issued, if such notices provided a higher Total Available Capacity.

By:

Name: _____

Title: Chief Electric Utility Officer

Signature: _____

Date: _____

File: File signed copy of Notice with the City Clerk's Office in Freedom Circle Junction Substation Agreement



Agenda Report

22-1748

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action on an Agreement with Iteris, Inc. for Design Professional Services for the Great America Parkway and Tasman Drive Traffic Signal Interconnect Project

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

The City contains over 145 signalized intersections and many of them are interconnected to the City Traffic Management Center using fiber optic or copper cables. The interconnected traffic signal system allows the City to better manage traffic operations at various times of the day and days of the week. Fiber optic cables provide faster data transmission speeds and support higher resolution video streams and future “smart” signals.

Included in the Adopted Biennial Capital Improvement Program Budget for FY 2020/21 and FY 2021/22 is an annual transportation project titled, Traffic Signal Interconnect Upgrade (Project No. 1232). This project will expand and upgrade the interconnected traffic signal system as needed. Currently, Great America Parkway and Tasman Drive are interconnected via copper wires. The traffic signals and traffic monitoring cameras along these two major corridors are used by the Department of Public Works (DPW) staff to control traffic during stadium events. The Great America Parkway and Tasman Drive Traffic Signal Interconnect Upgrade Project (Project) proposes to replace the existing copper interconnect cables with fiber optic cables, equipment, and pull boxes along Great America Parkway and Tasman Drive to allow transmission of high resolution video streams and support future adaptive traffic signal control. See Attachment 1 for project location map.

DISCUSSION

A formal selection process was utilized to solicit proposals from consultants to provide the required professional services. In October 2021, staff issued a competitive Request for Proposals (RFP) on the City’s e-procurement system, for the Project. Staff received proposals from five firms: Advanced Mobility Group, DKS Associates, GHD, Iteris Inc., and Kimley-Horn and Associates.

A proposal review panel consisting of staff from the DPW Design Division and Traffic Engineering Division evaluated each proposal against the criteria set forth in the RFP, including, responsiveness to the RFP, proposed team’s experience, project approach, and ability to complete the project within the proposed schedule. Based on the panel’s evaluation, Iteris Inc. (Iteris) is recommended for award of contract. Iteris submitted the best proposal, demonstrated a strong project understanding, and provided an excellent project approach to investigate and resolve the issues presented in the RFP. Iteris has extensive traffic experience working in California and has successfully completed numerous traffic signal interconnect projects.

The proposed agreement (Attachment 2) includes a refined scope of work based upon negotiations. The scope of work includes preliminary engineering, construction documents (plans, specifications, and engineer's estimate) for public works bidding, assistance with obtaining building permit(s), and engineering support services during bid, award, and construction. Staff recommends entering into the Agreement with Iteris, Inc. to complete design professional services for the Project. Design of the Project is anticipated to be completed by summer 2023 and construction of the project is anticipated to be completed in summer 2024. The Agreement includes a section covering prevailing wage requirements.

ENVIRONMENTAL REVIEW

Council action on this item does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") because it is an administrative activity that will not result in direct or indirect physical changes in the environment as set forth in section 15378(b)(5) of the CEQA Guidelines.

FISCAL IMPACT

The proposed Agreement is for a total not-to-exceed amount of \$158,000. This amount includes \$137,105 for basic services and \$20,895 for additional services. Sufficient funds for the agreement are available in the Traffic Signal Interconnect Upgrade Project (Project No. 1232) in the Streets and Highways Capital Fund.

COORDINATION

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

PUBLIC CONTACT

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

RECOMMENDATION

1. Approve and authorize the City Manager to execute an agreement for Design Professional Services with Iteris, Inc. for the Great America Parkway and Tasman Drive Traffic Signal Interconnect Project in the amount not-to-exceed \$158,000; and
2. Authorize the City Manager to make minor modifications to the agreement, if needed.

Reviewed by: Craig Mobeck, Director of Public Works

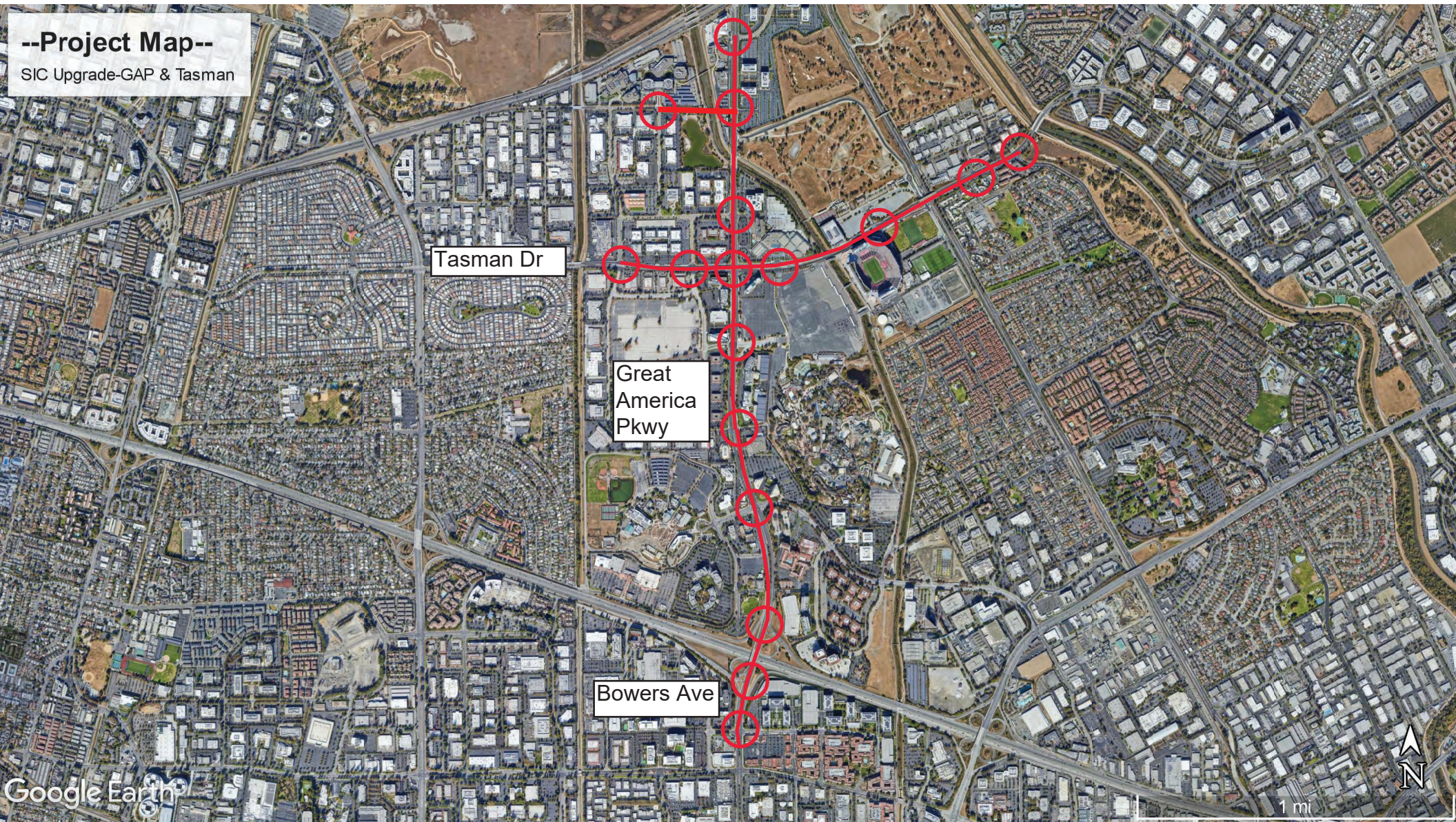
Approved by: City Manager's Office

ATTACHMENTS

1. Project Map
2. Agreement

--Project Map--

SIC Upgrade-GAP & Tasman



Legend:

Fiber optic connection



Traffic Signal



**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ITERIS, INC.
FOR
GREAT AMERICA PARKWAY AND TASMAN DRIVE TRAFFIC SIGNAL
INTERCONNECT PROJECT**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Iteris, 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 – Milestone Schedule

Exhibit F - Project Management Document Software

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on March 23, 2022 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 B. 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.

All documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

6. COMPENSATION AND PAYMENT

In consideration for Consultant's complete performance of Services, City shall pay Consultant for all materials provided and Services rendered by Consultant in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is one hundred fifty-eight thousand dollars (\$158,000) 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

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: Department of Public Works – 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:

ITERIS, INC.
Attention: Matt Wages
1999 Harrison St., Suite 2125
Oakland, CA 94612
and by e-mail at mwages@iteris.com

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

18. COMPLIANCE WITH LAWS

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

19. CONFLICTS OF INTEREST

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

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

20. FAIR EMPLOYMENT

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

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

26. STATEMENT OF ECONOMIC INTERESTS

Due to the nature of the Services to be performed, Consultant shall promptly file a Statement of Economic Interests (Form 700) upon commencement of the

Agreement in accordance with California Government Code section 87200, et seq.

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

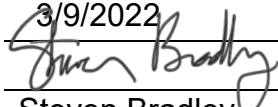
Dated: _____

City of Santa Clara
Office of the City Attorney

Office of the City Manager
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

ITERIS, INC.
a California Corporation

Dated: 3/9/2022
By (Signature): 
Name: Steven Bradley
Title: Regional Vice President
Principal Place of Business Address: 1999 Harrison St., Suite 2125
Oakland, CA 94612
Email Address: sdb@Iteris.com
Telephone: (949) 270-9647
Fax: N/A
"CONSULTANT"

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ITERIS, INC.
FOR
GREAT AMERICA PARKWAY AND TASMAN DRIVE TRAFFIC SIGNAL
INTERCONNECT PROJECT**

**EXHIBIT A
SCOPE OF SERVICES**

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

I. GENERAL

This Scope of Services is anticipated as necessary to meet City's objectives as described under Section II, BACKGROUND AND PROJECT, and Section III, DESCRIPTION OF SERVICES of this document. Consultant and City agree that this Scope of Services incorporates Consultant's professional qualifications and experience and will meet the City's objectives.

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

II. BACKGROUND AND PROJECT

The GAP and Tasman Dr. Traffic Signal Interconnect Project (Project) proposes to replace the copper interconnect cables with fiber optic cables along Great America Parkway and Tasman Drive. The City's existing traffic signal interconnect network is comprised of both fiber optic cables and copper wires. Fiber optic cables are the newer standard for data transmission due to transmitting data at much faster rate. Currently, Great America Parkway and Tasman Drive are interconnected via copper cables. The traffic signals along these two major corridors are equipped with traffic monitoring cameras that stream high definition video back to the City's Traffic Management Center. Streaming video and other data from these traffic signals over copper wires results in noticeably slower streaming speeds and quality compared to other traffic signals in the City that are connected over fiber optic cables.

III. DESCRIPTION OF SERVICES

Consultant shall provide the services described herein. All work shall be done in

accordance with the Department of Transportation Standard Specifications and Details, City Standard Plans and Specifications, ADA Design Guidelines, latest building and fire codes, and other applicable codes and standards recommended by the Consultant. Below is an outline of required services; however, it is the responsibility of the consultant to independently assess the PROJECT and provide improvement recommendations to meet the goals for this PROJECT.

- A. Removal of approx. 24,000 feet of existing copper signal interconnect and replace with new fiber optic cable
- B. Fiber optic splices between new fiber optic cable and existing backbone cable
- C. 15 new fiber distribution units
- D. 15 new ethernet switches
- E. 13 new fiber optic splice closures
- F. Remove 7 existing pull boxes and replace with 24"x36" pull box
- G. 5 new 24"x36" pull box
- H. 10 new crosswalk sensors
- I. 4 new accessible pedestrian signals
- J. 11 new travel time antennas
- K. 3 new pan-tilt-zoom cameras

Plans for fiber optic work, travel time antennas, and PTZ cameras are anticipated to use 1"=40' scale. Plans for the 10 locations with crosswalk sensors are anticipated to require traffic signal modification plans using 1"=20' scale because the crosswalk sensors require new cables to all corners. The minimum requirements for the plans include:

- A. Field work collecting, confirming, and documenting all existing conditions that may impact project design
- B. Plans showing all existing traffic signal poles, pull boxes, conduits, and cabinets
- C. Plans showing all existing utility cabinets, covers, manholes, poles, and structures
- D. Plans showing all existing utility overhead wires, conduits, and pipes
- E. Plans showing all landscaping, trees, and irrigation pipes and valve covers
- F. Any necessary potholes to confirm potential utility conflicts.

Consultant shall provide the Services described herein through a project team, comprised of Consultant and sub-consultants identified as follows:

- 1. Consultant: ITERIS, INC.
- 2. Sub-consultants to ITERIS, INC.:
 - 1) PLS Surveys, Inc. – Surveying

Any changes to the Project team through the course of the Services shall be approved in writing by City.

IV. RESPONSIBILITIES OF CITY

CITY will provide the following information and support for the project as-available and applicable:

- A. Record drawings (as-available)
- B. CITY's Standard Details, Specifications, Benchmark, and Design Criteria.
- C. Storm Drain (SD), Sanitary Sewer (SS), Electric, Fiber, Water and Recycled Water Block Book Maps (as-available).
- D. Geographic Information System (GIS) data including land parcels, street centerlines, City sanitary sewers, City storm drains, and aerial photographic tiles
- E. Payment of permit application fees with other internal departments, if required.
- F. Filing exemption under the California Environmental Quality Act, if applicable.

Besides the above, the City will work closely with the consultant to provide any other data or records, as available and necessary for the work involved.

V. BASIC SCOPE OF SERVICES

The Basic Scope of Services includes all professional services required to prepare construction bid documents (plans, specifications, and engineer's estimate or PS&E) for public works bidding and construction of the Project.

PROJECT MANAGEMENT

CONSULTANT shall:

- A. Manage its team and overall project activities consistent with the direction from CITY in order to meet the project schedule and budget. Manage sub-consultants, maintain schedule and budget, anticipate and mitigate potential design issues and delays and coordinate and update the City on the overall progress of the Project.
- B. Any field work that involves subsurface excavation and/or coring, consultant is required to submit plan of work to the City for review and approval prior to proceeding.
- C. Organize and attend project meetings with the City to discuss project progress, decisions, and direction and to coordinate activities. Meetings shall be held at key project milestones and shall include, but are not limited to:
 - C.1 Kick-off Meeting
 - C.2 Preliminary Design Review Meeting

C.3 65% Design Review Meeting
C.4 95% Design Review Meeting
C.5 Punch list/Project acceptance Meeting

- D.** Coordinate with CITY, design team members, consultants, utility companies, other government agencies, and other affected parties as required throughout the duration of the project as well as the Quality Assurance/Quality Control (QA/QC) activities for project deliverables.
- E.** Prepare, monitor, and update progress schedule in MS Project format beginning at the kickoff meeting and ending at contract award for the last submittal package. Schedule shall show significant milestones for the project. CONSULTANT shall notify CITY if there are delays or potential delays in any phase of the project. In such cases, CONSULTANT shall make up the schedule in subsequent phases of the project or provide information to CITY substantiating a request for time extension (which may not be approved). The schedule shall be maintained at all times and shall be updated each time progress and milestones are achieved and/or changed.
- F.** Meetings: Meetings shall be budgeted for and invoiced under each respective Task or activity requiring a meeting and not as project management. Preparation for meetings shall be considered as included in the Task or activity for which the meeting is involved. A kick-off meeting shall be conducted with designated CITY staff prior to beginning work to review anticipated Tasks and schedule, review available information and needs, and address any outstanding questions regarding the project moving forward raised by CITY or CONSULTANT. During the course of Services while there is active work on the PROJECT, CONSULTANT shall schedule and attend brief bi-weekly (every other week) conference calls with CITY. The purpose of the bi-weekly conference calls will be to keep CITY apprised on the PROJECT's progress and address any issues that may arise during the course of Services.
- G.** Provide monthly progress reports.
- H.** Stakeholder Coordination: CONSULTANT shall coordinate with project stakeholders as needed to inform each stakeholder of the project work and incorporate any necessary accommodations into the final submittal documents.
- I.** 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.

- J.** Conduct QC reviews in accordance with its QA Program guidelines. CONSULTANT shall provide a copy of its QA Program guidelines and shall provide a QC report at the end of each Task. Time spent for QA-QC reviews for specific deliverables shall be budgeted and billed under each respective task requiring QA-QC review and not as Project Management.
- K.** Invoicing and Contract Administration: CONSULTANT administrative staff time spent preparing invoices for Services complete shall be considered as included in the overhead of the CONSULTANT's basic hourly rates and shall not be billed. Additionally, addressing administrative issues regarding the professional Services agreement, such as preparing additional Services requests or budget modifications, shall also be considered as included in the overhead of the CONSULTANT's basic hourly rates and shall not be billed.
- L.** Payment for all responsibilities related to Project Management shall be included in the various tasks identified in Exhibit B, Schedule of Fees.

Deliverables:

- 1. Progress schedules in MS Project format (submitted electronically as an 11" x 17" pdf file and in native MS Project format).
- 2. QA Program guidelines and QC reports for each Task (in pdf file).
- 3. Meeting agendas, preparation materials, and meeting minutes for each project meeting (in pdf file).
- 4. Monthly progress reports and invoices (in pdf file).

Task 1.0: Preliminary Engineering/Evaluation

Attend Project Kick-Off Meeting and provide meeting minutes for the City to review and approve. Perform all necessary assessment and field investigations including collecting, confirming, and documenting all existing conditions to determine the existing conditions and propose recommendations to City for the improvements. Contact all regulatory agencies that will affect the proposed works to determine applicable codes and ordinances.

- 1.1** Review all necessary as-builts to understanding existing condition in order to prevent utility conflicts and changes during construction.
- 1.2** Meet with City staff to obtain additional information and input as needed. Provide all necessary design services, including but not limited to landscape, civil, structural, and electrical design.
- 1.3** Perform needed topographic survey for existing site, plans layout, and final approved improvements (from the evaluation/recommendation) for use as base layout for the design plans.

- 1.4** CITY maintains a list of known utility operators in CITY. CONSULTANT shall prepare a Notice of Intent to Construct (NOI) on CITY's standard NOI form and submit it to the known utility operators in order to gather records for existing utilities. Location map exhibits will be required to be submitted as part of the NOI. CONSULTANT shall provide CITY a draft of the NOI prior to sending it to the utility, maintain log of all NOI sent and received, and provide CITY all information received from the NOI. The purpose of the collection of utility information is to identify ownership of surface features that will be impacted by the work, and also to identify if there are any high-risk utilities within the project limits that may be impacted by the work.

All data collected from the field shall be provided to the City for records. Prior to performing data collection, CONSULTANT shall provide a work plan to the City for review and approval. No work shall be performed unless authorized by the City.

Task 1 Deliverables – Electronic copy format:

1. Project Work Plan
2. Miscellaneous Project information (as requested).
3. Field notes, photographs, and Underground Service Alert (USA) information.
4. Notice of Intent form(s)

Task 2.0: 65% Construction Documents

Plans shall be 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.

- 2.1** Prepare 65% construction documents and supporting information for the City's review. Consultants shall follow City's Design Criteria and plan format to prepare 65% Plans and supporting information for the City's review. Plans with details of major design components as necessary such as: Site Plan, Existing Condition, Proposed Improvement, Traffic Control Plan, Details, and other pertinent information for the City to review and provide comments.

65% Plans shall include all existing utilities on-site and immediate surrounding off-site areas. Pertinent background information as relating to proposed improvements such as, but not be limited to, layouts, fence, gate, pedestrian pathway, property lines, site entrance/exist driveway, adjacent streets shall be shown.

- 2.2** Prepare project estimate that includes an itemized list of bid items. The project estimate shall be accurate and prepared based upon current construction pricing and escalated to mid construction. CONSULTANT shall review recent bids, and contact vendors, suppliers, and contractors as necessary to develop an accurate cost estimate. The CONSULTANT shall provide the assumptions and supporting documents used to prepare the estimate. The project estimate shall consider the

following factors:

1. Recent similar Projects bided in the Bay Area, especially in the South Bay.
2. Current economic trend.
3. When the Project will be bided.
4. When construction will occur.
5. The risks that contractors need to consider for the Project.

2.3 Develop project schedule. Schedule shall include all needed times to complete all tasks, including City's review times, permitting process, and construction period.

2.4 CITY maintains a list of known utility operators in CITY. CONSULTANT shall prepare a Notice of Intent to Construct (NOI) on CITY's standard NOI form and submit it to the known utility operators in order to gather records for existing utilities. Location map exhibits will be required to be submitted as part of the NOI. CONSULTANT shall provide CITY a draft of the NOI prior to sending it to the utility, maintain log of all NOI sent and received, and provide CITY all information received from the NOI. The purpose of the collection of utility information is to identify ownership of surface features that will be impacted by the work, and also to identify if there are any high-risk utilities within the project limits that may be impacted by the work.

All data collected from the field shall be provided to the City for records. Prior to performing data collection, CONSULTANT shall provide a work plan to the City for review and approval. No work shall be performed unless authorized by the City.

2.5 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.

2.6 Conduct a quality control (QC) review of design documents (Plans, Specifications, and Engineer's Cost Estimates).

2.7 CITY will circulate the submittal package to internal CITY departments for review and comments. CONSULTANT shall be responsible for submitting the package to external stakeholders if required. CONSULTANT shall prepare written responses to all written comments received. All redlined drawings shall be returned with CONSULTANT's response on the redlined drawings.

2.8 CONSULTANT shall be responsible for resolving comments from each commenter and shall identify to CITY any comments that cannot be resolved. CONSULTANT shall conduct a 65% comments review meeting with CITY to discuss comments on the submittal package, to identify any significant design issues, and gain concurrence as to how the submittal shall be revised as appropriate to incorporate CITY's comments.

2.9 CONSULTANT is required to coordinate with Underground Service Alert to mark all locations requiring new signal cabinet foundations. All potential utility conflicts

shall be discussed with the City and coordinated with each respective utility agency to clear all conflicts. The project plan shall clear identified all existing utilities that will be and potentially be impacted during construction.

Task 2 Deliverables – Electronic and hard copy format:

1. 65% Plans – One (1) PDF and one (1) AutoCAD file.
2. 65% Engineering cost estimate – One (1) PDF and one (1) Microsoft Excel file.
3. Project schedule – One (1) PDF and one (1) Microsoft Project file.
4. Quality control checklist for 65% PS&E submittal – One (1) PDF and one (1) Microsoft Word or Excel file.
5. Miscellaneous Project information (as requested).
6. Meeting minutes – One (1) PDF and one (1) Microsoft Word file.
7. Field notes, photographs, and Underground Service Alert (USA) information.
8. Notice of Intent form(s)

Task 3.0: 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:

- 3.1** Prepare 95% construction documents and supporting information for the City's review and approval.
 - 3.1.1 Construction details of proposed improvements shall be included in the 95% Plans.
 - 3.1.2 Provide technical specifications.
 - 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 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 staff, as needed, to review City comments on 65% submittal and gain concurrence as to how the documents will be revised as appropriate to incorporate City comments.
- 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 65% PS&E.
- 3.7** Conduct a quality control (QC) review of design documents (Plans, Specifications, and Engineer's Cost Estimates).

Task 3 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. 95% 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. Meeting minutes – One (1) PDF and one (1) Microsoft Word file.
- 6. Quality control checklist for 95% design submittal.
- 7. Written response matrix – One (1) PDF and one (1) Microsoft Word or Excel file.

Task 4.0: 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:

- 4.1** Prepare 100% construction documents and supporting documents.
 - 4.1.1 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.
 - 4.1.2 Specifications shall be stamped and signed (on Document 00030 – Seal) by Consultant's Project Engineer.
- 4.2** Prepare an updated Engineering Cost Estimate with backups and justifications for unit pricing.
- 4.3** Prepare an updated Project Schedule.
- 4.4** 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.

- 4.5** 100% PS&E shall be Peer reviewed and Certification of Peer Review shall be submitted with the 100% Submittal.

A statement to indicate Peer Review has been performed and signature of the Engineer who performed it shall be added to the Plans Cover Sheet.

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 landscape architect with expertise and experience in the appropriate fields of landscaping equal to or greater than the Architect of Record, and that appropriate corrections have been made.”

- 4.6** Meet with City staffs as needed to review City comments on 95% submittal and gain concurrence as to how the documents will be revised as appropriate to incorporate City comments.
- 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 95% PS&E.
- 4.9** Provide list of potential bidders including company name, email address, contact number, and address of business.
- 4.10** The City shall review the 100% Design Submittal Package (Plans, Specifications, Engineer’s cost estimate, and Project bid and construction schedule) to ensure that all comments and issues have been rectified.

Task 4 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. Certification of Peer Review – One (1) PDF.
5. 100% Engineering Cost Estimate – One (1) PDF and one (1) Microsoft Excel file.
6. Updated Project Schedule – One (1) PDF and one (1) Microsoft Project file.
7. Special Inspection Form – One (1) PDF.
8. Quality control checklist for 100% design submittal.
9. Written response matrix – One (1) PDF and one (1) Microsoft Word or Excel file

Task 5: Bid Documents (P&S)

The Bid Documents shall incorporate all comments from the City and any other stakeholders that are involved in the Project. 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:

5.1 Incorporate City review comments of 100% PS&E into Bid Documents.

5.2 Prepare Bid Documents (P&S).

5.2.1 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.

5.2.2 Bid Specifications shall be wet stamped and signed (on Document 00030 – Seal) by Consultant's Project Engineer.

5.2.3 Final Engineer's Estimate

5.3 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 5 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. Written response matrix – One (1) PDF and one (1) Microsoft Word or Excel file.

Task 6: Bid and Award Phase Assistance

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.

Consultant shall:

6.1 Attend and conduct one Pre-Bid Conference/Site Visit.

6.2 Assist the City with responses to bidder's inquiries through the City's Project Manager.

6.3 Assist the City with addenda to the construction documents as needed to respond to bidder's inquiries and clarify the intent of bid documents.

- 6.4** Assist the City in evaluating bids (if required by the City).
- 6.5** 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 6 Deliverables – Electronic and hard copy format:

- 1. Written response to bidder's inquiries – Signed PDF.
- 2. Support information for addenda – Signed PDF.
- 3. Written recommendation letter to award of contract for the Project – Signed 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 7: Construction Phase Assistance

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.

- 7.1** 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.
- 7.2** Consultant shall attend the Pre-construction meeting.
- 7.3** Consultant shall visit the site three times during construction. 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, civil, and electrical sub-consultants shall visit the site as required when work related to their discipline is in progress.
- 7.4** Consultant shall make construction observation visits throughout the construction phase. Consultant shall issue an observation report after each visit. Assume up to three (3) meetings.
- 7.5** 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.

- 7.6** 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.
- 7.7** 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 COs

Task 7 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 8: Post-Construction Phase

- 8.1** 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.
- 8.2** 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.
- 8.3** 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.
- 8.4** 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.

- 8.5** Consultant shall at completion of the Project provide City with one set of reproducible Record Drawings (RDs) on good quality bond paper 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.
- 8.6** Provide a complete set of the Record Drawings and all X-ref files “bound,” including other associated fonts, plot style files on AutoCAD, including electronic copies in PDF format. CONSULTANT may, at its own expense, prepare and retain a copy of each drawing for its permanent file.

Task 8 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.

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INTERCONNECT PROJECT**

**EXHIBIT B
SCHEDULE OF FEES**

I. GENERAL PAYMENT

The total payment to the Consultant for Basic Services, as stated in **Exhibit A**, shall not exceed \$137,105. The amount billed to City for pre-approved Additional Services shall not exceed the sum of \$20,895. In no event shall the amount billed to City by Consultant for Services under this Agreement exceed \$158,000, subject to budget appropriations.

Consultant shall bill City on a monthly basis for Services provided by Consultant during the preceding month on an invoice and in a format approved by City and subject to verification and approval by City. Billing shall be proportionate to the Services performed for each task completed. The invoice shall describe the Task completed, and percentage completed by Task, and total during the invoice period. The invoice shall also show the total to be paid for the invoice period. City will pay Consultant within thirty (30) days of City's receipt of an approved invoice.

II. BASIC SERVICES

The total payment to Consultant for all work necessary for performing all Tasks, as stated in **Exhibit A**, shall be in proportion to Services rendered and on a Time-and-Material not-to-exceed basis.

The Consultant fee allocated to each Task, as shown below, shall be the Consultant's full compensation for all the Consultant Services required for the Project and by this Agreement, as directed by the City, and no additional compensation shall be allowed. The total amount of all the Tasks is a not-to-exceed amount.

The amount for each Task and the total amount of all the Tasks are as listed below:

<u>Description of work and task</u>	<u>Basic Services</u> <u>Cost</u>
Task No. 1 – Preliminary Engineering	\$24,670
Task No. 2 – 65% Construction Documents	\$36,635
Task No. 3 – 95% Construction Documents Package	\$31,860
Task No. 4 – 100% Construction Documents Package	\$19,350
Task No. 5 – Final Bid Documents	\$9,800
Task No. 6 – Bid Support Assistance	\$2,910
Task No. 7 – Construction Support	\$8,850
Task No. 8 – Record Drawings and Project Close-out	\$3,030
TOTAL COST	\$137,105

In no event shall the amount billed to City by Consultant for BASIC SERVICES under this Agreement exceed one hundred thirty-seven thousand one hundred five dollars (\$137,105).

III. REIMBURSABLE EXPENSES

There are no reimbursable expenses.

IV. ADDITIONAL SERVICES

Additional Services consists of work not included in the Scope of Services outlined within this Agreement. Pre-approved Additional Services shall be billed to City at the fixed hourly rates shown below in Section V, RATE SCHEDULE, or at an agreed negotiated lump sum price. Monthly billing for Additional Services shall be consistent with the term set forth in this Agreement. Payment for any Additional Services is allowed only if written authorization is given by the City Engineer in advance of the work to be performed. Additional Services shall not exceed \$20,895.

V. RATE SCHEDULE

Personnel Charges

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the project.

The pay rates for the project by classification are listed below:

Primary Consultant – ITERIS, INC.:

Matt Wages - \$255
Steven Bradley - \$355
David Huynh - \$320
Paul Frislie - \$245

Monique Fuhrman - \$220
Kassra Rafiee - \$125
Delbert Smith-Lavezzari - \$125
Casey Hu - \$125
Lydia Chun - \$125
Evan Shipley - \$125
Raymond Liang - \$125

Subconsultant Billing Rates:

PLS Surveys, Inc.



RATE SCHEDULE

Field:

One-man	\$215.00
Two-man	\$275.00**
Three-man	\$310.00
4 hour minimum applies to above rates	

Office:

Principal-in-Charge	\$190.00
Land Surveyor	\$150.00
Survey Technician	\$105.00
AutoCAD/Drafter	\$131.00
Clerical/Delivery (In-House)	\$95.00

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**EXHIBIT C
INSURANCE REQUIREMENTS**

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

- b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
- c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

C. WORKERS' COMPENSATION

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

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

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

H. EVIDENCE OF COMPLIANCE

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

and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

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

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**EXHIBIT D
LABOR COMPLIANCE ADDENDUM**

This Agreement is subject to the requirements of California Labor Code section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements. If applicable to the Services, Consultant or its subconsultant(s), as applicable, shall comply with the following requirements.

A. Prevailing Wage Requirements

1. Consultant shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov 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 consultant" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All consultants/subconsultants and related construction Services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works consultant". Those 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 consultant and perform work on the project, Consultant agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.

11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

B. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Consultant's address indicated for receipt of notices in this Agreement.

C. Enforcement

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

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

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**EXHIBIT E
MILESTONE SCHEDULE**

<u>Description of work and task</u>	<u>Duration</u>
Task No. 1 – Preliminary Engineering	5 weeks
Task No. 2 – 65% Construction Documents Package	4 weeks
Task No. 3 – 95% Construction Documents Package	4 weeks
Task No. 4 – 100% Construction Documents Package	2 weeks
Task No. 5 – Final Bid Documents	2 weeks
Task No. 6 – Bid Support Assistance	2 days response time for clarifications and questions
Task No. 7 – Construction Support	5 days response time for each submittal review; 3 days response time for all RFI's and clarifications.
Task No. 8 – Record Drawings and Project Close-out	2 weeks to prepare record drawings

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**EXHIBIT F
PROJECT MANAGEMENT DOCUMENTATION SOFTWARE**

1.0 GENERAL

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

3.0 REQUIREMENTS

A. General Requirements:

1. Consultant and Subconsultants shall provide at a minimum, the following to its staff:
 - a) Computer: Minimum Intel Pentium® 4 Processor 2.4 GHz or equivalent processor with 512MB of RAM; recommended Centrino Duo® Processors 1.6 GHz or equivalent with 2GB of RAM, or higher;
 - b) Computer Operation System: Windows XP 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:

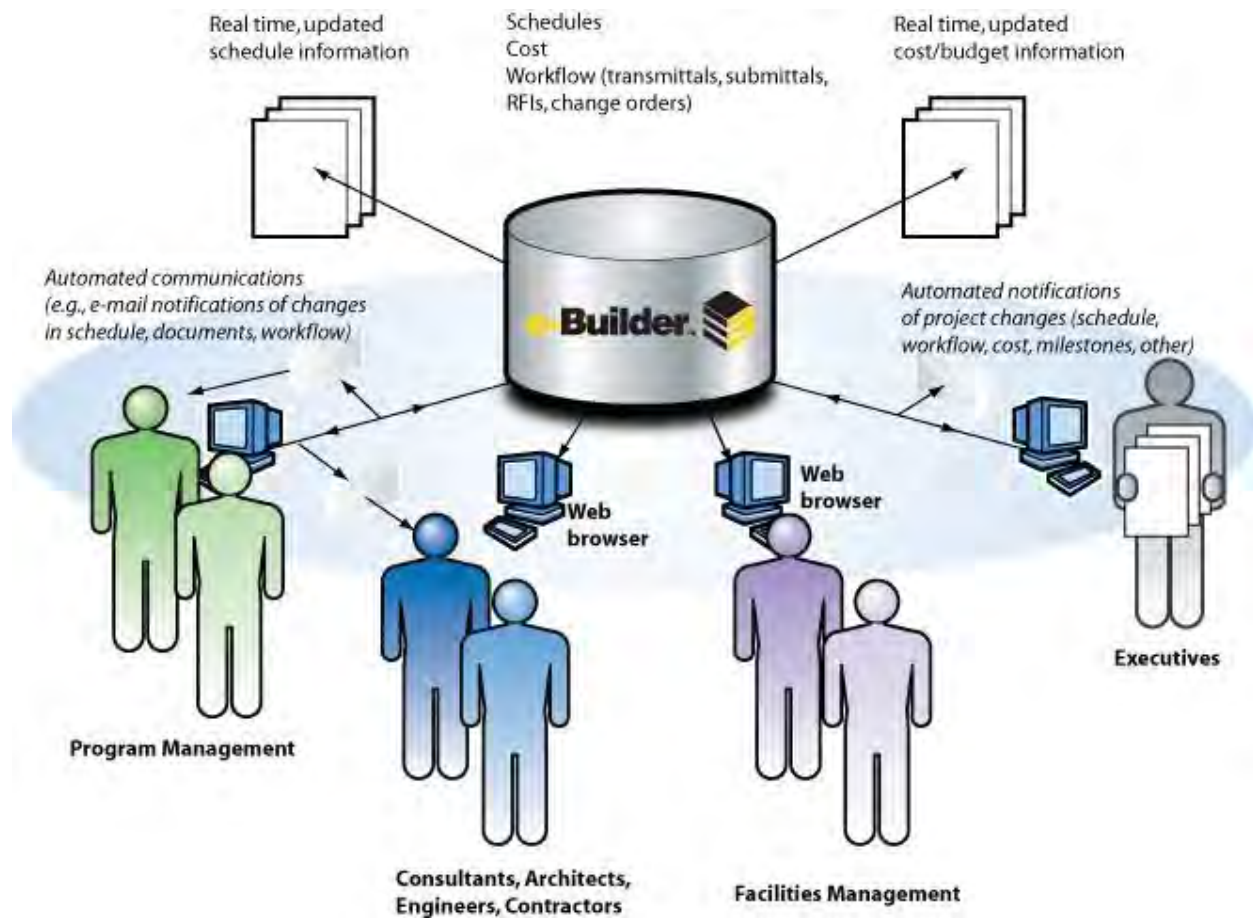
- 1. This project utilizes a web-based project management tool, e-Builder. This web-based application is a collaboration tool, which will allow all project team members continuous access through the Internet to important project data as well as up to the minute decision and approval status information.
- 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 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, Drawing Issuances, Addenda, Bulletins, Permits, Insurance & Bonds, Safety Program Procedures, Safety Notices, Accident Reports, Personnel Injury Reports, Schedules, Site Logistics, Progress Reports, Daily Logs, Non-Conformance Notices, Quality Control Notices, Punch Lists, Meeting Minutes, Requests for Information, Submittal Packages, Substitution Requests, Monthly Payment Request Applications, Supplemental Instructions, Construction Change Directives, Potential Change Orders, Change Order Requests, Change Orders, etc. All supporting data including, but not limited to, shop drawings, product data sheets, manufacturer data sheets and instructions, method statements, safety MSDS sheets, Substitution Requests, Submittals, etc. and the like will be submitted in digital format via e-Builder.

C. Electronic File Requirements:

1. In addition to the standard closeout submittal requirements detailed elsewhere in the Contract Documents, the Consultant and Subconsultants shall also submit all closeout documents including all “As-Built Drawings”, catalog cuts, and Owner’s Operation and Maintenance manuals in digital format. All documents (including as-built drawings) shall be converted or scanned into the Portable Document Format (PDF) file and uploaded to e-Builder.

4.0 IMPLEMENTATION REQUIREMENTS

- A. e-Builder is a comprehensive Project and Program Management system that will be implemented for managing documents, communications, and costs between the Contractor, Sub-contractors, Consultant, Sub-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 Consultant is not responsible.



Agenda Report

22-103

Agenda Date: 3/22/2022

REPORT TO COUNCIL AND THE STADIUM BOARD

SUBJECT

Action on Agreements with Axon Enterprise, Inc. for the Purchase of Body Worn Cameras, Conducted Energy Weapons, and Evidence.com

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

Body Worn Cameras for the Santa Clara Police Department (SCPD)

Body Worn Cameras (BWCs) are an invaluable tool for law enforcement organizations, providing benefits such as:

- Educational resource in the evaluation of training and policy thus increasing officer safety and situational awareness
- Investigative tool which allows officers to review and present evidence and creates indisputable and court-admissible evidence. Typical uses include documenting encounters in domestic violence cases, evidence collection at accident scenes, and documenting witness, suspect and/or victim interviews and arrests
- Strengthens police accountability by providing an accurate record of the sequence of events, improves agency transparency, and strengthens officer performance which is important when building community trust
- Reduces Department, City and police officer liability
- Reduces confrontational situations, manages citizen complaints, and reduces the time required to resolve such situations
- Collects information to assist with officer performance evaluations by helping to identify positive or negative patterns of behavior

In 2015, after a year of field testing, approving a vendor, establishing a usage policy and implementing training, SCPD implemented its BWC program initially deploying approximately 150 BWCs manufactured by VieVu. Santa Clara Police Department Policy 98.2 was issued in October 2015 to serve as a foundation for their use.

In 2017, the City terminated its contract with VieVu and entered into a new five-year agreement with Axon Enterprise, Inc. for the purchase of 169 BWCs through a cooperative agreement. This transition to Axon enabled SCPD to utilize one solution for cameras, video storage and management as opposed to two separate systems under the VieVu contract.

The agreement with Axon expires in September 2022.

Conducted Energy Weapons for SCPD

SCPD began researching and field testing Conducted Energy Weapons (CEWs) in 2015. CEWs, commonly referred to as "tasers", are non-lethal weapons that can provide temporary painful stimuli and neuromuscular incapacitation in an effort to gain compliance.

In 2015, SCPD purchased 170 X26P CEWs from TASER International utilizing grant funds from the Citizen's Option for Public Safety. Prior to deployment, Policy 1.4 was revised to include information on the use of CEWs and extensive training was conducted among staff.

In 2017, TASER International changed its name to Axon to reflect the company's product diversification. The X26P CEWs reached their end of life in December 2020. While still functional, the units are beyond Axon's recommended service life, and the possibility of failures increase after the useful life has expired.

Body Worn Cameras for the Santa Clara Stadium Authority

In 2020, the Stadium Authority purchased 100 BWCs from Axon, under a separate contract, for use during major events at Levi's Stadium. In 2021, after delays due to COVID-19 restrictions on in-person events held at Levi's Stadium, SCPD introduced BWCs for use by the City's Special Event Officers who are bound by the same policy as full-time SCPD Officers pursuant to SCPD Policy 423, Portable Audio/Video Recorders.

SCPD's Evidence.com licenses for the Stadium Authority were combined with SCPD's account in order for SCPD to retain all evidence captured from Stadium events. Therefore, a new agreement for SCPD requires that the Stadium Authority also renews its agreement with Axon.

DISCUSSION

This recommendation is pursuant to City Code Section 2.105.290(b)(3) which states that without observing formal bidding requirements, the City may contract with vendors directly on terms obtained pursuant to formal bidding processes that name the City either specifically or categorically as a third-party beneficiary of the bidding process. Staff is recommending the purchase of body worn cameras, conducted energy weapons, and data management through the League of Oregon Cities (LOC) cooperative purchase agreement with Axon.

The LOC cooperative agreement is part of the National Purchasing Partners nationwide cooperative procurement program. The LOC, consisting of representation from 25 cities in the state of Oregon, served as the lead agency in the Request for Proposal process conducted in 2020 for contracts for law enforcement equipment including body worn cameras and conducted energy weapons. Public agencies that have purchased BWCs and/or CEWs under the LOC cooperative agreement include

City of Carlsbad Police Department (with a contract value of \$1,137,180), Louisville Metro Police Department (\$18,874,537), Philadelphia Police Department (\$13,313,362), and Athens-Clarke County Police Department (\$1,848,879).

Additionally, staff reviewed the marketplace and concluded that Axon is the leader in BWC and CEW technology. Local agencies on OSP7+ (Axon's bundle package for body worn cameras, conducted energy weapons, and data storage/management) include Bay Area Rapid Transit (BART), and the cities of Walnut Creek, San Leandro, Vallejo, Richmond and Campbell, and Counties of Marin, Napa, San Joaquin, and Solano.

Summary of Proposed Agreement for the City of Santa Clara Police Department

The proposed agreement with Axon for the OSP7+ bundle includes 187 third generation BWCs including two additional technology refreshes during the term of the agreement, 181 Taser 7 CEWs, and Evidence.com which is Axon's secure cloud-based video/audio storage system that is fully compliant with Criminal Justice Information Services (CJIS) security standards.

The OSP7+ bundle also includes the following enhancements/add-ons not previously available:

- Signal Sidearm - A smart sensor that attaches to an officer's holster to trigger Axon body-worn cameras within a 30' range to start recording automatically when an officer's weapon is drawn, even if an officer does not activate his/her BWC.
- Taser 7/Certification Bundle - Taser 7 improvements include an additional back-up shot, automatic activation of cameras and improved accuracy. Also included are duty and training cartridges, instructor and master instructor courses for certification, and hook and loop training suit.
- Respond+ - Provides critical notifications such as map-based location tracking via Evidence.com, ability to live-stream into the BWC for better situational awareness, and ability to upload critical incidents out in the field without needing to dock the camera.
- Axon Performance - Automates body-worn camera policy reviews and provides actionable, up-to-date compliance information, such as camera use during calls for service, with an intuitive metrics dashboard and shareable reporting capabilities.
- Axon Redaction Assistant - This is an add-on to the Evidence.com Redaction Studio that speeds up the redaction process by automating redactions for common objects like faces, license plates, and video screens.
- Axon Auto Transcription - Allows officers to dictate their reports in the field and identify key words in all BWC footage, producing transcripts in substantially less time than with current manual methods.
- Citizen for Communities - Allows the City to engage the community in efforts to investigate crimes and preserve public safety. Agencies can launch public portals from Evidence.com to collect digital evidence submissions from members of the public.

- Auto Tagging - Tags Axon body-worn camera videos with correlating metadata from the City's CAD or RMS system.
- Axon Standards - Provides report writing capabilities including customizable forms, workflows, alerts, and user groups. Integrates with Taser 7 CEW for automatically pulling firing logs.

Enhancing technology is one way to continue achieving SCPD's goal of building community and officer confidence. Bundling technology allows the seamless integration of the products to deliver unprecedented efficiency and impact and saves the City approximately \$1,191,343 versus purchasing each of the components separately.

The total cost is \$2,276,714 for a five-year agreement ending on March 31, 2027, which includes a credit of \$187,449 for undelivered services under the existing agreement. Under the proposed agreement, SCPD will receive new Taser 7s and cameras starting in April 2022. As previously mentioned, there are two additional upgrades to the cameras during the five-year term. Five years of warranty for service and replacement, docking stations, training, and other accessories are included in the price.

As previously discussed, the City is leveraging pricing from the League of Oregon Cities' agreement with Axon. To ensure the City's pricing is fair and reasonable, staff benchmarked the City's price of \$13,177 per set against contracts with the County of Solano (\$20,235), City of Richmond (\$15,357), and Louisville Metro Police Department (\$15,729).

Summary of Proposed Agreement for the Santa Clara Stadium Authority

The proposed agreement with Axon includes 75 body worn cameras and Evidence.com.

The total cost is \$439,294 for a five-year agreement through March 31, 2027. The Stadium Authority will receive a replacement of the existing cameras in September 2024 plus one additional upgrade to the latest cameras in March 2027. Five years of warranty for service and replacement, docking stations, and other accessories are included in the price.

Staff determined Stadium Authority's pricing is fair and reasonable, and consistent with SCPD's pricing for the body worn cameras.

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 Police Department has sufficient funding in their General Fund operating budget to cover the costs for the current fiscal year. For the out-years of the contract, an increase to the Police Department's contractual services budget will be included and recommended as part of the FY 2022/23 and FY 2023/24 Proposed Budget. Payments will be made annually over the five-year term

of the agreement.

Santa Clara Police Department

Date	Subtotal	Tax	Total
2022	\$337,305.03	\$14,412.67	\$351,717.70
2023	\$461,528.49	\$19,720.47	\$481,248.96
2024	\$461,528.49	\$19,720.47	\$481,248.96
2025	\$461,528.49	\$19,720.47	\$481,248.96
2026	\$461,528.49	\$19,720.47	\$481,248.96
Total	\$2,183,418.99	\$93,294.55	\$2,276,713.54

Santa Clara Stadium Authority

Date	Subtotal	Tax	Total
2022	\$82,447.20	\$5,411.62	\$87,858.82
2023	\$82,447.20	\$5,411.59	\$87,858.79
2024	\$82,447.20	\$5,411.59	\$87,858.79
2025	\$82,447.20	\$5,411.59	\$87,858.79
2026	\$82,447.20	\$5,411.59	\$87,858.79
Total	\$412,236.00	\$27,057.98	\$439,293.98

COORDINATION

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

PUBLIC CONTACT

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

RECOMMENDATION

1. Authorize the City Manager's Office to execute an agreement with Axon Enterprise, Inc. for the bundled purchase of Body Worn Cameras, Conducted Energy Weapons and Evidence.com for the Santa Clara Police Department with a five-year term starting on April 1, 2022 and ending on March 31, 2027, with maximum compensation not-to-exceed \$2,276,714, and subject to the appropriation of funds;
2. Authorize the Executive Director's Office to execute an agreement with Axon Enterprise, Inc. for the purchase of Body Worn Cameras and Evidence.com for the Santa Clara Stadium Authority with a five-year term starting on April 1, 2022 and ending on March 31, 2027, with maximum compensation not-to-exceed \$439,294, and subject to the appropriation of funds;
3. Authorize staff to purchase additional body worn cameras, conducted energy weapons and software services as may be required, subject to the same terms and conditions and the appropriation of funds; and
4. Authorize the City Manager and the Executive Director Offices to extend the agreements for up to

five additional years, at the discretion of the SCPD and subject to the appropriation of funds.

Reviewed by: Pat Nikolai, Chief of Police

Approved by: City Manager/Executive Director's Office

ATTACHMENTS

1. Agreement with Axon Enterprise, Inc. for the Santa Clara Police Department
2. Agreement with Axon Enterprise, Inc. for the Santa Clara Stadium Authority
3. Axon Quote for the Santa Clara Police Department
4. Axon Quote for the Santa Clara Stadium Authority



Master Services and Purchasing Agreement between Axon and the City of Santa Clara

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc., a Delaware corporation ("**Axon**"), and the City of Santa Clara ("**Agency**"). This Agreement is effective as of the last signature date on this Agreement ("**Effective Date**"). Axon and Agency are each a "**Party**" and collectively "**Parties**". This Agreement governs Agency's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement act as a master agreement governing all subsequent purchases by Agency for the same Axon products and services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties therefore agree as follows:

1 **Definitions.**

"**Axon Cloud Services**" means Axon's web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Evidence.com and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

"**Axon Device**" means all hardware provided by Axon under this Agreement.

"**Quote**" means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

"**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2 **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 plans begin after shipment of the applicable Axon Device. If Axon ships the Axon Device in the first half of the month, the start date is the 1st of the following month. If Axon ships the Axon Device in the second half of the month, the start date is the 15th of the following month. For purchases solely of Axon Evidence subscriptions, the start date is the Effective Date. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").

3 **Payment.** Axon invoices upon shipment and in accordance with the payment schedule set forth in the Quote. Payment is due net 30 days from the invoice date. Except as otherwise provided in Section 17, payment obligations are non-cancelable. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for collection and attorneys' fees.

4 **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5 **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are FOB destination point via common carrier. Title and risk of loss pass to Agency upon delivery to the City. Agency is responsible for any shipping charges in the Quote.

6 **Returns.** Except as otherwise provided in Section 17, all sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7 **Warranty.**

7.1 Hardware Limited Warranty. Axon warrants that Axon Devices are free from defects in workmanship and materials for 1 year from the date of Agency's receipt, except Signal Sidearm, which Axon warrants for 30 months from the date of Agency's receipt. Axon warrants its Axon-manufactured accessories for 90-days from the date of Agency's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from

Title: Master Services and Purchasing Agreement between Axon and Agency



Master Services and Purchasing Agreement between Axon and the City of Santa Clara

the expiration of the 1-year hardware warranty through the extended warranty term. Non-Axon manufactured Devices are not covered by Axon's warranty. Agency should contact the manufacturer for support of non-Axon manufactured Devices.

- 7.2 Claims.** If Axon receives a valid warranty claim for an Axon Device during the warranty term, Axon's sole responsibility is to repair or replace the Axon Device with the same or like Axon Device, at Axon's option. A replacement Axon Device will be new or like new. Axon will warrant the replacement Axon Device for the longer of (a) the remaining warranty of the original Axon Device or (b) 90-days from the date of repair or replacement.

If Agency exchanges a device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering an Axon Device for service, Agency must upload Axon Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon Device sent to Axon for service.

- 7.3 Spare Axon Devices.** For qualified purchases, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose.

- 7.4 Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number.

7.4.1 To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.

7.4.2 Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to this Agreement will not exceed \$1,000,000. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.

7.4.3 Liability for damages to persons or real or tangible property, bodily injury or death arising in connection with this Agreement and caused by Axon's gross negligence or intentional misconduct shall be unlimited.

- 8 Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

- 9 Axon Device Warnings.** See www.axon.com/legal for the most current Axon Device warnings.

- 10 Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency provided that they do not materially derogate the overall quality of the Axon Device or Service.

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Master Services and Purchasing Agreement between Axon and the City of Santa Clara

- 11 **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.
- 12 **Insurance.** During the term of this Agreement, Axon shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in the Insurance Requirements Appendix.
- 13 **Indemnification.** Axon will indemnify Agency's officers, directors, and employees ("**Agency Indemnitees**") against all claims, demands, losses, and reasonable expenses arising out of a third-party claim against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct by Axon under this Agreement, except to the extent of Agency's negligence or willful misconduct, or claims under workers compensation.
- 14 **IP Rights.** Axon owns and reserves all right, title, and interest in Axon devices and services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
- 15 **IP Indemnification.** Axon will indemnify Agency Indemnitees against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
- 16 **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; and (c) a dispute between Agency and a third-party over Agency's use of Axon Devices, except for disputes covered under Section 15 IP Indemnification.
- 17 **Termination.**
 - 17.1 **For Breach.** A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
 - 17.2 **By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.
 - 17.3 **Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
- 18 **Confidentiality.** "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will

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Master Services and Purchasing Agreement between Axon and the City of Santa Clara

disclose the other Party's Confidential Information during the Term and for 5-years thereafter. Axon may publicly announce information related to this Agreement.

19 General.

- 19.1 Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.
- 19.2 Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 19.3 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 19.4 Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 19.5 Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 19.6 Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 19.7 Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 19.8 Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 19.9 Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.
- 19.10 Governing Law.** The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 19.11 Notices.** All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Contact information for notices:

Axon: Axon Enterprise, Inc.
Attn: Legal
17800 N. 85th Street
Scottsdale, Arizona 85255
legal@axon.com

Agency: City of Santa Clara
Attn: Santa Clara Police Department
1500 Warburton Avenue
Santa Clara, CA 95050
police@santaclaraca.gov

- 19.12 Entire Agreement.** This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each representative identified below declares they have been expressly authorized to execute this Agreement as

Title: Master Services and Purchasing Agreement between Axon and Agency

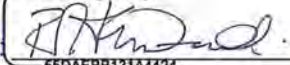
Department: Legal

Version: 13.0

Release Date: 3/31/2021

of the date of signature.

Axon Enterprise, Inc.

Signature: 

Name: Robert E. Driscoll, Jr.

Title: VP, Assoc. General Counsel

Date: 2/14/2022

Agency

Signature: _____

Name: _____

Title: _____

Date: _____



Master Services and Purchasing Agreement

Axon Cloud Services Terms of Use Appendix

1 Definitions.

"Agency Content" is data uploaded into, ingested by, or created in Axon Cloud Services within Agency's tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.

"Evidence" is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.

"Non-Content Data" is data, configuration, and usage information about Agency's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.

"Personal Data" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

- 2 **Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Agency may not upload non-TASER Data to Axon Evidence Lite.

- 3 **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content is not Axon's business records. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will only have access to Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.

- 4 **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

- 5 **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user's use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to Axon Cloud Services.

Agency will also maintain the security of end user names and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately

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if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.

To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at <https://www.youtube.com/static?template=terms>.

- 6 **Privacy.** Agency's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Agency agrees to allow Axon access to Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.
- 7 **Axon Body 3 Wi-Fi Positioning.** Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("Skyhook") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
- 8 **Storage.** For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.
- 9 **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.
- 10 **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent.

Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.
- 11 **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.
- 12 **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 bundle. During Agency's Axon Records Subscription Term, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

The Axon Records Subscription Term will end upon the competition of the Axon Records

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Subscription as documented in the Quote, or if purchased as part of an OSP 7 bundle, upon competition of the OSP 7 Term ("**Axon Records Subscription**")

An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.

New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.

- 13 **Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
 - 13.1 copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
 - 13.2 reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
 - 13.3 access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
 - 13.4 use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
 - 13.5 access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
 - 13.6 remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
 - 13.7 use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.
- 14 **After Termination.** Axon will not delete Agency Content for 90-days following termination. There will be no functionality of Axon Cloud Services during these 90-days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these 90-days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.
- 15 **Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
- 16 **U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.



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- 17 **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.



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Axon Customer Experience Improvement Program Appendix

- 1 **Axon Customer Experience Improvement Program (ACEIP).** The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Agency Content from all of its customers, to provide, develop, improve, and support current and future Axon products (collectively, "**ACEIP Purposes**"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Agency will be a participant in ACEIP Tier 1. If Agency does not want to participate in ACEIP Tier 1, Agency can revoke its consent at any time. If Agency wants to participate in Tier 2, as detailed below, Agency can check the ACEIP Tier 2 box below. If Agency does not want to participate in ACEIP Tier 2, Agency should leave box unchecked. At any time, Agency may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.

1.1 ACEIP Tier 1.

- 1.1.1. When Axon uses Agency Content for the ACEIP Purposes, Axon will extract from Agency Content and may store separately copies of certain segments or elements of the Agency Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Agency Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1¹. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Agency from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Agency request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Agency may revoke the consent granted herein to Axon to access and use Agency Content for ACEIP Purposes. Within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency. In addition, if Axon uses Agency Content for the ACEIP Purposes, upon request, Axon will make available to Agency a list of the specific type of Agency Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices

¹ For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.

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applicable to the Agency Content or ACEIP Content ("Use Case"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Agency notice (by updating the list of Use Case at <https://www.axon.com/aceip> and providing Agency with a mechanism to obtain notice of that update or another commercially reasonable method to Agency designated contact) ("New Use Case").

1.1.2. Expiration of ACEIP Tier 1. Agency consent granted herein, will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency.

1.2 ACEIP Tier 2. In addition to ACEIP Tier 1, if Agency wants to help further improve Axon's services, Agency may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2, grants Axon certain additional rights to use Agency Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed or de-identified data.

☐ Check this box if Agency wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. By checking this box, Agency hereby agrees to the Axon Customer Experience Improvement Program Tier 2 Terms of Service, available at <https://www.axon.com/sales-terms-and-conditions> and incorporated herein by reference.



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Professional Services Appendix

1 **Utilization of Services.** Agency must use professional services as outlined in the Quote and this Appendix within 6 months of the Effective Date.

2 **Body-Worn Camera Full Service (BWC Full Service).** BWC Full Service includes advance remote project planning and configuration support and up to 4 consecutive days of on-site service and a professional services manager to work with Agency to assess Agency's deployment and determine which on-site services are appropriate. If Agency requires more than 4 consecutive on-site days, Agency must purchase additional days. BWC Full Service options include:

System set up and configuration

- Instructor-led setup of Axon View on smartphones (if applicable)
- Configure categories and custom roles based on Agency need
- Register cameras to Agency domain
- Troubleshoot IT issues with Axon Evidence and Axon Dock ("Dock") access
- One on-site session included

Dock configuration

- Work with Agency to decide the ideal location of Docks and set configurations on Dock
- Authenticate Dock with Axon Evidence using admin credentials from Agency
- On-site assistance, not to include physical mounting of docks

Best practice implementation planning session

- Provide considerations for the establishment of video policy and system operations best practices based on Axon's observations with other agencies
- Discuss the importance of entering metadata in the field for organization purposes and other best practice for digital data management
- Provide referrals of other agencies using the Axon camera devices and Axon Evidence
- Recommend rollout plan based on review of shift schedules

System Admin and troubleshooting training sessions

Step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence

Axon instructor training (Train the Trainer)

Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon has fulfilled its contractual on-site obligations

Evidence sharing training

Tailored workflow instruction for Investigative Units on sharing Cases and Evidence with local prosecuting agencies

End user go-live training and support sessions

- Assistance with device set up and configuration
- Training on device use, Axon Evidence, and Evidence Sync

Implementation document packet

Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

Post go-live review

3 **Body-Worn Camera Starter Service (BWC Starter).** BWC Starter includes advance remote project planning and configuration support and one day of on-site Services and a professional services manager to work closely with Agency to assess Agency's deployment and determine which Services are appropriate. If Agency requires more than 1 day of on-site Services, Agency must purchase additional on-site Services. The BWC Starter options include:



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System set up and configuration (Remote Support) <ul style="list-style-type: none"> • Instructor-led setup of Axon View on smartphones (if applicable) • Configure categories & custom roles based on Agency need • Troubleshoot IT issues with Axon Evidence and Axon Dock ("Dock") access
Dock configuration <ul style="list-style-type: none"> • Work with Agency to decide the ideal location of Dock setup and set configurations on Dock • Authenticate Dock with Axon Evidence using "Administrator" credentials from Agency • Does not include physical mounting of docks
Axon instructor training (Train the Trainer) Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations
End user go-live training and support sessions <ul style="list-style-type: none"> • Assistance with device set up and configuration • Training on device use, Axon Evidence, and Evidence Sync
Implementation document packet Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

- 4 **Body-Worn Camera Virtual 1-Day Service (BWC Virtual).** BWC Virtual includes all items in the BWC Starter Service Package, except one day of on-site services.

- 5 **CEW Services Packages.** CEW Services Packages are detailed below:

System set up and configuration <ul style="list-style-type: none"> • Configure Axon Evidence categories & custom roles based on Agency need. • Troubleshoot IT issues with Axon Evidence. • Register users and assign roles in Axon Evidence. • For the CEW Full Service Package: On-site assistance included • For the CEW Starter Package: Virtual assistance included
Dedicated Project Manager Assignment of specific Axon representative for all aspects of planning the rollout (Project Manager). Ideally, Project Manager will be assigned to Agency 4–6 weeks before rollout
Best practice implementation planning session to include: <ul style="list-style-type: none"> • Provide considerations for the establishment of CEW policy and system operations best practices based on Axon's observations with other agencies • Discuss the importance of entering metadata and best practices for digital data management • Provide referrals to other agencies using TASER CEWs and Axon Evidence • For the CEW Full Service Package: On-site assistance included • For the CEW Starter Package: Virtual assistance included
System Admin and troubleshooting training sessions On-site sessions providing a step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence
Axon Evidence Instructor training <ul style="list-style-type: none"> • Provide training on the Axon Evidence to educate instructors who can support Agency's subsequent Axon Evidence training needs. • For the CEW Full Service Package: Training for up to 3 individuals at Agency • For the CEW Starter Package: Training for up to 1 individual at Agency



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TASER CEW inspection and device assignment

Axon's on-site professional services team will perform functions check on all new TASER CEW Smart weapons and assign them to a user on Axon Evidence.

Post go-live review

For the CEW Full Service Package: On-site assistance included.

For the CEW Starter Package: Virtual assistance included.

6 **Smart Weapon Transition Service.** The Smart Weapon Transition Service includes:

Archival of CEW Firing Logs

Axon's on-site professional services team will upload CEW firing logs to Axon Evidence from all TASER CEW Smart Weapons that Agency is replacing with newer Smart Weapon models.

Return of Old Weapons

Axon's on-site professional service team will ship all old weapons back to Axon's headquarters.

Axon will provide Agency with a Certificate of Destruction

*Note: CEW Full Service packages for TASER 7 include Smart Weapon Transition Service instead of 1-Day Device Specific Instructor Course.

7 **Signal Sidearm Installation Service.** If Agency purchases Signal Sidearm Installation Service, Axon will provide one day of on-site Services and one professional services manager and will cover the installation of up to 100 Signal Sidearm devices per package purchased. Agency is responsible for providing an appropriate work area and ensuring all holsters that will have Signal Sidearm installed onto them are available on the agreed-upon installation date(s). Installation includes:

Removal of existing connection screws that affix a holster to a holster mount

Proper placement of the Signal Sidearm Mounting Plate between the holster and the mount

Reattachment of the holster to the mount using appropriate screws

Functional testing of Signal Sidearm device

8 **Out of Scope Services.** Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

9 **Delivery of Services.** Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m. Pacific Standard Time, except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Agency travel time by Axon personnel to Agency premises as work hours.

10 **Access Computer Systems to Perform Services.** Agency authorizes Axon to access relevant Agency computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.

11 **Site Preparation.** Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices ("User Documentation"). User Documentation will include all required environmental specifications for the professional Services and Axon Devices to operate per the Axon Device User Documentation. Before installation of Axon Devices (whether performed by Agency or Axon), Agency must prepare the location(s) where Axon Devices are to be installed ("Installation Site") per the environmental specifications in the Axon Device User Documentation. Following installation, Agency must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this

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Agreement, Axon will provide the update to Agency when Axon generally releases it

- 12 **Acceptance**. When Axon completes professional Services, Axon will present an acceptance form ("**Acceptance Form**") to Agency. Agency will sign the Acceptance Form acknowledging completion. If Agency reasonably believes Axon did not complete the professional Services in substantial conformance with this Agreement, Agency must notify Axon in writing of the specific reasons for rejection within 7 calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within 7 calendar days of delivery of the Acceptance Form, Axon will deem Agency to have accepted the professional Services.
- 13 **Agency Network**. For work performed by Axon transiting or making use of Agency's network, Agency is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Agency's network from any cause.



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Technology Assurance Plan Appendix

If Technology Assurance Plan ("TAP") or a bundle including TAP is on the Quote, this appendix applies.

- 1 **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the 1-year Hardware Limited Warranty.
- 2 **Officer Safety Plan.** If Agency purchases an Officer Safety Plan ("OSP"), Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.
- 3 **OSP 7 Term.** OSP 7 begins after Axon ships the Axon Body 3 or TASER 7 hardware to Agency. If Axon ships in the first half of the month, OSP 7 starts the 1st of the following month. If Axon ships in the second half of the month, OSP 7 starts the 15th of the following month ("**OSP 7 Term**").
- 4 **TAP BWC Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera ("**BWC Upgrade**") as scheduled in the Quote. If Agency purchased TAP Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.
- 5 **TAP Dock Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote ("**Dock Upgrade**"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon's option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon's option.
- 6 **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least 90 days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote 60 days before the end of the Subscription Term without prior confirmation from Agency.
- 7 **Upgrade Change.** If Agency wants to change Axon Device models for the offered BWC or Dock Upgrade, Agency must pay the price difference between the MSRP for the offered BWC or Dock Upgrade and the MSRP for the model desired. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
- 8 **Return of Original Axon Device.** Within 30 days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
- 9 **Termination.** If Agency's payment for TAP, OSP, or Axon Evidence is more than 30 days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
 - 9.1 TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
 - 9.2 Axon will not and has no obligation to provide the Upgrade Models.
 - 9.3 Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.

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TASER 7 Appendix

This TASER 7 Appendix applies to Agency's TASER 7, OSP 7, or OSP 7 Plus purchase from Axon.

- 1 **Duty Cartridge Replenishment Plan.** If the Quote includes "Duty Cartridge Replenishment Plan", Agency must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Agency may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
- 2 **Training.** If the Quote includes a training voucher, Agency must use the voucher within 1 year of issuance, or the voucher will be void. Axon will issue Agency a voucher annually beginning on the start of the TASER Subscription Term. The voucher has no cash value. Agency cannot exchange it for another device or service. Unless stated in the Quote, the voucher does not include travel expenses and will be Agency's responsibility. If the Quote includes Axon Online Training or Virtual Reality Content Empathy Development for Autism/Schizophrenia (collectively, "Training Content"), Agency may access Training Content. Axon will deliver all Training Content electronically.
- 3 **Extended Warranty.** If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a 5-year term, which includes the hardware manufacturer's warranty plus the 4-year extended term.
- 4 **Trade-in.** If the Quote contains a discount on CEW-related line items, including items related to OSP, then that discount may only be applied as a trade-in credit, and Agency must return used hardware and accessories associated with the discount ("Trade-In Units") to Axon. Agency must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Agency the value of the trade-in credit. Agency may not destroy Trade-In Units and receive a trade-in credit.

Agency Size	Days to Return from Start Date of TASER 7 Subscription
Less than 100 officers	30 days
100 to 499 officers	90 days
500+ officers	180 days

- 5 **TASER 7 Subscription Term.** The TASER 7 Subscription Term for a standalone TASER 7 purchase begins on shipment of the TASER 7 hardware. The TASER 7 Subscription Term for OSP 7 begins on the OSP 7 Start date.
- 6 **Access Rights.** Upon Axon granting Agency a TASER 7 Axon Evidence subscription, Agency may access and use Axon Evidence for the storage and management of data from TASER 7 CEW devices during the TASER 7 Subscription Term. Agency may not upload any non-TASER 7 data or any other files to Axon Evidence. Agency may not exceed the number of end users than the Quote specifies.
- 7 **Privacy.** Axon will not disclose Agency Content or any information about Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content, so Agency may file an objection with the court or administrative body.
- 8 **Termination.** If payment for TASER 7 is more than 30 days past due, Axon may terminate Agency's TASER 7 plan by notifying Agency. Upon termination for any reason, then as of the

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date of termination:

- 8.1 TASER 7 extended warranties and access to Training Content will terminate. No refunds will be given.
- 8.2 Axon will invoice Agency the remaining MSRP for TASER 7 products received before termination. If terminating for non-appropriations, Axon will not invoice Agency if Agency returns the CEW, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within 30 days of the date of termination.
- 8.3 Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER 7 plan.



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Axon Auto-Tagging Appendix

- 1 **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Agency's Computer-Aided Dispatch ("CAD") or Records Management Systems ("RMS"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Agency's CAD or RMS.
- 2 **Support.** For thirty days after completing Auto-Tagging Services, Axon will provide up to 5 hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, so long as long as Agency maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Agency changes its CAD or RMS.
- 3 **Changes.** Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.
- 4 **Agency Responsibilities.** Axon's performance of Auto-Tagging Services requires Agency to:
 - 4.1 Make available relevant systems, including Agency's current CAD or RMS, for assessment by Axon (including remote access if possible);
 - 4.2 Make required modifications, upgrades or alterations to Agency's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
 - 4.3 Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Agency safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
 - 4.4 Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
 - 4.5 Promptly install and implement any software updates provided by Axon;
 - 4.6 Ensure that all appropriate data backups are performed;
 - 4.7 Provide assistance, participation, and approvals in testing Auto-Tagging Services;
 - 4.8 Provide Axon with remote access to Agency's Axon Evidence account when required;
 - 4.9 Notify Axon of any network or machine maintenance that may impact the performance of the module at Agency; and
 - 4.10 Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.
- 5 **Access to Systems.** Agency authorizes Axon to access Agency's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.



Master Services and Purchasing Agreement

Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus.

- 1 **Axon Respond Subscription Term.** If Agency purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Agency.

If Agency purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Agency, or (2) first day of the month following the Effective Date.

The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.

- 2 **Scope of Axon Respond.** The scope of Axon Respond is to assist Agency with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Agency uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Respond to better meet Agency's needs.

- 3 **Axon Body 3 LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Agency utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Agency's consent.

- 4 **Axon Fleet 3 LTE Requirements.** Axon Respond is only available and usable with a Fleet 3 system configured with LTE modem and service. Agency is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Agency's LTE carrier.

- 5 **Axon Respond Service Limitations.** Agency acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.

With regard to Axon Body 3, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Agency expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Agency is not a third-party beneficiary of any agreement between Axon and the underlying carrier.

- 6 **Termination.** Upon termination of this Agreement, or if Agency stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Aware services, including any Axon-provided LTE service.

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Add-on Services Appendix

This Appendix applies to Axon Citizen for Communities, Axon Redaction Assistant, and Axon Performance.

- 1 **Subscription Term.** If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as part of OSP 7, the subscription begins on the later of the (1) start date of the OSP 7 Term, or (2) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency.

If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency, or (2) first day of the month following the Effective Date.

The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.

- 2 **Axon Citizen Storage.** For Axon Citizen, Agency may store an unlimited amount of data submitted through the public portal ("**Portal Content**"), within Agency's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.

- 3 **Performance Auto-Tagging Data.** In order to provide some features of Axon Performance to Agency, Axon will need to store call for service data from Agency's CAD or RMS.



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Axon Auto-Transcribe Appendix

This Appendix applies to Axon Auto-Transcribe.

- 1) **Subscription Term.** If Agency purchases Axon Auto-Transcribe as part of a bundle or Axon Cloud Services subscription, the subscription begins on the later of the (1) start date of the bundle or Axon Cloud Services license term, or (2) date Axon provisions Axon Auto-Transcribe to Agency. If Agency purchases Axon Auto-Transcribe minutes as a standalone, the subscription begins on the date Axon provisions Axon Auto-Transcribe to Agency.

Axon Auto-Transcribe minutes expire one year after being provisioned to Agency by Axon.

If Agency cancels Auto-Transcribe services, any amounts owed by the Parties will be based on the amount of time passed under the annual subscription, rather than on the number of minutes used, regardless of usage.

- 2) **Auto-Transcribe A-La-Carte Minutes.** Upon Axon granting Agency a set number of minutes, Agency may utilize Axon Auto-Transcribe, subject to the number of minutes allowed on the Quote. Agency will not have the ability to roll over unused minutes to future Auto-Transcribe terms. Axon may charge Agency additional fees for exceeding the number of purchased minutes.
- 3) **Axon Auto-Transcribe On-Demand.** Upon Axon granting Agency an On-Demand subscription to Axon Auto-Transcribe, Agency may utilize Axon Auto-Transcribe with no limit on the number of minutes. The scope of Axon Auto-Transcribe On-Demand is to assist Agency with reviewing and transcribing individual evidence items. In the event Agency uses Axon Auto-Transcribe On-Demand outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Auto-Transcribe On-Demand to better meet Agency's needs.
- 4) **Warranty.** Axon does not warrant the accuracy of Axon Auto-Transcribe.



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Service Level Agreement Appendix

This Service Level Agreement (SLA) is a policy governing the use of the Evidence.com™ Service Offerings (Service Offerings) under the MSPA.

1 Definitions.

"Downtime" are periods of time, measured in minutes, in which the Service Offering is Unavailable to the Agency. Downtime does not include Scheduled Downtime and does not include Unavailability of the Service Offering due to limitations described in Exclusions.

"Incident" a period of time in which the Agency experiences Downtime.

"Maximum Available Minutes" is the total accumulated minutes during a Service Month for the Service Offering.

"Monthly Uptime Percentage" is (Maximum Available Minutes - Downtime) / Maximum Available Minutes * 100.

"Scheduled Downtime" are periods of time, measured in minutes, in which the Service Offering is unavailable to the Agency and in which the period of time falls within scheduled routine maintenance or planned maintenance timeframes.

"Service Month" is a calendar month at Coordinated Universal Time (UTC).

"Unavailable" and "Unavailability" is when the Service Offering does not allow for the upload of evidence files, viewing of evidence files or interactive login by an end-user.

2 Service Level Objective. Axon will use commercially reasonable efforts to make the Service Offerings available 99.99% of the time.

3 Guaranteed Service Level and Credits. If Axon fails to make the Service Offering available to the defined Monthly Uptime Percentage availability levels, the Agency may be entitled to Service Credits. Service Credits are awarded as days of Service Offering usage added to the end of the Service Offerings subscription term at no charge to the Agency.

Monthly Uptime Percentage	Service Credit in Days
Less than 99.9%	3
Less than 99.0%	7

4 Requesting Service Credits. In order for Axon to consider a claim for Service Credits, the Agency must submit the claim to Axon's customer support, including all information necessary for Axon to validate the claim, including but not limited to: (i) a detailed description of the Incident; (ii) information regarding the time and duration of the Incident; (iii) the number and location(s) of affected users (if applicable); and (iv) descriptions of your attempts to resolve the Incident at the time of occurrence.

4.1 Axon must receive the claim within one month of the end of the month in which the Incident that is the subject of the claim occurred. For example, if the Incident occurred on February 12th, Axon must receive the claim and all required information by March 31st.

4.2 Axon will evaluate all information reasonably available to Axon and make a good faith determination of whether a Service Credit is owed. Axon will use commercially reasonable efforts to process claims during the subsequent month and within forty five (45) days of receipt. The Agency must be in compliance with all Axon agreements in order to be eligible for a Service Credit. If Axon determines that a Service Credit is owed to the Agency, Axon will apply the Service Credit



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to the end of the Agency's Service Offering subscription term. Service Credits may not be exchanged for or converted to monetary amounts.

- 5 **Service Maintenance.** Maintenance will take place according to Axon's prevailing Maintenance Schedule, which may be found at: <https://www.axon.com/trust/maintenance>. Maintenance periods may periodically result in the Service Offerings being Unavailable to the Agency. Downtime falling within Scheduled Routine or Planned maintenance is Scheduled Downtime and is not eligible for Service Credits

Emergency maintenance may have less than a 24-hour notification period. Emergency maintenance may be performed at any time, with or without notice as deemed necessary by Axon. Emergency maintenance falling outside Scheduled Routine or Planned maintenance is eligible for Service Credits

- 6 **Exclusions.** The Service Commitment does not apply to any unavailability, suspension or termination of the Service Offerings, or any other Evidence.com performance issues: (a) caused by factors outside of Axon's reasonable control, including any force majeure event, terrorism, sabotage, virus attacks, or Internet access or related problems beyond the demarcation point of the Service Offerings (including Domain Name Server issues outside Axon's direct control); (b) that result from any actions or inactions of the Agency or any third party; (c) that result from the Agency's communication delays, including wrong, bad or missing data, improperly formatted, organized or transmitted data received, or any other data issues related to the communication or data received from or through the Agency; (d) that result from Agency equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within Axon's direct control); (e) that result from any maintenance as provided for pursuant to this SLA; or (f) arising from Axon's suspension and termination of Agency's right to use the Service Offerings in accordance with this Agreement.



Master Services and Purchasing Agreement

Insurance Requirements Appendix

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$2,000,000 Each occurrence
 - \$2,000,000 General aggregate
 - \$2,000,000 Products/Completed Operations aggregate
 - \$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor



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under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. 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.
5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

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



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

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

F. EVIDENCE OF COVERAGE

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

G. EVIDENCE OF COMPLIANCE

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

Or by mail to:

EBIX Inc.
City of Santa Clara – Police Department
P.O. Box 100085 – S2
Duluth, GA 30096
Telephone number: 951-766-2280
Fax number: 770-325-0409

H. QUALIFYING INSURERS

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



Master Services and Purchasing Agreement between Axon and the Santa Clara Stadium Authority

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc., a Delaware corporation ("**Axon**"), and the Santa Clara Stadium Authority ("**Agency**"). This Agreement is effective as of the last signature date on this Agreement ("**Effective Date**"). Axon and Agency are each a "**Party**" and collectively "**Parties**". This Agreement governs Agency's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement act as a master agreement governing all subsequent purchases by Agency for the same Axon products and services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties therefore agree as follows:

1 **Definitions.**

"**Axon Cloud Services**" means Axon's web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Evidence.com and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

"**Axon Device**" means all hardware provided by Axon under this Agreement.

"**Quote**" means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

"**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2 **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 plans begin after shipment of the applicable Axon Device. If Axon ships the Axon Device in the first half of the month, the start date is the 1st of the following month. If Axon ships the Axon Device in the second half of the month, the start date is the 15th of the following month. For purchases solely of Axon Evidence subscriptions, the start date is the Effective Date. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").

3 **Payment.** Axon invoices upon shipment and in accordance with the payment schedule set forth in the Quote. Payment is due net 30 days from the invoice date. Except as otherwise provided in Section 17, payment obligations are non-cancelable. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for collection and attorneys' fees.

4 **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5 **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are FOB destination point via common carrier. Title and risk of loss pass to Agency upon delivery to the Agency. Agency is responsible for any shipping charges in the Quote.

6 **Returns.** Except as otherwise provided in Section 17, all sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7 **Warranty.**

7.1 Hardware Limited Warranty. Axon warrants that Axon Devices are free from defects in workmanship and materials for 1 year from the date of Agency's receipt, except Signal Sidearm, which Axon warrants for 30 months from the date of Agency's receipt. Axon warrants its Axon-manufactured accessories for 90-days from the date of Agency's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from

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the expiration of the 1-year hardware warranty through the extended warranty term. Non-Axon manufactured Devices are not covered by Axon's warranty. Agency should contact the manufacturer for support of non-Axon manufactured Devices.

- 7.2 Claims.** If Axon receives a valid warranty claim for an Axon Device during the warranty term, Axon's sole responsibility is to repair or replace the Axon Device with the same or like Axon Device, at Axon's option. A replacement Axon Device will be new or like new. Axon will warrant the replacement Axon Device for the longer of (a) the remaining warranty of the original Axon Device or (b) 90-days from the date of repair or replacement.

If Agency exchanges a device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering an Axon Device for service, Agency must upload Axon Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon Device sent to Axon for service.

- 7.3 Spare Axon Devices.** For qualified purchases, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose.

- 7.4 Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number.

7.4.1 To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.

7.4.2 Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to this Agreement will not exceed \$1,000,000. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.

7.4.3 Liability for damages to persons or real or tangible property, bodily injury or death arising in connection with this Agreement and caused by Axon's gross negligence or intentional misconduct shall be unlimited.

- 8 Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

- 9 Axon Device Warnings.** See www.axon.com/legal for the most current Axon Device warnings.

- 10 Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency provided that they do not materially derogate the overall quality of the Axon Device or Service.



Master Services and Purchasing Agreement between Axon and the Santa Clara Stadium Authority

- 11 **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.
- 12 **Insurance.** During the term of this Agreement, Axon shall provide and maintain in full force and effect, at no cost to Agency, insurance policies as set forth in the Insurance Requirements Appendix.
- 13 **Indemnification.** Axon will indemnify Agency's officers, directors, and employees ("Agency Indemnitees") against all claims, demands, losses, and reasonable expenses arising out of a third-party claim against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct by Axon under this Agreement, except to the extent of Agency's negligence or willful misconduct, or claims under workers compensation.
- 14 **IP Rights.** Axon owns and reserves all right, title, and interest in Axon devices and services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
- 15 **IP Indemnification.** Axon will indemnify Agency Indemnitees against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
- 16 **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; and (c) a dispute between Agency and a third-party over Agency's use of Axon Devices, except for disputes covered under Section 15 IP Indemnification.
- 17 **Termination.**
 - 17.1 **For Breach.** A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
 - 17.2 **By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.
 - 17.3 **Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("MSRP") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
- 18 **Confidentiality.** "Confidential Information" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will

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disclose the other Party's Confidential Information during the Term and for 5-years thereafter. Axon may publicly announce information related to this Agreement.

19 General.

- 19.1 Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.
- 19.2 Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 19.3 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 19.4 Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 19.5 Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 19.6 Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 19.7 Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 19.8 Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 19.9 Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.
- 19.10 Governing Law.** The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 19.11 Notices.** All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Contact information for notices:

Axon: Axon Enterprise, Inc.
Attn: Legal
17800 N. 85th Street
Scottsdale, Arizona 85255
legal@axon.com

Agency: The Santa Clara Stadium Authority
Attn: Derek Rush
1500 Warburton Avenue
Santa Clara, CA 95050
drush@santaclaraca.gov

- 19.12 Entire Agreement.** This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each representative identified below declares they have been expressly authorized to execute this Agreement as

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of the date of signature.

Axon Enterprise, Inc.

Signature: _____

Name: Robert E. Driscoll, Jr.

Title: VP, Assoc. General Counsel

Date: 2/14/2022

Agency

Signature: _____

Name: _____

Title: _____

Date: _____



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Axon Cloud Services Terms of Use Appendix

1 Definitions.

"Agency Content" is data uploaded into, ingested by, or created in Axon Cloud Services within Agency's tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.

"Evidence" is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.

"Non-Content Data" is data, configuration, and usage information about Agency's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.

"Personal Data" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

- 2 Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Agency may not upload non-TASER Data to Axon Evidence Lite.

- 3 Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content is not Axon's business records. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will only have access to Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.

- 4 Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

- 5 Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user's use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to Axon Cloud Services.

Agency will also maintain the security of end user names and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately

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if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.

To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at <https://www.youtube.com/static?template=terms>.

- 6 **Privacy.** Agency's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Agency agrees to allow Axon access to Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.
- 7 **Axon Body 3 Wi-Fi Positioning.** Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("Skyhook") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
- 8 **Storage.** For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.
- 9 **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.
- 10 **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent.

Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.
- 11 **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.
- 12 **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 bundle. During Agency's Axon Records Subscription Term, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

The Axon Records Subscription Term will end upon the competition of the Axon Records

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Subscription as documented in the Quote, or if purchased as part of an OSP 7 bundle, upon competition of the OSP 7 Term ("**Axon Records Subscription**")

An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.

New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.

- 13 **Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
 - 13.1 copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
 - 13.2 reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
 - 13.3 access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
 - 13.4 use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
 - 13.5 access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
 - 13.6 remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
 - 13.7 use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.
- 14 **After Termination.** Axon will not delete Agency Content for 90-days following termination. There will be no functionality of Axon Cloud Services during these 90-days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these 90-days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.
- 15 **Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
- 16 **U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.



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- 17 **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.



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Axon Customer Experience Improvement Program Appendix

- 1 **Axon Customer Experience Improvement Program (ACEIP).** The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Agency Content from all of its customers, to provide, develop, improve, and support current and future Axon products (collectively, "**ACEIP Purposes**"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Agency will be a participant in ACEIP Tier 1. If Agency does not want to participate in ACEIP Tier 1, Agency can revoke its consent at any time. If Agency wants to participate in Tier 2, as detailed below, Agency can check the ACEIP Tier 2 box below. If Agency does not want to participate in ACEIP Tier 2, Agency should leave box unchecked. At any time, Agency may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.

1.1 **ACEIP Tier 1.**

- 1.1.1. When Axon uses Agency Content for the ACEIP Purposes, Axon will extract from Agency Content and may store separately copies of certain segments or elements of the Agency Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Agency Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1¹. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Agency from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Agency request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Agency may revoke the consent granted herein to Axon to access and use Agency Content for ACEIP Purposes. Within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency. In addition, if Axon uses Agency Content for the ACEIP Purposes, upon request, Axon will make available to Agency a list of the specific type of Agency Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices

¹ For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.

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applicable to the Agency Content or ACEIP Content ("Use Case"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Agency notice (by updating the list of Use Case at <https://www.axon.com/aceip> and providing Agency with a mechanism to obtain notice of that update or another commercially reasonable method to Agency designated contact) ("New Use Case").

1.1.2. Expiration of ACEIP Tier 1. Agency consent granted herein, will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency.

1.2 ACEIP Tier 2. In addition to ACEIP Tier 1, if Agency wants to help further improve Axon's services, Agency may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2, grants Axon certain additional rights to use Agency Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed or de-identified data.

☐ Check this box if Agency wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. By checking this box, Agency hereby agrees to the Axon Customer Experience Improvement Program Tier 2 Terms of Service, available at <https://www.axon.com/sales-terms-and-conditions> and incorporated herein by reference.



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Technology Assurance Plan Appendix

If Technology Assurance Plan ("TAP") or a bundle including TAP is on the Quote, this appendix applies.

- 1 **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the 1-year Hardware Limited Warranty.
- 2 **Officer Safety Plan.** If Agency purchases an Officer Safety Plan ("OSP"), Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.
- 3 **OSP 7 Term.** OSP 7 begins after Axon ships the Axon Body 3 or TASER 7 hardware to Agency. If Axon ships in the first half of the month, OSP 7 starts the 1st of the following month. If Axon ships in the second half of the month, OSP 7 starts the 15th of the following month ("**OSP 7 Term**").
- 4 **TAP BWC Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera ("**BWC Upgrade**") as scheduled in the Quote. If Agency purchased TAP Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.
- 5 **TAP Dock Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote ("**Dock Upgrade**"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon's option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon's option.
- 6 **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least 90 days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote 60 days before the end of the Subscription Term without prior confirmation from Agency.
- 7 **Upgrade Change.** If Agency wants to change Axon Device models for the offered BWC or Dock Upgrade, Agency must pay the price difference between the MSRP for the offered BWC or Dock Upgrade and the MSRP for the model desired. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
- 8 **Return of Original Axon Device.** Within 30 days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
- 9 **Termination.** If Agency's payment for TAP, OSP, or Axon Evidence is more than 30 days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
 - 9.1 TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
 - 9.2 Axon will not and has no obligation to provide the Upgrade Models.
 - 9.3 Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.

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Axon Auto-Tagging Appendix

- 1 **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Agency's Computer-Aided Dispatch ("CAD") or Records Management Systems ("RMS"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Agency's CAD or RMS.
- 2 **Support.** For thirty days after completing Auto-Tagging Services, Axon will provide up to 5 hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, so long as long as Agency maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Agency changes its CAD or RMS.
- 3 **Changes.** Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.
- 4 **Agency Responsibilities.** Axon's performance of Auto-Tagging Services requires Agency to:
 - 4.1 Make available relevant systems, including Agency's current CAD or RMS, for assessment by Axon (including remote access if possible);
 - 4.2 Make required modifications, upgrades or alterations to Agency's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
 - 4.3 Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Agency safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
 - 4.4 Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
 - 4.5 Promptly install and implement any software updates provided by Axon;
 - 4.6 Ensure that all appropriate data backups are performed;
 - 4.7 Provide assistance, participation, and approvals in testing Auto-Tagging Services;
 - 4.8 Provide Axon with remote access to Agency's Axon Evidence account when required;
 - 4.9 Notify Axon of any network or machine maintenance that may impact the performance of the module at Agency; and
 - 4.10 Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.
- 5 **Access to Systems.** Agency authorizes Axon to access Agency's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.



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Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus.

- 1 **Axon Respond Subscription Term.** If Agency purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Agency.

If Agency purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Agency, or (2) first day of the month following the Effective Date.

The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.

- 2 **Scope of Axon Respond.** The scope of Axon Respond is to assist Agency with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Agency uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Respond to better meet Agency's needs.

- 3 **Axon Body 3 LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Agency utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Agency's consent.

- 4 **Axon Fleet 3 LTE Requirements.** Axon Respond is only available and usable with a Fleet 3 system configured with LTE modem and service. Agency is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Agency's LTE carrier.

- 5 **Axon Respond Service Limitations.** Agency acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.

With regard to Axon Body 3, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Agency expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Agency is not a third-party beneficiary of any agreement between Axon and the underlying carrier.

- 6 **Termination.** Upon termination of this Agreement, or if Agency stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Aware services, including any Axon-provided LTE service.



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Add-on Services Appendix

This Appendix applies to Axon Citizen for Communities, Axon Redaction Assistant, and Axon Performance.

- 1 **Subscription Term.** If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as part of OSP 7, the subscription begins on the later of the (1) start date of the OSP 7 Term, or (2) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency.

If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency, or (2) first day of the month following the Effective Date.

The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.

- 2 **Axon Citizen Storage.** For Axon Citizen, Agency may store an unlimited amount of data submitted through the public portal ("**Portal Content**"), within Agency's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.
- 3 **Performance Auto-Tagging Data.** In order to provide some features of Axon Performance to Agency, Axon will need to store call for service data from Agency's CAD or RMS.



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Service Level Agreement Appendix

This Service Level Agreement (**SLA**) is a policy governing the use of the Evidence.com™ Service Offerings (**Service Offerings**) under the MSPA.

1 Definitions

"Downtime" are periods of time, measured in minutes, in which the Service Offering is Unavailable to the Agency. Downtime does not include Scheduled Downtime and does not include Unavailability of the Service Offering due to limitations described in Exclusions.

"Incident" a period of time in which the Agency experiences Downtime.

"Maximum Available Minutes" is the total accumulated minutes during a Service Month for the Service Offering.

"Monthly Uptime Percentage" is (Maximum Available Minutes - Downtime) / Maximum Available Minutes * 100.

"Scheduled Downtime" are periods of time, measured in minutes, in which the Service Offering is unavailable to the Agency and in which the period of time falls within scheduled routine maintenance or planned maintenance timeframes.

"Service Month" is a calendar month at Coordinated Universal Time (UTC).

"Unavailable" and **"Unavailability"** is when the Service Offering does not allow for the upload of evidence files, viewing of evidence files or interactive login by an end-user.

2 Service Level Objective. Axon will use commercially reasonable efforts to make the Service Offerings available 99.99% of the time.

3 Guaranteed Service Level and Credits. If Axon fails to make the Service Offering available to the defined Monthly Uptime Percentage availability levels, the Agency may be entitled to Service Credits. Service Credits are awarded as days of Service Offering usage added to the end of the Service Offerings subscription term at no charge to the Agency.

Monthly Uptime Percentage	Service Credit in Days
Less than 99.9%	3
Less than 99.0%	7

4 Requesting Service Credits. In order for Axon to consider a claim for Service Credits, the Agency must submit the claim to Axon's customer support, including all information necessary for Axon to validate the claim, including but not limited to: (i) a detailed description of the Incident; (ii) information regarding the time and duration of the Incident; (iii) the number and location(s) of affected users (if applicable); and (iv) descriptions of your attempts to resolve the Incident at the time of occurrence.

4.1 Axon must receive the claim within one month of the end of the month in which the Incident that is the subject of the claim occurred. For example, if the Incident occurred on February 12th, Axon must receive the claim and all required information by March 31st.

4.2 Axon will evaluate all information reasonably available to Axon and make a good faith determination of whether a Service Credit is owed. Axon will use commercially reasonable efforts to process claims during the subsequent month and within forty five (45) days of receipt. The Agency must be in compliance with all Axon agreements in order to be eligible for a Service Credit. If Axon determines that a Service Credit is owed to the Agency, Axon will apply the Service Credit to the end of the Agency's Service Offering subscription term. Service Credits may not be exchanged for or converted to monetary amounts.

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- 5 **Service Maintenance**. Maintenance will take place according to Axon's prevailing Maintenance Schedule, which may be found at: <https://www.axon.com/trust/maintenance>. Maintenance periods may periodically result in the Service Offerings being Unavailable to the Agency. Downtime falling within Scheduled Routine or Planned maintenance is Scheduled Downtime and is not eligible for Service Credits

Emergency maintenance may have less than a 24-hour notification period. Emergency maintenance may be performed at any time, with or without notice as deemed necessary by Axon. Emergency maintenance falling outside Scheduled Routine or Planned maintenance is eligible for Service Credits

- 6 **Exclusions**. The Service Commitment does not apply to any unavailability, suspension or termination of the Service Offerings, or any other Evidence.com performance issues: (a) caused by factors outside of Axon's reasonable control, including any force majeure event, terrorism, sabotage, virus attacks, or Internet access or related problems beyond the demarcation point of the Service Offerings (including Domain Name Server issues outside Axon's direct control); (b) that result from any actions or inactions of the Agency or any third party; (c) that result from the Agency's communication delays, including wrong, bad or missing data, improperly formatted, organized or transmitted data received, or any other data issues related to the communication or data received from or through the Agency; (d) that result from Agency equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within Axon's direct control); (e) that result from any maintenance as provided for pursuant to this SLA; or (f) arising from Axon's suspension and termination of Agency's right to use the Service Offerings in accordance with this Agreement.



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Insurance Requirements Appendix

Without limiting the Contractor's indemnification of the Santa Clara Stadium Authority, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

\$2,000,000 Each occurrence
\$2,000,000 General aggregate
\$2,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury

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

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).



Master Services and Purchasing Agreement

3. This policy must include a Waiver of Subrogation in favor of the Santa Clara Stadium Authority, its respective governing boards, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. Santa Clara Stadium Authority, its respective governing boards, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for the Santa Clara 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 Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. 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 Santa Clara 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 Santa Clara 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.
5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and the Santa Clara Stadium Authority agree as follows:

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



Master Services and Purchasing Agreement

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

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

F. EVIDENCE OF COVERAGE

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

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to the Santa Clara Stadium Authority, or its representative as set forth below, at or prior to execution of this Agreement. Upon the Santa Clara Stadium Authority's request, Contractor shall submit to the Santa Clara 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 Santa Clara Stadium Authority pursuant to this Agreement shall be e-mailed to ctsantaclara@ebix.com:

Or by mail to:

EBIX Inc.
Santa Clara Stadium Authority
P.O. Box 100085 – S2
Duluth, GA 30096
Telephone number: 951-766-2280
Fax number: 770-325-0409



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H. QUALIFYING INSURERS

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



Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Q-336706-44575.835CM

Issued: 01/14/2022

Quote Expiration: 03/31/2022

Estimated Contract Start Date: 04/01/2022

Account Number: 107259

Payment Terms: N30

Delivery Method: Fedex - Ground

SHIP TO	BILL TO
Business;Delivery;Invoice-601 El Camino Real 601 El Camino Real Santa Clara, CA 95050-4307 USA	Santa Clara Police Dept. - CA 601 El Camino Real Santa Clara, CA 95050-4307 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Chris Morton Phone: +1 2063106165 Email: cmorton@axon.com Fax:	Tyson Shearer Phone: 1-408-615-4700 Email: Fax:

Quote Summary

Program Length	60 Months
TOTAL COST	\$2,183,418.99
ESTIMATED TOTAL W/ TAX	\$2,276,713.54

Discount Summary

Average Savings Per Year	\$274,386.64
TOTAL SAVINGS	\$1,371,933.22

Payment Summary

Date	Subtotal	Tax	Total
Mar 2022	\$337,305.03	\$14,412.67	\$351,717.70
Mar 2023	\$461,528.49	\$19,720.47	\$481,248.96
Mar 2024	\$461,528.49	\$19,720.47	\$481,248.96
Mar 2025	\$461,528.49	\$19,720.47	\$481,248.96
Mar 2026	\$461,528.49	\$19,720.47	\$481,248.96
Total	\$2,183,418.99	\$93,294.55	\$2,276,713.54

Quote Unbundled Price:	\$3,554,771.80
Quote List Price:	\$2,747,470.00
Quote Subtotal:	\$2,183,418.99

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
Program									
OSP7+	2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	181	60	\$282.28	\$209.00	\$173.64	\$1,885,698.99	\$91,939.56	\$1,977,638.55
BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	5	60	\$20.67	\$9.00	\$9.00	\$2,700.00	\$246.36	\$2,946.36
BWCUwTAP	BWC Unlimited with TAP	5	60	\$115.60	\$89.00	\$89.00	\$26,700.00	\$1,108.63	\$27,808.63
A la Carte Hardware									
AB3C	AB3 Camera Bundle	187			\$699.00	\$0.00	\$0.00	\$0.00	\$0.00
AB3MBD	AB3 Multi Bay Dock Bundle	23			\$1,495.00	\$0.00	\$0.00	\$0.00	\$0.00
AB3C	AB3 Camera Bundle	5			\$699.00	\$0.00	\$0.00	\$0.00	\$0.00
AB3MBD	AB3 Multi Bay Dock Bundle	1			\$1,495.00	\$0.00	\$0.00	\$0.00	\$0.00
AB31BD	AB3 1-Bay Dock Bundle	5			\$200.00	\$0.00	\$0.00	\$0.00	\$0.00
A la Carte Software									
85760	Auto-Transcribe Unlimited Service	187	60		\$20.00	\$20.00	\$224,400.00	\$0.00	\$224,400.00
BasicLicense	Basic License Bundle	15	60		\$15.40	\$15.00	\$13,500.00	\$0.00	\$13,500.00
ProLicense	Pro License Bundle	13	60		\$39.40	\$39.00	\$30,420.00	\$0.00	\$30,420.00
A la Carte Services									
85144	AXON STARTER	1			\$2,750.00	\$0.00	\$0.00	\$0.00	\$0.00
85147	CEW STARTER	1			\$2,750.00	\$0.00	\$0.00	\$0.00	\$0.00
85144	AXON STARTER	1			\$2,750.00	\$0.00	\$0.00	\$0.00	\$0.00
Total							\$2,183,418.99	\$93,294.55	\$2,276,713.54

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Estimated Delivery Date
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20050	HOOK-AND-LOOP TRAINING (HALT) SUIT	4	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20160	TASER 7 HOLSTER - SAFARILAND, RH+ CART CARRIER	181	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	543	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	362	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	543	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	362	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22177	TASER 7 HOOK-AND-LOOP TRN (HALT) CARTRIDGE, STANDOFF NS	362	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22178	TASER 7 HOOK-AND-LOOP TRN (HALT) CARTRIDGE, CLOSE QUART NS	362	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22179	TASER 7 INERT CARTRIDGE, STANDOFF (3.5-DEGREE) NS	50	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22181	TASER 7 INERT CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	50	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	2	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	71019	NORTH AMER POWER CORD FOR AB3 8-BAY, AB2 1-BAY / 6-BAY DOCK	2	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	71044	BATTERY, SIGNAL SIDEARM, CR2430 SINGLE PACK	362	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	75015	SIGNAL SIDEARM KIT	181	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	80087	TASER 7 TARGET, CONDUCTIVE, PROFESSIONAL (RUGGEDIZED)	3	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	80090	TARGET FRAME, PROFESSIONAL, 27.5 IN. X 75 IN., TASER 7	3	03/01/2022
AB3 1-Bay Dock Bundle	71104	NORTH AMER POWER CORD FOR AB3 1-BAY DOCK	5	03/01/2022
AB3 1-Bay Dock Bundle	74211	AXON BODY 3 - 1 BAY DOCK	5	03/01/2022
AB3 Camera Bundle	11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2	206	03/01/2022
AB3 Camera Bundle	11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2	6	03/01/2022
AB3 Camera Bundle	73202	AXON BODY 3 - NA10 - US - BLK - RAPIDLOCK	187	03/01/2022
AB3 Camera Bundle	73202	AXON BODY 3 - NA10 - US - BLK - RAPIDLOCK	5	03/01/2022
AB3 Camera Bundle	74028	WING CLIP MOUNT, AXON RAPIDLOCK	206	03/01/2022
AB3 Camera Bundle	74028	WING CLIP MOUNT, AXON RAPIDLOCK	6	03/01/2022
AB3 Multi Bay Dock Bundle	71019	NORTH AMER POWER CORD FOR AB3 8-BAY, AB2 1-BAY / 6-BAY DOCK	23	03/01/2022
AB3 Multi Bay Dock Bundle	71019	NORTH AMER POWER CORD FOR AB3 8-BAY, AB2 1-BAY / 6-BAY DOCK	1	03/01/2022
AB3 Multi Bay Dock Bundle	74210	AXON BODY 3 - 8 BAY DOCK	23	03/01/2022
AB3 Multi Bay Dock Bundle	74210	AXON BODY 3 - 8 BAY DOCK	1	03/01/2022
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	362	03/01/2023
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	362	03/01/2023
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73309	AXON CAMERA REFRESH ONE	187	03/01/2023
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73689	MULTI-BAY BWC DOCK 1ST REFRESH	23	03/01/2023
Body Worn Camera Single-Bay Dock TAP Bundle	73313	1-BAY DOCK AXON CAMERA REFRESH ONE	5	03/01/2023
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	362	03/01/2024
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	362	03/01/2024
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22177	TASER 7 HOOK-AND-LOOP TRN (HALT) CARTRIDGE, STANDOFF NS	362	03/01/2024
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22178	TASER 7 HOOK-AND-LOOP TRN (HALT) CARTRIDGE, CLOSE QUART NS	362	03/01/2024
BWC Unlimited with TAP	73309	AXON CAMERA REFRESH ONE	5	10/01/2024
BWC Unlimited with TAP	73689	MULTI-BAY BWC DOCK 1ST REFRESH	1	10/01/2024
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	362	03/01/2025
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	362	03/01/2025
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	362	03/01/2026
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	362	03/01/2026

Hardware

Bundle	Item	Description	QTY	Estimated Delivery Date
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73310	AXON CAMERA REFRESH TWO	187	03/01/2026
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73688	MULTI-BAY BWC DOCK 2ND REFRESH	23	03/01/2026
Body Worn Camera Single-Bay Dock TAP Bundle	73314	1-BAY DOCK AXON CAMERA REFRESH TWO	5	03/01/2026
BWC Unlimited with TAP	73310	AXON CAMERA REFRESH TWO	5	04/01/2027
BWC Unlimited with TAP	73688	MULTI-BAY BWC DOCK 2ND REFRESH	1	04/01/2027

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20248	TASER 7 EVIDENCE.COM LICENSE	181	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20248	TASER 7 EVIDENCE.COM LICENSE	2	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73478	REDACTION ASSISTANT USER LICENSE	181	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73618	CITIZEN FOR COMMUNITIES USER LICENSE	181	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73680	RESPOND DEVICE PLUS LICENSE-	181	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73681	AXON RECORDS FULL	181	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73682	AUTO TAGGING LICENSE	181	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73683	10 GB EVIDENCE.COM A-LA-CART STORAGE-	1810	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73686	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE-	181	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73687	EVIDENCE.COM VIEWER LICENSE	1	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73739	PERFORMANCE LICENSE	181	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	73746	PROFESSIONAL EVIDENCE.COM LICENSE (Formerly SKU 73746)	181	04/01/2022	03/31/2027
Basic License Bundle	73683	10 GB EVIDENCE.COM A-LA-CART STORAGE-	15	04/01/2022	03/31/2027
Basic License Bundle	73840	EVIDENCE.COM BASIC LICENSE	15	04/01/2022	03/31/2027
BWC Unlimited with TAP	73686	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE-	5	04/01/2022	03/31/2027
BWC Unlimited with TAP	73746	PROFESSIONAL EVIDENCE.COM LICENSE (Formerly SKU 73746)	5	04/01/2022	03/31/2027
Pro License Bundle	73683	10 GB EVIDENCE.COM A-LA-CART STORAGE-	39	04/01/2022	03/31/2027
Pro License Bundle	73746	PROFESSIONAL EVIDENCE.COM LICENSE (Formerly SKU 73746)	13	04/01/2022	03/31/2027
A la Carte	85760	Auto-Transcribe Unlimited Service	187	04/01/2022	03/31/2027

Services

Bundle	Item	Description	QTY
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	11642	THIRD-PARTY VIDEO SUPPORT LICENSE	181
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	2
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	2
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	2
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	2
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	2
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	79999	AUTO TAGGING / PERFORMANCE IMPLEMENTATION SERVICE	1

Services

Bundle	Item	Description	QTY
A la Carte	85144	AXON STARTER	1
A la Carte	85144	AXON STARTER	1
A la Carte	85147	CEW STARTER	1

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	80464	EXT WARRANTY, CAMERA (TAP)	181	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	80464	EXT WARRANTY, CAMERA (TAP)	6	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	80465	EXT WARRANTY, MULTI-BAY DOCK (TAP)	23	04/01/2022	03/31/2027
Body Worn Camera Single-Bay Dock TAP Bundle	80466	EXT WARRANTY, SINGLE-BAY DOCK (TAP)	5	04/01/2022	03/31/2027
BWC Unlimited with TAP	80464	EXT WARRANTY, CAMERA (TAP)	5	04/01/2022	03/31/2027
BWC Unlimited with TAP	80465	EXT WARRANTY, MULTI-BAY DOCK (TAP)	1	04/01/2022	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	80374	EXT WARRANTY, TASER 7 BATTERY PACK	217	03/01/2023	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	80395	EXT WARRANTY, TASER 7 HANDLE	181	03/01/2023	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	80395	EXT WARRANTY, TASER 7 HANDLE	6	03/01/2023	03/31/2027
2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	80396	EXT WARRANTY, TASER 7 SIX BAY DOCK	2	03/01/2023	03/31/2027

Payment Details

Mar 2022

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
5 Year Payment Plan	85144	AXON STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85144	AXON STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85147	CEW STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85760	Auto-Transcribe Unlimited Service	187	\$34,666.41	\$0.00	\$34,666.41
5 Year Payment Plan	AB31BD	AB3 1-Bay Dock Bundle	5	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3C	AB3 Camera Bundle	187	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3C	AB3 Camera Bundle	5	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3MBD	AB3 Multi Bay Dock Bundle	23	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3MBD	AB3 Multi Bay Dock Bundle	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	BasicLicense	Basic License Bundle	15	\$2,085.55	\$0.00	\$2,085.55
5 Year Payment Plan	BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	5	\$417.12	\$38.06	\$455.18
5 Year Payment Plan	BWCUwTAP	BWC Unlimited with TAP	5	\$4,124.47	\$171.32	\$4,295.79
5 Year Payment Plan	OSP7+	2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	181	\$291,312.05	\$14,203.29	\$305,515.34
5 Year Payment Plan	ProLicense	Pro License Bundle	13	\$4,699.43	\$0.00	\$4,699.43
Total				\$337,305.03	\$14,412.67	\$351,717.70

Mar 2023

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
5 Year Payment Plan	85144	AXON STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85144	AXON STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85147	CEW STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85760	Auto-Transcribe Unlimited Service	187	\$47,433.40	\$0.00	\$47,433.40
5 Year Payment Plan	AB31BD	AB3 1-Bay Dock Bundle	5	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3C	AB3 Camera Bundle	187	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3C	AB3 Camera Bundle	5	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3MBD	AB3 Multi Bay Dock Bundle	23	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3MBD	AB3 Multi Bay Dock Bundle	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	BasicLicense	Basic License Bundle	15	\$2,853.61	\$0.00	\$2,853.61
5 Year Payment Plan	BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	5	\$570.73	\$52.08	\$622.81
5 Year Payment Plan	BWCUwTAP	BWC Unlimited with TAP	5	\$5,643.81	\$234.34	\$5,878.15
5 Year Payment Plan	OSP7+	2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	181	\$398,596.80	\$19,434.05	\$418,030.85
5 Year Payment Plan	ProLicense	Pro License Bundle	13	\$6,430.14	\$0.00	\$6,430.14
Total				\$461,528.49	\$19,720.47	\$481,248.96

Mar 2024

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
5 Year Payment Plan	85144	AXON STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85144	AXON STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85147	CEW STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85760	Auto-Transcribe Unlimited Service	187	\$47,433.40	\$0.00	\$47,433.40
5 Year Payment Plan	AB31BD	AB3 1-Bay Dock Bundle	5	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3C	AB3 Camera Bundle	187	\$0.00	\$0.00	\$0.00

Mar 2024

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
5 Year Payment Plan	AB3C	AB3 Camera Bundle	5	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3MBD	AB3 Multi Bay Dock Bundle	23	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3MBD	AB3 Multi Bay Dock Bundle	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	BasicLicense	Basic License Bundle	15	\$2,853.61	\$0.00	\$2,853.61
5 Year Payment Plan	BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	5	\$570.73	\$52.08	\$622.81
5 Year Payment Plan	BWCuWTAP	BWC Unlimited with TAP	5	\$5,643.81	\$234.34	\$5,878.15
5 Year Payment Plan	OSP7+	2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	181	\$398,596.80	\$19,434.05	\$418,030.85
5 Year Payment Plan	ProLicense	Pro License Bundle	13	\$6,430.14	\$0.00	\$6,430.14
Total				\$461,528.49	\$19,720.47	\$481,248.96

Mar 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
5 Year Payment Plan	85144	AXON STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85144	AXON STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85147	CEW STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85760	Auto-Transcribe Unlimited Service	187	\$47,433.40	\$0.00	\$47,433.40
5 Year Payment Plan	AB31BD	AB3 1-Bay Dock Bundle	5	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3C	AB3 Camera Bundle	187	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3C	AB3 Camera Bundle	5	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3MBD	AB3 Multi Bay Dock Bundle	23	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3MBD	AB3 Multi Bay Dock Bundle	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	BasicLicense	Basic License Bundle	15	\$2,853.61	\$0.00	\$2,853.61
5 Year Payment Plan	BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	5	\$570.73	\$52.08	\$622.81
5 Year Payment Plan	BWCuWTAP	BWC Unlimited with TAP	5	\$5,643.81	\$234.34	\$5,878.15
5 Year Payment Plan	OSP7+	2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	181	\$398,596.80	\$19,434.05	\$418,030.85
5 Year Payment Plan	ProLicense	Pro License Bundle	13	\$6,430.14	\$0.00	\$6,430.14
Total				\$461,528.49	\$19,720.47	\$481,248.96

Mar 2026

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
5 Year Payment Plan	85144	AXON STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85144	AXON STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85147	CEW STARTER	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	85760	Auto-Transcribe Unlimited Service	187	\$47,433.40	\$0.00	\$47,433.40
5 Year Payment Plan	AB31BD	AB3 1-Bay Dock Bundle	5	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3C	AB3 Camera Bundle	187	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3C	AB3 Camera Bundle	5	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3MBD	AB3 Multi Bay Dock Bundle	23	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	AB3MBD	AB3 Multi Bay Dock Bundle	1	\$0.00	\$0.00	\$0.00
5 Year Payment Plan	BasicLicense	Basic License Bundle	15	\$2,853.61	\$0.00	\$2,853.61
5 Year Payment Plan	BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	5	\$570.73	\$52.08	\$622.81
5 Year Payment Plan	BWCuWTAP	BWC Unlimited with TAP	5	\$5,643.81	\$234.34	\$5,878.15
5 Year Payment Plan	OSP7+	2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	181	\$398,596.80	\$19,434.05	\$418,030.85
5 Year Payment Plan	ProLicense	Pro License Bundle	13	\$6,430.14	\$0.00	\$6,430.14
Total				\$461,528.49	\$19,720.47	\$481,248.96

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Contract League of Oregon Cities (fka NPP) Contract No. PS20270 is incorporated by reference into the terms and conditions of this Agreement. In the event of conflict the terms of Axon's Master Services and Purchasing Agreement shall govern.

Exceptions to Standard Terms and Conditions

Agency has existing contract #13786/13787 (originated via Q-93888) and is terminating that contract upon the new license start date (4/1/2022) of this quote.

The parties agree that Axon is granting a refund of \$187,448.58 to refund paid, but undelivered services. This discount is based on a ship date range of 3/1/2022-3/15/2022, resulting in a 4/1/2022 license date. Any change in this date and resulting license start date will result in modification of this discount value which may result in additional fees due to or from Axon.

This credit is contingent upon agency payment of any outstanding invoices including and not limited to Year 5 Billing of contract 13786/13787.

Signature

Date Signed

1/14/2022



ATTENTION

This order may qualify for freight shipping, please fill out the following information.

What is the contact name and phone number for this shipment?	
What are your receiving hours? (Monday-Friday)	
Is a dock available for this incoming shipment?	
Are there any delivery restrictions? (no box trucks, etc.)	



Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Q-369826-44623.927CM

Issued: 03/03/2022

Quote Expiration:

Estimated Contract Start Date: 04/01/2022

Account Number: 107259

Payment Terms: N30

Delivery Method: Fedex - Ground

SHIP TO	BILL TO
Business;Delivery;Invoice-601 El Camino Real 601 El Camino Real Santa Clara, CA 95050-4307 USA	Santa Clara Police Dept. - CA 601 El Camino Real Santa Clara, CA 95050-4307 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Chris Morton Phone: +1 2063106165 Email: cmorton@axon.com Fax:	Cory Morgan Phone: Email: cmorgan@santaclaraca.gov Fax:

Quote Summary

Program Length	60 Months
TOTAL COST	\$412,236.00
ESTIMATED TOTAL W/ TAX	\$439,293.98

Discount Summary

Average Savings Per Year	\$26,469.08
TOTAL SAVINGS	\$132,345.40

Payment Summary

Date	Subtotal	Tax	Total
Mar 2022	\$82,447.20	\$5,411.62	\$87,858.82
Mar 2023	\$82,447.20	\$5,411.59	\$87,858.79
Mar 2024	\$82,447.20	\$5,411.59	\$87,858.79
Mar 2025	\$82,447.20	\$5,411.59	\$87,858.79
Mar 2026	\$82,447.20	\$5,411.59	\$87,858.79
Total	\$412,236.00	\$27,057.98	\$439,293.98

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Estimated Delivery Date
BWC Unlimited with TAP	73309	AXON CAMERA REFRESH ONE	77	09/01/2024
BWC Unlimited with TAP	73689	MULTI-BAY BWC DOCK 1ST REFRESH	10	09/01/2024
BWC Unlimited with TAP	73310	AXON CAMERA REFRESH TWO	77	03/01/2027
BWC Unlimited with TAP	73688	MULTI-BAY BWC DOCK 2ND REFRESH	10	03/01/2027

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BWC Unlimited with TAP	73686	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE	75	04/01/2022	03/31/2027
BWC Unlimited with TAP	73746	PROFESSIONAL EVIDENCE.COM LICENSE	75	04/01/2022	03/31/2027
A la Carte	73682	AUTO TAGGING LICENSE	75	04/01/2022	03/31/2027

Services

Bundle	Item	Description	QTY
A la Carte	79999	AUTO TAGGING / PERFORMANCE IMPLEMENTATION SERVICE	1

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BWC Unlimited with TAP	80464	EXT WARRANTY, CAMERA (TAP)	75	04/01/2022	03/31/2027
BWC Unlimited with TAP	80464	EXT WARRANTY, CAMERA (TAP)	2	04/01/2022	03/31/2027
BWC Unlimited with TAP	80465	EXT WARRANTY, MULTI-BAY DOCK (TAP)	10	04/01/2022	03/31/2027

Payment Details

Mar 2022

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	73682	AUTO TAGGING LICENSE	75	\$4,269.74	\$0.00	\$4,269.74
Year 1	79999	AUTO TAGGING / PERFORMANCE IMPLEMENTATION SERVICE	1	\$0.00	\$0.00	\$0.00
Year 1	BWCUwTAP	BWC Unlimited with TAP	75	\$53,730.26	\$3,180.82	\$56,911.08
Year 1 - Cost of INUS055715	73843	UNLIMITED EVIDENCE.COM TAP BUNDLE TRUE UP PAYMENT YEAR 1	1	\$24,447.20	\$2,230.80	\$26,678.00
Total				\$82,447.20	\$5,411.62	\$87,858.82

Mar 2023

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	73682	AUTO TAGGING LICENSE	75	\$4,269.74	\$0.00	\$4,269.74
Year 2	79999	AUTO TAGGING / PERFORMANCE IMPLEMENTATION SERVICE	1	\$0.00	\$0.00	\$0.00
Year 2	BWCUwTAP	BWC Unlimited with TAP	75	\$53,730.26	\$3,180.79	\$56,911.05
Year 2 - Cost of INUS055715	73843	UNLIMITED EVIDENCE.COM TAP BUNDLE TRUE UP PAYMENT YEAR 1	1	\$24,447.20	\$2,230.80	\$26,678.00
Total				\$82,447.20	\$5,411.59	\$87,858.79

Mar 2024

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	73682	AUTO TAGGING LICENSE	75	\$4,269.74	\$0.00	\$4,269.74
Year 3	79999	AUTO TAGGING / PERFORMANCE IMPLEMENTATION SERVICE	1	\$0.00	\$0.00	\$0.00
Year 3	BWCUwTAP	BWC Unlimited with TAP	75	\$53,730.26	\$3,180.79	\$56,911.05
Year 3 - Cost of INUS055715	73843	UNLIMITED EVIDENCE.COM TAP BUNDLE TRUE UP PAYMENT YEAR 1	1	\$24,447.20	\$2,230.80	\$26,678.00
Total				\$82,447.20	\$5,411.59	\$87,858.79

Mar 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	73682	AUTO TAGGING LICENSE	75	\$4,269.74	\$0.00	\$4,269.74
Year 4	79999	AUTO TAGGING / PERFORMANCE IMPLEMENTATION SERVICE	1	\$0.00	\$0.00	\$0.00
Year 4	BWCUwTAP	BWC Unlimited with TAP	75	\$53,730.26	\$3,180.79	\$56,911.05
Year 4 - Cost of INUS055715	73843	UNLIMITED EVIDENCE.COM TAP BUNDLE TRUE UP PAYMENT YEAR 1	1	\$24,447.20	\$2,230.80	\$26,678.00
Total				\$82,447.20	\$5,411.59	\$87,858.79

Mar 2026

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 5	73682	AUTO TAGGING LICENSE	75	\$4,269.74	\$0.00	\$4,269.74
Year 5	79999	AUTO TAGGING / PERFORMANCE IMPLEMENTATION SERVICE	1	\$0.00	\$0.00	\$0.00
Year 5	BWCUwTAP	BWC Unlimited with TAP	75	\$53,730.26	\$3,180.79	\$56,911.05
Year 5 - Cost of INUS055715	73843	UNLIMITED EVIDENCE.COM TAP BUNDLE TRUE UP PAYMENT YEAR 1	1	\$24,447.20	\$2,230.80	\$26,678.00
Total				\$82,447.20	\$5,411.59	\$87,858.79

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Exceptions to Standard Terms and Conditions

Agency has existing contract #13786/13787 (originated via Q-93888) and is terminating that contract upon the new license start date (4/1/2022) of this quote.

The parties agree that Axon is granting a refund of \$124,223.10 to refund paid, but undelivered services. This discount is based on a ship date range of 3/1/2022-3/15/2022, resulting in a 4/1/2022 license date. Any change in this date and resulting license start date will result in modification of this discount value which may result in additional fees due to or from Axon.

This credit is contingent upon agency payment of any outstanding invoices including and not limited to Year 5 Billing of contract 13786/13787. The value of outstanding Invoice INUS055715 for \$122,236.00, before taxes, is included in the value of this quote.

Signature

Date Signed

3/3/2022





Agenda Report

22-112

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action on an Agreement with R3 Consulting Group, Inc. for Solid Waste Consulting Services

COUNCIL PILLARS

Promote Sustainability and Environmental Protection and Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

The Department of Public Works (DPW) currently utilizes a consultant working under two separate agreements to provide services related to solid waste and recycling programs. Consultant services include assisting the City to negotiate solid waste collection and processing agreements, calculating and preparing annual rate recommendations, performing various audits to verify tonnages and franchise fee payments, and auditing the City's 11 non-exclusive franchise haulers to ensure compliance with mandatory organics and recyclables collection services.

One agreement has recently expired and the other is set to expire on June 30, 2022. It is necessary to conduct a procurement to continue the tasks outlined above along with tasks associated with implementing new state mandated route reviews and future landfill disposal and composting services. The City's current long-term agreement with BFI/IDC Corporation for landfill disposal and composting services will expire on December 31, 2024, so it is necessary to have a new contract in place in advance of that date.

DISCUSSION

DPW determined that services provided under the two previous consulting agreements are similar in nature and should be combined into a single agreement to reduce the amount of time spent on the procurement and administration of multiple agreements.

Pursuant to City Code Section 2.105.330, a formal Request for Proposals (RFP) was conducted for this procurement, with the award recommendation based on "best value". The factors considered in the award were quality and completeness of proposal, experience and qualifications of firm and key personnel, approach, and methodology in performing the work, and cost.

The City published a RFP on January 13, 2022, for Solid Waste Consulting Services. On January 24, 2022, the City held a mandatory, pre-proposal conference that was attended by four firms: HF&H Consultants, LLC; MSW Consultants, Inc.; NBS Government Finance Group; and R3 Consulting Group, Inc (R3). The purpose of the meeting was to give potential proposers a better understanding of the City's requirements by providing an overview of the services required and a forum for questions.

One proposal was received from R3 by the proposal due date. The other three firms did not submit proposals citing current client commitments and time required to fulfill the City's service requirements. After a thorough review of the sole proposal from R3, staff determined that the proposal met or exceeded all the requirements set forth in the RFP in the following key areas:

- Proposal demonstrated a clear understanding of the scope of services and methodology for completing each task
- R3 provided excellent consulting services during previous negotiations for solid waste collection and processing agreements with multiple vendors
- R3's team possesses a thorough knowledge of the City's complex NEF hauler system and has successfully completed five previous annual audits that have identified inaccuracies and underpayments of \$262,500

Summary of Agreement: The maximum compensation under the proposed agreement with R3 is \$754,915 for a five-year term to complete the following tasks:

- Task 1 - Annual Auditing of NEF Hauler Franchise Fee Payments and Compliance with Bundled Service Requirements
- Task 2 - Annual NEF Hauler Route Reviews
- Task 3 - Assistance with FY 2023/24 - FY 2025/26 Annual Rate Setting
- Task 4 - Annual Santa Clara County-wide Rate Matrix for FY 2022/23 - FY 2025/26
- Task 5 - Residue Audits at GWR and Z-Best Composting Facility
- Task 6 - Assistance Securing Disposal and Composting Services beginning January 1, 2025
- Task 7 - Rate Study for FY 2025/26 Solid Waste Rates

Tasks 1 through 4 will occur once per year, Task 5 will occur twice per year, and Tasks 6 and 7 will occur only once during the initial five-year term of the agreement. Each task has an associated not-to-exceed amount based on the estimated number of staff hours at specified hourly billing rates and reimbursable expenses. Staff benchmarked R3's rates against other public agency contracts and determined that pricing is fair and reasonable for the consultant services being provided.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

The maximum compensation under the proposed agreement is \$754,915. Tasks 1 and 2 will be funded by NEF hauler franchise fee payments which are deposited in the General Fund. Tasks 3 -7 will be funded by the Solid Waste Fund through customer garbage charges. Funding for all tasks is subject to future approval of Council appropriations.

COORDINATION

This report has been coordinated with the Finance Department, Silicon Valley Power, 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. Authorize the City Manager's Office to execute an Agreement with R3 Consulting Group, Inc. for solid waste consulting services, with a five-year term starting on or around April 1, 2022, and ending on June 30, 2027, with maximum compensation not-to-exceed \$754,915 subject to the appropriation of funds;
2. Authorize the City Manager's Office to execute amendments to the Agreement for additional solid waste consulting services that may be required during the five-year term, subject to the appropriation of funds; and
3. Authorize the City Manager's Office to execute up to two, one-year options to extend the Agreement through June 30, 2029, subject to the appropriation of funds.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: City Manager's Office

ATTACHMENT

1. Agreement with R3 Consulting Group, Inc.

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
R3 CONSULTING GROUP, INC.**

PREAMBLE

This Agreement is entered into as of the City's execution date (Effective Date) between the City of Santa Clara, California, a chartered California municipal corporation (City) and R3 Consulting Group, Inc., a California corporation (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

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

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

2. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date and terminate on June 30, 2027. The City reserves the right, at its own sole discretion, to extend the term of this Agreement for up two (2) additional one-year options through June 30, 2029.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

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

4. WARRANTY

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

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

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is set forth in Section 1 of Exhibit B, subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the

maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

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

8. ASSIGNMENT AND SUBCONTRACTING

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

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

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

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

11. CONFIDENTIALITY OF MATERIAL

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

12. OWNERSHIP OF MATERIAL

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

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

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

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

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury,

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

- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

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

17. NOTICES

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

City of Santa Clara
Attention: Department of Public Works
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at cmobeck@santaclaraca.gov

And to Contractor addressed as follows:

R3 Consulting Group, Inc.
1512 Eureka Road, Suite 220
Roseville, CA 95661
and by e-mail at gschultz@r3cqi.com

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

18. COMPLIANCE WITH LAWS

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

19. CONFLICTS OF INTEREST

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

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

20. FAIR EMPLOYMENT

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

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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: _____

Office of the City Attorney
City of Santa Clara

Office of the City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

R3 CONSULTING GROUP, INC.
a California corporation

Dated: February 28, 2022

By (Signature):

Name: Garth Schultz

Title: Principal

Principal Place of Business Address: 1512 Eureka Road, Suite 220
Roseville, CA 95661

Email Address: gschultz@r3cgi.com

Telephone: (510) 292-0853

Fax: ()

"CONTRACTOR"

EXHIBIT A

SCOPE OF SERVICES

1. INTRODUCTION

- 1.1. Contractor shall provide solid waste consulting services as set forth herein.
- 1.2. To the extent not inconsistent with this Agreement between the City and Contractor including this Scope of Services, the City's SOQ DPW-64 (including subsequent updates), and Contractor's proposal response dated February 11, 2022 are hereby incorporated by reference herein, and shall supplement this Scope of Services and be subject to the terms and conditions of the Agreement.

2. TASKS AND DELIVERABLES

Contractor shall provide the following services:

2.1. Task 1. Annual Auditing of Non-Exclusive Franchise Hauler Franchise Fee Payments and Compliance with Bundled Service Requirements

- 2.1.1. Annually (October 1 of each year) consolidate and review quarterly reports (four (4) reports per year) from each of the eleven (11) active NEF haulers for completeness and compliance with NEF hauler agreement provisions, as well as for mathematical accuracy. Based on the quarterly reports and collected supporting documentation from NEF haulers, the Contractor will recalculate franchise fee payments, and report any discrepancies. Annual auditing shall also include verification that haulers are providing bundled services consisting of garbage, organics and recycling services to all customers with at least two (2) cubic yards of weekly service. Contractor shall provide field verification of the at least 10% of each hauler's customers to complete this portion of the audit (see Table I).

2.2. Task 2. Annual Non-Exclusive Franchise Hauler Route Reviews

- 2.2.1. SB 1383, Section 18984.5 requires route reviews or waste evaluations be conducted to as part of the inspection process to check for compliance. The City believes route reviews may be more cost-effective given the number of haulers and accounts that need to be reviewed in the NEF area (see Table I). Contractor shall develop a methodology and conduct the route reviews in accordance with all SB 1383 requirements.

Only four (4) of the eleven (11) NEF haulers provide weekly services for businesses located in parcels zoned for industrial use and are thus subject to SB 1383, Section 1894.5. The remaining seven (7) only provide construction and demolition services which are not subject to the required route reviews.

Table I: NEF Hauler Routes and Customers

NEF Hauler	Number of Routes	Number of Customers
Mission Trail Waste Systems	7	686
Republic Services	4	297
GW Debris Services	3	38
Recology	3	110

Table I Note: This is a current count of routes and number of customers (12/2021). The number of customers may vary or change over time and routes may be revised.

2.3. Task 3. Assistance with FY 2023/24 – FY 2026/27 Annual Rate Setting

- 2.3.1.** Calculate and prepare annual rate recommendations for garbage, yard trimmings, residential recycling, household hazardous waste collection, disposal and processing, the Cleanup Campaign, street sweeping, landfill post-closure maintenance, and compliance with several State Laws, including Senate Bill 1383 (SB 1383). Rate recommendations shall be proposed in a manner that meets all Proposition 218 notification requirements and aligns with the City's timeline for rate setting.

Rate recommendations will include an evaluation of contractually obligated compensation adjustments, collection and disposal costs, the solid waste fund budget and associated program costs, and any other rate impacts, including changes required by State regulations under SB 1383, dramatic changes in the marketplace for commodities, adjustments for cost-of-living increases and any other new programs and services.

2.4. Task 4. Annual Santa Clara County-wide Rate Matrix for FY 2022/23 – FY 2026/27

- 2.4.1.** Develop a jurisdictional comparison matrix for monthly bundled single-family residential cart service rates in Santa Clara County and compare to City current rates and proposed rates. The matrix must include whether the jurisdictions anticipate rate increases in the upcoming fiscal year. The final comparison matrix must be submitted by March 15 of each year.
- 2.4.2.** Develop a jurisdictional comparison matrix for monthly garbage bin service rates in Santa Clara County and compare to City's current rates and proposed rates. The matrix must include whether the jurisdictions anticipate rate increases in the upcoming fiscal year and whether they have a separate charge for organics collection services or if it is bundled. The final comparison matrix must be submitted by March 15 of each year.

2.5. Task 5. Residue Audits at Green Waste Recovery, Inc. (GWR) and Z-Best Composting Facility

- 2.5.1.** Conduct two (2) residual audits annually that reflect seasonal changes (March or April and July or August) at GWR (sorting and processing of MSW material) and Z-Best (processing of the same materials to recover any additional residual from organics material).

For each audit, observe forty (40) tons each of residential and commercial MSW and verify that the reported data is accurate and reasonable, and that processes and procedures are conducted in a manner consistent with the *GreenWaste Recovery, Inc. Solid Waste Auditing Protocol & Residue Allocation Methodology* (confidential document to be provided as a reference to the Contractor following contract execution). Provide findings in a report of observations with disposal allocations and data evaluations.

2.6. Task 6. Assistance Securing Disposal and Composting Services Beginning January 1, 2025.

- 2.6.1.** Evaluate whether the City should move forward with the GWR proposed disposal services or if the City should include disposal of residue from GWR's mixed waste processing and composting operations in a request for proposals for the services. The evaluation must include a report outlining the methods used to assess the options and provide recommendations based on findings. Even if the City chooses to take advantage of the option to have GWR pay for disposal, the City will still need a disposal services agreement to dispose of refuse collected during the annual Cleanup Campaign and municipal maintenance operations.
- 2.6.2.** Prepare a Request for Proposals (RFP) for disposal services beginning January 1, 2025 if it is recommended in the evaluation. The RFP must meet state requirements and industry standards for the services.
- 2.6.3.** Prepare a RFP for composting services beginning January 1, 2025. The RFP must meet state requirements and industry standards for the services.

2.7. Task 7. Rate Study for FY 2025/26 Solid Waste Rates

- 2.7.1.** Prepare a solid waste rate study for funding the City's solid waste program at cost recovery. The rate study must fully analyze cost breakdowns and how they are distributed to the various subscription options the public has to choose from and include the following evaluation categories: garbage rate component, residential yard trimmings rate component, residential recycling rate component, and cleanup campaign rate component. Each rate component will be comprised the costs of collection, plus the cost of disposal/processing/composting, plus program cost elements. A cost allocation study must be conducted to establish the program cost for each rate component. The final report must include analyses on bundled solid waste rates charged to customers, alignment with previous estimates, rate stabilization fund, comparison with rates from other jurisdictions in Santa Clara County, rate assistance program, and any next steps or recommendations.

3. ADDITIONAL SERVICES/TASKS

Other services, not specifically set forth above and when authorized in writing by the City, shall be at additional cost. Contractor shall be compensated for by a fee mutually agreed upon between the City and Contractor, or on a time-and-materials basis in accordance with Contractor's hourly rates set forth in Exhibit B.

EXHIBIT B SCHEDULE OF FEES

1. MAXIMUM COMPENSATION

The maximum compensation the City will pay Contractor for all professional fees, costs and expenses provided under this Agreement shall not exceed **Seven Hundred Fifty-Four Thousand Nine Hundred Fifteen Dollars (\$754,915)**, subject to annual appropriation of funds. 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.

2. FEE SCHEDULE

The all-inclusive fee schedule set forth herein is to complete Tasks 1 through 7.

Table 1 below details the costs by task and in total by year, with the costs for Tasks 1 through 5 being annual costs, and the costs for Tasks 6 and 7 being one-time costs.

Table 2 details staffing assignments and hours by tasks, and lists the estimated reimbursable expenses (applicable to Tasks 2 and 5 only). Values shown in Tables 1 and 2 comprise Contractor's not-to-exceed estimates for completion of all tasks; actual billings may be lower than shown.

Table 1

TASK		FY 21/22 COST	FY 22/23 COST	FY 23/24 COST	FY 24/25 COST	FY 25/26 COST	FY 26/27 COST	TOTAL COST
1	Annual NEF Compliance Audits	N/A	\$20,575	\$21,190	\$21,830	\$22,480	\$23,150	\$109,225
2	Annual NEF* Route Reviews	N/A	\$18,925	\$19,490	\$20,070	\$20,670	\$21,290	\$100,445
3	Annual Rate Setting Calculations	N/A	\$14,250	\$14,680	\$15,120	\$15,570	\$16,040	\$75,660
4	Annual County-wide RateMatrix	\$6,725	\$6,930	\$7,140	\$7,350	\$7,570	\$7,800	\$43,515
5	Annual Residual Audit #1	\$19,650	\$20,240	\$20,850	\$21,480	\$22,120	\$22,780	\$127,120
	Annual Residual Audit #2	N/A	\$19,650	\$20,240	\$20,850	\$21,480	\$22,120	\$104,340
6	Disposal and Composting Contracting Evaluation	N/A	\$19,110	N/A	N/A	N/A	N/A	\$19,110
	Optional Disposal RFP	N/A	N/A	\$63,625	N/A	N/A	N/A	\$63,625
	Composting RFP	N/A	N/A	\$63,625	N/A	N/A	N/A	\$63,625
7	FY 2025/26 Rate Study	N/A	N/A	N/A	\$48,250	N/A	N/A	\$48,250
Total		\$26,375	\$119,680	\$230,840	\$154,950	\$109,890	\$113,180	\$754,915

*Task 2 assumes four (4) days of route auditing for contamination, for approximately 10% of containers on route being audited.

Table 2

TASK		STAFF MEMBER & 2022 HOURLY RATE							Annual Hours	Total Hours	Reimbursable Expenses
		Garth Schultz, \$285	Scott Hanin, \$285	Ryan Calkins, \$200	Claire Wilson, \$190	Jordan Muratsuchi, \$190	Nikhil Tagore-Erwin, \$170	Sarah Koplowicz, \$155			
1	Annual NEF Compliance Audits	5	-	-	60	-	-	50	115	575	-
2	Annual NEF Route Reviews	5	-	-	50	-	-	50	105	525	\$ 250
3	Annual Rate Setting Calculations	50	-	-	-	-	-	-	50	250	-
4	Annual County-wide Rate Matrix	10	-	-	-	-	-	25	35	175	-
5	Annual Residual Audit #1	10	-	40	-	-	40	-	90	450	\$ 2,000
	Annual Residual Audit #2	10	-	40	-	-	40	-	90	450	\$ 2,000
6	Disposal and Composting Contracting Evaluation	20	45	-	-	-	-	-	N/A	65	-
	Optional Disposal RFP	50	75	50	75	-	-	-	N/A	250	-
	Composting RFP	50	75	50	75	-	-	-	N/A	250	-
7	FY 2025/26 Rate Study	75	-	-	-	75	50	-	N/A	200	-
Total		285	195	180	260	75	130	125	485	3190	\$ 4,250

3. ADDITIONAL SERVICES/TASKS

In the event additional services are required by the City, Contractor shall prepare a statement of work based on the City's requirements, propose a fee based on the rates set forth in Table 3 and obtain written approval from the City prior to commencing work.

The hourly rates below will be adjusted by 3% (and rounded to the nearest whole dollar) annually, on January 1, during the term of the Agreement.

Table 3

Classification	2022 Hourly Rates
Principal	\$ 285
Senior Project Director	\$ 285
Project Director	\$ 240
Senior Project Manager	\$ 220
Project Manager	\$ 200
Senior Project Analyst	\$ 190
Senior Administrative Support	\$ 170
Project Analyst	\$ 170
Associate Analyst	\$ 155
Administrative Support	\$ 125
Reimbursable Costs	
Consultants/Subcontractors	Cost plus 10%
Lodging and meals	Direct cost
Travel — <i>Private or company car</i>	At Current Federal Rate
Travel — <i>Other</i>	Direct cost
Delivery and other expenses	Direct cost

4. INVOICING

Unless otherwise agreed in writing, Contractor will bill monthly for work completed at the first of each month for the preceding month. City will pay Contractor within thirty (30) days of City's receipt of an approved invoice.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

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

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

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

C. WORKERS' COMPENSATION

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

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

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

H. EVIDENCE OF COMPLIANCE

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

and other items required to be delivered to City pursuant to this Agreement shall be provided by email to: ctsantaclara@ebix.com.

Or by mail to:

EBIX Inc.
City of Santa Clara – Public Works Department
P.O. Box 100085 – S2
Duluth, GA 30096
Telephone number: 951-766-2280
Fax number: 770-325-0409

I. QUALIFYING INSURERS

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



Agenda Report

22-153

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action on Various Agreements for Silicon Valley Power (SVP), Authorizing the Office of the City Manager to:

1. Exercise options to renew an Enterprise Program Agreement with OSIsoft, LLC for up to five years and increase funding authorization to include additional services or addition of assets to the existing licenses;
2. Negotiate and Execute Amendment No. 2 to an Agreement for Services with Efficiency Services Group, LLC to administer the Commercial Parking Lot & Exterior Lighting Program to Silicon Valley Power's (SVP) small and mid-sized business customers;
3. Negotiate and execute additional amendments to add or delete services or licenses consistent with the scopes of the subject agreements, and allow future rate adjustments including associated increases to maximum compensation, subject to request and justification by contractor, approval by the City, and the appropriation of funds; and
4. Execute long lead-time material agreements and purchase orders for the South Loop Reconfiguration Project

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

To meet its mission, goals, and regulatory needs, the City of Santa Clara's Electric Department, Silicon Valley Power (SVP), requires a variety of specialized services and materials, including:

Plant Information Historian Software (OSIsoft)

The Electric Utility Department, Silicon Valley Power (SVP), maintains and supports historical data infrastructure for electric utility operations, generation, and power trading. The data is collected and maintained in numerous systems, such as the Advanced Metering Infrastructure (AMI) and Geospatial Information System (GIS). Using OSIsoft's (OSI) Plant Information (PI) historian software (OSI Software) allows for seamless and secure data collection and configuration from these systems. This streamlines SVP's processes and procedures and supports SVP with regulatory compliance.

On August 28, 2018, Council authorized the City Manager to execute an Enterprise Program Agreement and Corporate Family Software License and Service Agreement with OSIsoft. To achieve continuity, the Enterprise Program Agreement was effective retroactive to April 24, 2017 for a 5-year term and included installation, configuration, modification, and maintenance to OSIsoft software and related systems. The previous fourteen years prior to the 2017 agreement, OSIsoft had been providing service support to the City through an Enterprise and Software License Agreement. The Corporate Family Software License Agreement governs the right for SVP to use the PI historian software and the Enterprise Program Agreement outlines the terms for SVP and OSIsoft to conduct

business. The Enterprise Program Agreement executed in 2018 included the implementation of the system as well as five (5) years of enterprise services including a software reliance program, a dedicated program manager, an annual roadmap, and additional services such as training. The Software License Agreement is valid as long as there is an Enterprise Program Agreement in place.

Administration of Commercial Parking Lot & Exterior Lighting Program (Efficiency Services Group, LLC)

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

In order to expand its energy efficiency programs, Silicon Valley Power periodically issues Requests for Proposals (RFP) for energy efficiency programs managed by third-party firms. An RFP was issued in August 2016 and, as a result of this RFP, Silicon Valley Power selected the Commercial Parking Lot & Exterior Lighting Third Party Energy Efficiency Program offered by Efficiency Services Group, LLC (ESG) to complement SVP's existing energy efficiency programs. This program began in January 2017 and exceeded expectations in customer participation. The original program contract ended on January 11, 2020 and had a total contract cost of \$554,545. Due to significant remaining customer demand for the program, a new Agreement for Services was executed with ESG on April 15, 2020 to renew the program for two years through March 31, 2022 and increase the maximum compensation to \$1,000,000 in order to serve the remaining customers and contribute to the City and utility's energy efficiency goals.

Materials for South Loop Project

On January 11, 2022, Silicon Valley Power (SVP) awarded Contract No. 2124B to Hotline Construction, LLC (Hotline) for Construction of the South Loop Reconfiguration Project in the amount of \$18,583,938 and authorized the City Manager to execute change orders up to 15% (\$2,787,591) of the original contract amount. The primary objective of the South Loop Reconfiguration Project (Project) is to shift the electrical load demand from the South Loop Circuit to the East Loop Circuit while increasing the power transfer capability of the 60 kilovolt (kV) electric system. The system capacity that is gained from the implementation of this Project is needed to maintain system reliability as the electrical demands of the City continue to increase. The Project is also critical to maintaining project timelines for new data center customers as well as allowing for load growth at existing data center sites.

DISCUSSION

Plant Information Historian Software (OSIsoft)

The Agreement with OSIsoft includes an option to extend the term for an additional five years. SVP has found OSI Software's performance satisfactory and OSI continues to develop the PI historian software which has greatly enhanced SVP's data collection, storage, analysis, and presentation capabilities. SVP uses the data collected through the PI historian for troubleshooting, real time operational assessments, and billing functions.

The previous five years of Enterprise Service Fees were fixed at \$97,614 for a total authorization of \$488,070. The Agreement provided for a 7.5% increase in annual fees beginning with the sixth year of service and annual increases in future years based on Consumer Price Index subject to a minimum increase of 3% and maximum increase of 6%. The current executed Agreement for Services with OSIsoft does not include any contingency or additional funds authorized by Council. However, as SVP continues to use OSI Software, opportunities for further efficiencies may be identified or additional assets may need to be added to the license. To save time, staff recommends that additional funding is built into this authorization for future additional services or if additional assets are added to the licensing. Therefore, staff recommends an authorization to increase compensation by up to \$911,930 for a total maximum compensation of \$1,400,000. This increase includes up to \$591,530 for annual licensing cost based on maximum annual increase of six percent and \$320,400 for additional services or to add additional assets to the license.

Administration of Commercial Parking Lot & Exterior Lighting Program (Efficiency Services Group, LLC)

The Commercial Parking Lot & Exterior Lighting Third Party Energy Efficiency Program administered by ESG reduces the energy consumption of small business customers through exterior lighting energy efficiency measures. The program provides free light fixtures with the customers responsible for installation. ESG assists the customer in identifying the appropriate retrofit light fixtures and performs verification of installation, ensuring customer satisfaction with the new product.

Since the program was started, 330 projects have been completed, 2,899 fixtures have been replaced, and 2,761,642 kilowatt hours (kWh) in first year energy savings were achieved. This energy savings will be ongoing depending on the useful life of the new fixtures. While the fixtures are provided at no cost, the customer is essentially paying a "copayment" by paying for the installation of the fixtures. This model still falls within the program cost effectiveness requirements of Silicon Valley Power. ESG has had significantly more interest than expected and, in 2021 was on track to spend the entire budget in one year. Through its outreach efforts to small business customers, ESG estimates that with additional funding of \$527,000, it could retrofit over 2,600 additional fixtures and achieve an additional 2.1 million kWh of first year energy savings.

The total spent on this contract to date is approximately \$835,000 with significant remaining customer interest and reservations for the current funding. Staff recommends extending the program and contract for an additional fifteen months and increasing maximum compensation by \$527,000 from \$1,000,000 to a total maximum compensation of \$1,527,000.

Materials for South Loop Project

Typically, long lead-time materials such as poles, insulators, conductors, and rebar cages are ordered by the City prior to issuance of the construction bid where possible so there are not delays due to long lead times once the construction contract is awarded. Recently, the lead times for these materials increased significantly due to global supply chain issues. Therefore, staff recommends delegation of authority to the Office of the City Manager to approve long lead-time material agreements and purchase orders associated with the South Loop Reconfiguration Project. For example, during the routine construction kick off meeting with Hotline, Hotline recommended that

SVP order conductor optimized in reels to provide for a more efficient and reliable installation of the Project. All materials will be procured under Purchasing guidelines and ordinance.

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 commitment to a specific project which may result in potential significant impact on the environment.

FISCAL IMPACT

The cost of these proposed agreements are as follows:

OSIsoft, LLC: Exercising the option to extend the agreement with OSIsoft would extend the term through April 23, 2027. The proposed Enterprise Services Fees are anticipated not to exceed \$591,530 and would be paid annually. Staff requests additional authorization for up to \$320,400 for additional services or in the event that the licenses need to be modified for additional assets.

Funding for this agreement is included in the FY 2022/23 budget. Funding for future years will be incorporated into the biennial budget.

Efficiency Services Group, LLC: Sufficient funding is available in the Electric Department Public Benefits program's operating budget for FY 2022/23. The Public Benefits program is funded through a state-mandated charge on all electric bills established by Assembly Bill 1890. Funds shall be spent in four areas: energy efficiency, renewable energy, low income programs, and research and development of energy technologies.

South Loop Materials: Sufficient funds for these materials are available in the Transmission System Reinforcements project (project number 2124) 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. Authorize the Office of the City Manager to exercise options to renew the Enterprise Program Agreement with OSIsoft, LLC for up to five years through April 23, 2027 and increase funding authorization by \$911,930 to include additional services or addition of assets to the existing licenses for a total maximum authorization of \$1,400,000, subject to annual appropriation of funds;
2. Authorize the Office of the City Manager to negotiate and execute Amendment No. 2 to an Agreement for Services with Efficiency Services Group, LLC to administer the Commercial Parking Lot & Exterior Lighting Program to Silicon Valley Power's (SVP) small and mid-sized business customers extending the term through June 30, 2023 and increasing maximum compensation by

\$527,000 for a total maximum authorization of \$1,527,000, subject to annual appropriation of funds;

3. Authorize the Office of the City Manager to negotiate and execute additional amendments to add or delete services or licenses consistent with the scope of the agreements and allow future rate adjustments including associated increases in maximum compensation subject to request and justification by contractor, approval by the City, and the appropriation of funds; and
4. Delegation of authority to the Office of the City Manager to purchase long lead-time materials for South Loop Reconfiguration Project.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Office of the City Manager

ATTACHMENTS

1. Enterprise Program Agreement with OSIsoft, LLC
2. Agreement for Services with Efficiency Services Group, LLC
3. Amendment No. 1 to the Agreement for Services with Efficiency Services Group, LLC

Enterprise Program Agreement
August 31, 2018
 ("Effective Date")

OSIsoft, LLC ("OSIsoft")
 Attn: Legal Department
 1600 Alvarado Street
 San Leandro, CA 94577
 Phone: (510) 297-5800

City of Santa Clara, dba
Silicon Valley Power ("Licensee")
 1500 Warburton Ave.
 Santa Clara, CA 95050

Contacts:*Business:*

Name: Adele Ward
 Email: adele@osisoft.com
 Phone: 1 510 297-5850

Contacts:*Business:*

Name: Tim Lynch
 Email: tlynch@svpower.com
 Phone: 408-615-6689

Legal:

Name: Legal Department
 Email: legal@osisoft.com
 Facsimile: (510) 295-2444

Legal:

Name: City of Santa Clara City Attorney's Office
 Email: CityAttorney@santaclaraca.gov
 Phone: (408) 615-2230

This Enterprise Program Agreement ("**Enterprise Agreement**" or "**Agreement**") effective as of the Effective Date specified above incorporates by this reference the terms and conditions of that certain Software License and Services Agreement with an effective date of April 24, 2017 (OSIsoft Agreement # _____) (the "**SLA**") by and between OSIsoft, LLC ("**OSIsoft**"), and City of Santa Clara, dba Silicon Valley Power. Unless otherwise specified, all capitalized terms in this Enterprise Agreement have the meaning defined in the SLA.

1. COMMERCIAL TERMS

Term	From Effective Date through April 23, 2022
Enterprise Licensed Software	<ul style="list-style-type: none"> Enterprise Infrastructure Version 2.0 as further described on http://www.osisoft.com/enterprise-agreement-software-services/, OSIsoft software licensed under the Former Agreement (see next row of this table) not replaced or updated by Enterprise Infrastructure Version 2.0.
Annual Enterprise Services Fee ("ESRP")	<p>Licensee's annual Enterprise Services subscription price shall be equal to 20.4% ("Enterprise Services Rate") of the License Fee Basis.</p> <p>"License Fee Basis" shall be the License Fees paid under Licensee's Enterprise Program Agreement dated April 24, 2012 (the "Former Agreement," now expired; all licensed OSIsoft software under the Former Agreement is hereby transferred to the terms and conditions of this Agreement), plus any additional license fees paid hereunder for Enterprise Licensed Software</p>
License	Licensee shall receive Enterprise Licensed Software for the Assets specified in Exhibit A ("Licensed Assets")
Net Licensee Fee Due:	\$0

Net Initial Enterprise Services Fee Due:	Years 1 and 2: \$ 195,228
Enterprise Services Fees following initial Term year:*	Year 3: \$97,614* due April 23, 2019 Year 4: \$97,614* due April 23, 2020 Year 5: \$97,614* due April 23, 2021
Initial Invoice Total	\$195,228

* Subject to adjustments to material changes in Licensed Assets or Licensed Asset Capacities, see Section 4.1., and minimum annual ESRP.

Please check one:

- ☐ Corresponding PO will be submitted and required for invoicing.
☐ Contract number can be used for invoicing.

2. ENTERPRISE SERVICES (“Enterprise Services”)

Remote Monitoring of PI Systems (“Remote Monitoring”). Licensee will permit OSIsoft to remotely monitor certain performance metrics of Licensee’s Enterprise Licensed Software in accordance with the mutually agreed Enterprise Roadmap. The software used to provide the Remote Monitoring service is for use only by OSIsoft in providing the Enterprise Services or by Licensee to monitor the performance of the Enterprise Licensed Software, and may not be used by Licensee for any purpose including, without limitation, to monitor other software programs or equipment. Remote Monitoring services are in no way meant to serve as a safety monitoring service and Licensee shall indemnify OSIsoft against any claims resulting from Licensee’s failure to operate Licensee’s equipment in a safe manner. To be eligible to utilize this service offering, Licensee must grant OSIsoft support staff unattended remote access to the nodes to be monitored. Remote access will be provided via OSIsoft’s remote support software that allows our engineers to properly troubleshoot and remediate alerts regarding the PI System. In the event that Licensee ceases to subscribe to Enterprise Services, Licensee will delete this software upon OSIsoft’s request. OSIsoft may use data collected by the Remote Monitoring service to issue to Licensee recommendations for hardware and software (Enterprise Licensed Software and OS) upgrades and other measures Licensee may implement to increase Enterprise Licensed Software performance as agreed in the Enterprise Roadmap.

- 2.1. **Software Reliance Program (“SRP”).** As part of Enterprise Services, Licensee and its Contractors will receive the benefits of OSIsoft’s Software Reliance Program (“SRP”) to support the Enterprise Licensed Software. (All references to “OSIsoft Products” within the SRP terms and conditions shall mean the Enterprise Licensed Software.). Contractors will also have facilitated access to OSIsoft’s relevant partner program.
- 2.2. **Enterprise Program Manager.** A global Enterprise Program Manager (“EPM”) will be assigned to Licensee’s account to provide a reasonable amount of coordination and assistance for questions pertaining to architecture and deployment of Enterprise Licensed Software (as defined in Section 3 below), as well as project management. Licensee will assign its own Program Manager (“*Licensee Program Manager*”) to manage the relationship with OSIsoft. The Licensee Program Manager is responsible for the identification of potential installations globally and to identify and make available the required resources within Licensee. The EPM will strive to understand the business of Licensee and develop domain knowledge to further facilitate collaboration in utilization of the Enterprise Licensed Software. Additionally, the EPM will coordinate between OSIsoft technical staff and Licensee to create and maintain, as part of the Enterprise Roadmap, a central monitoring philosophy for the Enterprise Licensed Software, including alerts, proactive remedial actions and fixes. OSIsoft reserves the right to change the EPM at any time upon notice to Licensee.

2.3. Enterprise Roadmap. OSIsoft, in collaboration with Licensee, will develop a roll out and update plan ("Enterprise Roadmap") for the Enterprise Licensed Software.

The Enterprise Roadmap will specify what services OSIsoft will provide on an annual basis during the term of the Enterprise Agreement and for what areas Licensee will have primary responsibility. Areas of consideration to be documented in the annual Enterprise Roadmap may include:

- Identification, prioritization and set target timelines for business and technical objectives where OSIsoft's products or services will be of assistance
- Enterprise architecture considerations such as:
 0. technical architecture diagram,
 1. hardware and software requirements,
 2. remote access requirements and plan,
 3. selection of interfaces,
 4. update and back-up strategy
 5. migration strategy
- Define the necessary technical prerequisite requirements to deploy the Enterprise Licensed Software
- Site/Asset installation schedule, areas of responsibility and frequency of updates
- Identification and scheduling of Learning and Event vouchers, and CoE services
- Administration items such as annual review expectations, true-up process and T&L budget considerations

Taking into account Licensee's stated business objectives and resources, the Enterprise Roadmap will include a proposed schedule, recommendations on training for Licensee personnel and end users, best practices and other recommendations for operation of the Enterprise Licensed Software.

Prior to providing any services OSIsoft will work jointly with the customer to prioritize the activities defined in the Enterprise Roadmap. This Enterprise Roadmap will be updated annually based on Licensee's updated business objectives and resources and to account for material changes in the Licensed Assets.

2.4. Reviews. Reviews will be conducted on an as-needed basis by the EPM, Licensee Program Manager and appropriate management personnel. These reviews may be conducted in person at a mutually agreed upon location or virtually, using web-based collaboration tools. These reviews shall be based upon a review report prepared by the OSIsoft team and supervised by the EPM, and will address any concerns identified by the EPM or Licensee Program Manager, and be specifically focused on Licensee's opportunities and goals. The Enterprise Roadmap may be adjusted and modified at these meetings.

2.5. Installation of Enterprise Licensed Software. OSIsoft will provide a single installation or upgrade service per Licensee Site per year for Enterprise Licensed Software in accordance with the mutually agreed Enterprise Roadmap. These installation services will be performed remotely from OSIsoft's offices or through an installation manager server installed on Licensee's network and connected to Licensee's deployment locations and computers ("*Installation Management System*"). On an exception basis as expressly agreed in the Enterprise Roadmap and subject to the SRP conditions for On-Site Assistance, these installations may be performed manually on-site at Licensee's facilities. Licensee will provide the Datastream Point configuration in electronic format for configuration of

Interface(s) as set forth in the mutually agreed Enterprise Roadmap.

- 2.6. Center of Excellence.** OSIsoft will provide reasonable assistance and information resources to Licensee in Licensee's application of Enterprise Infrastructure to Licensee's particular needs per the initiatives jointly agreed upon in the annual Enterprise Roadmap. Examples of OSIsoft Enterprise Service offerings are described in the Enterprise Support section of [osisoft.com](http://www.osisoft.com) [<http://www.osisoft.com/Legal/ea-service-offerings.pdf>].

The scope of work for each CoE service engagement will be created by the EPM for Licensee's review and approval. The scope of work will include a description of the deliverables, Licensee participation required, and anticipated scheduling. Licensee shall bear complete responsibility for determining whether any concepts, preliminary designs, application recommendations or advice by OSIsoft are appropriate for Licensee's operations. OSIsoft personnel delivering CoE services will strive to understand Licensee's business, but in no event does OSIsoft represent that such personnel are experts in Licensee's particular industry. While Licensee's operational and business data will remain Licensee's Confidential Information, Licensee acknowledges that OSIsoft may utilize deliverables of general applicability which do not include Licensee's Confidential Information, to assist other customers or improve the Enterprise Licensed Software, even if such deliverables are based upon requirements provided by Licensee. These materials may include, but are not limited to, non-confidential application designs, architecture, general engineering or programming methodologies in common use or within a particular industry, algorithms, sample screens or enhancements to the Enterprise Licensed Software.

- 2.7. Migration of Third Party Historical Data.** OSIsoft will provide one-time assistance at the beginning of this Agreement, as agreed in the Enterprise Roadmap, for Licensee in migrating data from third party historian software to the Enterprise Infrastructure. Data from the third-party historian must be provided by Licensee to OSIsoft in a format compatible with an existing OSIsoft interface. OSIsoft will supply Licensee with the technical requirements to prepare such data files. OSIsoft will convert the data supplied by Licensee into a data file that is compatible with the Enterprise Infrastructure. The data will not be validated by OSIsoft. Data validation is the sole responsibility of the Licensee. The migration scope does not include migration of calculations or applications.

2.8. Vouchers.

Licensee will receive two different types of Vouchers:

- (i) **Learning Vouchers:** Licensee will receive (1) one learning voucher per \$5,000 paid to OSIsoft for Enterprise Services per year. These Services Vouchers may be used for standard training courses at OSIsoft training locations at a rate of (1) one voucher per (1) one seat per training day. Licensee may request that a standard or custom training course be conducted onsite at one of licensee's facilities. Twelve (12) learning vouchers are required for onsite training, per day, regardless of the number of students. Onsite training is limited to a maximum of (12) twelve students per day. An additional (6) six learning vouchers (not per day; in total) will be required for a custom training course, to cover OSIsoft's additional preparation time.
- (ii) **Event Vouchers:** These Services Vouchers may only be redeemed for admission to an OSIsoft user's events at a rate of one (1) seat per \$40,000 paid to OSIsoft for Enterprise Services per year.

From time to time OSIsoft may make other services or admission to other events available for purchase with these vouchers. Vouchers are valid for one (1) year from each anniversary date of the Effective Date of this Enterprise Agreement and cannot be carried over to subsequent years. In no event may vouchers be redeemed for anything other than the foregoing including, without limitation, software products, professional services or cash, unless otherwise

expressly agreed by the parties.

Vouchers cannot be sold, bartered, swapped or exchanged.

- 2.9. Travel and Living Expenses.** Licensee will reimburse OSIsoft for all reasonable out of pocket travel or living expenses incurred in connection with mutually agreed upon services provided by OSIsoft under this Enterprise Agreement, including without limitation onsite installations, onsite training sessions, kickoff meetings, periodic reviews or any other visit to Licensee's premises by OSIsoft services personnel. Travel and living expenses will be charged in addition to any Service Vouchers redeemed or services fees paid for such services. OSIsoft will incur such expenses in compliance with its then-current field services travel policy, which will be provided to Licensee upon request.
- 2.10. Additional Services.** For clarification, any services beyond the scope of Enterprise Services including, without limitation, providing on-site installation services beyond those expressly provided in the Enterprise Roadmap or additional services or time required as a result of Licensee not meeting any Technical Prerequisites (such as not having the appropriate hardware prepared as specified by OSIsoft), will be subject to OSIsoft's then-current field services rate. As of the Effective Date this rate is \$2,000/person/day. OSIsoft will provide an estimate using the then-current applicable rates upon request.

3. ENTERPRISE LICENSING

3.1. Enterprise Licensed Software Definitions.

"Licensee's Enterprise" means Licensee's business activities comprised of power trading, power generation and electric transmission and distribution.

"Asset" means Licensee's power trading, generation and distribution assets (including substations), including utility operations devices, utility network infrastructure, Meters, and phasor measurement units (PMUs) concentrators, owned and operated by Silicon Valley Power, all as identified on Exhibit A.

"Meter" means a physical device which measures and analyzes for energy usage in time differentiated registers, including 5 minute reads as required by Licensee's power trading operation or quarter-hourly or such interval as is specified by Licensee's SVP Meter Connect program. Specifically, a **Meter** is a single device connected to Licensee's owned and operated power trading assets, customers' home devices, including appliances, thermostats, water heaters, pool pumps, etc., which receives data from such devices, and which data is then read from the single Meter by remote access and control, either by Licensee or a third-party service provider for the purpose of customizing and monitoring home energy consumption.

"Licensed Asset Capacity" means the capacity of each Asset measured as specified in Exhibit A. On the Effective Date, there are 54,309 Meters and 534 MWs of generation, transmission and distribution Assets. (Licensed Asset Capacity is not applicable to power trading activities and to substations.)

"Operating Data" is (i) data generated directly by operation of the Assets, including all analyses, calculations and derivatives thereof, and (ii) market, environmental, meteorological data or other information that is used to operate the Assets.

"Enterprise Licensed Software" is OSIsoft's commercial proprietary software system comprised of certain database, visualization, analytic and interface OSIsoft Products as described in the then-current accompanying documentation and specified in Section 1.

3.2. Scope of License.

- (a) **Qualified Assets Only.** Licensee may use the Enterprise Licensed Software only for the purpose of processing the Operating Data generated by the Assets identified in **Exhibit A** as “*Licensed Assets*”.
- (b) **Additional Licensed Assets.** Licensee may add additional Licensed Assets to **Exhibit A** upon written notification to OSIsoft or in connection with each Annual Review as provided below.
- (c) **Usage by Licensee.** Licensee may use unlimited copies and quantities of Enterprise Licensed Software (including Datastream Points) for the purpose of:
 - (i) processing Operating Data generated by the Assets up to the Licensed Asset Capacity as may be revised in accordance with this Enterprise Agreement; and
 - (ii) redundancy and failover options, development systems, test systems, research and development, pilot plants, analysis of financial data pertaining to the Asset, and operation of a central Enterprise Licensed Software system to monitor other Enterprise Licensed Software systems installed throughout Licensee’s organization.
- (d) **Limitations on Scope.** Enterprise Licensed Software may not be used to process Operating Data: (i) generated by non-Licensed Assets, even if such Operating Data is stored in equipment located within a Licensed Asset or (ii) in any automated metering initiative or similar customer direct billing or metering initiatives.

3.3. Enterprise Services Maintenance. As a condition to retaining its licenses to Enterprise Licensed Software, Licensee agrees to maintain a current Enterprise Services subscription for all Enterprise Licensed Software purchased hereunder.

4. ENTERPRISE PROGRAM PRICING

4.1. Licensing and Enterprise Services Rate Adjustments.

- (a) **Licensed Asset Capacities.** Licensed Asset Capacities are measured in megawatts generated by SVP owned & operated assets (“MW”) and number of Meters.
- (b) **Material Change in Licensed Asset Capacities:** A material change in the Licensed Asset Capacity shall be defined as 2% increase or decrease in; MW, or Meter increments.
- (c) **Annual Review.** If the annual review performed in accordance with this Enterprise Agreement reveals that Licensee is using any Enterprise Infrastructure to process data generated by additional Assets or there is a material increase in the Licensed Asset Capacity of an Asset, Licensee shall purchase the required Enterprise Infrastructure licenses at the License fee specified below and OSIsoft will include such new Licensed Assets in the Enterprise Services calculation for the new Review Period:

Pricing Table

Asset Description	Licensing fee	Enterprise Services Annual fee
• Total Generation Capacity	• \$1,020/MW	• 208/MW
• Meter	• \$5.10/Meter	• \$1.04/Meter

If Licensee has ceased operating a Licensed Asset and all use of the Enterprise Licensed Software containing the Operating Data generated therefrom or there is otherwise a material decrease in the Licensed Asset Capacity, then Licensee's annual Enterprise Services fee will be reduced by the Enterprise Services Rate multiplied by the applicable Licensing Fee specified in the table above in OSIsoft's Enterprise Services calculation for the then-currently Licensed Assets in and for the new License Year. **Notwithstanding the foregoing, in all events if Licensee retains at least one Asset under this Agreement, Licensee will pay a minimum of \$90,000 for Enterprise Services per Review Period.**

- 4.2. Agreement Term.** This Enterprise Agreement will remain in effect for a period of five (5) years from the Effective Date ("**Initial Term**"). OSIsoft and Licensee each has the right to terminate the Enterprise Agreement, for any or no reason and with immediate effect, at the end of the Initial Term or any one-year successive anniversary for which it continues (each year the "**Renewal Period**"), by providing thirty days' prior written notice of its intent to terminate. Following the Initial Term, for so long as Licensee renews its Enterprise Services subscription, and this Enterprise Agreement is not otherwise terminated in accordance with its terms, it will renew for successive Renewal Periods. In the event of termination or expiration in accordance with this section, the Enterprise Conversion Procedure in subsection 4.2(b) shall apply.

Pricing Protection. During the Renewal Period, and for so long as Licensee does not allow any lapse in its Enterprise Services subscription fees for the Enterprise Licensed Software, OSIsoft will increase Licensee's Enterprise Services Rate and Enterprise Licensed Software license fees via a one-time step change of 7.5% for the first Renewal Period (year 6) and for each annual subsequent Renewal Period by the percentage increase in the monthly Consumer Price Index for All Items, U.S. City Average, All Urban Consumers (base year 1982-84=100) over the rates and fees applicable from the beginning of the immediately preceding Renewal Period (subject to a minimum increase of 3% and maximum increase of 6% in each Renewal Period).

- (a) Licensee's Enterprise Services subscription must remain current to maintain the license rights set forth in this Enterprise Agreement. Should this subscription lapse at any time during the Initial Term or Renewal Period, the Enterprise Conversion Procedure set forth in subsection 4.2(b) shall apply. Additionally, all Enterprise License Fee payments under any payment plan shall be accelerated and become immediately due and payable. All License fees and Enterprise Services fees paid are nonrefundable.
- (b) **Enterprise Conversion Procedure:** After the Initial Term, in the event Licensee does not maintain Enterprise Services or if this Agreement is otherwise terminated in accordance with this Section 4.2, Licensee's usage limits for Enterprise Licensed Software will be inventoried as further described below, and converted to the license levels then-currently in use by Licensee, using the license units as defined in Licensee's SLA and the nearest OSIsoft Product sizes in OSIsoft's then-current applicable price list. Licensee will no longer be eligible to receive any Enterprise Services and all pricing, except as set forth below, shall be canceled. Licensee shall provide OSIsoft an inventory of all OSIsoft Software that has been installed, including the number of PI Servers, number of Datastream Points configured within each

Server, number of Individual Users and Interface Nodes. OSIsoft will have the opportunity to perform an audit to validate this inventory and Licensee will pay OSIsoft's then-current field service rates for the time required to complete this audit should it reveal that Licensee has underreported by 5% of the final agreed upon audit outcome. For the inventoried OSIsoft Products, Licensee may purchase annual SRP at OSIsoft's then-current applicable list price. Any future expansions of these systems or any additional OSIsoft Products will be available from OSIsoft at OSIsoft's then-current applicable list price, under the terms of Licensee's SLA.

4.3. Ordering and Delivery.

- (a) **Annual License Review.** OSIsoft and Licensee will perform an OSIsoft Product license review at each successive Review Period. Licensee will provide OSIsoft with all reasonably requested information necessary to determine whether Licensee is using the Enterprise Licensed Software within the purchased license limits. Unless otherwise agreed, the initial Review Period shall commence with the Effective Date.
- (b) **Additional Licensed Assets Through Review.** OSIsoft and Licensee have agreed to the Licensed Assets specified in **Exhibit A**. The Licensed Assets will be modified at the end of each Review Period as necessary. At the end of each Review Period, Licensee will submit an order to OSIsoft for the Enterprise Licensed Software licenses and corresponding Enterprise Services fees required to cover any additional Assets or material increase in the Licensed Asset Capacity at the prices stated in this Enterprise Agreement.
- (c) **Fulfillment.** Licensee or Licensee Affiliates may submit requests for additional copies of any Enterprise Licensed Software without payment of additional license fees. Such requests may be submitted in any form mutually agreeable to both parties. Electronically delivered is the default method.
- (d) **Availability.** Enterprise Licensed Software is only available from OSIsoft directly and not through any third party distributor or sales channel.

5. GENERAL CONDITIONS

- 5.1. **Affiliate Eligibility.** "*Licensee Affiliate*" means any entity that controls, is controlled by, or is under common control with Licensee. For purposes of this Enterprise Agreement, "control" of an entity means having ownership of at least fifty percent (50%) of the voting equity or beneficial interest of such entity. Licensee Affiliates that Licensee would like to add to this Enterprise Agreement are listed in the attached **Exhibit A**. Licensee may add Licensee Affiliates to this Enterprise Agreement by providing OSIsoft with written or electronic notice containing the contact information for each relevant Licensee Affiliate specified in **Exhibit A**. Upon OSIsoft's consent, not to be unreasonably withheld or delayed, such Licensee Affiliates will be added to this Enterprise Agreement and **Exhibit A** will be deemed amended accordingly. Licensee Affiliates on **Exhibit A** are entitled to use and order Enterprise Licensed Software and shall be bound by this Enterprise Agreement as a "Licensee". Notwithstanding the foregoing, any such Licensee Affiliate shall remain eligible to receive the benefits of this Enterprise Agreement only so long as it continues to qualify as a Licensee Affiliate as defined in this Section. Should a Licensee Affiliate no longer qualify as such under this Enterprise Agreement, then Licensee will notify OSIsoft and such change of ownership or control shall be considered an assignment, subject to subsection 5.2 below, of the OSIsoft Products then being used by such Licensee Affiliate for purposes of this Enterprise Agreement, and such Licensee Affiliate will no longer be eligible to order any Enterprise Licensed Software or receive Enterprise Services under this Enterprise Agreement. Licensee and any Licensee Affiliate that purchases OSIsoft Product

licenses shall be jointly and severally liable for any breach of this Enterprise Agreement by any Licensee Affiliate.

- 5.2. Assignment.** Licensee may assign Enterprise Licensed Software licensed under this Enterprise Agreement provided that Licensee provides prior written notice to OSIsoft. The usage limits for any assigned Enterprise Licensed Software will be converted to the license levels then-currently in use by Licensee, using the license units as defined in OSIsoft's then-current standard Software License and Services Agreement and the nearest Server sizes in OSIsoft's then-current applicable price list ("**Converted Software**"). Licensee will provide OSIsoft with all information reasonably necessary to determine the appropriate license sizes for the Converted Software. Licensee hereby acknowledges that as a condition to any assignment OSIsoft may require the assignee to: (i) purchase up to one year of support and maintenance services at OSIsoft's then-current rate; (ii) pay OSIsoft's then-current license fees for the software assigned; and (iii) execute OSIsoft's then-current standard Software License and Services Agreement. Except as otherwise specified in writing by OSIsoft, Orders submitted by the assignee will be in accordance with OSIsoft's then current list price. Any attempted assignment or transfer of the Enterprise Licensed Software or this Enterprise Agreement, whether by operation of law, as a result of any change in control (as defined in paragraph 5.1) of Licensee or otherwise without complying with this Section shall be null and void.
- 5.3. Scope of Enterprise Agreement.** Unless otherwise specified, this Enterprise Agreement supersedes all prior agreements, understandings or arrangements with respect to the subject matter hereof and any existing OSIsoft software products within Licensee's possession or control shall be subject to the terms and conditions of the SLA and this Enterprise Agreement, as applicable. Any pricing provided herein cannot be combined with any other discounts including, without limitation, any discounts for volume purchases. OSIsoft may refuse any Orders submitted by Licensee or a Licensee Affiliate pursuant to any other pricing agreement, understanding or arrangement.
- 5.4. Marketing Participation.** Licensee agrees to send a management representative to an OSIsoft User's Conference occurring within twelve (12) months following the Effective Date, or a subsequent User's Conference as mutually agreed, to present Licensee's use of the Enterprise Licensed Software. Licensee will provide reasonable information and cooperation to OSIsoft to provide OSIsoft with an understanding of Licensee's application of the Enterprise Licensed Software. OSIsoft may use Licensee's non-stylized name in its customer lists.

IN WITNESS WHEREOF, the parties have executed this Enterprise Agreement as of the Effective Date through their duly authorized representatives. Each individual signatory below hereby represents and warrants that they have full corporate power and authority to execute this agreement and bind the respective parties to the terms and conditions of this Enterprise Agreement.

OSIsoft, LLC

Licensee City of Santa Clara, dba
Silicon Valley Power

Signature: 

Signature: 

Name: Robert Guilbault

Name: Deanna J. Santana

Title: COO

Title: City Manager

Date: 6/20/18

Date: 8/31/18

APPROVED AS TO FORM:
SANTA CLARA CITY ATTORNEY'S OFFICE

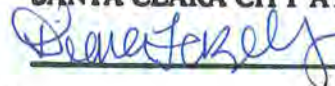


Exhibit A**Initial Licensee Affiliates, Licensed Assets and Asset Capacities****Power Generation and Distribution Assets:**

1) Site Name:	Fiber Central Office (FCO)	2) Site Name:	Trading Central Office (TCO)
Licensee Legal Name:	City of Santa Clara dba Silicon Valley Power	Licensee Affiliate Legal Name:	City of Santa Clara dba Silicon Valley Power
Contact Name, phone & email:	Tim Lynch, 408-615-6689 tlynch@svpower.com	Contact Name, phone & email:	Tim Lynch, 408-615-6689 tlynch@svpower.com
Physical Street Address:	1705 Martin Avenue	Physical Street Address:	1601 Civic Center Drive
City, State, Zip Code:	Santa Clara, CA 95050	City, State, Zip Code:	Santa Clara, CA 95050
Country:	USA	Country:	USA
Baseline No of Licensed Assets:	52,377 Electric Meters (maximum of 10 Data Streams per meter)	Licensed Asset Capacity:	Energy Trading Activities
3) Site Name:	Donald Von Raesfeld Power Plant (DVR)	4) Site Name:	Stony Creek Hydroelectric System
Licensee Affiliate Legal Name:	City of Santa Clara dba Silicon Valley Power	Licensee Affiliate Legal Name:	City of Santa Clara dba Silicon Valley Power
Contact Name, phone & email:	Tim Lynch, 408-615-6689 tlynch@svpower.com	Contact Name, phone & email:	Tim Lynch, 408-615-6689 tlynch@svpower.com
Physical Street Address:	850 Duane Avenue	Physical Street Address:	Various
City, State, Zip Code:	Santa Clara, CA	City, State, Zip Code:	Santa Clara, CA
Country:	USA	Country:	USA
Licensed Asset Capacity:	147 MW	Licensed Asset Capacity:	11.63 MW
5) Site Name:	Cogeneration Plant #1	6) Site Name:	Gianera Generating Station
Licensee Affiliate Legal Name:	City of Santa Clara dba Silicon Valley Power	Licensee Affiliate Legal Name:	City of Santa Clara dba Silicon Valley Power
Contact Name, phone & email:	Tim Lynch, 408-615-6689 tlynch@svpower.com	Contact Name, phone & email:	Tim Lynch, 408-615-6689 tlynch@svpower.com
Physical Street Address:	560 Robert Ave	Physical Street Address:	2339 Gianera Street
City, State, Zip Code:	Santa Clara, CA	City, State, Zip Code:	Santa Clara, CA
Country:	USA	Country:	USA
Licensed Asset Capacity:	7 MW	Licensed Asset Capacity:	49.5 MW

(Exhibit A continued next page)

Eligible Silicon Valley Power Substation Assets		
TRANSMISSION SUBSTATIONS		
Operating Company "SVP"=Silicon Valley Power (Licensee)	Name	Location (City of Santa Clara, CA)
SVP	Kifer Receiving Station	2970 Lafayette
SVP	Northern Receiving Station	4857 Centennial Blvd.
SVP	Duane Electric Substation	901 Comstock St.
SVP	Scott Receiving Substation	1205 Space Park Drive
SVP	Northern Receiving 230Kv Station	4857 Centennial Blvd.
SVP	Silicon Valley Power Switching Station	810 Thomas Foon Chew Way
Total:		
DISTRIBUTION SUBSTATIONS		
Operating Company	Name	Location (City of Santa Clara, CA)
SVP	Agnew Electric Substation	2375 Agnew Road
SVP	Brokaw Electric Substation	349 Brokaw Road
SVP	CCA Electric Substation	2700 De La Cruz Blvd
SVP	Central Electric Substation	3370 Bowers Ave.
SVP	De La Cruz Junction Substation	510 Mathew Street
SVP	Fiberglas Electric Substation	2850 Lafayette St.
SVP	Homestead Electric Substation	2831 Homestead Road
SVP	Juliette Electric Substation	3750 Juliette Lane
SVP	Kenneth Substation	1234 Space Park Drive
SVP	Lafayette Electric Substation	2960 Lafayette St.
SVP	Mathew Electric Substation	600 Mathew Ave.
SVP	Mission Electric Substation	2929 Mission College Boulevard
SVP	Norman Avenue Junction Substation	1515 Norman Ave.
SVP	Northwestern Electric Substation	2690 Condensa Street
SVP	Orland Junction Substation	4585 County Road 99W
SVP	Palm Substation	4211 North Lafayette Street
SVP	Raymond Substation	1255 Space Park Drive
SVP	Serra Electric Substation	5301 Stevens Creek Blvd.
SVP	Fairview Substation	2930 Coronado Way
SVP	Uranium Electric Substation	2705 Bowers Ave.
SVP	Walsh Electric Substation	1600 Walsh Ave.
SVP	Zeno Electric Substation	3050 Semiconductor Drive
Total:		

GENERATION SUBSTATIONS		(City of Santa Clara, CA)
SVP	Cogeneration Plant No. 1	524 Robert Ave.
SVP	Don Von Raesfeld Power Plant	850 Duane Ave
SVP	Gianera Power Plant	2339 Gianera St.
SVP	Stony Gorge Hydroelectric Plant	2550 County Road 306
SVP	Black Butte Hydroelectric Plant	19227 Newville Road
SVP	High Line Hydroelectric Plant	5640 County Road 200
SVP		
Total:		

Initial Number of Meters: 54,309 by City of Santa Clara dba Silicon Valley Power on Effective Date

Exhibit B**INSURANCE COVERAGE REQUIREMENTS**

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$1,000,000 each occurrence
 - \$1,000,000 general aggregate
 - \$1,000,000 products/completed operations aggregate
 - \$1,000,000 personal injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - 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 minimum policy limits of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with the following limits: at least one million dollars (\$1,000,000) policy limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage,

compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

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

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

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

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

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



Cert of Insurance for OSIsoft LLC 2017-2018
Cert of Insurance for OSIsoft LLC 2018-2019

Encl: Certificate of Insurance (embedded PDF document)

(current year's certificate of insurance is also available at <https://osisoft.com/legal-notice>)

OSIsoft Agreement # 1029798

Corporate Family Software License and Services Agreement

August 31, 2018

("Effective Date")

OSIsoft, LLC ("OSIsoft")
Legal Department
1600 Alvarado Street
San Leandro, CA 94577 USA
Phone: +1 (510) 297-5800

Contacts:*Business:*

Name: Adele Ward
Email: adele@osisoft.com
Phone: 510 297-5850

Legal:

Name: Legal Department
Email: legal@osisoft.com
Facsimile: +1 (510) 295-2444

City of Santa Clara, dba Silicon Valley Power ("Licensee")
1500 Warburton Ave.
Santa Clara, CA 95050

Contacts:*Business:*

Name: Tim Lynch
Email: tlynch@svpower.com
Phone: 408-615-6689

Legal:

Name: City of Santa Clara City Attorney's Office
Email: CityAttorney@santaclaraca.gov
Phone: 408-615-2230

OSIsoft and Licensee hereby agree as follows:

1. License

1.1 **License Grant.** Subject to the terms and conditions of this **Agreement**, OSIsoft grants to Licensee a perpetual nonexclusive, nontransferable (except as specified in Section 10.1) license to use in accordance with the Product Usage Terms as specified at www.osisoft.com that correspond to the OSIsoft products and related documentation ordered by Licensee (the "**OSIsoft Products**"). Licensee may make a reasonable number of copies of any OSIsoft Product documentation for internal business use. Any OSIsoft Software received by Licensee via FTP or other electronic delivery method will be governed by this Agreement even if no reference to this Agreement is made in connection with such electronic delivery, unless OSIsoft states another agreement applies. Any OSIsoft online services that Licensee purchases or uses will be governed by the agreement presented to you when you register for the applicable service.

1.2 **License Restrictions.** Except as expressly provided in this Agreement, Licensee agrees that it has no right to: (i) modify the OSIsoft Products or to permit any third party to do so; (ii) copy the OSIsoft Products, except as strictly required to install the OSIsoft Software and make a reasonable number of copies for archival or backup purposes, or (iii) use the OSIsoft Products to provide service-bureau, software rental, time-sharing or any data

services to any third party that is not a Licensee Affiliate. Any OSIsoft Products ordered by Licensee and licensed by OSIsoft as a bundled unit must be used by Licensee as a bundled unit. Licensee acknowledges that OSIsoft Products contain trade secrets of OSIsoft, and in order to protect such trade secrets, Licensee agrees not to disassemble, decompile or reverse engineer the OSIsoft Products, nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable law. Licensee may only write programs that make calls to OSIsoft's Data Access Software under the following circumstances: (i) pursuant to an appropriate development license from OSIsoft; (ii) to extend the functionality of an OSIsoft Product that is designated by OSIsoft as including "Programmatic Extensions", or a similar designation, and only as expressly permitted by the accompanying documentation; or (iii) as expressly permitted by a previously purchased OSIsoft Product license.

1.3 **Limited Rights.** Licensee's rights in the OSIsoft Products will be limited to those expressly granted in this Section 1, and OSIsoft reserves all other rights, title, interest and licenses therein. All OSIsoft Products provided to the U.S. Government are provided with the commercial license rights and restrictions described in this Agreement. Further, all OSIsoft Products provided to the U.S. Government are provided with Restricted Rights as

provided for in FAR 52.227-19 (DEC 2007) and DFARS227-7202 or their successors, as applicable.

1.4. **Audit Rights.** Upon OSIsoft's written request, Licensee shall furnish OSIsoft with a certification signed by an officer of Licensee verifying that the OSIsoft Products are being used pursuant to the terms of this Agreement. In addition, upon prior written notice, OSIsoft may audit Licensee's use of the OSIsoft Products to ensure that Licensee is in compliance with the terms of this Agreement. Any such audit shall be conducted during regular business hours at Licensee's facilities and shall not unreasonably interfere with Licensee's business activities. Licensee shall provide OSIsoft access to the relevant Licensee records and facilities. If an audit reveals that Licensee has underpaid fees to OSIsoft, Licensee shall be invoiced for such underpaid fees based on OSIsoft's price list in effect at the time the audit is completed. Licensee shall promptly deliver to OSIsoft any unpaid fee for any errors or omissions disclosed by such audit. Licensee shall pay OSIsoft an additional fee of twenty-five percent (25%) of the applicable unpaid fee disclosed by the audit to compensate for Licensee's over use of the OSIsoft Products. If the underpaid fees exceed five percent (5%) of the license fees previously paid by Licensee, then Licensee shall also pay OSIsoft's reasonable costs of conducting the audit.

2. Ordering and Delivery.

2.1 **Order Process.** Licensee or a Licensee Affiliate may submit written orders containing the information and in the format reasonably requested by OSIsoft ("Orders") to OSIsoft or OSIsoft's authorized distributor for the purchase of new or additional licenses of OSIsoft Products or for Software Reliance Program services (as described in Section 4). All OSIsoft Products will be delivered DAP Licensee location.

2.2 **Licensee Affiliate.** "**Licensee Affiliate**" means any entity that controls, is controlled by, or is under common control with Licensee. For purposes of this Agreement, "control" of an entity means having ownership of more than fifty percent (50%) of the voting equity or beneficial interest of such entity. Licensee Affiliates that Licensee would like to add to this Agreement can be added by a form provided on osisoft.com. Licensee may add or subtract Licensee Affiliates from this Agreement by providing OSIsoft with written or electronic notice containing the contact information for each relevant Licensee Affiliate. Authorized Licensee Affiliates are entitled to use and order OSIsoft Products and shall be bound by this Agreement. Licensee is obligated to promptly notify OSIsoft of the change in status of any Licensee Affiliate. Licensee and any Licensee Affiliate that purchases OSIsoft Product licenses shall be jointly and separately liable for any breach of this Agreement by any

Licensee Affiliate. Licensee and Licensee Affiliates may be collectively referred to as Licensee.

2.3 **Contractor.** Licensee may designate one or more contractors that may interact with OSIsoft on its behalf for purposes of accessing Licensee's OSIsoft technical support account, ("**Contractors**"). Licensee may add or subtract Contractors from this Agreement by providing OSIsoft with written or electronic notice containing the contact information for each Contractor and Licensee Affiliates with which the Contractor is working. Licensee may permit Contractors to access and use the OSIsoft Products, without notice to OSIsoft, in accordance with this Agreement and so long as the Contractor is subject to confidentiality obligations no less protective than this Agreement. All Contractors shall be bound by this Agreement, and shall only have the right to act for the sole benefit of the Licensee. Licensee is obligated to promptly notify OSIsoft of any change in status of Contractors. Licensee and any Licensee Affiliate who benefits from a Contractor hereunder shall be jointly and severally liable for any breach of this Agreement by the Contractor.

2.4 **Order Submission and Acceptance.** Orders submitted directly to OSIsoft will not be deemed binding on OSIsoft until an authorized representative of OSIsoft expressly accepts such Order in writing or until Licensee receives the OSIsoft Products, whichever first occurs. Licensee must notify OSIsoft prior to using any OSIsoft Product at a location other than the one specified in the applicable Order. Except for information necessary to place an Order, such as identification of the OSIsoft Product, quantity and other similar information, any terms and conditions of any Order that are inconsistent with or in addition to the terms and conditions of this Agreement will be deemed stricken from such Order, and OSIsoft hereby expressly rejects such terms and conditions even if OSIsoft fulfills such Order. Licensee will be responsible for any contractors submitting Orders to OSIsoft on Licensee's behalf. OSIsoft reserves the right to refuse, cancel or delay shipment to Licensee if Licensee (i) fails to make any payment as provided herein or under the terms of payment set forth in any invoice or otherwise agreed to by OSIsoft and Licensee, (ii) fails to meet the credit or financial requirements established by OSIsoft, or (iii) otherwise fails to comply with the terms and conditions of this Agreement. Without interference with the licenses to OSIsoft Products previously ordered by and delivered to Licensee under this Agreement, OSIsoft, reserves the right to discontinue the distribution of any or all OSIsoft Products at any time and to cancel any orders therefor without liability of any kind to Licensee or any other person. No such cancellation, refusal or delay will be deemed a termination (unless OSIsoft so advises Licensee) or breach of this Agreement by OSIsoft.

3. **Payment of OSIsoft Invoices.** Provided that Licensee meets OSIsoft's then-current credit standards and policies, payment of all fees and expenses pursuant to OSIsoft's invoices will be due and payable within thirty (30) days of the date of invoice, otherwise invoices will be due upon receipt. All fees are non-cancelable, non-contingent and non-refundable except as expressly stated in this Agreement. Licensee will pay all amounts due under OSIsoft's invoices in U.S. currency, free of any and all currency controls or other restrictions. All past due amounts under OSIsoft's invoices will incur interest at a rate equal to the lower of 1.5% per month or the highest rate permitted by law, beginning as of forty (40) days after the applicable due date. Except for taxes paid by OSIsoft on its net income, all amounts due pursuant to OSIsoft's invoices are net of, and Licensee will be solely responsible for, any shipping charges, withholding, use, sales, value-added, import and any other taxes, fees, tariffs or duties associated with this Agreement or Licensee's use of the OSIsoft Products and Software Reliance Program. This section will not apply when an authorized OSIsoft distributor invoices Licensee for Orders submitted to such distributor. However, Licensee will comply with any payment terms agreement Licensee may have with such distributor.

4. **Support, Maintenance and Services**

4.1 **Software Reliance Program.** Subject to Licensee's advance payment of the applicable Software Reliance Program subscription fees, Licensee will be enrolled in OSIsoft's then-current Software Reliance Program ("**Software Reliance Program**"). OSIsoft's current terms of Software Reliance Program will be provided on request and are also available through OSIsoft's description of services section at <http://www.osisoft.com>.

4.2 **Replacement Software.** Promptly following its use of any Updates, Bug Fixes or other replacement software as designated by OSIsoft and accepted by Licensee ("**Replacement Software**"), except for archival copies, Licensee will return or destroy the OSIsoft Software replaced by the Replacement Software. Licensee will not receive any credit for software replaced by Replacement Software.

4.3 **Services.** If Licensee purchases OSIsoft's services, OSIsoft warrants that the results of such services will comply with mutually agreed upon specifications for a period of 90-days following delivery of the services by OSIsoft. Licensee agrees to supply OSIsoft with access to and use of all information and facilities reasonably necessary for OSIsoft to render any on-site services pursuant to this Agreement. OSIsoft will comply with all reasonable safety rules and procedures provided by Licensee to OSIsoft personnel in advance.

5. **Warranties.**

5.1 **Limited Warranty.** OSIsoft warrants that, for a period of one (1) year after delivery of the OSIsoft Products, the OSIsoft Products will function in accordance with OSIsoft's accompanying documentation in all material respects. As Licensee's sole and exclusive remedy and OSIsoft's entire liability for any breach of the foregoing warranty, OSIsoft will repair or replace, at no additional charge to Licensee, any OSIsoft Products that fail to meet this limited warranty. The limited warranty set forth herein shall automatically become null and void if a party other than OSIsoft modifies the OSIsoft Products in any way. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, OSIsoft MAKES NO WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, AND OSIsoft EXPRESSLY DISCLAIMS ANY AND ALL SUCH OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NONINFRINGEMENT.

6. **Indemnity**

6.1 **OSIsoft Indemnity Obligation.** OSIsoft will defend any action brought against Licensee to the extent that it is based upon a claim that the OSIsoft Products infringe any U.S. patent, copyright or trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded or paid in settlement in any such action, provided that: (i) Licensee promptly notifies OSIsoft in writing of the claim; (ii) Licensee grants OSIsoft sole control of the defense and settlement of the claim; and (iii) Licensee provides OSIsoft with all assistance, information and authority reasonably required for the defense and settlement of the claim, at OSIsoft's expense.

6.2 **Injunction.** If Licensee's use of any of the OSIsoft Products hereunder is, or in OSIsoft's opinion is likely to be, subject to the type of infringement claim specified in Section 6.1, OSIsoft may, at its sole option and expense: (i) procure for Licensee the right to continue using such OSIsoft Products, as applicable under the terms of this Agreement; (ii) replace or modify such OSIsoft Products so that it is non-infringing, but retains substantially the same functionality; or (iii) if options (i) and (ii) above cannot be accomplished despite OSIsoft's reasonable efforts, then OSIsoft may terminate Licensee's rights and OSIsoft's obligations hereunder with respect to such OSIsoft Products and refund to Licensee the unamortized portion of the fees paid for such OSIsoft Products,

based upon a straight-line three (3) year depreciation commencing as of the date Licensee received such OSIsoft Products.

6.3 OSIsoft Indemnity Exclusions. OSIsoft will have no liability for infringement claims of any kind arising from: (i) any use of the OSIsoft Products beyond the scope of this Agreement; (ii) Licensee's use of the OSIsoft Products in combination with any products not developed by OSIsoft, if the basis for the claim is such combined use; (iii) Licensee's failure to use updated or modified versions of the OSIsoft Products provided or made available by OSIsoft without additional charge; or (iv) OSIsoft's compliance with designs or specifications of a published standard or as provided by Licensee. THE PROVISIONS OF THIS SECTION 6 SET FORTH OSIsoft's SOLE AND EXCLUSIVE OBLIGATIONS AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

7. Limitations of Liability. EVEN IF ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE AND REGARDLESS OF WHETHER A CLAIM ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT OSIsoft HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, IN NO EVENT SHALL OSIsoft BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) NOR SHALL OSIsoft's TOTAL CUMULATIVE LIABILITY HEREUNDER EXCEED THE TOTAL LICENSE FEES PAID BY LICENSEE TO OSIsoft UNDER THIS AGREEMENT DURING THE TRAILING 12 MONTH PERIOD OR TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), WHICHEVER IS GREATER. The parties expressly agree that the allocation of risk contained in this Section is an essential basis of this Agreement.

8. Confidential Information. "Confidential Information" means the OSIsoft Products and any business (including any pricing information provided by OSIsoft) or technical information that is marked by a disclosing party as "confidential" or "proprietary" at the time of disclosure. Licensee's Confidential Information shall also include information related to Licensee's operations that Licensee discloses to OSIsoft in connection with this Agreement in whatever form. OSIsoft's Confidential Information shall also include, without limitation, any interfaces developed using OSIsoft's Software. The receiving party will not use or disclose any Confidential Information of the other party except as expressly permitted herein or as required by California state law.

Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical but within three (3) business days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile, email and/or by US Mail to the legal address and/or facsimile number listed at the beginning of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action within ten (10) days after receiving the foregoing notice from the Receiving Party, or sooner if the Requestor's demand is for sooner disclosure by governmental, administrative or judicial order or decree, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

Notwithstanding the foregoing, if the Requestor is an individual and/or an entity who has a written confidentiality agreement with the Receiving Party containing confidentiality obligations at least as protective of the Disclosing Party's Confidential Information as are the Parties' obligations in this Agreement, and if such Requestor has a need to know the Confidential Information in order for the Receiving Party to perform its rights and obligations under this Agreement in a commercially reasonable and timely manner, then the preceding paragraph shall not apply to the disclosure of Confidential Information to the Requestor.

Confidential Information will not include information which: (i) is or becomes publicly available without fault of the receiving party; (ii) is independently developed by the receiving party without use or access to the Confidential Information; or (iii) was known to the receiving party prior to its receipt of the Confidential Information from the disclosing party and is not subject to other restrictions on disclosure or use.

9. Term and Termination. This Agreement will remain in effect perpetually unless and until terminated pursuant to this Section. Either party may terminate this Agreement if the other party breaches any material term, and such breach remains uncured for thirty (30) days after receiving notice thereof. In the event of any termination of this Agreement, the parties agree to return or at the other party's request destroy all of the other party's Confidential Information within three (3) business days, and without limiting the foregoing, Licensee will return or at OSIsoft's request destroy all copies of the OSIsoft Products within its possession or control. Licensee may terminate its license to the OSIsoft Products under

this Agreement at any time, with or without cause, by destroying all copies of the OSIsoft Products and Confidential Information associated with the OSIsoft Products within its possession or control, and in such event as it elects to terminate all licenses hereunder, Licensee shall notify OSIsoft in writing that the Agreement is terminated. Termination of this Agreement by either party will be a nonexclusive remedy for breach without prejudice to any other right or remedy of such party. The rights and obligations of the parties contained in Sections 3, and 6 through 10 will survive the termination of this Agreement.

10. General

10.1 Assignment, Independent Contractors, Notices and Force Majeure. Licensee must obtain OSIsoft's written consent prior to: (i) moving the OSIsoft Software from the location designated in the corresponding Order or (ii) assigning this Agreement or any licenses to OSIsoft Products granted hereunder to any third party or Licensee Affiliate. Licensee hereby acknowledges that as a condition to such consent OSIsoft may require Licensee or the proposed assignee, if applicable, to agree to update the OSIsoft Software to the then-current version, pay OSIsoft's then-current license fees and purchase a one year subscription of Software Reliance Program services at OSIsoft's then-current rate. In the case of an assignment or transfer to a third party or a Licensee Affiliate, OSIsoft may require the assignee to execute its then-current Software License and Services Agreement. Except as otherwise specified in writing by OSIsoft in its consent, Orders submitted by any assignee will be in accordance with OSIsoft's then-current list price. Any attempted assignment, whether by operation of law, as a result of any change in control (as control is defined in Section 2) of Licensee or otherwise without complying with this Section shall be null and void. The parties to this Agreement are independent contractors and neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. All notices required or permitted under this Agreement will be sent to the address specified above (or such other address specified by the receiving party) in writing and will be deemed effective upon receipt. OSIsoft will not be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control.

10.2 Disputes and Governing Law. Any dispute arising out of or relating to this Agreement, including without limitation its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Commercial Rules of the American Arbitration Association (the "**AAA**"). The arbitration panel shall consist of a single arbitrator experienced in the enterprise software industry, selected and agreed to by the parties. If the

parties cannot agree upon selection of an arbitrator, then the AAA shall appoint the arbitrator. The place of the arbitration will be San Francisco, California. The arbitration will be conducted in English. The arbitrator shall apply the substantive law of California. The arbitrator shall provide detailed written findings of fact and conclusions of law in support of any award. Judgment upon any such award may be enforced in any court of competent jurisdiction. Notwithstanding the foregoing, OSIsoft may file an action in any court of competent jurisdiction to enforce its intellectual property rights in the OSIsoft Products without first submitting its claim to arbitration, Licensee hereby submits to the jurisdiction and venue of the federal or state courts located in San Francisco, California for this purpose. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding that body of law pertaining to conflicts of law and the United Nations Convention on Contracts for the International Sale of Goods. The prevailing party in any action arising from or relating to this Agreement shall be entitled to recover all attorneys' fees and costs including, without limitation, arbitration fees and fees of experts.

10.3 Compliance with Laws; Government Approvals and Severability. Licensee's use of the OSIsoft Products will comply with all laws, rules, and regulations of the United States and other countries that may be applicable to the OSIsoft Products. Without limiting the generality of the foregoing, Licensee acknowledges that the distribution and use of OSIsoft Products and any technical data related thereto (collectively "**OSIsoft Technology**") may be subject to U.S. export control laws and regulations including, but not limited to, the U.S. Export Administration Act of 1979, as amended, and the regulations promulgated there under. Licensee will not export or re-export, directly or indirectly, any OSIsoft Technology, to any destination for any use that is restricted by U.S. export control laws and regulations including, without limitation, to any party that is involved in sensitive or unguarded nuclear activities, or activities related to chemical or biological weapons or missiles, unless Licensee first obtains the required authorizations from the U.S. Department of Commerce or other appropriate governmental agencies. Licensee may not use the OSIsoft Products to operate or control any inherently dangerous application. Notwithstanding the preceding sentence, Licensee may use the OSIsoft Products in a commercial nuclear power facility so long as Licensee does not use the OSIsoft Products: (i) in any manner where failure of the OSIsoft Products would affect the operability of Licensee's facility or affect Licensee's ability to safely cease all operations of the facility; (ii) to control any safety related system or in any safety related application; or (iii) in any manner that would violate applicable laws or regulations. Licensee shall indemnify and hold OSIsoft harmless from any and all claims, liability, costs, damages and losses arising out of or related use of

the OSIsoft Products in violation of this section. OSIsoft shall have no responsibility to test, certify, validate or to take any other action regarding the OSIsoft Products with the Nuclear Regulatory Commission or any other governmental agency. Obtaining such approvals, if any, will be the sole responsibility of Licensee. Within ninety (90) days of the Effective Date, Licensee must, at Licensee's expense, obtain and arrange for the maintenance of all government approvals, if any

that may be necessary to make this Agreement effective in the locations where the OSIsoft Products are used by Licensee. If for any reason any part of this Agreement is found unenforceable, the remainder of this Agreement will be enforced to the maximum extent permissible.

10.4 **Use of Name in Customer List.** Licensee consents to OSIsoft's use of Licensee's non-stylized corporate name

in its marketing literature and customer lists. Licensee may withdraw such consent at any time with reasonable notice.

10.5 **Entire Agreement, Waiver and Language.** This Agreement is the entire agreement between OSIsoft and Licensee with respect to all OSIsoft products and services and their use, superseding any prior agreements or understandings related to any OSIsoft products or services, except for such other agreements OSIsoft expressly specifies. The Agreement contains the entire agreement between the parties with respect to the OSIsoft Products and services Ordered and delivered hereunder, and supersedes any prior or contemporaneous agreements, understandings, representations or warranties relating thereto. Except for the online Product Usage Terms and Software Reliance Program terms and conditions, this Agreement cannot be amended except by a writing which specifically references this Agreement and is signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date through their duly authorized representatives. Each individual signatory below hereby represents and warrants that they have full corporate power and authority to execute this agreement and bind the respective parties to the terms and conditions of this Agreement.

OSIsoft, LLC

Signature: _____

Name: Robert Guilbault

Title: COO

Date: 6/20/18

Licensee: City of Santa Clara dba Silicon Valley Power

Signature: _____

Name: Deanna J. Santana

Title: City Manager

Date: 8/21/18

**APPROVED AS TO FORM:
SANTA CLARA CITY ATTORNEY'S OFFICE**

Deanna J. Santana

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
EFFICIENCY SERVICES GROUP, LLC**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Efficiency Services Group, LLC, an Oregon Limited Liability Corporation, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – 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 April 1, 2020 and terminate on March 31, 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 City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

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

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is four hundred ninety nine thousand nine hundred ninety seven dollars (\$499,997), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall

be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

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

8. ASSIGNMENT AND SUBCONTRACTING

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

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

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

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

11. CONFIDENTIALITY OF MATERIAL

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

or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL

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

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

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

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

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part

from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.

- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

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

17. NOTICES

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

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

And to Contractor addressed as follows:

Efficiency Services Group, LLC
5625 NE Elam Young Pkwy, Suite 100
Hillsboro, OR 97124
and by e-mail at markg@esgroupllc.com

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

18. COMPLIANCE WITH LAWS

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

19. CONFLICTS OF INTEREST

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

20. FAIR EMPLOYMENT

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

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

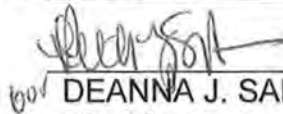
Approved as to Form:

Dated:

4/15/2020



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"

EFFICIENCY SERVICES GROUP, LLC
an Oregon Limited Liability Corporation

Dated:

3/19/2020

By (Signature):

Name: Mark Gosvener

Title: Chief Operating Officer

Principal Place of Business Address: 5625 NE Elam Young Parkway, Suite 100
Hillsboro, Oregon, 97124

Email Address: markg@esgroupllc.com

Telephone: (503) 869-5131

"CONTRACTOR"

EXHIBIT A

SCOPE OF SERVICES

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

Program Description

Efficiency Services Group (ESG) offered the Commercial Parking Lot & Exterior Lighting Program (the Program) to Silicon Valley Power's (SVP) small and mid-sized business customers with a goal of upgrading exterior HID wall fixtures and parking lot lights to new LED fixtures. The most recent Program contract expired on January 11, 2020.

The program has proven to be a success and ESG has identified additional market potential for the program with a proposed program budget in the amount of \$499,997 to continue serving SVP customers interested in retrofitting their exterior lighting with more efficient LED lighting. This program would operate for a period of two years following contract approval.

Program Overview

The Commercial Parking Lot & Exterior Lighting Program is designed to have a focused, efficient approach to helping customers upgrade their exterior lighting. The fixtures are provided to the customer at no cost, and the customer is responsible for the installation. Customers may install the fixtures themselves or hire an electrician to install the fixtures for them. ESG has found that most customers hire an electrician to install the fixtures. ESG verifies the installations of all LED fixtures prior to invoicing SVP.

The measures selected for inclusion in the Program are designed to take advantage of exterior lighting opportunities that ESG identified from the snapshot audits performed during the initial phase of the Program when ESG visited 2,500 customer sites.

The program has proven to effectively persuade some customers to pay for the installation that would otherwise not participate in SVP's standard lighting program.

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

- Continue to strengthen and build on the relationships established with customers through the Commercial Direct Install and Snapshot Auditing program
- Afford significant energy and cost savings to targeted customers
- Reduce customer maintenance costs and increase customer security
- Contribute savings toward AB2021 targets
- Reduce greenhouse gas emissions, which helps to contribute to the City of Santa Clara's Climate Action plan goals.

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

- 1) Selection of measures to address the upgrade opportunities identified at customer sites

- 2) Identifying eligible customers with the need for parking lot and exterior lighting upgrades
- 3) Effectively presenting the program and securing customer participation
- 4) Follow-up visits to all participating customers to verify measures were installed and are operating properly, and addressing any customer questions or concerns before considering a project complete
- 5) Complete and accurate invoicing and reporting of all program activity to SVP

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

Mix of Measures

The Program measures are focused on LED parking lot fixtures and LED upgrades to existing fixtures. The program will include the following measures:

- LED Screw-In Based "Corncob" Retrofit
- LED Parking Garage Fixtures
- LED Canopy Fixtures
- LED Shoebox Area Lighting
- LED Cobra Head Area Lighting
- LED Wall Pack

Measure Descriptions

LED Screw-In Based "Corncob" Retrofits: Screw directly into existing screw-in based HID fixtures. Requires rewiring the fixture to bypass the existing ballast.

LED Parking Garage Lighting: Replaces existing HID fixtures most commonly found throughout parking garages.

LED Canopy Lighting: Replaces existing HID fixtures most commonly found in gas station island canopies.

LED Pole/Wall Lighting: LED Shoebox and Cobra head fixtures replace existing HID fixtures most commonly found throughout commercial parking lots, roadways, auto-dealerships, and building perimeters.

LED Wall packs: LED wall pack fixtures replace pre-existing HID wall packs.

Subscribing the Program

In FY15 and FY16, ESG performed snapshot audits on over 2,500 of SVP's commercial customers. During these visits, ESG identified approximately 438 small to mid-sized commercial customers with parking lot lighting. In addition to these sites, SVPs mid-size commercial customers are also eligible for the program. Energy Efficiency Advisors (EEAs) will visit customer sites, explain the program and encourage them to participate. For the customers ESG has served in the previous phases of the program, we expect that a large majority of these customers will allow the EEA in and listen to the program presentation because these doors are now "warm" and the customers are familiar with ESG. During customer site visits, the EEA will:

- Ask to talk with the decision maker
- Explain the Program offer to the customer
- Persuade the customer to agree to install/upgrade their exterior lighting with LEDs
- If customer agrees, verify the quantity and type of fixtures or upgrade kits needed for the exterior lights
- Schedule a follow up visit with the customer to deliver the LED lighting equipment

When the EEA delivers the LED lighting equipment to the customer, the EEA will schedule another appointment with the customer to return and verify the installation of the fixtures. This will provide the customer with an installation deadline.

ESG has learned through experience that it can take several contacts with a customer and can be a time intensive task to get them ready to take delivery of LED lighting equipment for installation. EEAs have demonstrated the persistence needed to accomplish this task.

Customer Satisfaction

A final verification inspection will be performed on all projects completed. During the final visit, the EEA will assure that any customer questions or concerns are addressed and resolved before closing the project and invoicing SVP. ESG understands the importance of emphasizing with the customer that the program is coming from SVP and using the program experience to help SVP build/strengthen their relationships with their customers.

Reporting and Invoicing

ESG thoroughly understands the CEC reporting requirements for utility energy efficiency programs. Because of this, ESG is able to generate complete and accurate activity report and invoice formats that make it easy for SVP to track budgets, program expenses, and report program results to the State. ESG will prepare monthly activity reports and invoices as required by SVP.

Turnkey Administration

ESG will provide complete turnkey program administration, including:

- Program development (product selection, marketing materials, customer outreach)
- Customer service/support
- Delivery of LED exterior lighting equipment
- Warranty information
- Reporting/invoicing
- CEC compliance support

A. Program Targets

This program is available to small and mid-size commercial customers that receive electric service from SVP. Based on the proposed budget, the program will save an estimated 715,665 kWh annually.

B. Incentive Structure

All LED fixtures/lamps will be provided at no cost to the customer. The customer will be responsible for their installation (either maintenance staff or hiring an electrician).

C. Program Budget

ESG's fees for this program include:

- A fee for marketing and presenting the program offer to each customer
- A program subscription/administration fee for projects completed in the program
- Cost per fixture/lamp installed

Program fees cover all costs, including program development activities, marketing/outreach, labor, materials (including mounting hardware and photocells), State sales tax, travel expenses and admin/overhead.

The proposed budget of \$499,997 is expected to serve 72 commercial customers. Because all program costs are covered in the program fees, the budget can be scaled up or down with little expected change to program financial performance.

Description	Unit Type	Utility Cost/Price Per Unit	Estimated Units	Estimated Utility Cost
Site Visit & Program Presentation	Audit	\$100	762	\$76,200
Completed Project Administration	Project	\$375	76.2	\$28,575
Wall Pack 70W MH Replacement	Fixture	\$285	24.38	\$6,948
Wall Pack 100W MH Replacement	Fixture	\$285	0.76	\$217
Wall Pack 150W MH Replacement	Fixture	\$285	0.76	\$217
Wall Pack 175W MH Replacement	Fixture	\$320	31.24	\$9,997
Wall Pack 250W MH Replacement	Fixture	\$383	38.1	\$14,592
Wall Pack 400W MH Replacement	Fixture	\$519	15.24	\$7,910
Wall Pack 70W MH Replacement w/Photocell	Fixture	\$293	26.67	\$7,814
Wall Pack 100W MH Replacement w/Photocell	Fixture	\$293	0.76	\$223
Wall Pack 150W MH Replacement w/Photocell	Fixture	\$316	153.92	\$48,639
Wall Pack 175W MH Replacement w/Photocell	Fixture	\$350	47.24	\$16,534
Wall Pack 250W MH Replacement w/Photocell	Fixture	\$383	38.1	\$14,592
Wall Pack 400W MH Replacement w/Photocell	Fixture	\$560	22.86	\$12,802
HID - Screw-in Base 70W Replacement	Retrofit	\$147	.40	\$59
HID - Screw-in Base 100W Replacement	Retrofit	\$147	.40	\$59
HID - Screw-in Base 125W Replacement	Retrofit	\$147	60.96	\$8,961
HID - Screw-in Base 150W Replacement	Retrofit	\$147	45.3	\$6,659
HID - Screw-in Base 175W Replacement	Retrofit	\$190	2.29	\$434

HID - Screw-in Base 250W Replacement	Retrofit	\$230	0.38	\$87
HID - Screw-in Base 600W Replacement	Retrofit	\$418	0.38	\$159
HID - Screw-in Base 700W Replacement	Retrofit	\$397	1.52	\$605
HID -Retrofit Kit w/Driver 400W Replacement	Retrofit Kit	\$413	0.76	\$315
HID - Retrofit Kit w/Driver 600W Replacement	Retrofit Kit	\$445	0.76	\$338
HID - Retrofit Kit w/Driver 700W Replacement	Retrofit Kit	\$572	0.76	\$435
HID - Retrofit Kit w/Driver 900W Replacement	Retrofit Kit	\$742	0.76	\$564
HID - Retrofit Kit w/Driver 1000W Replacement	Retrofit Kit	\$990	7.62	\$7,544
Canopy Parking Garage 70W HID	Fixture	\$240	0.76	\$182
Canopy Parking Garage 125W HID	Fixture	\$250	0.38	\$95
Canopy Parking Garage 150W HID	Fixture	\$280	0.38	\$106
Canopy Parking Garage 175-250W HID	Fixture	\$304	0.38	\$116
Canopy Parking Garage 250W HID	Fixture	\$266	0.76	\$202
Canopy Gas Stations 250W HID	Fixture	\$279	0.38	\$106
Canopy Gas Stations 400W HID	Fixture	\$638	0.38	\$242
Canopy Gast Stations - Slim - 70W HID	Fixture	\$350	.40	\$140
Canopy Gast Stations - Slim - 125W HID	Fixture	\$395	0.76	\$300
Canopy Gast Stations - Slim - 175W HID	Fixture	\$396	19.81	\$7,845
Canopy Gast Stations - Slim - 250W HID	Fixture	\$327	0.76	\$249
Canopy Gast Stations - Slim - 320W HID	Fixture	\$599	0.38	\$228
Canopy Gast Stations - Slim - 400W HID	Fixture	\$637	0.38	\$242
Area Light (Pole/Wall) 175W HID Medium Shoebox	Fixture	\$665	38.1	\$25,337
Area Light (Pole/Wall) 250W HID Medium Shoebox	Fixture	\$676	60.96	\$41,209
Area Light (Pole/Wall) 320W HID Medium Shoebox	Fixture	\$717	7.62	\$5,464
Area Light (Pole/Wall) 400W HID Medium Shoebox	Fixture	\$759	15.24	\$11,567
Area Light (Pole/Wall) 400W HID Large Shoebox	Fixture	\$759	22.86	\$17,351
Area Light (Pole/Wall) 500W HID Large Shoebox	Fixture	\$985	0.76	\$749
Area Light (Pole/Wall) 600W HID Large Shoebox	Fixture	\$985	0.76	\$749
Area Light (Pole/Wall) 750W HID Large Shoebox	Fixture	\$985	0.76	\$749
Area Light (Pole/Wall) 175W HID Medium Cobra	Fixture	\$654	30.48	\$19,934
Area Light (Pole/Wall) 250W HID Medium Cobra	Fixture	\$687	76.2	\$52,349

Area Light (Pole/Wall) 400W HID Medium Cobra	Fixture	\$757	38.1	\$28,842
Area Light (Pole/Wall) 500W HID Large Cobra	Fixture	\$985	0.76	\$749
Area Light (Pole/Wall) 750W HID Large Cobra	Fixture	\$985	0.76	\$749
TOTAL				\$499,997

Program Strategy/Avoiding Lost Opportunities

The Program benefits from having a list of customer sites already verified as having parking lot lighting equipment. SVP has already invested in developing relationships with these customers through the Commercial Direct Install and Snapshot Audit Program and the previous Exterior Lighting Direct Install and Snapshot Audit program. By including this specific program offering to those customers identified with parking lot lighting, SVP is taking advantage of this discovered opportunity and not allowing it to go unaddressed.

Program Objectives

Objective #1: Present the program to enough customers to identify approximately 72 customers willing to participate in the program.

Objective #2: Persuade customers to install approximately 885 parking lot and exterior light fixtures or upgrade kits.

Program Metrics

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

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

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

D.

E. Program Implementation

F.

The Program has been implemented and was recently offered to SVP small and mid-size commercial customers until the contract ended in January 2020. The purpose of this Scope of Work is to renew the program to take advantage of remaining energy efficiency opportunities. No additional implementation tasks are necessary to continue administration of the Program.

Based on the proposed budget and the length of time it takes to gain customer agreement to participate, program delivery is expected to span two years from the time the contract is approved.

Program Development

Program development tasks have been completed in earlier phases of the program. ESG and SVP will work together to assure that ESG has the most current eligible customer lists.

Program Delivery

Task: Customer Service/Support

The Program will have a phone number for customers to call with questions about the program or if they need to talk with a Program field representative. This number will connect customers directly to program staff that can answer questions about the program and, if applicable, put them in a queue for an on-site visit by program subscription staff. ESG also maintains a toll-free number for customers to call if they need to speak to a program representative immediately and the local field rep is not available to answer a call. This assures that SVP customers will always be able to get in touch with Program staff.

Task: Program Presentation and Subscription

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

- Identify the decision maker and present the program to them
- Evaluate the existing parking light lighting and determine quantity and type of LED upgrade equipment is appropriate
- Offer the LED equipment to the customer and ask them to commit to the installation
- Persuade customer to participate and have them sign participation documents
- Set appointment with customer to deliver LED parking lot lighting equipment
- Enter all activity from the site visit into the iPad application and upload to database

Task: Order LED Lighting Equipment

Place orders for equipment needed to complete projects.

Task: Exterior Lighting Equipment Delivery

The EEA will deliver the LED parking lot lighting equipment to the customer and schedule an appointment for the final verification site visit.

Task: Final Verification Site Visits

EEA will visit the customer site a final time and verify that the LED lighting has been installed. They will also make sure any customer questions or concerns are addressed before they finalize the project and invoice SVP.

Task: Warranty Information

LED exterior lighting products delivered under the program will carry the standard manufacturer warranty (typically 2-3 years).

Task: Reporting/Invoicing

Detailed activity reports will be provided to SVP on a monthly basis, along with the monthly invoice for work completed. Reports will include all customers served, and detailed information regarding measures installed at each customer site.

Task: CEC Compliance Support

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

Payment Schedule

ESG will submit invoices to SVP monthly, accompanied by detailed reports showing each site visited and work performed at each customer/business site. ESG's payment terms are net 30 days.

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

Customer Interface

ESG will continue to employ the same successful recruitment strategy utilized in delivering the current Program. Effective recruitment of program participants begins with the coordination of effort between ESG and SVP. For example, a utility-endorsed letter is presented to customers on the targeted list that lends credibility to the program and introduces ESG as an approved SVP partner. Following this initial utility contact, EEAs will continue to visit sites on the target customer list. In most cases this will not be the first time an EEA has been onsite talking with the customer, so this program does not require any "cold-calling". If the EEA is unable to speak to the decision maker during an initial site visit, leave-behind materials will be provided and will include information for the customer to schedule a future visit. The EEA will follow-up with the customer at a later time.

It often takes several conversations with a customer before they agree to install the LED lighting equipment. The EEAs must be persistent in pursuing the customer until they have an answer regarding the customer's willingness to participate in the program.

Strategic Partners

ESG will serve as the program administrator for the Program. In addition, ESG has one other partner we plan to have help in the implementation of the program. ESG has had a relationship with this partner for over seven years and has successfully delivered utility programs with them; including the current Program for SVP. Our program partner is:

RD Energy Solutions
7333 SE Ellis St.
Portland, OR 97206

Detailed Information

Efficiency Services Group key program personnel include:

Mark Gosvener, COO – Contract related issues and general oversight of the program, main point of contact for SVP.

Miranda Boutelle, Program Manager – Program administration, reporting, invoicing.

Dave Barnhart, Manager of Direct Install Services – General oversight of all field activity and coordination with RD Energy Solutions.

ESG program administration responsibilities include:

- Communication with SVP; ESG will serve as SVP's point of contact for anything related to the Commercial Program
- Coordinating all program development tasks with our program partner
- Activity reporting and invoicing
- Budget tracking
- Customer follow-up visits and measure verification

RD Energy Solutions: Key Personnel include:

Zack Lewetag, Vice President of Operations – Coordination of all field activity and oversight of EEAs

Mark Brost, Energy Efficiency Manager – Manages EEAs, product delivery, customer interaction and contractor liaison.

RD Energy Solutions is the partner that performs the customer interface and field functions for the Program. ESG and RD have partnered to implement EE programs to over 32 utilities in California and the Northwest. RD will perform the following tasks:

- Initial customer outreach and program subscription activities
- Ordering and delivery of LED exterior lighting equipment needed to complete installations
- Entering program activity for each business served into the iPad application
- Follow-up verification inspections

Quality Assurance and Measure Verification Activities

The EEAs will be involved in all aspects of the program; from the initial visit to the final verification inspection. This will provide consistent project management of each customer site throughout the program. Final inspections will be performed on all projects to assure that the product is installed and operational, and that all customer needs have been met and customers are happy with the program experience.

Customer Complaint Resolution

Customer complaints are dealt with on a case-by-case basis depending on the specific needs of the customer. Customers may call ESG directly on our toll-free line, or they can contact the EEA that works for RD Energy Solutions. Phone numbers will be listed in program marketing materials, and the EEA will leave their contact information with the customers.

Customer complaints are considered urgent and receive an immediate call-back from a Program representative. Every effort is made to resolve the customer complaints completely and promptly.

During the final inspection, the customer will be asked if they have any questions or concerns. Any concerns or complaints are forwarded via email to the appropriate Program representative

responsible for its resolution, and the responsible person is required to send an email reply that the complaint has been resolved and the customer is completely satisfied.

Marketing Activities

Experience has shown that customer response to the program is significantly improved by endorsement from their utility. This can be accomplished by SVP mailing a letter to the targeted list of customers prior to EEAs beginning their site visits.

ESG will work with SVP to develop/assemble any program or marketing collateral SVP would like presented to the customers during the EEAs visit.

The remainder of the marketing/sales activities will be relational, face-to-face discussions between the customers and the EEA. It may take several conversations and/or site visits by the EEA to subscribe and complete projects under this program.

Measurement and Verification of Savings Discussion

KWh savings values for all exterior fixtures are based on calculations based on pre/post wattages, and assume fixtures are on all night. kWh saving assumption calculations are available upon request.

Savings Estimate per Item

Description	Unit Type	Estimated Units	kWh Per Unit	Total kWh
Site Visit & Program Presentation	Audit	762		
Completed Project Administration	Project	76.2		
Wall Pack 70W MH Replacement	Fixture	24.4	292	7120
Wall Pack 100W MH Replacement	Fixture	0.8	439	335
Wall Pack 150W MH Replacement	Fixture	0.8	648	494
Wall Pack 175W MH Replacement	Fixture	31.2	702	21932
Wall Pack 250W MH Replacement	Fixture	38.1	994	37871
Wall Pack 400W MH Replacement	Fixture	15.2	1464	22311
Wall Pack 70W MH Replacement w/Photocell	Fixture	26.7	292	7788
Wall Pack 100W MH Replacement w/Photocell	Fixture	0.8	439	335
Wall Pack 150W MH Replacement w/Photocell	Fixture	153.9	648	99743
Wall Pack 175W MH Replacement w/Photocell	Fixture	47.2	702	33165
Wall Pack 250W MH Replacement w/Photocell	Fixture	38.1	994	37871
Wall Pack 400W MH Replacement w/Photocell	Fixture	22.9	1464	33467
HID - Screw-in Base 70W Replacement	Retrofit	0.4	287	114.8

HID - Screw-in Base 100W Replacement	Retrofit	19.4	447	8672
HID - Screw-in Base 125W Replacement	Retrofit	61	493	30053
HID - Screw-in Base 150W Replacement	Retrofit	45.3	493	22333
HID - Screw-in Base 175W Replacement	Retrofit	2.3	656	1500
HID - Screw-in Base 250W Replacement	Retrofit	03.8	882	3360
HID - Screw-in Base 600W Replacement	Retrofit	1.5	2132	3249
HID - Screw-in Base 700W Replacement	Retrofit	1.5	2583	3936
HID -Retrofit Kit w/Driver 400W Replacement	Retrofit Kit	0.8	1468	1119
HID - Retrofit Kit w/Driver 600W Replacement	Retrofit Kit	0.8	2132	1625
HID - Retrofit Kit w/Driver 700W Replacement	Retrofit Kit	0.8	2583	1968
HID - Retrofit Kit w/Driver 900W Replacement	Retrofit Kit	0.8	3075	2343
HID - Retrofit Kit w/Driver 1000W Replacement	Retrofit Kit	7.6	3198	24369
Canopy Parking Garage 70W HID	Fixture	0.8	287	219
Canopy Parking Garage 125W HID	Fixture	7.6	513	3905
Canopy Parking Garage 150W HID	Fixture	0.4	656	250
Canopy Parking Garage 175-250W HID	Fixture	0.4	615	234
Canopy Parking Garage 250W HID	Fixture	19.1	1046	19917
Canopy Gas Stations 250W HID	Fixture	11.4	882	10076
Canopy Gas Stations 400W HID	Fixture	1.5	1439	2193
Canopy Gast Stations - Slim - 70W HID	Fixture	.4	287	114.8
Canopy Gast Stations - Slim - 125W HID	Fixture	0.8	513	391
Canopy Gast Stations - Slim - 175W HID	Fixture	19.81	697	13809
Canopy Gast Stations - Slim - 250W HID	Fixture	0.8	882	672
Canopy Gast Stations - Slim - 320W HID	Fixture	.8	1128	859
Canopy Gast Stations - Slim - 400W HID	Fixture	1.5	1386	2112
Area Light (Pole/Wall) 175W HID Medium Shoebox	Fixture	38.1	533	20307
Area Light (Pole/Wall) 250W HID Medium Shoebox	Fixture	61	791	48238
Area Light (Pole/Wall) 320W HID Medium Shoebox	Fixture	7.6	1091	8310
Area Light (Pole/Wall) 400W HID Medium Shoebox	Fixture	15.2	1300	19807
Area Light (Pole/Wall) 400W HID Large Shoebox	Fixture	22.9	1300	29711
Area Light (Pole/Wall) 500W HID Large Shoebox	Fixture	0.8	1222	931
Area Light (Pole/Wall) 600W HID Large Shoebox	Fixture	0.8	1632	1243

Area Light (Pole/Wall) 750W HID Large Shoebox	Fixture	0.8	2214	1687
Area Light (Pole/Wall) 175W HID Medium Cobra	Fixture	30.5	533	16246
Area Light (Pole/Wall) 250W HID Medium Cobra	Fixture	76.2	783	59672
Area Light (Pole/Wall) 400W HID Medium Cobra	Fixture	38.1	1275	48581
Area Light (Pole/Wall) 500W HID Large Cobra	Fixture	0.8	1451	1106
Area Light (Pole/Wall) 750W HID Large Cobra	Fixture	0.8	2116	1612
TOTAL				715,665

EXHIBIT B SCHEDULE OF FEES

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

Description	Unit Type	Utility Cost/Price Per Unit
Site Visit & Program Presentation	Audit	\$100
Completed Project Administration	Project	\$375
Wall Pack 70W MH Replacement	Fixture	\$285
Wall Pack 100W MH Replacement	Fixture	\$285
Wall Pack 150W MH Replacement	Fixture	\$285
Wall Pack 175W MH Replacement	Fixture	\$320
Wall Pack 250W MH Replacement	Fixture	\$383
Wall Pack 400W MH Replacement	Fixture	\$519
Wall Pack 70W MH Replacement w/Photocell	Fixture	\$293
Wall Pack 100W MH Replacement w/Photocell	Fixture	\$293
Wall Pack 150W MH Replacement w/Photocell	Fixture	\$316
Wall Pack 175W MH Replacement w/Photocell	Fixture	\$350
Wall Pack 250W MH Replacement w/Photocell	Fixture	\$383
Wall Pack 400W MH Replacement w/Photocell	Fixture	\$560
HID - Screw-in Base 70W Replacement	Retrofit	\$147
HID - Screw-in Base 100W Replacement	Retrofit	\$147
HID - Screw-in Base 125W Replacement	Retrofit	\$147
HID - Screw-in Base 150W Replacement	Retrofit	\$147
HID - Screw-in Base 175W Replacement	Retrofit	\$190
HID - Screw-in Base 250W Replacement	Retrofit	\$230
HID - Screw-in Base 600W Replacement	Retrofit	\$418
HID - Screw-in Base 700W Replacement	Retrofit	\$397
HID -Retrofit Kit w/Driver 400W Replacement	Retrofit Kit	\$413
HID - Retrofit Kit w/Driver 600W Replacement	Retrofit Kit	\$445
HID - Retrofit Kit w/Driver 700W Replacement	Retrofit Kit	\$572
HID - Retrofit Kit w/Driver 900W Replacement	Retrofit Kit	\$742
HID - Retrofit Kit w/Driver 1000W Replacement	Retrofit Kit	\$990
Canopy Parking Garage 70W HID	Fixture	\$240
Canopy Parking Garage 125W HID	Fixture	\$250

Canopy Parking Garage 150W HID	Fixture	\$280
Canopy Parking Garage 175-250W HID	Fixture	\$304
Canopy Parking Garage 250W HID	Fixture	\$266
Canopy Gas Stations 250W HID	Fixture	\$279
Canopy Gas Stations 400W HID	Fixture	\$638
Canopy Gas Stations - Slim - 70W HID	Fixture	\$350
Canopy Gas Stations - Slim - 125W HID	Fixture	\$395
Canopy Gas Stations - Slim - 175W HID	Fixture	\$396
Canopy Gas Stations - Slim - 250W HID	Fixture	\$327
Canopy Gas Stations - Slim - 320W HID	Fixture	\$599
Canopy Gas Stations - Slim - 400W HID	Fixture	\$637
Area Light (Pole/Wall) 175W HID Medium Shoebox	Fixture	\$665
Area Light (Pole/Wall) 250W HID Medium Shoebox	Fixture	\$676
Area Light (Pole/Wall) 320W HID Medium Shoebox	Fixture	\$717
Area Light (Pole/Wall) 400W HID Medium Shoebox	Fixture	\$759
Area Light (Pole/Wall) 400W HID Large Shoebox	Fixture	\$759
Area Light (Pole/Wall) 500W HID Large Shoebox	Fixture	\$985
Area Light (Pole/Wall) 600W HID Large Shoebox	Fixture	\$985
Area Light (Pole/Wall) 750W HID Large Shoebox	Fixture	\$985
Area Light (Pole/Wall) 175W HID Medium Cobra	Fixture	\$654
Area Light (Pole/Wall) 250W HID Medium Cobra	Fixture	\$687
Area Light (Pole/Wall) 400W HID Medium Cobra	Fixture	\$757
Area Light (Pole/Wall) 500W HID Large Cobra	Fixture	\$985
Area Light (Pole/Wall) 750W HID Large Cobra	Fixture	\$985

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

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

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

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

D. COMPLIANCE WITH REQUIREMENTS

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

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

insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. **ADDITIONAL INSURANCE RELATED PROVISIONS**

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

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

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

Email address: ctsantaclara@ebix.com

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

**AMENDMENT NO. 1
TO THE AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
EFFICIENCY SERVICES GROUP, LLC**

PREAMBLE

This agreement ("Amendment No. 1") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Efficiency Services Group, LLC, an Oregon Limited Liability Corporation, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled Agreement for Services between the City of Santa Clara, California, and Efficiency Services Group, LLC. dated April 15, 2020 (Agreement); and
- B. The Parties entered into the Agreement for the purpose of having Contractor administer the Commercial Parking Lot & Exterior Lighting Program (the Program) to Silicon Valley Power's (SVP) small and mid-sized business customers with a goal of upgrading exterior HID wall fixtures and parking lot lights to new LED fixtures.
- C. Due to the success of the program, the Parties now wish to amend the Agreement to add additional compensation.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

- 1. Section 6 of the Agreement, entitled "COMPENSATION AND PAYMENT" is amended to read as follows:

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is one million dollars (\$1,000,000), 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 unless authorized through an executed amendment to this Agreement.

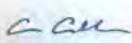
2. Exhibit A – Scope of Services is hereby deleted and replaced with Exhibit A - Scope of Services – Amended March 1, 2021.
3. Exhibit B – Schedule of Fees is hereby deleted and replaced with Exhibit B – Compensation and Fee Schedule – Amended March 1, 2021.
4. Except as set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect. In case of a conflict in the terms of the Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: 3/12/2021


Digitally signed by Brian Doyle
Arellano
Date: 2021.03.11 15:41:02
+08'00'


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"

EFFICIENCY SERVICES GROUP, LLC
a California corporation

Dated: 2/10/21

By (Signature): 

Name: Mark Gosvener

Title: Chief Operating Officer

Principal Place of Business Address: 5625 NE Elam Young Parkway, Suite 100
Hillsboro, Oregon, 97124

Email Address: markg@esgroupllc.com

Telephone: (503) 869-5131

Fax: _____

"CONTRACTOR"

**AGREEMENT FOR SERVICES
AMENDMENT NO. 1
TO THE AGREEMENT FOR SERVICES
BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA,
AND EFFICIENCY SERVICES GROUP, LLC
EXHIBIT A - SCOPE OF SERVICES
AMENDED MARCH 1, 2021**

The Services to be performed for the City by the Contractor under this Agreement to administer the Commercial Parking Lot & Exterior Lighting Program (Program) to Silicon Valley Power's (SVP) small and mid-sized business customers as further defined in this Exhibit A.

1. Program Description

Efficiency Services Group (ESG) will administer the Commercial Parking Lot & Exterior Lighting Program (the Program) to Silicon Valley Power's (SVP) small and mid-sized business customers interested in retrofitting their exterior lighting with more efficient LED lighting with a goal of upgrading exterior HID wall fixtures and parking lot lights to new LED fixtures.

1.1. Program Overview

1.1.1. The Program is designed to have a focused, efficient approach to helping customers upgrade their exterior lighting.

1.1.2. Fixtures are provided to the customer at no cost, and the customer is responsible for the installation. Customers may install the fixtures themselves or hire an electrician to install the fixtures for them. ESG has found that most customers hire an electrician to install the fixtures.

1.1.3. ESG verifies the installations of all LED fixtures prior to invoicing SVP.

1.1.4. The Program has demonstrated that some customers will pay for the installation that would otherwise not participate in SVPs standard lighting program.

1.2. ESG believes that renewing this program will provide the opportunity for SVP to:

1.2.1. Continue to strengthen and build on the relationships established with customers through the Commercial Direct Install and Snapshot Auditing program

1.2.2. Afford significant energy and cost savings to targeted customers

- 1.2.3. Reduce customer maintenance costs and increase customer security
- 1.2.4. Contribute savings toward AB2021 targets
- 1.2.5. Reduce greenhouse gas emissions, which helps to contribute to the City of Santa Clara's Climate Action plan goals.
- 1.3. The success of the program requires the effective implementation of five strategies:
 - 1.3.1. Selection of measures to address the upgrade opportunities identified at customer sites
 - 1.3.2. Identifying eligible customers with the need for parking lot and exterior lighting upgrades
 - 1.3.3. Effectively presenting the program and securing customer participation
 - 1.3.4. Follow-up visits to all participating customers to verify measures were installed and are operating properly, and addressing any customer questions or concerns before considering a project complete
 - 1.3.5. Complete and accurate invoicing and reporting of all program activity to SVP
- 1.4. The Program is designed to perform well in all phases of the program.
- 2. Program Measures:
 - 2.1. The measures selected for inclusion in the Program are designed to take advantage of exterior lighting opportunities that ESG identified from the snapshot audits performed during a previous phase of the Program when ESG visited 2,500 customer sites.
 - 2.2. Mix of Measures: The Program measures are focused on LED parking lot fixtures and LED upgrades to existing fixtures. The program will include the following measures:
 - 2.2.1. LED Screw-In Based "Corncob" Retrofit
 - 2.2.2. LED Parking Garage Fixtures
 - 2.2.3. LED Canopy Fixtures
 - 2.2.4. LED Shoebox Area Lighting
 - 2.2.5. LED Cobra Head Area Lighting
 - 2.2.6. LED Wall Pack

2.3. Measure Descriptions

- 2.3.1. LED Screw-In Based "Corncob" Retrofits: Screw directly into existing screw-in based HID fixtures. Requires rewiring the fixture to bypass the existing ballast.
- 2.3.2. LED Parking Garage Lighting: Replaces existing HID fixtures most commonly found throughout parking garages.
- 2.3.3. LED Canopy Lighting: Replaces existing HID fixtures most commonly found in gas station island canopies.
- 2.3.4. LED Pole/Wall Lighting: LED Shoebox and Cobra head fixtures replace existing HID fixtures most commonly found throughout commercial parking lots, roadways, auto-dealerships, and building perimeters.
- 2.3.5. LED Wall packs: LED wall pack fixtures replace pre-existing HID wall packs.

3. Subscribing the Program

3.1. Snapshot Audits

- 3.1.1. In FY15 and FY16, ESG performed snapshot audits on over 2,500 of SVP's commercial customers.
- 3.1.2. During these visits, ESG identified approximately 438 small to mid-sized commercial customers with parking lot lighting.
- 3.1.3. In addition to these sites, SVPs mid-size commercial customers are also eligible for the program.

3.2. Site Visits

- 3.2.1. EEG representatives hereinafter referred to as Energy Efficiency Advisors (EEA) will visit customer sites, explain the program and encourage the customer to participate. For the customers ESG has served in the previous phases of the program, ESG expects that a majority of these customers will allow the EEA in and will listen to the program presentation because these doors are now "warm" and the customers are familiar with ESG.
- 3.2.2. During initial customer site visits, the EEA will:
 - 3.2.2.1. Ask to talk with the decision maker
 - 3.2.2.2. Explain the Program offer to the customer

3.2.2.3. Ask the customer to agree to install/upgrade their exterior lighting with LEDs

3.2.2.4. If customer agrees, verify the quantity and type of fixtures or upgrade kits needed for the exterior lights

3.3. Delivery and Follow Up

3.3.1. If customer agrees to install lighting fixtures, ESG will schedule a follow up visit with the customer to deliver the LED lighting equipment. ESG has learned through experience that it can take several contacts with a customer and can be a time intensive task to get the customer ready to take delivery of LED lighting equipment for installation. EEAs have demonstrated the persistence needed to accomplish this task.

3.3.2. When the EEA delivers the LED lighting equipment to the customer, the EEA will schedule another appointment with the customer to return and verify the installation of the fixtures. This also serves to provide the customer with an installation deadline.

3.3.3. A final verification inspection will be performed on all projects completed. During the final visit, the EEA will assure that any customer questions or concerns are addressed and resolved before closing the project and invoicing SVP. ESG understands the importance of emphasizing with the customer that the program is initiated by SVP and using the program experience to help SVP build/strengthen their relationships with their customers.

4. Reporting and Invoicing

4.1. ESG thoroughly understands the CEC reporting requirements for utility energy efficiency programs. Because of this, ESG is able to generate complete and accurate activity report and invoice formats that make it easy for SVP to track budgets, program expenses, and report program results to the State.

4.2. ESG will prepare monthly activity reports and invoices as required by SVP.

5. Turnkey Administration: ESG will provide complete turnkey program administration, including:

5.1. Program development (product selection, marketing materials, customer outreach)

5.2. Customer service/support

5.3. Delivery of LED exterior lighting equipment

- 5.4. Warranty information
- 5.5. Reporting/invoicing
- 5.6. CEC compliance support
- 6. Program Targets: This program is available to small and mid-size commercial customers that receive electric service from SVP. Based on the proposed budget, the program will save an estimated 1,422,323 kWh annually.
- 7. Incentive Structure: All LED fixtures/lamps will be provided at no cost to the SVP customer. The customer will be responsible for their installation (either using customer's maintenance staff or hiring an electrician).
- 8. Program Budget:
 - 8.1. ESG's fees for this program are further outlined in Exhibit B – Fee Schedule and Payment Provisions and include:
 - 8.1.1. Fee for marketing and presenting the program offer to each customer
 - 8.1.2. Program subscription/administration fee for projects completed in the program
 - 8.1.3. Cost per fixture/lamp installed
 - 8.2. Program fees cover all costs, including program development activities, marketing/outreach, labor, materials (including mounting hardware and photocells), State sales tax, travel expenses, and administration/overhead.
- 9. Program Strategy/Avoiding Lost Opportunities

The Program benefits from having a list of customer sites already verified as having parking lot lighting equipment. SVP has already invested in developing relationships with these customers through the Commercial Direct Install and Snapshot Audit Program and the previous Exterior Lighting Direct Install and Snapshot Audit program. By including this specific program offering to those customers identified with parking lot lighting, SVP is taking advantage of this previously discovered opportunity instead of allowing it to go unaddressed.
- 10. Program Objectives
 - 10.1. Objective #1: Present the program to enough customers to identify approximately 148 customers willing to participate in the program.
 - 10.2. Objective #2: Secure enough customers to meet a target of approximately 1,770 parking lot and exterior light fixtures or upgrade kits.

11. Program Metrics

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

11.1.1. Number of business subscribed

11.1.2. Number of measures installed

11.1.3. Percentage of program budget utilized

11.1.4. Customer satisfaction

11.2. ESG will track all program metrics on a monthly and program-to-date basis.

11.2.1. Metrics will be generated by site audit data detailing measure upgrade opportunities, verified measures installed, and customer satisfaction as determined during final verification inspections.

11.2.2. Activity reports will include a budget tracker to show how much of the program budget has been utilized and the amount of remaining program budget.

12. Program Development: Program development tasks have been completed in earlier phases of the program. ESG and SVP will work together to assure that ESG has the most current eligible customer lists.

13. Program Delivery

13.1. Task: Customer Service/Support

13.1.1. ESG will maintain a phone number for customers to call with questions about the Program or if the customer needs to talk with a Program field representative. This number will connect customers directly to Program staff that can answer questions about the Program and, if applicable, put them in a queue for an on-site visit by Program subscription staff.

13.1.2. ESG will also maintain a toll-free number for customers to call if they need to speak to a Program representative immediately and the local field rep is not available to answer a call. This assures that SVP customers will always be able to get in touch with Program staff.

13.2. Task: Program Presentation and Subscription: The EEA will visit customer sites to present the program and sign them up to participate. The following are the objectives for the site visit.

13.2.1. Identify the decision maker and present the program to them

- 13.2.2. Evaluate the existing parking light lighting and determine quantity and type of LED upgrade equipment is appropriate
- 13.2.3. Offer the LED equipment to the customer and ask the customer to commit to the installation
- 13.2.4. If customer agrees to participate, EEA will have the customer sign participation documents
- 13.2.5. Set appointment with customer to deliver LED parking lot lighting equipment
- 13.2.6. Enter all activity from the site visit into the application and upload to database
- 13.3. Task: Order LED Lighting Equipment: ESG will place orders for equipment needed to complete projects.
- 13.4. Task: Exterior Lighting Equipment Delivery: EEA will deliver the LED parking lot lighting equipment to the customer and schedule an appointment for the final verification site visit.
- 13.5. Task: Final Verification Site Visits: EEA will visit the customer site a final time and verify that the LED lighting has been installed. EEA will also make sure any customer questions or concerns are addressed before they finalize the project and invoice SVP.
- 13.6. Task: Warranty Information: LED exterior lighting products delivered under the program will carry the standard manufacturer warranty (typically 2-3 years).
- 13.7. Task: Reporting/Invoicing: Detailed activity reports will be provided to SVP on a monthly basis, along with the monthly invoice for work completed. Reports will include all customers served, and detailed information regarding measures installed at each customer site.
- 13.8. Task: CEC Compliance Support: ESG will maintain the documentation necessary to support SVP's reporting requirements (SB 1037, EM&V) for no less than five years.

14. Customer Interface

- 14.1. ESG will continue to employ the same successful recruitment strategy utilized in delivering the current Program.
- 14.2. ESG understands that effective recruitment of program participants begins with the coordination of effort between ESG and SVP.

- 14.2.1. For example, a utility-endorsed letter is presented to customers on the targeted list that lends creditability to the program and introduces ESG as an approved SVP partner.
 - 14.2.2. Following this initial utility contact, EEAs will continue to visit sites on the target customer list. In most cases this will not be the first time an EEA has been onsite talking with the customer, so this program does not typically require any "cold-calling".
 - 14.2.3. If the EEA is unable to speak to the decision maker during an initial site visit, leave-behind materials will be provided and will include information for the customer to schedule a future visit. The EEA will follow-up with the customer at a later time.
- 14.3. It often takes several conversations with a customer before the customer agrees to install the LED lighting equipment. The EEAs will be reasonably persistent in pursuing the customer until they have an answer regarding the customer's willingness to participate in the program.

15. Strategic Partners

- 15.1. ESG will serve as the program administrator for the Program. ESG has one partner used in the implementation of the program RD Energy Solutions, 7333 SE Ellis St. , Portland, OR 97206
- 15.2. ESG has had a relationship with this RD Energy Solutions (RD) for over seven years and has successfully delivered utility programs with RD; including the current Program for SVP. ESG and RD have partnered to implement EE programs to over 32 utilities in California and the Northwest.
- 15.3. RD Key Personnel include:
 - 15.3.1. Zack Lewetag, Vice President of Operations - Coordination of all field activity and oversight of EEAs
 - 15.3.2. Mark Brost, Energy Efficiency Manager - Manages EEAs, product delivery, customer interaction and contractor liaison.
- 15.4. RD Energy Solutions is the partner that performs the customer interface and field functions for the Program. RD will perform the following tasks:
 - 15.4.1. Initial customer outreach and program subscription activities
 - 15.4.2. Ordering and delivery of LED exterior lighting equipment needed to complete installations
 - 15.4.3. Entering program activity for each business served into the iPad application

15.4.4. Follow-up verification inspections

16. ESG Key Program Personnel

- 16.1. Mark Gosvener, COO - Contract related issues and general oversight of the program, main point of contact for SVP.
- 16.2. Miranda Boutelle, Program Manager - Program administration, reporting, invoicing.
- 16.3. Dave Barnhart, Manager of Direct Install Services - General oversight of all field activity and coordination with RD Energy Solutions.

17. ESG Program Administration Responsibilities:

- 17.1. Communication with SVP; ESG will serve as SVP's point of contact for anything related to the Commercial Program
- 17.2. Coordinating all program development tasks with our program partner
- 17.3. Activity reporting and invoicing
- 17.4. Budget tracking
- 17.5. Customer follow-up visits and measure verification

18. Quality Assurance and Measure Verification Activities

- 18.1. The EEAs will be involved in all aspects of the program; from the initial visit to the final verification inspection. This will provide consistent project management of each customer site throughout the program.
- 18.2. Final inspections will be performed on all projects to assure that the product is installed and operational, and that all customer needs have been met and customers are happy with the program experience.

19. Customer Complaint Resolution

- 19.1. Customer complaints are dealt with on a case-by-case basis depending on the specific needs of the customer. Customers may call ESG directly on our toll-free line, or they can contact the EEA that works for RD Energy Solutions. Phone numbers will be listed in program marketing materials, and the EEA will leave their contact information with the customers.
- 19.2. Customer complaints are considered urgent and receive an immediate call-back from a Program representative. Every effort is made to resolve the customer complaints completely and promptly.

- 19.3. During the final inspection, the customer will be asked if they have any questions or concerns. Any concerns or complaints are forwarded via email to the appropriate Program representative responsible for its resolution, and the responsible person is required to send an email reply that the complaint has been resolved and the customer is completely satisfied.

20. Marketing Activities

- 20.1. ESG's experience has shown that customer response to the program is significantly improved by endorsement from their utility. This endorsement is provided using a letter that the EEA shares with the customer at the first site visit. Alternately, at SVP's sole discretion, this can be accomplished by SVP mailing a letter to the targeted list of customers prior to EEAs beginning their site visits.
 - 20.2. ESG will work with SVP to develop/assemble any program or marketing collateral SVP would like presented to the customers during the EEAs visit. All materials will be approved by SVP in advance.
 - 20.3. The remainder of the marketing/sales activities will be relational, face-to-face discussions between the customers and the EEA. It may take several conversations and/or site visits by the EEA to subscribe and complete projects under this program.
21. Measurement and Estimate of Savings are listed in Table A-1. KWh savings values for all exterior fixtures are based on calculations based on pre/post wattages, and assume fixtures are on all night. kWh saving assumption calculations are available upon request. Total kWh savings may change based on types of customers served by the Program and specific lighting fixtures and materials needed.

**AGREEMENT FOR SERVICES
AMENDMENT NO. 1 TO THE AGREEMENT FOR SERVICES
BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA,
AND EFFICIENCY SERVICES GROUP, LLC
TABLE A-1 ESTIMATE OF COSTS AND kWh SAVINGS**

Description	Unit Type	Estimated Units	kWh Per Unit	Total kWh
Site Visit & Program Presentation	Audit	1,524.000		
Completed Project Administration	Project	152.400		
Wall Pack 70W MH Replacement	Fixture	48.768	292	14,240
Wall Pack 100W MH Replacement	Fixture	1.524	439	669
Wall Pack 150W MH Replacement	Fixture	1.524	648	988
Wall Pack 175W MH Replacement	Fixture	62.484	702	43,864
Wall Pack 250W MH Replacement	Fixture	76.200	994	75,743
Wall Pack 400W MH Replacement	Fixture	30.480	1,464	44,623
Wall Pack 70W MH Replacement w/Photocell	Fixture	53.340	292	15,575
Wall Pack 100W MH Replacement w/Photocell	Fixture	1.524	439	669
Wall Pack 150W MH Replacement w/Photocell	Fixture	307.848	648	199,486
Wall Pack 175W MH Replacement w/Photocell	Fixture	94.488	702	66,331
Wall Pack 250W MH Replacement w/Photocell	Fixture	76.200	994	75,743
Wall Pack 400W MH Replacement w/Photocell	Fixture	45.720	1,464	66,934
HID - Screw-in Base 70W Replacement	Retrofit	30.000	493	14,790
HID - Screw-in Base 100W Replacement	Retrofit	30.000	493	14,790
HID - Screw-in Base 125W Replacement	Retrofit	61.920	493	30,527
HID - Screw-in Base 150W Replacement	Retrofit	90.600	493	44,666
HID - Screw-in Base 175W Replacement	Retrofit	4.572	656	2,999
HID - Screw-in Base 250W Replacement	Retrofit	7.620	882	6,721
HID - Screw-in Base 600W Replacement	Retrofit	3.048	2,132	6,498
HID - Screw-in Base 700W Replacement	Retrofit	3.048	2,583	7,873
HID -Retrofit Kit w/Driver 400W Replacement	Retrofit Kit	1.524	1,468	2,237
HID - Retrofit Kit w/Driver 600W Replacement	Retrofit Kit	1.524	2,132	3,249
HID - Retrofit Kit w/Driver 700W Replacement	Retrofit Kit	1.524	2,583	3,936
HID - Retrofit Kit w/Driver 900W Replacement	Retrofit Kit	1.524	3,075	4,686
HID - Retrofit Kit w/Driver 1000W Replacement	Retrofit Kit	15.240	3,198	48,738
Canopy Parking Garage 70W HID	Fixture	1.524	287	437

**AGREEMENT FOR SERVICES
AMENDMENT NO. 1 TO THE AGREEMENT FOR SERVICES
BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA,
AND EFFICIENCY SERVICES GROUP, LLC
TABLE A-1 ESTIMATE OF COSTS AND kWh SAVINGS**

Description	Unit Type	Estimated Units	kWh Per Unit	Total kWh
Canopy Parking Garage 125W HID	Fixture	15.240	513	7,811
Canopy Parking Garage 150W HID	Fixture	0.762	656	500
Canopy Parking Garage 175-250W HID	Fixture	0.762	615	469
Canopy Parking Garage 250W HID	Fixture	38.100	1,046	39,834
Canopy Gas Stations 250W HID	Fixture	22.860	882	20,151
Canopy Gas Stations 400W HID	Fixture	3.048	1,439	4,386
Canopy Gast Stations - Slim - 70W HID	Fixture	1.100	1,440	1,584
Canopy Gast Stations - Slim - 125W HID	Fixture	1.500	513	769
Canopy Gast Stations - Slim - 175W HID	Fixture	39.624	697	27,618
Canopy Gast Stations - Slim - 250W HID	Fixture	1.524	882	1,343
Canopy Gast Stations - Slim - 320W HID	Fixture	1.524	1,128	1,718
Canopy Gast Stations - Slim - 400W HID	Fixture	3.048	1,386	4,224
Area Light (Pole/Wall) 175W HID Medium Shoebox	Fixture	76.200	533	40,615
Area Light (Pole/Wall) 250W HID Medium Shoebox	Fixture	121.920	791	96,475
Area Light (Pole/Wall) 320W HID Medium Shoebox	Fixture	15.240	1,091	16,621
Area Light (Pole/Wall) 400W HID Medium Shoebox	Fixture	30.480	1,300	39,615
Area Light (Pole/Wall) 400W HID Large Shoebox	Fixture	45.720	1,300	59,422
Area Light (Pole/Wall) 500W HID Large Shoebox	Fixture	1.524	1,222	1,862
Area Light (Pole/Wall) 600W HID Large Shoebox	Fixture	1.524	1,632	2,487
Area Light (Pole/Wall) 750W HID Large Shoebox	Fixture	1.524	2,214	3,374
Area Light (Pole/Wall) 175W HID Medium Cobra	Fixture	60.960	533	32,492
Area Light (Pole/Wall) 250W HID Medium Cobra	Fixture	152.400	783	119,344
Area Light (Pole/Wall) 400W HID Medium Cobra	Fixture	76.200	1,275	97,163
Area Light (Pole/Wall) 500W HID Large Cobra	Fixture	1.524	1,451	2,212
Area Light (Pole/Wall) 750W HID Large Cobra	Fixture	1.524	2,116	3,224
TOTAL		1,769.600		1,422,323

**AMENDMENT NO. 1
TO THE AGREEMENT FOR SERVICES
BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA,
AND EFFICIENCY SERVICES GROUP, LLC**

**EXHIBIT B – PAYMENT PROVISIONS AND FEE SCHEDULE
AMENDED MARCH 1, 2021**

1. Services shall be provided according to the rates and costs outlined in Table B-1 – Unit Prices attached and incorporated into this Agreement.
2. Payment Provisions:
 - 2.1. ESG will submit invoices to SVP monthly, accompanied by detailed reports showing each site visited and work performed at each customer/business site.
 - 2.2. City will pay Contractor within thirty (30) days of City's receipt of an approved invoice.
 - 2.3. If an invoice error is identified by SVP, a corrected invoice will be submitted by ESG within five business days of receiving notification from SVP.
3. Budget
 - 3.1. A pro forma budget is attached as Table B-2 – Pro Forma Budget. Line amounts may change based on types of customers served by the Program and specific lighting fixtures and materials needed.
 - 3.2. Because all program costs are covered in the program fees, the budget can be scaled up or down with little expected change to program financial performance.
 - 3.3. The pro-forma budget of \$1,000,000 is anticipated to serve up to 144 commercial customers.
4. Compensation: The amount billed to City by Contractor for services under this Agreement as Amended will not exceed one million dollars (\$1,000,000).

**AGREEMENT FOR SERVICES
AMENDMENT NO. 1 TO THE AGREEMENT FOR SERVICES
BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA,
AND EFFICIENCY SERVICES GROUP, LLC
TABLE B-1 UNIT PRICES**

Description	Unit Type	Utility Cost/Price Per Unit
Site Visit & Program Presentation	Audit	\$100
Completed Project Administration	Project	\$375
Wall Pack 70W MH Replacement	Fixture	\$285
Wall Pack 100W MH Replacement	Fixture	\$285
Wall Pack 150W MH Replacement	Fixture	\$285
Wall Pack 175W MH Replacement	Fixture	\$320
Wall Pack 250W MH Replacement	Fixture	\$383
Wall Pack 400W MH Replacement	Fixture	\$519
Wall Pack 70W MH Replacement w/Photocell	Fixture	\$293
Wall Pack 100W MH Replacement w/Photocell	Fixture	\$293
Wall Pack 150W MH Replacement w/Photocell	Fixture	\$316
Wall Pack 175W MH Replacement w/Photocell	Fixture	\$350
Wall Pack 250W MH Replacement w/Photocell	Fixture	\$383
Wall Pack 400W MH Replacement w/Photocell	Fixture	\$560
HID - Screw-in Base 70W Replacement	Retrofit	\$147
HID - Screw-in Base 100W Replacement	Retrofit	\$147
HID - Screw-in Base 125W Replacement	Retrofit	\$147
HID - Screw-in Base 150W Replacement	Retrofit	\$147
HID - Screw-in Base 175W Replacement	Retrofit	\$190
HID - Screw-in Base 250W Replacement	Retrofit	\$230
HID - Screw-in Base 600W Replacement	Retrofit	\$418
HID - Screw-in Base 700W Replacement	Retrofit	\$397
HID -Retrofit Kit w/Driver 400W Replacement	Retrofit Kit	\$413
HID - Retrofit Kit w/Driver 600W Replacement	Retrofit Kit	\$445
HID - Retrofit Kit w/Driver 700W Replacement	Retrofit Kit	\$572
HID - Retrofit Kit w/Driver 900W Replacement	Retrofit Kit	\$742
HID - Retrofit Kit w/Driver 1000W Replacement	Retrofit Kit	\$990
Canopy Parking Garage 70W HID	Fixture	\$240
Canopy Parking Garage 125W HID	Fixture	\$250
Canopy Parking Garage 150W HID	Fixture	\$280
Canopy Parking Garage 175-250W HID	Fixture	\$304

**AGREEMENT FOR SERVICES
AMENDMENT NO. 1 TO THE AGREEMENT FOR SERVICES
BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA,
AND EFFICIENCY SERVICES GROUP, LLC
TABLE B-1 UNIT PRICES**

Description	Unit Type	Utility Cost/Price Per Unit
Canopy Parking Garage 250W HID	Fixture	\$266
Canopy Gas Stations 250W HID	Fixture	\$279
Canopy Gas Stations 400W HID	Fixture	\$638
Canopy Gas Stations - Slim - 70W HID	Fixture	\$350
Canopy Gas Stations - Slim - 125W HID	Fixture	\$395
Canopy Gas Stations - Slim - 175W HID	Fixture	\$396
Canopy Gas Stations - Slim - 250W HID	Fixture	\$327
Canopy Gas Stations - Slim - 320W HID	Fixture	\$599
Canopy Gas Stations - Slim - 400W HID	Fixture	\$637
Shoebox	Fixture	\$665
Shoebox	Fixture	\$676
Area Light (Pole/Wall) 320W HID Medium Shoebox	Fixture	\$717
Area Light (Pole/Wall) 400W HID Medium Shoebox	Fixture	\$759
Area Light (Pole/Wall) 400W HID Large Shoebox	Fixture	\$759
Area Light (Pole/Wall) 500W HID Large Shoebox	Fixture	\$985
Area Light (Pole/Wall) 600W HID Large Shoebox	Fixture	\$985
Area Light (Pole/Wall) 750W HID Large Shoebox	Fixture	\$985
Area Light (Pole/Wall) 175W HID Medium Cobra	Fixture	\$654
Area Light (Pole/Wall) 250W HID Medium Cobra	Fixture	\$687
Area Light (Pole/Wall) 400W HID Medium Cobra	Fixture	\$757
Area Light (Pole/Wall) 500W HID Large Cobra	Fixture	\$985
Area Light (Pole/Wall) 750W HID Large Cobra	Fixture	\$985

**AGREEMENT FOR SERVICES
AMENDMENT NO. 1 TO THE AGREEMENT FOR SERVICES
BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA,
AND EFFICIENCY SERVICES GROUP, LLC
TABLE B-2 PRO FORMA BUDGET**

Description	Unit Type	Utility Cost/Price Per Unit	Estimated Units	Estimated Utility Cost	kWh Per Unit	Total kWh
Site Visit & Program Presentation	Audit	\$100	1,524.000	\$152,400		
Completed Project Administration	Project	\$375	152.400	\$57,150		
Wall Pack 70W MH Replacement	Fixture	\$285	48.768	\$13,899	292	14,240
Wall Pack 100W MH Replacement	Fixture	\$285	1.524	\$434	439	669
Wall Pack 150W MH Replacement	Fixture	\$285	1.524	\$434	648	988
Wall Pack 175W MH Replacement	Fixture	\$320	62.484	\$19,995	702	43,864
Wall Pack 250W MH Replacement	Fixture	\$383	76.200	\$29,185	994	75,743
Wall Pack 400W MH Replacement	Fixture	\$519	30.480	\$15,819	1,464	44,623
Wall Pack 70W MH Replacement w/Photocell	Fixture	\$293	53.340	\$15,629	292	15,575
Wall Pack 100W MH Replacement w/Photocell	Fixture	\$293	1.524	\$447	439	669
Wall Pack 150W MH Replacement w/Photocell	Fixture	\$316	307.848	\$97,280	648	199,486
Wall Pack 175W MH Replacement w/Photocell	Fixture	\$350	94.488	\$33,071	702	66,331
Wall Pack 250W MH Replacement w/Photocell	Fixture	\$383	76.200	\$29,185	994	75,743
Wall Pack 400W MH Replacement w/Photocell	Fixture	\$560	45.720	\$25,603	1,464	66,934
HID - Screw-in Base 70W Replacement	Retrofit	\$147	30.000	\$4,410	493	14,790
HID - Screw-in Base 100W Replacement	Retrofit	\$147	30.000	\$4,410	493	14,790
HID - Screw-in Base 125W Replacement	Retrofit	\$147	61.920	\$9,102	493	30,527
HID - Screw-in Base 150W Replacement	Retrofit	\$147	90.600	\$13,318	493	44,666
HID - Screw-in Base 175W Replacement	Retrofit	\$190	4.572	\$869	656	2,999
HID - Screw-in Base 250W Replacement	Retrofit	\$230	7.620	\$1,753	882	6,721
HID - Screw-in Base 600W Replacement	Retrofit	\$418	3.048	\$1,274	2,132	6,498
HID - Screw-in Base 700W Replacement	Retrofit	\$397	3.048	\$1,210	2,583	7,873
HID -Retrofit Kit w/Driver 400W Replacement	Retrofit Kit	\$413	1.524	\$629	1,468	2,237

**AGREEMENT FOR SERVICES
AMENDMENT NO. 1 TO THE AGREEMENT FOR SERVICES
BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA,
AND EFFICIENCY SERVICES GROUP, LLC
TABLE B-2 PRO FORMA BUDGET**

Description	Unit Type	Utility Cost/Price Per Unit	Estimated Units	Estimated Utility Cost	kWh Per Unit	Total kWh
HID - Retrofit Kit w/Driver 600W Replacement	Retrofit Kit	\$445	1.524	\$678	2,132	3,249
HID - Retrofit Kit w/Driver 700W Replacement	Retrofit Kit	\$572	1.524	\$872	2,583	3,936
HID - Retrofit Kit w/Driver 900W Replacement	Retrofit Kit	\$742	1.524	\$1,131	3,075	4,686
HID - Retrofit Kit w/Driver 1000W Replacement	Retrofit Kit	\$990	15.240	\$15,088	3,198	48,738
Canopy Parking Garage 70W HID	Fixture	\$240	1.524	\$366	287	437
Canopy Parking Garage 125W HID	Fixture	\$250	15.240	\$3,810	513	7,811
Canopy Parking Garage 150W HID	Fixture	\$280	0.762	\$213	656	500
Canopy Parking Garage 175-250W HID	Fixture	\$304	0.762	\$232	615	469
Canopy Parking Garage 250W HID	Fixture	\$266	38.100	\$10,135	1,046	39,834
Canopy Gas Stations 250W HID	Fixture	\$279	22.860	\$6,367	882	20,151
Canopy Gas Stations 400W HID	Fixture	\$638	3.048	\$1,945	1,439	4,386
Canopy Gas Stations - Slim - 70W HID	Fixture	\$350	1.100	\$385	1,440	1,584
Canopy Gas Stations - Slim - 125W HID	Fixture	\$395	1.500	\$593	513	769
Canopy Gas Stations - Slim - 175W HID	Fixture	\$396	39.624	\$15,691	697	27,618
Canopy Gas Stations - Slim - 250W HID	Fixture	\$327	1.524	\$498	882	1,343
Canopy Gas Stations - Slim - 320W HID	Fixture	\$599	1.524	\$913	1,128	1,718
Canopy Gas Stations - Slim - 400W HID	Fixture	\$637	3.048	\$1,942	1,386	4,224
Area Light (Pole/Wall) 175W HID Medium Shoebox	Fixture	\$665	76.200	\$50,673	533	40,615
Area Light (Pole/Wall) 250W HID Medium Shoebox	Fixture	\$676	121.920	\$82,418	791	96,475
Area Light (Pole/Wall) 320W HID Medium Shoebox	Fixture	\$717	15.240	\$10,927	1,091	16,621
Area Light (Pole/Wall) 400W HID Medium Shoebox	Fixture	\$759	30.480	\$23,134	1,300	39,615
Area Light (Pole/Wall) 400W HID Large Shoebox	Fixture	\$759	45.720	\$34,701	1,300	59,422

**AGREEMENT FOR SERVICES
AMENDMENT NO. 1 TO THE AGREEMENT FOR SERVICES
BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA,
AND EFFICIENCY SERVICES GROUP, LLC
TABLE B-2 PRO FORMA BUDGET**

Description	Unit Type	Utility Cost/Price Per Unit	Estimated Units	Estimated Utility Cost	kWh Per Unit	Total kWh
Area Light (Pole/Wall) 500W HID Large Shoebox	Fixture	\$985	1.524	\$1,501	1,222	1,862
Area Light (Pole/Wall) 600W HID Large Shoebox	Fixture	\$985	1.524	\$1,501	1,632	2,487
Area Light (Pole/Wall) 750W HID Large Shoebox	Fixture	\$985	1.524	\$1,501	2,214	3,374
Area Light (Pole/Wall) 175W HID Medium Cobra	Fixture	\$654	60.960	\$39,868	533	32,492
Area Light (Pole/Wall) 250W HID Medium Cobra	Fixture	\$687	152.400	\$104,699	783	119,344
Area Light (Pole/Wall) 400W HID Medium Cobra	Fixture	\$757	76.200	\$57,683	1,275	97,163
Area Light (Pole/Wall) 500W HID Large Cobra	Fixture	\$985	1.524	\$1,501	1,451	2,212
Area Light (Pole/Wall) 750W HID Large Cobra	Fixture	\$985	1.524	\$1,501	2,116	3,224
TOTAL			1,769.600	\$999,971		1,422,323



Agenda Report

22-96

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action on Agreements with C2R Engineering, Inc. and West Valley Construction Company, Inc. for On Call Emergency Water & Sewer Utility Repairs

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

The Water & Sewer Utilities Department (Department) is responsible for ensuring continuous operation of the water and recycled water distribution and sewer collection systems. The City's capital improvement program includes projects to maintain the integrity of the systems including replacement and repair of aging water and sewer mains. In the event of emergencies, such as water main, service line, hydrant and sanitary sewer leaks, staff is seeking to enter into on-call agreements with contractors to maintain levels of services, avoid service disruptions and damage to City properties and assets.

DISCUSSION

Pursuant to City Code Section 2.105.330, a formal request for Statement of Qualifications (SOQ) was conducted with the award recommendation based on "best value." The factors considered in the award were qualifications and technical capability. Cost is considered in the final step as discussed in this report.

In September 2021, the City released a SOQ for On Call Emergency Water & Sewer Utility Repairs using the City's bid notification system and two proposals were received. one from C2R Engineering, Inc. and another from West Valley Construction Company, Inc.

The proposals were evaluated independently by Utility Operations staff and the Principal Engineer in the Department. Factors in the evaluation included safety records, licensing, prevailing wage violations, previous performance, litigation history, experience, key personnel, and availability of resources to perform the work. The evaluation team determined both companies were qualified to provide on call water and sewer utility repair services. Therefore, staff recommends award of contract to C2R Engineering, Inc. and West Valley Construction Company, Inc. The evaluation process also included reference checks for both companies that confirmed their capabilities to perform the work.

If Council approves, the City will enter into a master agreement with each company. Both companies will exclusively compete for projects via a mini bid process, unless the nature of the emergency prevents competitive bidding, in which case, the award will be made on a rotational basis. A work order pursuant to the terms of the master agreement will be issued to the lowest bid for each project. Availability of internal staff and equipment will be determined before assigning any emergency work

to the contractors.

Under the proposed agreements, the contractors will provide repair services for all water, recycled water and sewer assets including, but not limited to, main lines, service connections, valves, fittings, hydrants, instrumentation, backflow assemblies, sanitary sewer overflows, manholes, collection laterals and other system appurtenances that are essential to operating the utilities. The contractors will be responsible for all necessary permits, traffic controls, and inspections to complete the work.

The term of the proposed master agreements is five years.

ENVIRONMENTAL REVIEW

The action being considered is exempt from formal environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15301(b) (Class 1 - "Existing Facilities") as the activity consists of the operation, repair, and maintenance of existing public structures, facilities, and mechanical equipment, including publicly-owned utilities, involving negligible or no expansion of the existing use.

FISCAL IMPACT

The cost of the proposed work shall not exceed \$5,000,000 during the five-year term. There is sufficient funding in the Water & Sewer Utilities Department's adopted operating budget to cover this agreement. No budget amendment is required at this time. Funds will be expended depending on the nature of the emergency. There is adequate funding available in the Water, Sewer, and Recycled Water Utilities operating funds to cover necessary expenditures. Should an emergency arise that exceeds the available funds, staff will bring forward a budget amendment for Council action.

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 or via email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>>.

RECOMMENDATION

Authorize the City Manager's Office to execute Master Agreements with C2R Engineering, Inc. and West Valley Construction Company for On Call Emergency Water & Sewer Utility Repairs, for a five-year term starting on or about April 1, 2022, and ending on or about March 31, 2027, with a maximum aggregate compensation not-to-exceed \$5,000,000 for the two Master Agreements.

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

Approved by: Office of The City Manager

ATTACHMENTS

1. Master Agreement with C2R Engineering, Inc.
2. Master Agreement with West Valley Construction Company, Inc.

**MASTER AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
C2R ENGINEERING, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and C2R Engineering, Inc., a California corporation (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum

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

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

2. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on April 1, 2022 and terminate on March 31, 2027.

3. WORK ORDERS

- A. Contractor shall provide the services described in Exhibit A to the City on an as-needed basis and as further described pursuant to individual work orders ("Work Orders") issued in accordance with the Terms and Conditions of this Agreement. Each Work Order shall describe the services and deliverables (collectively "Work") the Contractor must provide, the time limit within which the Contractor must complete the Work, and the compensation for the Work.
- B. Each Work Order shall be substantially in the form specified in Exhibit E. Subject to the terms and conditions of this Agreement, Contractor and City will negotiate the specific requirements of each Approved Work Order.
- C. The City will not compensate the Contractor for any Work until the City has executed the Work Order for such Work ("Approved Work Order").
- D. Each Approved Work Order incorporates the Terms and Conditions of this Agreement, and becomes a part of this Agreement. An Approved Work Order must be consistent with – and cannot alter - the terms and conditions of this Agreement. The terms and conditions of this Agreement control over the terms and conditions contained in an Approved Work Order – even if the Approved Work Order expressly states that it is intended to control. Any conflicting terms and conditions in an Approved Work Order are invalid and unenforceable.
- E. The City has no obligation to issue any Approved Work Orders under this Agreement.

4. WARRANTY

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make

corrections or replace materials or services and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

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

6. COMPENSATION AND PAYMENT

Each Approved Work Order will specify the maximum amount payable to the Contractor for all fees related to the Contractor providing the Work ("Maximum Work Order Compensation"). The Contractor shall fully complete all Work required by the Approved Work Order for no more than that Maximum Work Order Compensation. City shall only be liable for charges expressly authorized in an Approved Work Order.

7. TERMINATION

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

8. ASSIGNMENT AND SUBCONTRACTING

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

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

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

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

11. CONFIDENTIALITY OF MATERIAL

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

12. OWNERSHIP OF MATERIAL

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

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

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

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

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

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

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

17. NOTICES

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

City of Santa Clara
Attention: Water & Sewer Utilities Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at gwelling@santaclaraca.gov

And to Contractor addressed as follows:

C2R Engineering, Inc.
Trevor Connolly
100 Mountain View Avenue
Los Altos, CA 94034
and by e-mail at trevor@c2rengineering.com

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

18. COMPLIANCE WITH LAWS

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

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

19. CONFLICTS OF INTEREST

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

20. FAIR EMPLOYMENT

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

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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: _____

Office of the City Attorney
City of Santa Clara

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

"CITY"

C2R ENGINEERING, INC.
a California corporation

Dated: 2.9.2022

By (Signature): 

Name: Trevor Connolly

Title: President

Principal Place of Business Address: 100 Mountain View Avenue
Los Altos, CA 94034

Email Address: trevor@c2rengineering.com

Telephone: (415) 559-2841

Fax: ()

"CONTRACTOR"

EXHIBIT A SCOPE OF SERVICES

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

1. INTRODUCTION

- 1.1.** Contractor will be responsible for completing work as set forth in Approved Work Orders. The scope of work involves repair and maintenance, on an emergency basis, to all water, recycled water and sewer assets in plant including but not limited to main lines, service connections, valves, fittings, hydrants, instrumentation, backflow assemblies, manholes, collection laterals, system appurtenances, and all associated construction activities including but not limited to emergency pavement restoration, traffic control, and permitting.
- 1.2.** To the extent not inconsistent with this Agreement between the City and Contractor including this Scope of Services, the City's SOQ 21-22-16 (including subsequent updates), and Contractor's proposal response dated November 19, 2021 are hereby incorporated by reference herein, and shall supplement this Scope of Services and be subject to the terms and conditions of the Agreement.

2. APPLICABLE STANDARDS

- 2.1.** All work shall be completed in accordance with the following Water and Sewer and Public Works Design Specifications and Standards:
 - 2.1.1.** <https://www.santaclaraca.gov/our-city/departments-g-z/water-sewer-utilities/technical-documents>
 - 2.1.2.** <https://www.santaclaraca.gov/home/showpublisheddocument?id=70118>

3. PAYMENT BOND

Contractor must submit a payment bond executed by a surety naming the City of Santa Clara as beneficiary for 100% of the total project within five calendar days from receipt of an Approved Work Order that is greater than \$25,000.

4. GENERAL REQUIREMENTS

- 4.1.** Contractor shall provide all labor, tools, equipment, materials, and resources necessary to complete the work set forth herein.
- 4.2.** Contractor shall maintain all paperwork and certification to perform the work, and provide such documents to the City as requested.
- 4.3.** Contractor shall provide all personal protective equipment (PPE) required to perform the work. The use of the safety equipment includes but is not limited to

hard hats, eye protection, safety vests, hearing protection, respirators, and safety boots as required by the California Occupational Safety and Health Administration (OSHA).

- 4.4.** Contractor shall comply with all OSHA and manufacturer's safety requirements including but not limited to the OSHA requirements for confined space entry.
- 4.5.** The City follows all County and State public health orders as well as federal mandates and guidance to protect the community from COVID-19. Requirements may lessen or increase as the situation evolves, and Contractor is expected to comply accordingly including but not limited to implementing and enforcing sanitation procedures and completing the Contractor Vaccination Status Form pursuant to the County of Santa Clara May 18, 2021 Order.
- 4.6.** Contractor shall follow all applicable prevailing wage laws and submit certified payroll through the City's labor compliance software, LCP Tracker.
- 4.7.** Contractor shall utilize the City's Project Management Software E-Builder for general project management. See Appendix A.
- 4.8.** Contractor shall respond to emergency services 24 hours a day, 7 days a week, without exception with a 6-hour response time to address safety considerations.
- 4.9.** The City shall determine the final scope and bill of materials required to complete the work at the time of bid.

5. SCOPE OF WORK

Contractor shall perform the following as directed by the City:

5.1. Water and Recycled Water Distribution System Repair and Maintenance

- 5.1.1.** Main line repair and maintenance including the removal of pressurized utilities and appurtenances. Existing main lines can be of any diameter and material that may have been used for a distribution system. This can include but not limited to asbestos cement, cast iron, copper, P.V.C., wrapped steel, concrete cylinder, cement lined and coated steel, galvanized, lead and yellowmine pipe. Typical system pressures range from 35 PSI (lbs/in²) to 120 PSI. Proposed repair shall be completed with ductile iron pipe, C-900, or approved equivalent which shall be determined at the time of bid.
- 5.1.2.** Installation of valves, fittings, fire hydrants, water and fire service lines from 1" - 10", tie-ins, vertical offsets, fire protection services, backflows, air relief valves, control valves, sampling stations , water system monitoring instrumentation and other appurtenances.

5.2. Sewer Collection System Repair and Maintenance

- 5.2.1.** Sewer collection line repair and maintenance including the removal of damaged above and below ground pressurized and gravity utilities. Existing main line can be of any diameter and materials that is that is used in a sewer collection system. This can include but not limited to reinforced concrete, PVC, and vitrified clay pipe. Proposed repair shall be completed using reinforced concrete pipe, SDR, polyvinyl chloride (PVC), Sanitite or approved equivalent which shall be determined at the time of bid.
- 5.2.2.** Sewer collection line repair using trenchless technologies, including but not limited to CIPP lining, or other approved methods which shall be determined at the time of bid. Lining scope shall include the installation of pre-liners, end seals, epoxy sealants, grouting, mortar repairs needed to facilitate and complete the liner installation and performance.
 - 5.2.2.1.** This scope is optional can be performed under a subcontractor.
- 5.2.3.** Installation of new main lines and all associated piping, manholes and appurtenances; reconnecting or replacing service connections; installing tie-ins, vertical offsets, and other work needed to complete installations.
- 5.2.4.** Installation of new or replacement service connections and appurtenances, including but not limited to, clean-outs, service manholes, and the abandonment of existing service connections.
- 5.2.5.** Installation of new or replacement specialty items and appurtenances such as pressurized force mains and any associated valving, access structures, pumping and sewer system monitoring instrumentation.
- 5.2.6.** Respond to Sanitary Sewer Overflows (SSO) call outs.
 - 5.2.6.1.** Upon call out, the contractor shall assess the overflow and provide all labor, tool, equipment, and materials to stop, contain and remediate per City's discretion.
 - 5.2.6.2.** Upon completion of the remediation, the contractor shall include a report and photos describing the SSO, including the location and quantity of overflow, the measures taken to mitigate the SSO, the potential causes of the SSO, and the current state of the system/service associated with the SSO.
 - 5.2.6.3.** As Builts shall be submitted as follows:
 - 5.2.6.3.1.** As built with pertaining information for City GIS system, after installation pipe dimensions and capacity, and post construction CCTV video shall be provided to the City.
 - 5.2.6.3.2.** All CCTV data shall be generated using itpipes or

compatible software with the itpipes and Lucity. The reports shall be prepared using NASSCO certified PACP defect coding system for sewer mainlines. Media shall be high quality “.wmv” (video files) and “.jpeg” (picture files) correctly referenced in the database.

5.2.6.3.3. As built shall be completed according to the City of Santa Clara Water and Sewer Utilities Standard Drawing and Specification Standard 28 or as directed by City Project Manager.

- 5.3.** Work shall include all ancillary work including but not limited to permitting, trenching, shoring, dewatering, backfilling, compaction, pavement restoration, by-pass operations, temporary/interim services, valving, traffic control, curb, gutter, sidewalk and hardscape restoration, landscape restoration, cleaning, CCTV, and condition assessment.
- 5.4.** Work shall include all testing of all installed materials and facilities, including but not limited to material, compaction, pressure, disinfection, and cross-connection testing.
- 5.5.** Work shall include removal, hauling, and disposal of all materials and construction waste associated with the project.
- 5.6.** Pavement and trench restoration shall include but not limited to:
 - 5.6.1.** removing and replacing asphalt, concrete and other hardscape or paving surfaces;
 - 5.6.2.** saw cutting;
 - 5.6.3.** providing and installing imported backfill;
 - 5.6.4.** providing and installing base rock;
 - 5.6.5.** providing and installing cement slurry;
 - 5.6.6.** providing and applying slurry and chip sealant;
 - 5.6.7.** performing grinding for T-cuts, traffic plates and for trench lines;
 - 5.6.8.** performing patch paving including providing paving materials;
 - 5.6.9.** performing roadway paving including providing paving materials;
 - 5.6.10.** performing custom concrete installation, such as curb & gutter, brick, stamped, etc. including providing materials;
 - 5.6.11.** performing all pressure testing requirements for any improvements that are installed;

- 5.6.12.** performing final lane marking, bike lane, parking and general striping work;
- 5.6.13.** providing all cover removal and replacement, landscaping and other restoration work including plants, shrubs, lawns, trees, and irrigation;
- 5.6.14.** providing traffic control;
- 5.6.15.** providing compaction testing;
- 5.6.16.** providing potholing;
- 5.6.17.** providing all paving and grading-related materials, including sand, backfill, gravel, concrete, slurry, asphalt and striping paint including transporting of materials;
- 5.6.18.** providing off haul of native material and all construction waste;
- 5.6.19.** performing work with asbestos cement pipe including handling, transporting, and disposing asbestos in compliance with applicable laws and standards;
- 5.6.20.** providing final project as built drawings in electronic format via Blue Beam, AutoCad, or approved equivalent;
- 5.6.21.** obtaining encroachment permits and any other permitting required;
- 5.6.22.** obtaining and providing Traffic Control Plans to the City, if applicable;
- 5.6.23.** providing engineering design services; and
- 5.6.24.** coordinating with Underground Service Alert (USA Locates) for identification of below ground infrastructure.

6. OUT OF SCOPE WORK

- 6.1.** Contractor shall not be responsible for environmental reporting of discharges. If at any time, the scope requires reporting, Contractor will coordinate with the City to limit, monitor, and document the discharges. The management of records to the Regional Water Quality Control Board will be bore by the City.
- 6.2.** Contractor shall not be responsible for testing the water quality of the potable or recycled water distribution systems.

**APPENDIX A TO EXHIBIT A
CITY'S PROJECT MANAGEMENT SOFTWARE E-BUILDER**

General Requirements:

- a. Contractor and Subcontractors shall provide at a minimum, the following to its staff:
 - i. **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.
 - ii. **Computer Operation System:** Windows XP, Windows Vista, or Windows 7
 - iii. **Web Browser:** Microsoft Internet Explorer 9
 - iv. **Work and Spreadsheet Processors:** Microsoft Office Word, Excel and Outlook
 - v. **Scheduling Software:** Microsoft Project or Primavera
 - vi. **Internet Service Provider:** A reliable ISP in the area of the Project
 - vii. **Connection Speed/Minimum Bandwidth:** DSL, ADSL or T1 Line for transferring a minimum of 3 Mbps Downstream and 512 Kbps Upstream
- b. Contractor and Subcontractors shall provide its management personnel assigned to this Project with access to personal computers and the Internet on a daily basis.

Project Web Requirements:

- a. This project will utilize a web-based project management tool called e-Builder Enterprise™. 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.
- b. Contractor and Subcontractors shall conduct Project controls, outlined by the Owner, Development Manager, and Construction Manager, utilizing e-Builder Enterprise™. **This designated web-based application will be provided by the Contractor to the Subcontractors.** No additional software will be required. Furthermore, the Development Manager will assist Contractor in providing training of Subcontractor's personnel.
- c. Contractor and Subcontractors shall have the responsibility for visiting the Project web site on a daily basis, and as necessary to be kept fully apprised of Project developments, for correspondence, assigned tasks and other matters that transpire on the site. These may include but are not limited to: Contracts, Contract Exhibits, Contract Amendments, Drawing Issuances, Addenda, Bulletins, Permits, Insurance & Bonds, Safety Program Procedures, Safety Notices, Accident Reports, Personnel Injury Reports, Schedules, Site Logistics, Progress Reports, Daily Logs, Non-Conformance Notices, Quality Control Notices, Punch Lists, Meeting Minutes, Requests for

Information, Submittal Packages, Substitution Requests, Monthly Payment Request Applications, Supplemental Instructions, Construction Variation Directives, Potential Variation Orders, Variation Order Requests, Variation Orders, and the like. 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 and the like will be submitted in digital format via e-Builder EnterpriseTM

Electronic File Requirements:

- a. In addition to the standard closeout submittal requirements detailed elsewhere in the Contract Documents, the Contractor and Subcontractors shall also submit all closeout documents including all "As-Built Drawings", catalog cuts and Owner's Operation and Maintenance manuals in digital format. All documents (including as-built drawings) shall be converted or scanned into the Adobe Acrobat (.PDF) file format and uploaded to e-Builder EnterpriseTM.

BUILDER IMPLEMENTATION REQUIREMENTS

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

Central Document Vault: e-Builder EnterpriseTM system includes a central database that maintains all project information and manages project communications amongst team members.

Communication/Correspondence: e-Builder provides electronic routable communication forms that provide historical tracking, documentation, and increased accountability of project members.

Project Calendars: Meetings will be scheduled and maintained centrally on e-Builder EnterpriseTM

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.

EXHIBIT B SCHEDULE OF FEES

1. MAXIMUM WORK ORDER COMPENSATION

The maximum compensation shall be as set forth in each Approved Work Order (Maximum Work Order Compensation). No services will be performed unless both Parties execute an Approved Work Order outlining the services requested and the compensation agreed for such services.

2. FEES

- 2.1.** Where services are provided on a time and materials basis, the Maximum Work Order Compensation shall be determined in accordance with Contractor's equipment and labor rates, attached hereto as Appendix B1. Contractor may request adjustments to the rates on each anniversary during the term of the agreement.
- 2.2.** Where services are provided for a fixed price, the total project cost shall be the amount set out in the Approved Work Order.
- 2.3.** In the event that additional tools, equipment, and/or third-party services are required, Contractor shall obtain pre-approval from the City describing the additional requirement and the associated cost. City shall reimburse Contractor for any pre-approved additional charge at Contractor's actual cost, plus a maximum of 10% markup.

3. INVOICING

- 3.1.** Contractor shall render invoices in accordance with the fees, payment schedule, and other terms and conditions specified in the applicable Approved Work Order. If Contractor is entitled to reimbursable expenses, the invoice will include such expenses and/or costs associated with the Work completed during the invoice period.
- 3.2.** City will pay Contractor within thirty (30) days of City's receipt of an approved invoice package.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

\$5,000,000 Each occurrence
\$5,000,000 General Aggregate
\$5,000,000 Products/Completed Operations Aggregate
\$5,000,000 Personal Injury
\$5,000,000 Project Aggregate
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than five million dollars (\$5,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily

Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. 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.

5. 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 Document 00820.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Requirements of specific insurance coverage features described in this Agreement shall not be construed to be a limitation of liability on the part of Contractor or any of its subcontractors, nor to relieve any of them of any liability or responsibility under the Contract Documents, as a matter of law or otherwise. Such requirements are not intended by any Party to be limited to providing coverage for the vicarious liability of the City or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this Agreement in any way relating to City is intended to apply to the full extent of the policies involved.
2. Contractor shall maintain all required insurance policies in full force and effect during entire period of performance of the Services under this Agreement of Contract Documents. Contractor shall also keep such insurance in force during warranty and guarantee periods. At time of making application for extension of time, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time.
3. City reserves the right, at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Contractor thirty (30) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate in good faith additional compensation proportional to the increased benefit to City.
4. Any type of insurance or any increase of limits of liability not described in this Exhibit which Contractor requires for its own protection or in compliance with applicable statutes or regulations, shall be Contractors' responsibility and at its own expense.
5. No liability insurance coverage provided by Contractor to comply with the terms of this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor waives its right of subrogation against Indemnitees. Any property insurance policies affected by Contractor shall be endorsed to delete the subrogation condition as to indemnitees or shall specifically allow Contractor to waive subrogation prior to a loss. Contractor hereby waives any right of recovery against the indemnitees and agrees to require any subcontractor to do so.
6. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and

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

7. Contractor shall cooperate fully with City and Contractor's insurance companies in any safety and accident prevention program and claims handling procedures as established for the performance of Services under this Agreement.
8. All coverage types and limits required under this Agreement are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage which may affect City's protection without City's prior written consent.
9. For purposes of applying insurance coverage only, all contracts pertaining to the performance of services will be deemed to be executed when finalized and any activity commences in furtherance of performance under this agreement.
10. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any of the insurance requirements set forth in this Agreement in no way imposes any additional obligations on City nor does it waive any of the City's rights under this Agreement or any other regard.
11. Any provision in this Agreement dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the Parties here to be interpreted as such.
12. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
13. Contractor agrees to obtain and provide to City evidence of Professional Liability insurance for Architects or Engineers if engaged by Contractor to perform any of the Services required under this Agreement. City shall determine the minimum coverage and policy limits required, after consultation with Contractor.
14. The City acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. The Contractor's insurance obligations under this Agreement under may be satisfied in whole or in part by adequately funded self-insurance retention, but only after approval from the City Attorney's Office upon satisfactory evidence of financial capacity.

15. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

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

G. EVIDENCE OF COMPLIANCE

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

Or by mail to:

EBIX Inc.

City of Santa Clara – Water & Sewer Utilities Department

P.O. Box 100085 – S2

Duluth, GA 30096

Telephone number: 951-766-2280

Fax number: 770-325-0409

H. QUALIFYING INSURERS

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

EXHIBIT D LABOR COMPLIANCE ADDENDUM

This Agreement is subject to the requirements of California Labor Code section 1720 *et seq.* requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements.

I. Prevailing Wage Requirements

1. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov and are on file with the City Clerk's office, which shall be available to any interested party upon request. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov.
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 *et seq.*, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

6. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.
7. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works contractor". Those you fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.
10. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.
11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

J. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

K. Enforcement

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et

seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.

2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Addendum.

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

EXHIBIT E
SAMPLE WORK ORDER FORM

This Work Order is issued by the City of Santa Clara acting by and through its **Water & Sewer Utilities Department** (the "Department") to the contractor listed below. This Work Order shall constitute a binding legal contract between the Department and Contractor pursuant to the terms of the Agreement referenced below. In the event of any inconsistency between this Work Order and the Terms and Conditions of the Agreement, the Terms and Conditions of the Agreement shall govern and control.

PART A: GENERAL INFORMATION

Work Order No.:		<input type="checkbox"/> Original <input type="checkbox"/> First Revised <input type="checkbox"/> Second Revised <input type="checkbox"/> Other _____
Contract No.		
Contractor Name/Address:		
Master Agreement Name:		
Expiration Date of Agreement:		
Contractor's Project Manager:	Name:	Email:
City's Project Manager	Name:	Email:
Period of Performance for this Work Order:	Start Date:	Expected Completion Date:
Maximum Work Order Compensation:		
Sufficient funds are available in Fund #: (to be completed by City)		
Signatures:		
Contractor Name [Print]:		Date:
_____ <i>Signature</i>		_____
City's Project Manager [Print]:		Date:
_____ <i>Signature</i>		_____
City's Department Director Name [Print]:		Date:
_____ <i>Signature</i>		_____

PART B: SERVICES TO BE PERFORMED FOR WORK ORDER

1. REVISED WORK ORDER

- ☐ No
☐ If yes, provide a brief description of the change(s).

2. SCOPE OF WORK TO BE PERFORMED

The Contractor shall perform the service(s) described below in accordance with all of the Terms and Conditions of the Agreement. (Insert a detailed scope of work below or attach as a separate file.)

3. COMPENSATION

a. **Basis of Compensation:** ☐ Time & Materials ☐ Fixed Fee

b. **Reimbursable Expenses:**

- ☐ No expenses are reimbursable.
☐ Expenses are separately reimbursable in the maximum amount of: _____

c. **Payment Schedule:** ☐ Monthly ☐ Completion of Deliverable/Milestone ☐ Completion of Work

d. **Payment Terms.** Provide payment terms below or attach as a separate file.

**MASTER AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
WEST VALLEY CONSTRUCTION COMPANY, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and West Valley Construction Company, Inc., a California corporation (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum

Exhibit E – Sample Work Order Form

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 April 1, 2022 and terminate on March 31, 2027.

3. WORK ORDERS

- A. Contractor shall provide the services described in Exhibit A to the City on an as-needed basis and as further described pursuant to individual work orders ("Work Orders") issued in accordance with the Terms and Conditions of this Agreement. Each Work Order shall describe the services and deliverables (collectively "Work") the Contractor must provide, the time limit within which the Contractor must complete the Work, and the compensation for the Work.
- B. Each Work Order shall be substantially in the form specified in Exhibit E. Subject to the terms and conditions of this Agreement, Contractor and City will negotiate the specific requirements of each Approved Work Order.
- C. The City will not compensate the Contractor for any Work until the City has executed the Work Order for such Work ("Approved Work Order").
- D. Each Approved Work Order incorporates the Terms and Conditions of this Agreement, and becomes a part of this Agreement. An Approved Work Order must be consistent with – and cannot alter - the terms and conditions of this Agreement. The terms and conditions of this Agreement control over the terms and conditions contained in an Approved Work Order – even if the Approved Work Order expressly states that it is intended to control. Any conflicting terms and conditions in an Approved Work Order are invalid and unenforceable.
- E. The City has no obligation to issue any Approved Work Orders under this Agreement.

4. WARRANTY

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any

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

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

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

6. COMPENSATION AND PAYMENT

Each Approved Work Order will specify the maximum amount payable to the Contractor for all fees related to the Contractor providing the Work ("Maximum Work Order Compensation"). The Contractor shall fully complete all Work required by the Approved Work Order for no more than that Maximum Work Order Compensation. City shall only be liable for charges expressly authorized in an Approved Work Order.

7. TERMINATION

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

8. ASSIGNMENT AND SUBCONTRACTING

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

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

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

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

11. CONFIDENTIALITY OF MATERIAL

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

12. OWNERSHIP OF MATERIAL

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

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

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

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

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

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

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

17. NOTICES

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

City of Santa Clara
Attention: Water & Sewer Utilities Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at gwelling@santacclaraca.gov

And to Contractor addressed as follows:

West Valley Construction Company, Inc.
Attn: Patrick Miller
580 E. McGlinchy Lane
Campbell, CA 95008
and by e-mail at pmiller@wvcc.com

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

18. COMPLIANCE WITH LAWS

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

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

19. CONFLICTS OF INTEREST

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

20. FAIR EMPLOYMENT

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

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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: _____

Office of the City Attorney
City of Santa Clara

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

"CITY"

WEST VALLEY CONSTRUCTION COMPANY, INC.
a California corporation

Dated: _____

By (Signature): _____

Name: Patrick Miller

Title: Assistant Vice President

Principal Place of 580 E. McGlincy Lane

Business Address: Campbell, CA 95008

Email Address: pmiller@wvcc.com

Telephone: (408) 371-5510

Fax: ()

"CONTRACTOR"

EXHIBIT A SCOPE OF SERVICES

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

1. INTRODUCTION

- 1.1.** Contractor will be responsible for completing work as set forth in Approved Work Orders. The scope of work involves repair and maintenance, on an emergency basis, to all water, recycled water and sewer assets in plant including but not limited to main lines, service connections, valves, fittings, hydrants, instrumentation, backflow assemblies, manholes, collection laterals, system appurtenances, and all associated construction activities including but not limited to emergency pavement restoration, traffic control, and permitting.
- 1.2.** To the extent not inconsistent with this Agreement between the City and Contractor including this Scope of Services, the City's SOQ 21-22-16 (including subsequent updates), and Contractor's proposal response dated November 19, 2021 are hereby incorporated by reference herein, and shall supplement this Scope of Services and be subject to the terms and conditions of the Agreement.

2. APPLICABLE STANDARDS

- 2.1.** All work shall be completed in accordance with the following Water and Sewer and Public Works Design Specifications and Standards:
 - 2.1.1.** <https://www.santaclaraca.gov/our-city/departments-g-z/water-sewer-utilities/technical-documents>
 - 2.1.2.** <https://www.santaclaraca.gov/home/showpublisheddocument?id=70118>

3. PAYMENT BOND

Contractor must submit a payment bond executed by a surety naming the City of Santa Clara as beneficiary for 100% of the total project within five calendar days from receipt of an Approved Work Order that is greater than \$25,000.

4. GENERAL REQUIREMENTS

- 4.1.** Contractor shall provide all labor, tools, equipment, materials, and resources necessary to complete the work set forth herein.
- 4.2.** Contractor shall maintain all paperwork and certification to perform the work, and provide such documents to the City as requested.
- 4.3.** Contractor shall provide all personal protective equipment (PPE) required to perform the work. The use of the safety equipment includes but is not limited to

hard hats, eye protection, safety vests, hearing protection, respirators, and safety boots as required by the California Occupational Safety and Health Administration (OSHA).

- 4.4. Contractor shall comply with all OSHA and manufacturer's safety requirements including but not limited to the OSHA requirements for confined space entry.
- 4.5. The City follows all County and State public health orders as well as federal mandates and guidance to protect the community from COVID-19. Requirements may lessen or increase as the situation evolves, and Contractor is expected to comply accordingly including but not limited to implementing and enforcing sanitation procedures and completing the Contractor Vaccination Status Form pursuant to the County of Santa Clara May 18, 2021 Order.
- 4.6. Contractor shall follow all applicable prevailing wage laws and submit certified payroll through the City's labor compliance software, LCP Tracker.
- 4.7. Contractor shall utilize the City's Project Management Software E-Builder for general project management. See Appendix A1.
- 4.8. Contractor shall respond to emergency services 24 hours a day, 7 days a week, without exception with a 6-hour response time to address safety considerations.
- 4.9. The City shall determine the final scope and bill of materials required to complete the work at the time of bid.

5. SCOPE OF WORK

Contractor shall perform the following as directed by the City:

5.1. Water and Recycled Water Distribution System Repair and Maintenance

- 5.1.1. Main line repair and maintenance including the removal of pressurized utilities and appurtenances. Existing main lines can be of any diameter and material that may have been used for a distribution system. This can include but not limited to asbestos cement, cast iron, copper, P.V.C., wrapped steel, concrete cylinder, cement lined and coated steel, galvanized, lead and yellowmine pipe. Typical system pressures range from 35 PSI (lbs/in²) to 120 PSI. Proposed repair shall be completed with ductile iron pipe, C-900, or approved equivalent which shall be determined at the time of bid.
- 5.1.2. Installation of valves, fittings, fire hydrants, water and fire service lines from 1" - 10", tie-ins, vertical offsets, fire protection services, backflows, air relief valves, control valves, sampling stations, water system monitoring instrumentation and other appurtenances.

5.2. Sewer Collection System Repair and Maintenance

5.2.1. Sewer collection line repair and maintenance including the removal of damaged above and below ground pressurized and gravity utilities. Existing main line can be of any diameter and materials that is that is used in a sewer collection system. This can include but not limited to reinforced concrete, PVC, and vitrified clay pipe. Proposed repair shall be completed using reinforced concrete pipe, SDR, polyvinyl chloride (PVC), Sanitite or approved equivalent which shall be determined at the time of bid.

5.2.2. Sewer collection line repair using trenchless technologies, including but not limited to CIPP lining, or other approved methods which shall be determined at the time of bid. Lining scope shall include the installation of pre-liners, end seals, epoxy sealants, grouting, mortar repairs needed to facilitate and complete the liner installation and performance.

5.2.2.1. This scope is optional can be performed under a subcontractor.

5.2.3. Installation of new main lines and all associated piping, manholes and appurtenances; reconnecting or replacing service connections; installing tie-ins, vertical offsets, and other work needed to complete installations.

5.2.4. Installation of new or replacement service connections and appurtenances, including but not limited to, clean-outs, service manholes, and the abandonment of existing service connections.

5.2.5. Installation of new or replacement specialty items and appurtenances such as pressurized force mains and any associated valving, access structures, pumping and sewer system monitoring instrumentation.

5.2.6. Respond to Sanitary Sewer Overflows (SSO) call outs.

5.2.6.1. Upon call out, the contractor shall assess the overflow and provide all labor, tool, equipment, and materials to stop, contain and remediate per City's discretion.

5.2.6.2. Upon completion of the remediation, the contractor shall include a report and photos describing the SSO, including the location and quantity of overflow, the measures taken to mitigate the SSO, the potential causes of the SSO, and the current state of the system/service associated with the SSO.

5.2.6.3. As Builts shall be submitted as follows:

5.2.6.3.1. As built with pertaining information for City GIS system, after installation pipe dimensions and capacity, and post construction CCTV video shall be provided to the City.

5.2.6.3.2. All CCTV data shall be generated using itpipes or

compatible software with the itpipes and Lucity. The reports shall be prepared using NASSCO certified PACP defect coding system for sewer mainlines. Media shall be high quality ".wmv" (video files) and ".jpeg" (picture files) correctly referenced in the database.

5.2.6.3.3. As built shall be completed according to the City of Santa Clara Water and Sewer Utilities Standard Drawing and Specification Standard 28 or as directed by City Project Manager.

- 5.3.** Work shall include all ancillary work including but not limited to permitting, trenching, shoring, dewatering, backfilling, compaction, pavement restoration, bypass operations, temporary/interim services, valving, traffic control, curb, gutter, sidewalk and hardscape restoration, landscape restoration, cleaning, CCTV, and condition assessment.
- 5.4.** Work shall include all testing of all installed materials and facilities, including but not limited to material, compaction, pressure, disinfection, and cross-connection testing.
- 5.5.** Work shall include removal, hauling, and disposal of all materials and construction waste associated with the project.
- 5.6.** Pavement and trench restoration shall include but not limited to:
 - 5.6.1.** removing and replacing asphalt, concrete and other hardscape or paving surfaces;
 - 5.6.2.** saw cutting;
 - 5.6.3.** providing and installing imported backfill;
 - 5.6.4.** providing and installing base rock;
 - 5.6.5.** providing and installing cement slurry;
 - 5.6.6.** providing and applying slurry and chip sealant;
 - 5.6.7.** performing grinding for T-cuts, traffic plates and for trench lines;
 - 5.6.8.** performing patch paving including providing paving materials;
 - 5.6.9.** performing roadway paving including providing paving materials;
 - 5.6.10.** performing custom concrete installation, such as curb & gutter, brick, stamped, etc. including providing materials;
 - 5.6.11.** performing all pressure testing requirements for any improvements that are installed;

- 5.6.12.** performing final lane marking, bike lane, parking and general striping work;
- 5.6.13.** providing all cover removal and replacement, landscaping and other restoration work including plants, shrubs, lawns, trees, and irrigation;
- 5.6.14.** providing traffic control;
- 5.6.15.** providing compaction testing;
- 5.6.16.** providing potholing;
- 5.6.17.** providing all paving and grading-related materials, including sand, backfill, gravel, concrete, slurry, asphalt and striping paint including transporting of materials;
- 5.6.18.** providing off haul of native material and all construction waste;
- 5.6.19.** performing work with asbestos cement pipe including handling, transporting, and disposing asbestos in compliance with applicable laws and standards;
- 5.6.20.** providing final project as built drawings in electronic format via Blue Beam, AutoCad, or approved equivalent;
- 5.6.21.** obtaining encroachment permits and any other permitting required;
- 5.6.22.** obtaining and providing Traffic Control Plans to the City, if applicable;
- 5.6.23.** providing engineering design services; and
- 5.6.24.** coordinating with Underground Service Alert (USA Locates) for identification of below ground infrastructure.

6. OUT OF SCOPE WORK

- 6.1.** Contractor shall not be responsible for environmental reporting of discharges. If at any time, the scope requires reporting, Contractor will coordinate with the City to limit, monitor, and document the discharges. The management of records to the Regional Water Quality Control Board will be bore by the City.
- 6.2.** Contractor shall not be responsible for testing the water quality of the potable or recycled water distribution systems.

**APPENDIX A1 TO EXHIBIT A
CITY'S PROJECT MANAGEMENT SOFTWARE E-BUILDER**

General Requirements:

- a. Contractor and Subcontractors shall provide at a minimum, the following to its staff:
 - i. **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.
 - ii. **Computer Operation System:** Windows XP, Windows Vista, or Windows 7
 - iii. **Web Browser:** Microsoft Internet Explorer 9
 - iv. **Work and Spreadsheet Processors:** Microsoft Office Word, Excel and Outlook
 - v. **Scheduling Software:** Microsoft Project or Primavera
 - vi. **Internet Service Provider:** A reliable ISP in the area of the Project
 - vii. **Connection Speed/Minimum Bandwidth:** DSL, ADSL or T1 Line for transferring a minimum of 3 Mbps Downstream and 512 Kbps Upstream
- b. Contractor and Subcontractors shall provide its management personnel assigned to this Project with access to personal computers and the Internet on a daily basis.

Project Web Requirements:

- a. This project will utilize a web-based project management tool called e-Builder EnterpriseTM. 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.
- b. Contractor and Subcontractors shall conduct Project controls, outlined by the Owner, Development Manager, and Construction Manager, utilizing e-Builder EnterpriseTM. **This designated web-based application will be provided by the Contractor to the Subcontractors.** No additional software will be required. Furthermore, the Development Manager will assist Contractor in providing training of Subcontractor's personnel.
- c. Contractor and Subcontractors shall have the responsibility for visiting the Project web site on a daily basis, and as necessary to be kept fully apprised of Project developments, for correspondence, assigned tasks and other matters that transpire on the site. These may include but are not limited to: Contracts, Contract Exhibits, Contract Amendments, Drawing Issuances, Addenda, Bulletins, Permits, Insurance & Bonds, Safety Program Procedures, Safety Notices, Accident Reports, Personnel Injury Reports, Schedules, Site Logistics, Progress Reports, Daily Logs, Non-Conformance Notices, Quality Control Notices, Punch Lists, Meeting Minutes, Requests for

Information, Submittal Packages, Substitution Requests, Monthly Payment Request Applications, Supplemental Instructions, Construction Variation Directives, Potential Variation Orders, Variation Order Requests, Variation Orders, and the like. 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 and the like will be submitted in digital format via e-Builder EnterpriseTM

Electronic File Requirements:

- a. In addition to the standard closeout submittal requirements detailed elsewhere in the Contract Documents, the Contractor and Subcontractors shall also submit all closeout documents including all "As-Built Drawings", catalog cuts and Owner's Operation and Maintenance manuals in digital format. All documents (including as-built drawings) shall be converted or scanned into the Adobe Acrobat (.PDF) file format and uploaded to e-Builder EnterpriseTM.

BUILDER IMPLEMENTATION REQUIREMENTS

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

Central Document Vault: e-Builder EnterpriseTM system includes a central database that maintains all project information and manages project communications amongst team members.

Communication/Correspondence: e-Builder provides electronic routable communication forms that provide historical tracking, documentation, and increased accountability of project members.

Project Calendars: Meetings will be scheduled and maintained centrally on e-Builder EnterpriseTM

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.

EXHIBIT B
SCHEDULE OF FEES

1. MAXIMUM WORK ORDER COMPENSATION

The maximum compensation shall be as set forth in each Approved Work Order (Maximum Work Order Compensation). No services will be performed unless both Parties execute an Approved Work Order outlining the services requested and the compensation agreed for such services.

2. FEES

- 2.1.** Where services are provided on a time and materials basis, the Maximum Work Order Compensation shall be determined in accordance with Contractor's equipment and labor rates, attached hereto as Appendix B1. Contractor may request adjustments to the rates on each anniversary during the term of the agreement.
- 2.2.** Where services are provided for a fixed price, the total project cost shall be the amount set out in the Approved Work Order.
- 2.3.** In the event that additional tools, equipment, and/or third-party services are required, Contractor shall obtain pre-approval from the City describing the additional requirement and the associated cost. City shall reimburse Contractor for any pre-approved additional charge at Contractor's actual cost, plus a maximum of 10% markup.

3. INVOICING

- 3.1.** Contractor shall render invoices in accordance with the fees, payment schedule, and other terms and conditions specified in the applicable Approved Work Order. If Contractor is entitled to reimbursable expenses, the invoice will include such expenses and/or costs associated with the Work completed during the invoice period.
- 3.2.** City will pay Contractor within thirty (30) days of City's receipt of an approved invoice package.

**APPENDIX B1 TO EXHIBIT B
RATE SHEET**



**City of Santa Clara
Request for On-call Contractor Services**

Contractor: West Valley Construction

Company Date: 1/25/2022

Emergency Only Mobilization/Portal to Portal Fee (Per Event) :			\$1,656.59
Labor	Hourly Straight Time	Hourly Overtime Time	Hourly Double Time
Foreman	\$174.97	\$210.05	\$241.23
Labor Skilled	\$140.43	\$166.73	\$190.09
Equipment Operator	\$191.78	\$228.71	\$261.55
Materials/Subcontractor/Misc. Mark up Fee			10%



City of Santa Clara
Request for On-call Contractor Services
Contractor: West Valley
Construction Company
Date: 1/25/2022

Equipment Schedule		
Category	Description	Hourly Rate
AC1	Air compressor <124 CFM	\$ 30.59
AC2	Air Compressor 125-249 CFM	\$ 36.73
AP1	Asph. Milling Mach. <25.9" wide	\$ 172.79
AT1	Arrow board trailer	\$ 4.62
BB6	Beverage Body Truck, Class 6	\$ 48.13
BH3	BH/Ldr 14' to 14.9' dig depth	\$ 65.34
BH4	BH/Ldr 15' to 15.9' dig depth	\$ 75.81
BH6	BH/Ldr 17' and over dig depth	\$ 121.96
BHA	Breaker attachment	\$ 36.33
BHB	Pole Auger attachment	\$ 7.79
BHC	Compaction wheel	\$ 7.70
BN1	2" Conduit bender	\$ 12.04
CM1	Concrete mixer	\$ 8.97
CP1	Hydraulic cable puller	\$ 21.42
CP3	Electric cable puller	\$ 7.64
CR1	Crane < 8000 lbs Cap	\$ 9.90
CR6	Crane Truck, Class 6	\$ 55.11
CR7	Crane Truck, Class 6	\$ 57.59
CRA	Crane Truck Insulator	\$ 6.49
CT1	Concrete trailer <1.5 yard	\$ 25.62
DB4	Dump truck 1-2.9 yd. Class 4	\$ 70.26
DB5	Dump truck 3-4.9 yd. Class 5	\$ 63.86
DB6	Dump truck 5-6.9 yd. Class 6	\$ 73.55
DB7	Dump truck 7-9.9 yd. Class 7	\$ 98.81
DB8	Dump truck >10 yd Class 8	\$ 123.60
DBA	Side conveyor attachment	\$ 16.60
DC6	Dump trk 5-6.9 yd. cls 6 w/ KB	\$ 77.95

Equipment Schedule		
Category	Description	Hourly Rate
DR1	Service Drill	\$ 3.24
DT1	Dump Trailer, Class 1	\$ 19.37
DT2	Dump Trailer, Class 2	\$ 19.37
DZ2	Bulldozer 60-74 hp	\$ 71.83
ET1	Equipment Trailer, Class 1	\$ 5.28
ET2	Equipment Trailer, Class 2	\$ 6.83
ET3	Equipment Trailer, Class 3	\$ 9.13
ET4	Equipment Trailer, Class 4	\$ 10.42
ET5	Equipment Trailer, Class 5	\$ 11.46
ET6	Equipment Trailer, Class 6	\$ 12.47
ET7	Equipment Trailer, Class 7	\$ 15.34
ET8	Equipment Trailer, Class 8	\$ 28.15
EX1	Mini Excavator <4Metric Tons	\$ 15.46
EX4	Excavator 12.1-14 Metric Tons	\$ 55.91
EX5	Excavator 19.1-21 Metric Tons	\$ 60.21
EX6	Excavator 21.1-24 Metric Tons	\$ 71.07
EX7	Excavator 33.1-40 Metric Tons	\$ 102.82
EXA	Breaker attachment	\$ 38.66
EXB	Vib. sheet piling driver attch	\$ 46.91
EXC	Compaction wheel	\$ 16.70
EXD	Thumb attachment	\$ 30.68
EXE	Rock Bucket	\$ 143.07
FB1	Flatbed Truck, Class 1	\$ 14.11
FB3	Flatbed Truck, Class 3	\$ 43.65
FB4	Flatbed Truck, Class 4	\$ 45.92
FB5	Flatbed Truck, Class 5	\$ 48.13
FB6	Flatbed Truck, Class 6	\$ 54.79
FC4	Flatbed/Compressor, Class 4	\$ 59.36
FC5	Flatbed/Compressor, Class 5	\$ 66.02
FC6	Flatbed/Compressor, Class 6	\$ 72.68
FL4	Forklift, 4,000-4,999 lbs. Cap	\$ 21.27
FL5	Forklift, 5,000-5,999 lbs. Cap	\$ 25.25
FL8	Forklift, 8,000-8,999 lbs. Cap	\$ 31.66
FL9	Forklift, 9,000-9,999 lbs Cap.	\$ 31.66
FM1	Butt fusion machine	\$ 9.49
FM2	Service pipe freezer	\$ 7.64

Equipment Schedule		
Category	Description	Hourly Rate
FT4	Fuel Trailer, Class 4	\$ 24.25
GE1	Generator <5 KW	\$ 9.54
GE5	Generator-20K-50K Watts	\$ 45.96
HD1	Dir. Drill <7,000 lbs pullback	\$ 72.88
HD2	Dir. Drill 7,001 to 10K lbs PB	\$ 90.00
HD5	Dir. Drill 20001 to 30K lbs PB	\$ 191.66
HJ1	Hydraulic Shoring Jack	\$ 16.20
LD5	Wheel Loader 80-99 HP	\$ 65.20
LD7	Wheel Loader 110-119 HP	\$ 70.57
LD8	Wheel Loader 120-134 HP	\$ 83.74
LD9	Wheel Loader 135-149 HP	\$ 94.40
LDA	Asphalt grinder attachment	\$ 68.38
LDB	Adj. asphalt spreader box	\$ 12.08
LDE	Side dump bucket	\$ 11.16
LDF	Screen separator for backfill	\$ 7.70
LT1	Light Tower 0-6000 lbs GVWR	\$ 24.71
MI2	Measuring Instrument , Laser	\$ 8.00
OR1	All terrain vehicle	\$ 23.66
OT1	Paving oil trailer, Class 1	\$ 10.24
PB1	Hydraulic hammer	\$ 57.31
PC1	Hydraulic snap cutter	\$ 12.47
PL1	Pipe locator	\$ 18.44
PP2	Pneumatic Punch <-2"	\$ 5.76
PP4	Pneumatic Punch 2.1"-3"	\$ 7.42
PP6	Pneumatic Punch 3.1"-4"	\$ 10.24
PP7	Pneumatic Punch 4.1"-5"	\$ 10.24
PT1	Pipe trailer, Class 1	\$ 6.97
PT2	Pipe trailer, Class 2	\$ 6.97
PU1	Pickup Truck, Class 1	\$ 33.46
PU2	Pickup Truck, Class 2	\$ 29.62
PV5	Paving truck, Class 5	\$ 57.08
RF4	Forklift, R/T 8,000-9,999 lbs	\$ 61.87
RM6	Rodding Truck, Class 6	\$ 81.63
RO1	Walk behind roller<2,000 lbs	\$ 31.28
RT2	Reel Trailer, Class 2	\$ 5.89
RT3	Reel Trailer, Class 3	\$ 6.82

Equipment Schedule		
Category	Description	Hourly Rate
RT5	Reel Trailer, Class 5	\$ 52.01
RT6	Reel Trailer, Class 6	\$ 8.91
SD1	Service Drill	\$ 3.24
SE1	Shop Tools	\$ 18.89
SL4	Slugging truck, Class 4	\$ 61.28
SL6	Slugging truck, Class 6	\$ 70.36
SP1	Steel Crossing Plate	\$ 2.78
SS4	Skid steer ldr. Class 4	\$ 41.86
SS5	Skid steer ldr. Class 5	\$ 47.11
SS6	Skid steer ldr. Class 6	\$ 39.66
SS7	Skid steer ldr. Class 7	\$ 54.11
SSA	Hydraulic Breaker attachment	\$ 55.91
SSD	Asphalt Planer attachment	\$ 27.38
SSE	Broom attachment	\$ 9.12
SSG	Slot Mill attachment	\$ 27.38
ST1	Trailer, Pressure Washer	\$ 25.77
SV1	Storage Container	\$ 3.68
SW1	12-14" All purpose saw	\$ 7.27
SW2	Chain saw	\$ 6.60
SW3	Concr. saw, 12" max. blade cap	\$ 6.81
SW4	Con.saw,12.1"-14" max bld cap	\$ 15.20
SW5	Con.saw,14.1"-18" max bld cap	\$ 19.15
SW6	Con.saw,18.1"-24" max bld cap	\$ 32.25
SW7	Concrete coring machine	\$ 48.79
TA7	Fuel and Lube Truck Class 7	\$ 117.58
TB8	Truck Tractor Class 8	\$ 108.80
TC1	Trench compactor small rammer	\$ 9.49
TC2	Trench compactor large rammer	\$ 10.64
TC3	Trench compactor vib. roller	\$ 47.86
TH7	Telehandler	\$ 83.19
TK2	Mechanics truck, Class 2	\$ 29.62
TK3	Mechanics truck, Class 3	\$ 34.78
TK4	Mechanics truck, Class 4	\$ 39.65
TK5	Mechanics truck, Class 5	\$ 48.48
TL2	Wheel loader, 40 -49 hp	\$ 40.59
TL3	Wheel loader, 50 -59 hp	\$ 39.98

Equipment Schedule		
Category	Description	Hourly Rate
TM1	Trenching machine <14 hp	\$ 18.09
TM5	Trenching machine >131 hp	\$ 299.13
TMA	Conveyor attch. (use with TM5)	\$ 29.17
TP1	Air motor	\$ 7.64
TP2	Tapping machine <1"	\$ 11.73
TP3	Tapping machine 1"-2"	\$ 13.22
TP4	Tapping machine 2<	\$ 24.70
TT1	Water trailer, Class 1	\$ 23.46
UT1	Utility trailer, Class 1	\$ 5.28
UT2	Utility trailer, Class 2	\$ 5.28
VP2	Vibratory plate 17" wide	\$ 7.43
VP3	Vibratory plate 21" wide	\$ 13.19
VP4	Vibratory plate 25" wide	\$ 24.90
VR1	Vibratory roller <3750 lbs	\$ 23.93
VR2	Vibratory roller 3751-6400 lbs	\$ 40.96
VT2	Vacuum Trailer, Class 2	\$ 50.51
VT6	Vacuum Trailer, Class 6	\$ 62.81
WM1	Welding machine	\$ 11.85
WP1	Water main test pump	\$ 12.08
WP3	Water pump 2"-2.9"	\$ 12.08
WP4	Water pump 3"-3.9"	\$ 13.83
WP5	Water pump 4"-4.9"	\$ 23.28
WT6	Water Truck, Class 6	\$ 52.54

EXHIBIT C
INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$5,000,000 Each occurrence
 - \$5,000,000 General Aggregate
 - \$5,000,000 Products/Completed Operations Aggregate
 - \$5,000,000 Personal Injury
 - \$5,000,000 Project Aggregate
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than five million dollars (\$5,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily

Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. 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.

5. 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 Document 00820.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Requirements of specific insurance coverage features described in this Agreement shall not be construed to be a limitation of liability on the part of Contractor or any of its subcontractors, nor to relieve any of them of any liability or responsibility under the Contract Documents, as a matter of law or otherwise. Such requirements are not intended by any Party to be limited to providing coverage for the vicarious liability of the City or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this Agreement in any way relating to City is intended to apply to the full extent of the policies involved.
2. Contractor shall maintain all required insurance policies in full force and effect during entire period of performance of the Services under this Agreement of Contract Documents. Contractor shall also keep such insurance in force during warranty and guarantee periods. At time of making application for extension of time, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time.
3. City reserves the right, at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Contractor thirty (30) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate in good faith additional compensation proportional to the increased benefit to City.
4. Any type of insurance or any increase of limits of liability not described in this Exhibit which Contractor requires for its own protection or in compliance with applicable statutes or regulations, shall be Contractors' responsibility and at its own expense.
5. No liability insurance coverage provided by Contractor to comply with the terms of this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor waives its right of subrogation against Indemnitees. Any property insurance policies affected by Contractor shall be endorsed to delete the subrogation condition as to indemnitees or shall specifically allow Contractor to waive subrogation prior to a loss. Contractor hereby waives any right of recovery against the indemnitees and agrees to require any subcontractor to do so.
6. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and

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

7. Contractor shall cooperate fully with City and Contractor's insurance companies in any safety and accident prevention program and claims handling procedures as established for the performance of Services under this Agreement.
8. All coverage types and limits required under this Agreement are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage which may affect City's protection without City's prior written consent.
9. For purposes of applying insurance coverage only, all contracts pertaining to the performance of services will be deemed to be executed when finalized and any activity commences in furtherance of performance under this agreement.
10. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any of the insurance requirements set forth in this Agreement in no way imposes any additional obligations on City nor does it waive any of the City's rights under this Agreement or any other regard.
11. Any provision in this Agreement dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the Parties here to be interpreted as such.
12. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
13. Contractor agrees to obtain and provide to City evidence of Professional Liability insurance for Architects or Engineers if engaged by Contractor to perform any of the Services required under this Agreement. City shall determine the minimum coverage and policy limits required, after consultation with Contractor.
14. The City acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. The Contractor's insurance obligations under this Agreement under may be satisfied in whole or in part by adequately funded self-insurance retention, but only after approval from the City Attorney's Office upon satisfactory evidence of financial capacity.

15. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

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

G. EVIDENCE OF COMPLIANCE

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

Or by mail to:
EBIX Inc.
City of Santa Clara – Water & Sewer Utilities Department
P.O. Box 100085 – S2
Duluth, GA 30096
Telephone number: 951-766-2280
Fax number: 770-325-0409

H. QUALIFYING INSURERS

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

EXHIBIT D LABOR COMPLIANCE ADDENDUM

This Agreement is subject to the requirements of California Labor Code section 1720 *et seq.* requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements.

I. Prevailing Wage Requirements

1. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov and are on file with the City Clerk's office, which shall be available to any interested party upon request. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov.
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 *et seq.*, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

6. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.
7. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works contractor". Those you fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.
10. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.
11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

J. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

K. Enforcement

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et

seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.

2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Addendum.

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

EXHIBIT E
SAMPLE WORK ORDER FORM

This Work Order is issued by the City of Santa Clara acting by and through its **Water & Sewer Utilities Department** (the "Department") to the contractor listed below. This Work Order shall constitute a binding legal contract between the Department and Contractor pursuant to the terms of the Agreement referenced below. In the event of any inconsistency between this Work Order and the Terms and Conditions of the Agreement, the Terms and Conditions of the Agreement shall govern and control.

PART A: GENERAL INFORMATION

Work Order No.:		<input type="checkbox"/> Original
Contract No.		<input type="checkbox"/> First Revised
		<input type="checkbox"/> Second Revised
		<input type="checkbox"/> Other
Contractor Name/Address:		
Master Agreement Name:		
Expiration Date of Agreement:		
Contractor's Project Manager:	Name:	Email:
City's Project Manager	Name:	Email:
Period of Performance for this Work Order:	Start Date:	Expected Completion Date:
Maximum Work Order Compensation:		
Sufficient funds are available in Fund #: (to be completed by City)		
Signatures:		
Contractor Name [Print]:		Date:
<i>Signature</i>		
City's Project Manager [Print]:		Date:
<i>Signature</i>		
City's Department Director Name [Print]:		Date:
<i>Signature</i>		

PART B: SERVICES TO BE PERFORMED FOR WORK ORDER

1. REVISED WORK ORDER

- ☐ No
☐ If yes, provide a brief description of the change(s).

2. SCOPE OF WORK TO BE PERFORMED

The Contractor shall perform the service(s) described below in accordance with all of the Terms and Conditions of the Agreement. (Insert a detailed scope of work below or attach as a separate file.)

3. COMPENSATION

- a. **Basis of Compensation:** ☐ Time & Materials ☐ Fixed Fee
- b. **Reimbursable Expenses:**
☐ No expenses are reimbursable.
☐ Expenses are separately reimbursable in the maximum amount of: _____
- c. **Payment Schedule:** ☐ Monthly ☐ Completion of Deliverable/Milestone ☐ Completion of Work
- d. **Payment Terms.** Provide payment terms below or attach as a separate file.



Agenda Report

22-119

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action on a Resolution Acknowledging Receipt by City Council of a State-Mandated Compliance Report on Required Annual Fire Inspections of Certain Occupancies

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

Senate Bill (SB) 1205, which became effective in September 2018, enhanced an existing law that required every city fire department, county fire department or district providing fire protection services to annually inspect specific residential occupancies, including hotels, motels, boarding houses, apartment houses, fraternities, sororities, congregate residences, and similar, for compliance with building standards within the jurisdiction (HSC §13146.2). Existing law also requires annual inspection of every building used as a K-12th grade public or private school within the jurisdiction (HSC §13146.3). SB 1205 creates a new mandatory process whereby fire departments present an annual report to their governing authority regarding compliance with safety inspection requirements. SB 1205 further requires the governing authority to acknowledge receipt of the report via resolution or other similar formal document. For calendar year 2021, there were 1,442 occupancies required to be inspected under the current state regulations within the City of Santa Clara.

DISCUSSION

Senate Bill 1205 requires an inspection status report to be given to Council during its annual budget discussions (or at another time determined by Council), and that Council acknowledge receipt of the report in the manner described above.

The Fire Department is pleased to report 100.0% completion of the 44 public and private schools, and 99.5% of the 1,398 residential occupancy inspections required in calendar year 2021 (see table below). For calendar year 2021, the 0.5% (7 occupancies) not inspected, were subsequently inspected as of the date of this report.

2021 Inspection Status Report Data

Occupancy Type	Inspections Required	Inspections Performed	% Complete
Public and Private Schools	44	44	100.0%
Residential R-1, R-2, R2.1, R-4 (see Attachment Appendix A - Occupancy Type Definitions for definitions)	1,398	1,391	99.5%

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

Council has previously approved a cost recovery mechanism for the inspection mandates in the form of inspection fees as allowed by the Health and Safety Code. Revenues and related expenditures were included in FY 2020/21 and FY 2021/22 appropriations, with no additional impacts.

COORDINATION

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

PUBLIC CONTACT

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

RECOMMENDATION

Adopt a Resolution acknowledging receipt of a report made by the Fire Chief of the Santa Clara Fire Department regarding the inspection of certain occupancies requiring annual inspections in such occupancies pursuant to sections 13146.2 and 13146.3 of the California Health and Safety Code.

Reviewed by: Ruben Torres, Fire Chief

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. SB 1205 Resolution
2. SB 1205 (HSC 13146.4)
3. Appendix A - Occupancy Type Definitions

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
ACKNOWLEDGING RECEIPT OF A REPORT FROM THE FIRE
CHIEF OF THE SANTA CLARA FIRE DEPARTMENT REGARDING
THE INSPECTION OF CERTAIN OCCUPANCIES REQUIRING
ANNUAL INSPECTIONS PURSUANT TO SECTIONS 13146.2 AND
13146.3 OF THE CALIFORNIA HEALTH AND SAFETY CODE.**

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

WHEREAS, California Health & Safety Code Section 13146.4 was added in 2018, and became effective on September 27, 2018; and;

WHEREAS, California Health & Safety Code Sections 13146.2 and 13146.3 requires all fire departments, including the Santa Clara Fire Department, that provide fire protection services to perform annual inspections in every building used as a public or private school, hotel, motel, lodging house, apartment house, and certain residential care facilities for compliance with building standards, as provided; and,

WHEREAS, California Health & Safety Code Section 13146.4 requires all fire departments, including the Santa Clara Fire Department, that provide fire protection services to report annually to its administering authority on its compliance with Sections 13146.2 and 13146.3; and,

WHEREAS, the City Council intends this Resolution to fulfill the requirements of the California Health & Safety Code regarding acknowledgment of the Santa Clara Fire Department's compliance with California Health and Safety Code Sections 13146.2 and 13146.3.

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

1. That said Council expressly acknowledges the measure of compliance of the Santa Clara Fire Department with California Health and Safety Code Sections 13146.2 and 13146.3 in the area encompassed by the City, as follows:

A. EDUCATIONAL GROUP E OCCUPANCIES:

Educational Group E occupancies are generally those public and private schools, used by more

than six persons at any one time for educational purposes through the 12th grade. Within the City, there lie 44 Group E occupancies, buildings, structures and/or facilities.

During calendar year 2021, the Santa Clara Fire Department completed the annual inspection of 44 Group E occupancies, buildings, structures and/or facilities. This is a compliance rate of 100.0% for this reporting period.

B. RESIDENTIAL GROUP R OCCUPANCIES:

Residential Group R occupancies, for the purposes of this resolution, are generally those occupancies containing sleeping units, and include hotels, motels, apartments (three units or more), etc. as well as mandated residential care facilities. These residential care facilities have several different sub-classifications, and they may contain residents or clients that have a range of needs, including those related to custodial care, mobility impairments, cognitive disabilities, etc. The residents may also be non-ambulatory or bedridden. Within the City, there lie 1,398 Group R (and their associated sub-categories) occupancies of this nature.

During calendar year 2021, the Santa Clara Fire Department completed the annual inspection of 1,391 Group R occupancies, buildings, structures and/or facilities. This is a compliance rate of 99.5 % for this reporting period.

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

Senate Bill No. 1205

CHAPTER 854

An act to add Section 13146.4 to the Health and Safety Code, relating to fire protection.

[Approved by Governor September 27, 2018. Filed with
Secretary of State September 27, 2018.]

legislative counsel's digest

SB 1205, Hill. Fire protection services: inspections: compliance reporting.

Existing law requires the chief of any city or county fire department or district providing fire protection services and his or her authorized representatives to inspect every building used as a public or private school within his or her jurisdiction, for the purpose of enforcing specified building standards, not less than once each year, as provided. Existing law requires every city or county fire department or district providing fire protection services that is required to enforce specified building standards to annually inspect certain structures, including hotels, motels, lodging houses, and apartment houses, for compliance with building standards, as provided.

This bill would require every city or county fire department, city and county fire department, or district required to perform the above-described inspections to report annually to its administering authority, as defined, on the department's or district's compliance with the above-described inspection requirements, as provided. The bill would require the administering authority to acknowledge receipt of the report in a resolution or a similar formal document. To the extent this bill would expand the responsibility of a local agency, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 13146.4 is added to the Health and Safety Code, to read:

13146.4. (a) Every city or county fire department, city and county fire department, or district required to perform an annual inspection pursuant

to Sections 13146.2 and 13146.3 shall report annually to its administering authority on its compliance with Sections 13146.2 and 13146.3.

(b) The report made pursuant to subdivision (a) shall occur when the administering authority discusses its annual budget, or at another time determined by the administering authority.

(c) The administering authority shall acknowledge receipt of the report made pursuant to subdivision (a) in a resolution or a similar formal document.

(d) For purposes of this section, “administering authority” means a city council, county board of supervisors, or district board, as the case may be.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Appendix A

Occupancy Classification and Use Definitions (2019 California Building Code)

Occupancy Type	Definition
Educational Group E	Occupancy includes, among others, the use of a building or structure, or a portion thereof, by more than six persons at any one time for educational purposes through the 12 th grade.
Residential Group R-1	Residential occupancies containing sleeping units where the occupants are primarily transient in nature such as hotels, motels, and boarding houses (with more than 10 occupants).
Residential Group R-2	Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature such as apartment houses, boarding houses (with more than 16 occupants), convents and monasteries, dormitories, and fraternities and sororities.
Residential Group R-2.1	Buildings, structures or parts thereof housing clients, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services such as residential care facilities, group homes, and halfway houses. This occupancy may contain more than six non-ambulatory and/or bedridden clients.
Residential Group R-4	Residential Group R-4 occupancies shall include buildings, structures or portions thereof for more than six ambulatory clients, but not more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised residential environment and receive custodial care, such as residential care facilities, group homes, and halfway houses.



Agenda Report

22-262

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Accept the 2021 General Plan Annual Progress Report

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

BACKGROUND

California State Law requires local jurisdictions, including Santa Clara, to maintain a General Plan to guide the orderly, long-term use of lands within the City through policies and General Plan Land Use designations. The General Plan communicates the City's long-term vision for future growth and land use and establishes a policy framework to govern decision-making concerning the physical development of the community. The seven major strategies of the General Plan, along with their implementing goals and policies, define and communicate the City's overarching vision for the community in relation to physical development patterns. The City's seven major General Plan strategies are:

1. Enhance the City's High Quality of Life
2. Preserve and Cultivate Neighborhoods
3. Promote Sustainability
4. Enhance City Identity
5. Support Focus Areas and Community Vitality
6. Maintain the City's Fiscal Health and Quality Services
7. Maximize Health and Safety Benefits

The General Plan further establishes multiple goals and policies to guide decision making to be consistent with the realization of these strategies.

The Housing Element is a required component of the General Plan and per State law must demonstrate the City's ability to support residential development capacity consistent with the City's Regional Housing Needs Allocation (RHNA).

The City is required to provide three annual reports to the State to demonstrate the City's progress toward implementation of its General Plan:

- General Plan Annual Progress Report (GP APR)
- General Plan Housing Element Annual Progress Report (Housing Element APR)
- Housing Successor Agency Annual Report regarding the Low and Moderate Income Housing Asset Fund (LMIHAF)

These reports are due on April 1st of each calendar year and the Housing Element APR and LMIHAF

must be submitted to California Department of Housing and Community Development (HCD) using the forms and definitions adopted by HCD. These two documents must also be posted on the City's website.

Historically the City has submitted three reports to the State on an annual basis, in conformance with these requirements. Staff is preparing all three documents to submit to the State prior to April 1, 2022.

Beginning in 2020, the State further mandated that all cities, including Charter cities such as Santa Clara, and all 58 counties, submit the GP APR to their legislative body as well as to the Governor's OPR (Government Code Section 65400). This report is being submitted to the City Council to fulfill this requirement.

DISCUSSION

Annual Progress Reports (APRs) provide local legislative bodies with information regarding the implementation of the General Plan for their city or county. The Annual Progress Report is strictly a reporting document and does not create or modify any City of Santa Clara goals or policies found within the General Plan. APRs must be presented to the local legislative body for review and acceptance. Once approved, the General Plan APR must be filed with the Governor's Office of Planning and Research and the Housing Successor Agency Annual Report must be posted on the City's Website.

This report includes four attachments documenting the City's implementation of the General Plan over the last calendar year. In summary, as described in these documents, the City's General Plan is consistent with state law, and has been successful in creating market-rate housing, especially in the City's General Plan Focus Areas.

Attachment 1 is a fact sheet that includes relevant milestones for the General Plan, along with a short discussion of additions that need to be made to the General Plan in the coming years. A summary of the Housing Element APR, including housing production numbers for the year and Housing Element implementation actions, is included as Attachment 2.

The Housing Successor Annual Report regarding the Low and Moderate Income Housing Asset Fund (LMIHAF) has been prepared pursuant to California Health and Safety Code Section 34176.1(f). The report sets forth details of the City of Santa Clara Housing Successor activities in Fiscal Year 2020-2021 and is included for reference as Attachment 3.

A list of all General Plan Amendments filed since the adoption of the 2010-2035 General Plan is included as Attachment 4. No amendments were made to the General Plan in 2021.

ENVIRONMENTAL REVIEW

The action being considered is simply to accept an annual report on the City's General Plan and as such 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 administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

This report has no fiscal impact in that it simply reports housing production for the prior calendar year

and gives the Council a report on the status of the implementation and upkeep of the General Plan.

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

Accept the General Plan Annual Progress Report as presented by staff.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: City Manager's Office

ATTACHMENTS

1. Santa Clara General Plan 2010-2035 Fact Sheet
2. 2021 Housing Element Annual Progress Report Summary Data
3. FY 2020-2021 Successor Agency Annual Report
4. Amendments to the General Plan, 2010-Present



General Plan 2010-2035 Fact Sheet

Adoption Date of General Plan: November 6, 2010

Adoption Date of Housing Element: December 9, 2014

Consistency with the Office of Planning and Research General Plan Guidelines: Consistent

Amendments to be made during the next Housing Element Update, or by 2022, as required by State Law:

- Climate Adaptation and Resilience Policies, to be included as a part of the 2021 Climate Action Plan Update
- An update of the Safety Element in relation to Fire Hazards and Climate Change

Priorities for land use decision making that have been established by the local legislative body (e.g., passage of moratoria or emergency ordinances): Ordinance 2018, imposing a ban on all commercial cannabis activities, adopted May 12, 2020.

Advance Planning Activities initiated in 2021: An Amendment to the Tasman East Specific Plan to allow an additional 1,500 units, increasing the capacity of the Plan Area to a total of 6,000 units.

Ongoing Advance Planning Activities:

- Downtown Precise Plan
- El Camino Specific Plan
- Patrick Henry Drive Specific Plan
- Zoning Code Update
- Freedom Circle Focus Area Plan
- Climate Action Plan

Jurisdiction	Santa Clara	
Reporting Year	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	01/31/2015 - 01/31/2023

Building Permits Issued by Affordability Summary		
Income Level		Current Year
Very Low	Deed Restricted	108
	Non-Deed Restricted	13
Low	Deed Restricted	55
	Non-Deed Restricted	12
Moderate	Deed Restricted	7
	Non-Deed Restricted	13
Above Moderate		236
Total Units		444

Note: Units serving extremely low-income households are included in the very low-income permitted units totals

Units by Structure Type	Entitled	Permitted	Completed
SFA	0	105	124
SFD	0	19	18
2 to 4	0	0	0
5+	1339	267	532
ADU	73	53	54
MH	0	0	0
Total	1412	444	728

Housing Applications Summary	
Total Housing Applications Submitted:	94
Number of Proposed Units in All Applications Received:	727
Total Housing Units Approved:	233
Total Housing Units Disapproved:	0

Use of SB 35 Streamlining Provisions	
Number of Applications for Streamlining	1
Number of Streamlining Applications Approved	0
Total Developments Approved with Streamlining	0
Total Units Constructed with Streamlining	0

Units Constructed - SB 35 Streamlining Permits			
Income	Rental	Ownership	Total
Very Low	0	0	0
Low	0	0	0
Moderate	0	0	0
Above Moderate	0	0	0
Total	0	0	0

Cells in grey contain auto-calculation formulas



**City of
Santa Clara**
The Center of What's Possible

Prepared by Housing & Community Services Division
1500 Warburton Avenue
Santa Clara, CA 95050
408-615-2490

HOUSING SUCCESSOR ANNUAL REPORT

REGARDING THE LOW- AND MODERATE-INCOME HOUSING ASSET FUND
FOR FISCAL YEAR 2020-21 PURSUANT TO
CALIFORNIA HEALTH AND SAFETY CODE SECTION 34176.1(f)
FOR THE CITY OF SANTA CLARA

Submission Date: March 31, 2022





City of Santa Clara

The Center of What's Possible

HOUSING SUCCESSOR ANNUAL REPORT REGARDING THE LOW- AND MODERATE-INCOME HOUSING ASSET FUND FOR FISCAL YEAR 2020-21 PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34176.1(f) FOR THE CITY OF SANTA CLARA

The Housing Successor Annual Report (Report) regarding the Low- and Moderate-Income Housing Asset Fund (LMIHAF) has been prepared pursuant to California Health and Safety Code Section 34176.1(f) and describes the current status of the LMIHAF as of June 30, 2021. The Report further provides certain details regarding the City of Santa Clara, as Housing Successor ("Housing Successor" or "City"), and its activities during Fiscal Year 2020-21 (Fiscal Year). The purpose of this Report is to provide the governing body of the Housing Successor, the Santa Clara City Council, an annual report on the housing assets and activities of the Housing Successor under Part 1.85, Division 24 of the California Health and Safety Code, in particular sections 34176 and 34176.1 (Dissolution Law).

The following Report is based upon information prepared by staff and information contained within the financial records of the Low- and Moderate-Income Housing Asset Fund 169 for Fiscal Year 2020-21. The Report conforms with and is organized into Sections I through XI, inclusive, pursuant to Section 34176.1(f) of the Dissolution Law:

- I. Amount Deposited into LMIHAF:** This section provides the total amount of funds deposited into the LMIHAF during the Fiscal Year. Any amounts deposited for items listed on the Recognized Obligation Payment Schedule (ROPS) must be distinguished from the other amounts deposited. This section also includes a reporting on the amount the Housing Successor received pursuant to Health and Safety Code Section 34191.4(b)(3)(A) for sponsoring community loan repayments.
- II. Ending Balance of LMIHAF:** This section provides a statement of the balance in the LMIHAF as of the close of the Fiscal Year. Any amounts deposited for items listed on the ROPS must be distinguished from the other amounts deposited.
- III. Description of Expenditures from LMIHAF:** This section provides a description of the expenditures made from the LMIHAF during the Fiscal Year. The expenditures are to be categorized.
- IV. Statutory Value Of Assets Owned By Housing Successor In LMIHAF:** Under the Dissolution Law, and for purposes of this Report, the "statutory value of real property" means the value of properties formerly held by the former redevelopment agency, as listed on the housing asset transfer schedule approved by the Department of Finance, as listed in such schedule under Section 34176(a)(2), the value of the properties transferred to the Housing Successor pursuant to Section 34181(f), and the purchase price of property(ies) purchased by the Housing Successor. Further, the value of loans and grants receivable is included in these reported assets held in the LMIHAF.
- V. Description of Transfers:** This section describes transfers, if any, to another housing successor agency made in previous Fiscal Year(s), including whether the funds are unencumbered and the status of projects, if any, for which the transferred LMIHAF will be used. The sole purpose of the transfers must be for the development of transit priority projects, permanent supportive housing, housing for agricultural employees or special needs housing.

- VI. Project Descriptions:** This section describes any project for which the Housing Successor receives or holds property tax revenue pursuant to the ROPS and the status of that project.
- VII. Status of Compliance with Section 34176.1:** This section provides a status update on compliance with Section 34176.1 (amending the dates to initiate activities consistent with development of affordable housing under Section 33334.16). For interests in real property acquired on or after February 1, 2012, this section provides a status update on the project.
- VIII. Description of Outstanding Obligations under Section 33413:** This section describes the outstanding inclusionary and replacement housing obligations, if any, under Section 33413 that remained outstanding prior to dissolution of the former redevelopment agency as of February 1, 2012, along with the Housing Successor's progress in meeting those prior obligations of the former redevelopment agency and how the Housing Successor plans to meet any unmet obligations.
- IX. Income Test:** This section provides the information required by Section 34176.1(a)(3)(B), or a description of expenditures by income restriction for five-year period, with the time period beginning January 1, 2014 and whether the statutory thresholds have been met. However, reporting of the Income Test was reported in 2019 and will be reported again in 2024.
- X. Senior Housing Test:** This section provides the percentage of units of deed-restricted rental housing restricted to seniors and assisted individually or jointly by the Housing Successor, its former redevelopment agency, and its host jurisdiction within the previous 10 years in relation to the aggregate number of units of deed-restricted rental housing assisted individually or jointly by the Housing Successor, its former redevelopment agency and its host jurisdiction within the same time period. For this Report the ten-year period is July 1, 2011- June 30, 2021.
- XI. Excess Surplus Test:** This section provides the amount of excess surplus in the LMIHAF, if any, the length of time that the Housing Successor has had excess surplus, and the Housing Successor's plan for eliminating the excess surplus.
- XII. Inventory of Assisted Homeownership Units:** An inventory of homeownership units assisted by the former redevelopment agency or the housing successor that are subject to covenants or restrictions or to an adopted program that protects the former redevelopment agency's investment of moneys from the Low and Moderate Income Housing Fund pursuant to subdivision (f) of Section 33334.3.

This Report is to be provided to the California Department of Housing and Community Development by April 1, 2022. In addition, this Report and the former redevelopment agency's pre-dissolution Implementation Plans are to be made available to the public on the City's website, www.santaclaraca.gov.

I. AMOUNT DEPOSITED INTO LMIHAF (INCLUSIVE OF DEPOSITS MADE PURSUANT TO SECTION 34191.4(B)(3)(A))

Source	Amount
First Time Homebuyer Loan Repayment (Principal & Interest)	\$799,941
Housing Rehab Loans-NCIP (Principal & Interest)	\$0
AH Development Loans Repayment (Principal & Interest)	\$542,759
Use of Money & Assets (Interest, Rent, Misc. Other Revenue)	\$209,556
20% Set Aside on Sponsoring Community Loan Repayments Pursuant to Safety Code Section 34191.4(b)(3)(A)	-
Land Sale Proceeds	\$11,650,000
Total from all sources deposited in Fiscal Year	\$13,202,256

A total of \$13,202,256 was deposited into the LMIHAF during the Fiscal Year. Of the total funds deposited into the LMIHAF, a total of \$0 was held for items listed on the ROPS. The City did not receive any loan repayments under Section 34191.4(b)(3)(A) from the Successor Agency for funds borrowed from the City by the former redevelopment agency. Because no payments were made, no deposits were required to be made into the City's LMIHAF that were associated with sponsoring community loan repayments under Health and Safety Code Section 34191.4(b)(3)(A).

II. ENDING BALANCE OF LMIHAF

Balance of LMIHAF as of 6/30/21	
Subject	Balance
Previous balance + Current Deposits - Expenditures	\$14,007,972

At the close of the Fiscal Year, the ending balance in the LMIHAF was \$14,007,972 of which \$0 is held for items listed on the ROPS.

III. DESCRIPTION OF EXPENDITURES FROM LMIHAF

Subject	Amount
Monitoring & Administration	\$407,366
Homeless Prevention and Rapid Rehousing Services Expenditures	\$264,060
Housing Development Expenditures for pre-development expenses	\$11,650,000
Total Expenditures	\$12,321,426

The primary expenditures from the LMIHAF were for Homeless Prevention, Case Management services for the Tenant Based Rental Assistance (TBRA) program, and Rapid Rehousing Services and expenditures and administrative costs associated with monitoring the portfolio's long-term affordability restrictions. The City entered into two separate agreements with program service providers totaling \$250,000 from LMIHAF funds. The TBRA program is administered by two service providers: Abode Services and Bill Wilson Center. Only Bill Wilson Center was allocated LMIHAF funds (\$140,000) to

provide case management services and general program administration services for the TBRA program. Federal Home Investment Partnerships Act (HOME) funds in the amount of \$1,746,618 were allocated for subsidies and deposits, and \$212,089 from City Affordable Housing funds were allocated to supplement the LMIHAF funds. The TBRA program provides housing and case management services to individual and families who are homeless or at risk of homelessness. The second agreement is with the County of Santa Clara to provide intensive case management and other supportive services for homeless individuals in order to obtain and maintain permanent housing. The agreement is for \$110,000 from LMIHAF funds.

The City Council, on August 19, 2020 approved Amendment No. 1 to the Agreement for Services with HouseKeys Inc. for administration of the City's Affordable Rental Program to continue to strengthen the City's ability to administer and maintain its affordable rental program. The total compensation authorized contained a not-to-exceed amount of \$166,000 (\$156,000 for program administration and an additional \$10,000 for special projects) with \$125,000 of this agreement funded by the LMIHAF funds.

IV. STATUTORY VALUE OF ASSETS OWNED BY HOUSING SUCCESSOR IN LMIHAF

Under the Dissolution Law and for purposes of this Report, the "statutory value of real property" means the value of properties formerly held by the former redevelopment agency as listed on the housing asset transfer schedule approved by the Department of Finance as listed in such schedule under Section 34176(a)(2), the value of the properties transferred to the Housing Successor pursuant to Section 34181(f), and the purchase price of property(ies) purchased by the Housing Successor. Further, the value of loans and grants receivable is included in these reported assets held in the LMIHAF.

The following provides the statutory value of assets owned by the Housing Successor.

Asset Category - Loans	# of Loans	Statutory Value
First Time Home Buyers	25	\$ 1,277,194
Housing Rehab- NCIP	2	\$ 93,324
Development Loans	30	\$84,035,522
Total Loan Balances		\$ 85,406,040
Asset Category - Land		Statutory Value
Land Held for Development		
2330 Monroe St & San Tomas Expressway		\$ 5,400,270
3575 De La Cruz Boulevard		\$ 1,703,500
Land Developed with Affordable Housing		
Presidio El Camino Affordable Housing		\$ 2,694,997
Charities Housing		\$ 1,479,897
Total Land Balances		\$ 11,278,664
Total Statutory Value of Assets Owned by Housing Successor		\$ 96,684,704

V. DESCRIPTION OF TRANSFERS

The Housing Successor did not make any LMIHAF transfers to other Housing Successor(s) under Section 34176.1(c)(2) during the Fiscal Year.

No previous projects required LMIHAF transfers during the fiscal year.

VI. PROJECT DESCRIPTIONS

This section describes any project for which the Housing Successor receives or holds property tax revenue pursuant to the ROPS and the status of that project.

The Housing Successor does not receive or hold property tax revenue pursuant to the ROPS.

VII. STATUS OF COMPLIANCE WITH SECTION 34176.1

Section 34176.1 provides that the deadlines in Section 33334.16 do not apply to interests in real property acquired by the Housing Successor on or after February 1, 2012; however, this Report presents a status update on the project related to such real property.

With respect to interests in real property acquired by the former redevelopment agency prior to February 1, 2012, the time periods described in Section 33334.16 shall be deemed to have commenced on the date that the Department of Finance approved the property as a housing asset in the LMIHAF; thus, as to real property acquired by the former redevelopment agency now held by the Housing Successor in the LMIHAF, the Housing Successor must initiate activities consistent with the development of the real property for the purpose for which it was acquired within five years of the date the DOF approved such property as a housing asset.

The following provides a status update on the project(s) for property or properties that have been acquired by the Housing Successor using LMIHAF on or after February 1, 2012:

Address	Date of Transfer approval from DOF	Deadline to initiate activity	Current Status
2330 Monroe St & San Tomas Expressway	7/16/2013	7/16/2018	Executed DDA, Approved Entitlements, and Encumbered Funds (Closing April 2022)
3575 De La Cruz Boulevard	7/16/2013	7/16/2018	Awarded and Executed ENA (ENA Extended to June 2022)
90 N. Winchester Boulevard	7/16/2013	7/16/2018	Executed DDA, Approved Entitlements, and Encumbered Funds (Closed June 2021)

2330 Monroe Street:

On December 7, 2017, the Housing and Community Services Division held a Community Engagement Meeting at City Hall to discuss plans for the future development of the City-owned site at 2330 Monroe Street. The RFP was issued on March 2018 and on November 11, 2018, Santa Clara's City Council authorized the City Manager to execute an Exclusive Negotiation Agreement (ENA) with Freebird Development Company for the development of 2330 Monroe Street. On January 28, 2020, Santa Clara's City Council approved all land use entitlements for the project and adopted a resolution approving and authorizing the City Manager to negotiate and execute a Disposition and Development Agreement (DDA) with Freebird Development LLC and further authorizing the City Manager to execute all other agreements (including a Ground Lease, Loan Agreements, Deeds of Trust, Promissory Notes, and Affordable Housing Agreement). Freebird Development Company applied for tax-exempt bonds and tax credits in December 2020 but was not awarded in that round. In December 2021, Freebird's application for tax-exempt bonds and tax credits was successful and the project is

expected to close financing in April 2022.

3575 De La Cruz Boulevard:

On January 29, 2018, the Housing and Community Services Division held a Community Engagement Meeting at the Northside Library to discuss plans for the future development of the City-owned site at 3575 De La Cruz Boulevard. The RFP was issued in June 2018 and on April 9, 2019, Santa Clara's City Council approved an Exclusive Negotiation Agreement (ENA) with Habitat for Humanity Company for the development of 3575 De La Cruz Boulevard. The ENA provided an initial negotiating period of 18 months, commencing on the date of the Agreement was fully executed, which could be extended for two additional periods of six months each by the City Manager upon presentation of a written request from the Developer together with a schedule of tasks to be accomplished during the additional period. Both six-month extensions were authorized by the City Manager. As allowed under the ENA, the City Manager granted two six-month extensions for the ENA on December 14, 2020 and the second on July 12, 2021. On December 14, 2021, the third extension was approved by action of the City Council for six months to allow Habitat for Humanity additional time to prepare a Disposition and Development Agreement (DDA) for Council consideration.

90 North Winchester Boulevard:

On February 27, 2015, the Housing Successor issued a Request for Proposals for 90 North Winchester Boulevard (referred to as the "BAREC Site") for the development of affordable senior housing. On January 29, 2019, Santa Clara's City Council approved all land use entitlements for the project and adopted a resolution approving and authorizing the City Manager to negotiate and execute a Disposition and Development Agreement (DDA) with Core Affordable Housing LLC for the development of the Agrihood Project located at 90 North Winchester Boulevard/ 1834 Worthington Circle and further authorizing the City Manager to execute all other agreements (including a Ground Lease, Loan Agreements, Deeds of Trust, Promissory Notes, and Affordable Housing Agreement). The Core Companies announced in September 2020 that the Agrihood Project has been awarded \$50,000,000 in tax-exempt bonds by the California Debt Limit Allocation Committee (CDLAC). The project closed financing in June 2021 and is currently under construction.

2904 Corvin Drive:

On February 19, 2019, Santa Clara's City Council approved a loan agreement with Allied 2904 Corvin, LP for a loan of up to \$5,000,000 Housing Successor Funds to support the construction of a 100% affordable residential development at 2904 Corvin Drive. The project, Corvin Apartments, will contain 145 units consisting of 80 units for formerly chronically homeless residents with income levels at or below 30% of Area Median Income (AMI), 64 units for residents with income levels at or below 60% AMI, and 1 unrestricted two-bedroom manager's unit. The project started leasing up in June 2021 and is expected to reach full occupancy by February 2022.

VIII. DESCRIPTION OF OUTSTANDING OBLIGATIONS PURSUANT TO SECTION 33413

Replacement Housing: According to the FY2009/10 - FY2015/16 Implementation Plan for the former redevelopment agency, no Section 33413(a) replacement housing obligations were transferred to the Housing Successor. The former redevelopment agency's Implementation Plans are posted on the City's website at www.santaclaraca.gov

There are no existing replacement housing obligations.

Inclusionary/Production Housing: According to the FY2009/10 - FY2015/16 Implementation Plan for the former redevelopment agency, no Section 33413(b) inclusionary/production housing obligations were transferred to the Housing Successor. The former redevelopment agency's Implementation Plans are posted on the City's website at www.santaclaraca.gov

There are no existing inclusionary production obligations.

IX. EXTREMELY-LOW INCOME TEST

Section 34176.1(a)(3)(B) requires that the Housing Successor must require at least 30% of the LMIHAF be expended for development of rental housing affordable to and occupied by households earning 30% or less of the AMI. If the Housing Successor fails to comply with the Extremely-Low Income requirement in any five-year report, then the Housing Successor must ensure that at least 50% of the funds remaining in the LMIHAF be expended in each fiscal year following the latest fiscal year following the report on households earning 30% or less of the AMI until the Housing Successor demonstrates compliance with the Extremely-Low Income requirement. This information will be reported in 2024 and every five years thereafter.

X. SENIOR HOUSING TEST

The Housing Successor is to calculate the percentage of units of deed-restricted rental housing restricted to seniors and assisted by the Housing Successor, the former redevelopment agency and/or the City within the previous 10 years in relation to the aggregate number of units of deed-restricted rental housing assisted by the Housing Successor, the former redevelopment agency and/or City within the same period. If this percentage exceeds 50%, then the Housing Successor cannot expend future funds in the LMIHAF to assist additional senior housing units until the Housing Successor or City assists and construction has commenced on a number of restricted rental units that is equal to 50% of the total amount of deed-restricted rental units.

The following provides the Housing Successor's Senior Housing Test for the 10-year period of 7/1/2011-6/30/2021. The aggregate number of units of deed-restricted rental housing restricted to seniors and assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the previous 10 years did not exceed 50 percent of the aggregate number of units of deed-restricted rental housing assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the same time period. Therefore, the restrictions under Section 34176.1(b) do not apply.

Senior Housing Test	10 Year Test
July 1, 2011 - June 30, 2021	
# of Assisted Senior Rental Units by Former RDA	47
# of Assisted Senior Rental Units by City	0
# of Assisted Senior Rental Units by Housing Successor	165
Total # of Assisted Senior Rental Units	212
# of Assisted Rental Units by Former RDA	87
# of Assisted Rental Units by City	144
# of Assisted Rental Units by Housing Successor	359
Total # of Assisted Rental Units	590
Assisted Senior Housing Percentage	35.93%

XI. EXCESS SURPLUS TEST

Excess Surplus is defined in Section 34176.1(d) as an unencumbered amount in the LMIHAF account that exceeds the greater of one million dollars (\$1,000,000) or the aggregate amount deposited into the account during the Housing Successor's preceding four Fiscal Years, whichever is greater. The Housing Successor created the LMIHAF account on February 1, 2012. The LMIHAF Balance on Deposit of \$13,072,677 less the encumbered amount of \$11,500,000 for two affordable housing developments, equals \$1,572,677. This amount is less than the sum of the annual deposits made in the preceding four fiscal years of \$6,859,852. As a result, the LMIHAF does not have an Excess Surplus. The City has encumbered (meaning, approved by and budgeted by Council, but not expended in the reporting

period) \$11.5 million for two affordable housing projects including all \$13,072,677 of LMIHAF funds have been approved by the City Council as noted below.

Annual Deposits	Amount Deposited
FY 2016-17 LMIHAF Deposits	\$1,488,901
FY 2017-18 LMIHAF Deposits	\$1,799,709
FY 2018-19 LMIHAF Deposits	\$2,227,849
FY 2019-20 LMIHAF Deposits	\$1,343,393
Aggregate Deposits for 4 preceding fiscal years	\$6,859,852
LMIHAF Balance on Deposit	\$13,072,677
Encumbered Funds	(\$11,500,000)
Unencumbered LMIHAF Balance on Deposit	\$1,572,677
Excess Surplus	\$0

Encumbered Funds for Affordable Developments (as of June 30, 2021)	
Allied 2904 Corvin (3311 Kifer Road)	\$ 5,000,000
Freebird (2330 Monroe Street)	\$ 6,500,000
Total	\$ 11,500,000

Additionally, on January 29, 2019, Santa Clara's City Council approved all land use entitlements for the project and adopted a resolution approving and authorizing the City Manager to negotiate and execute a Disposition and Development Agreement (DDA) with Core Affordable Housing LLC for the development of the Agrihood Project located at 90 North Winchester Boulevard, which included a Loan Agreement for \$15.7 million. Consistent with the original project concept, at closing in June 2021, the Developer acquired the market-rate and mixed-income parcels at a value of \$15,700,000. Upon payment of the property purchase price the City conveyed the parcels to the developer excluding the portion to be developed as affordable senior housing, which city retains. At the escrow closing of the market-rate and mixed-income parcels, the City re-invested the sales proceeds of the market rate and mixed income parcels (\$15,700,000) into the affordable project through a Loan Agreement. As a requirement of the loan, the Developer must maintain the affordable units for rent to qualified tenants for 55 years.

The City's original costs basis for the land was \$11,650,000 of Housing Successor Funds and \$4,050,000 of General Funds, which approximately represents a 74%/26% split. As per the terms of the Loan Agreement, the City shall receive a portion of the residual receipt cash flows until the full loan plus interest is completely paid. As such, any residual receipt payments to the City shall be split 74%/26% between the Housing Successor Fund and the General Fund, which represents the original cost basis.

XII. HOMEOWNERSHIP INVENTORY

This section contains an inventory of homeownership units assisted by the former redevelopment agency or the housing successor that are subject to covenants or restrictions or to an adopted program that protects the former redevelopment agency's investment of moneys from the Low and Moderate Income Housing Fund pursuant to subdivision (f) of Section 33334.3.

There is a total 46 of assisted homeownership units being monitored by the housing successor. No units were lost from the portfolio during the fiscal year and no units have been lost from the portfolio since February 1, 2012. A total of 3 units have been removed from the housing successor's portfolio during the fiscal year because the homeowners have satisfied the terms of the recorded affordability covenants.

No funds were returned as part of a program that protects the former agency's investment of funds from the LMIHAF. The Housing Successor did receive \$799,941 of program income associated with the housing successor's homeownership portfolio.

The Housing Successor did not contract with any outside entity for the management of the housing successor's homeownership portfolio.

ACTIONS NEEDED

This report must be submitted to the California Department of Housing and Community Development by April 1st. This report and the former redevelopment agency's Implementation Plans are posted on the City's website at www.santaclaraca.gov

City of Santa Clara

Community Development/Planning Division

General Plan Amendment Applications

2010 to Present

Report prepared on 2/28/2022

GPA #	Project	File Number	Description	Notes
#73	1410 El Camino Real - The Presidio	PLN2010-08180	GPA# 73 from Gateway Thoroughfare to High Density Residential (3,025 sq.ft. of commercial use and 40 residential units)	11.09.2010 - City Council Approved
#74	2875 Lakeside Drive	PLN2010-08051	GPA #74 - General Plan Text Amendment for lot coverage; (5-story, 107 room extended stay hotel with podium parking at grade and 4 floors above)	GPA was withdrawn
#75	5403 Stevens Creek Blvd	PLN2011-08988	GPA #75 - General Plan Amendment from Low Intensity Office R&D to High Intensity Office R&D (Two 6-story office buildings totaling 295,500 sq.ft. & one below and above grade parking structure w/ a total of 1,118 on-site parking spaces; demolish existing commercial building [I-Hop])	07.17.2012 - City Council Approved
#76	45 Buckingham Drive	PLN2013-09799	GPA #76 from Community Mixed Use to High Density Residential (Four-story, 222 unit multi-family residential development with wrap parking structure w/ 375 on-site parking spaces; demolish of existing commercial building)	03.18.2014 - City Council Approved
#77	2585 El Camino Real	PLN2013-09805	GPA#77 - General Plan Amendment from Community Mixed Use to High Density Residential (60 condominiums at 43 DU/AC)	08.27.2013 - City Council Approved
#78	2611 El Camino Real	PLN2013-09744	GPA #78 General Plan Amendment from Regional Mixed Use to High Density Residential (183 multi-family residential project; demolish commercial)	09.15.2013 - City Council Approved
#79	166 Saratoga Avenue	PLN2013-10111	GPA #79 - General Plan Amendment from Community Mixed Use to Medium Density Residential (33 townhomes)	12.09.2014 - City Council Approved
#80	2620-2800, 2423-2475 Augustine Drive	PLN2014-10256	GPA #80 - General Plan Amendment from High Intensity Office/R&D to Community Commercial [Retail Center] and Light Industrial to High Intensity Office/R&D [Office Phase II & III] (up to 1,243,300 s.f. of office space and up to 125,000 s.f. of retail space for a total (inclusive of Office Phase I) of up to 2,000,100 square feet of development)	06.10.2014 - City Council Approved
#81	1313 Franklin Street	PLN2014-10542	GPA #81 - General Plan Amendment from Community Mixed Use to Regional Mixed Use (44 residential condominium units and 14,500 s.f. retail)	01.13.2015 - City Council Approved
#82	1701 Lawrence Road	PLN2014-10320	GPA #82 - General Plan Amendment from Medium Density Residential to Low Density Residential (9-unit townhome project; demolish two commercial buildings and a single family residence)	04.07.2015 - City Council Approved
#83	5155 Stars & Stripes	PLN2014-10554	GPA #83 - General Plan Amendment from Parks/Open Space and Regional Commercial to Urban Center/Entertainment District (up to ~9.16M s.f. of office, retail, residential, hotel and entertainment facilities; new open space, parking, roadways, and infrastructure; demolish existing structures)	06.28.2016 - City Council Approved
#84	2505 Augustine Drive, 3333 Octavius Drive	PLN2014-10577	GPA #84 - General Plan Amendment for Santa Clara Square Office Phases II and III (Light Industrial to High Intensity Office/R&D) (6-8 story office buildings)	11.18.2014 - City Council Approved
#85	2780 El Camino Real	PLN2015-11360	General Plan Amendment #85 from Regional Mixed-Use to Density Residential (158 apartments; demolish bowling alley)	Withdrawn
#85	2780 El Camino Real	PLN2017-12669	General Plan Amendment #85 from Regional Mixed-Use to Medium Density Residential (58 townhomes; demolish bowling alley)	5/22/2018 - City Council Approval
#86	Lawrence Station Area Plan	PLN2014-10500	GPA #86 - General Plan Amendment for Lawrence Station Area Plan from Low Intensity Office/R&D to Medium, High, and Very High Density Residential (up to 3,500 residential units and up to 104k s.f. commercial, plus parkland, roads, and infrastructure)	11/29/2016 - City Council Approved
#87	1205 Coleman Avenue	PLN2016-12318	GPA #87 - General Plan Amendment for the Santa Clara Station Focus Area to allow residential development at 51 - 100 du/ac and commercial development at a minimum 0.20 FAR (up to 1,600 residential units and approximately 220k s.f. hotel/retail/restaurant)	7/9/2019 - City Council Approved
#88	575 Benton Street	PLN2015-10980	GPA #88 - General Plan Amendment from Santa Clara Station High Density Residential and Santa Clara Station Low Density Residential to Santa Clara Station High Density Residential and to include a policy to allow limited neighborhood commercial uses within the Santa Clara Station Focus Area on a 5.8-acre site (318 apartments and approximately 22,000 s.f. commercial)	02/23/2016 - City Council Approved

GPA #	Project	File Number	Description	Notes
#89	3905 Freedom Circle	PLN2017-12516	GPA #89 - General Plan Amendment from High Intensity Office/R&D to a Very High Density Residential to allow up to 1,100 residential units with 1,540 parking spaces, up to 2,000 square foot of commercial with 10 parking spaces and a 2-acre public park.	Pending - 3/31/2020 PCC (deemed incomplete)
#90	100 N. Winchester Boulevard	PLN2015-11231	GPA #90 - General Plan Amendment from Regional Commercial to High Density Residential (92 market rate senior units)	01/12/2016 - City Council Approved
#91	575 Benton Street	PLN2017-12489	GPA #91 - General Plan Amendment #88 from High Density Residential to Very High Density Residential (355 apartment units, and ~22,000 square feet of retail)	7/17/2018 - City Council Approved
#92	2600 - 2610 Augustine Drive, 3300 - 3380 Montgomery Drive, et. al.	PLN2015-10899	GPA #92 - General Plan Amendment from Light Industrial/Community Commercial to Regional Mixed Use, and Light Industrial to High Density Residential (1800 apartments, 40,000 s.f. retail, & associated improvements)	12/15/2015 - City Council Approved
#93	2500 El Camino Real, et. al.	PLN2016-11684	Mixed Use to Regional Mixed Use for the development of 332 market rate residential units and 66 senior residential units totaling	Pending - PC/CC after ECR SP Visioning
#94	Tasman East SP	PLN2016-12400	Light Industrial to Transit Neighborhood	11/13/2018 - City Council Approved
#95	El Camino Real SP	PLN2014-10776	GPA #95 - Up to 6,200 residential units beyond the 2,073 that were allocated under the 2010 General Plan and of which some of those residential units have been constructed in the project area. Additionally, the Preferred Land Use Alternative would reduce the commercial space which currently exists in the project area by 315,000 square feet.	Pending
#96	3005 Democracy Way	PLN2017-12924	High-Intensity Office/Research and Development (R&D) to a new designation allowing high-intensity mixed use development, including residential and office	Pending
#97	Patrick Henry Drive Plan	Patrick Henry Drive SP	The Specific Plan will analyze two scenarios: 1) Up to 12,000 net new residential units and 310,000 net new square feet of non-residential uses, including retail and education facilities. 2) The same as the (1) but would substitute office for high-density residential along the east edge of the Plan Area, amounting to an approximate total of 10,300 net new residential units, 785,000 net new square feet of office, and 310,000 net new square feet of other nonresidential uses.	Pending
#98	Freedom Circle Focus Area	Freedom Circle Focus Area	The Focus Area would allow, subject to a future planning study, 2,500 dwelling units beyond those anticipated in the Greystar General Plan Amendment (described below), and 2 million square feet of additional office space beyond that allowed under the current high-intensity office designation.	Pending



Agenda Report

22-304

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action on Reappointment of Board and Commission Members, Declaring Commissioner Vacancies, and Setting Dates for Recruitment and Interviews

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

Board, Commission and Committee members are generally appointed to a four-year term (full term) and may serve a maximum of two consecutive full terms. In the case where an existing member is eligible for another term, past City practice has been for staff to contact those existing members and request if they would like to be re-appointed to another term. The Council then takes formal action to reappoint those existing members who indicate a desire to serve a second term. If an individual is appointed to fill a partial term, he or she may serve an additional two full terms. Full terms are effective July 1st of the appointing year and expire on June 30th of the fourth year.

DISCUSSION

Staff has continued with the past practice of reaching out to the incumbents eligible for reappointment and inquiring if there is a desire to continue to serve a second term. Regular attendance is one of the requirements to serve on a Board or Commission, staff has attached an attendance roster (Attachment 1) of all Boards and Commissions for Council's review.

The terms for the following commissioners will expire on June 30, 2022; however, staff reached out to all eligible incumbents and those who wished to be considered for reappointment to serve another term ending June 30, 2026 are listed below:

Board of Library Trustee (1)	Debbie Tryforos
Civil Service (1)	Franklin Felizardo
Cultural Commission (1)	Louis Samara
Historical and Landmarks Commission (2)	Michael Celso Ana Vargas Smith
Planning Commission (1)	Nancy Biagini

The following commissioners have served two full terms which will each end on June 30, 2022; creating three vacancies for a full-term each ending June 30, 2026; in addition, there will be another vacancy upon completion of the term ending June 30, 2022 on the Parks and Recreation commission for a full-term ending June 20, 2026:

Parks and Recreation Commission (2)

Andrew Knaack
Vacant Seat 6/2022

Planning Commission (1)

Yuki Ikezi

Senior Advisory Commission (1)

Wanda Buck

Currently there is a vacancy on the Senior Advisory Commission due to a resignation which needs to be filled for a partial term ending June 30, 2025.

Senior Advisory Commission (1)

Partial term ending 2025

Due to the above vacancies, staff recommends that the Council declare vacancies for five (5) positions to fill four (4) full terms each ending on June 30, 2026 and one (1) partial term ending on June 30, 2025; set the recruitment to begin on March 23, 2022 and set the application deadline to April 27, 2022 by 5:00 p.m.; and set May 16, 2022 to conduct interviews.

Staff will bring forward Special Orders of Business to recognize outgoing commissioners at a future Council meeting.

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 additional cost to the City other than administrative staff time and expense.

PUBLIC CONTACT

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

RECOMMENDATION

1. Reappoint the six (6) eligible commissioners to serve a four-year term each ending June 30, 2026;
2. Declare five (5) vacancies on the following commissions for four (4) full terms each ending June 30, 2026 and one partial term ending June 30, 2025:
 - Two (2) on the Parks and Recreation Commission (full terms);

- One (1) on the Planning Commission (full term); and
 - Two (2) on the Senior Advisory commission (one full term and one partial term);
3. Open the recruitment period on March 23, 2022;
 4. Set April 27, 2022 by 5:00 p.m. as the application deadline; and
 5. Set May 16, 2022 to conduct interviews.

Reviewed by: Nora Pimentel, Assistant City Clerk

Approved by: City Manager's Office

ATTACHMENT

1. Board/Commissions Attendance Roster 2021-2022

Board and Commission Attendance Roster

(Due to COVID-19 and the order of shelter in place as of March 16, 2020.
Boards and Commissions meetings were suspended. Meetings were
later reinstated to begin September 2020 virtually, therefore; the 2021 roster reflected
attendance from August 2019 – January 2021 with a break (between
March 2020-September 2020 due to COVID)

Current roster reflects attendance from February 2021- February 2022

Board of Library Trustees Attendance

First Name	Last Name	Term Ending	Elig. for Reappoint. at end of term	Regular Meeting Absences 2021/2022
Debbie	Tryforos (VC)	06/30/2022	Yes	None
Stephen	Ricossa	06/30/2023	Yes	None
Leonne	Broughman (C)	06/30/2024	No	9/13/2021 - Excused 3/7/2022 - Excused
Jan	Hintermeister	06/30/2024	No	2/7/2022 - Excused
Jonathan	Evans	06/30/2025	Yes	None

Civil Service Commission Attendance

First Name	Last Name	Term Ending	Elig. for Reappoint. at end of term	Regular Meeting Absences 2021/2022
Franklin J.	Felizardo	06/30/2022	Yes	4/12/21 – Not Excused 12/13/21 – Not Excused
Willie D.	Brown, Jr.	06/30/2023	No	5/10/21 – Not Excused 10/14/21 – Not Excused
Carolyn G.	McAllister	06/30/2023	No	None
Tahir J.	Naim	06/30/2024	Yes	5/10/21 – Not Excused
John	Casey	06/30/2025	No	4/12/21 – Not Excused 8/9/21 – Not Excused 2/14/22 – Not Excused

Cultural Commission Attendance

First Name	Last Name	Term Ending	Elig. for Reappoint. at end of term	Regular Meeting Absences 2021/2022
Louis	Samara (C)	06/30/2022	Yes	None
Debra	Von Huene	06/30/2023	Yes	None
Siddarth	Sundaram	06/30/2023	Yes	None
Candida A.	Diaz	06/30/2024	Yes	None
Paul	McNamara	06/30/2024	Yes	None
Jonathan	Marinero (VC)	06/30/2025	Yes	2/1/2021– Not Excused 4/5/2021– Not Excused 11/1/2021– Not Excused
Jennifer V.	Vega	06/30/2025	Yes	10/4/2021– Not Excused

Historical and Landmarks Commission Attendance

First Name	Last Name	Term Ending	Elig. for Reappoint. at end of term	Regular Meeting Absences 2021/2022
Michael	Celso	06/30/2022	Yes	2/4/21 – Excused 1/6/22 – Excused 2/3/22 – Excused
Ana	Vargas-Smith	06/30/2022	Yes	5/6/21 - Excused
Patricia	Leung	06/30/2023	Yes	None
Megan	Swartzwelder	06/30/2023	Yes	2/4/21 – Excused 2/3/22 – Excused
Kathleen	Romano	06/30/2025	Yes	10/7/21 - Excused
Amy	Kirby	06/30/2025	Yes	None
Ed	Stocks	06/30/2025	Yes	None

Parks and Recreation Commission Attendance

First Name	Last Name	Term Ending	Elig. for Reappoint. at end of term	Regular Meeting Absences 2021/2022
Andrew	Knaack (C)	06/30/2022	No	9/21/2021 – Excused 2/15/2022 - Excused
Joe	Martinez (VC)	06/30/2022	Yes	3/21/2021 – Excused 9/21/2021 – Excused
Burt	Field	06/30/2023	Yes	6/15/2021 – Excused 10/19/2021 - Excused
Eversley	Forte	06/30/2023	Yes	None
Dana	Caldwell	06/30/2024	Yes	2/15/2022 - Excused
Kelly	Gonzalez	06/30/2024	Yes	8/17/2021 – Excused
Saji	Hai	06/30/2025	Yes	None

Planning Commission Attendance

First Name	Last Name	Term Ending	Elig. for Reappoint. at end of term	Regular Meeting Absences 2021/2022
Nancy A	Biagini	06/30/2022	Yes	None
Yuki	Ikezi	06/30/2022	No	None
Priya	Cherukuru	06/30/2023	Yes	8/25/21 - Excused
Yashraj	Bhatnagar	06/30/2023	Yes	None
Ricci	Herro	06/30/2024	yes	2/24/21 – Excused 9/22/21 - Excused
Lance	Saleme (VC)	06/30/2020	Yes	None
Qian	Huang	06/30/2025	Yes	None

Senior Advisory Commission Attendance

First Name	Last Name	Term Ending	Elig. for Reappoint. at end of term	Regular Meeting Absences 2021/2022
Wanda	Buck	06/30/2022	No	None
James	Hohenshelt	06/30/2023	Yes	None
Nancy	Toledo (C)	06/30/2023	No	None
Judy	Hubbard	06/30/2024	Yes	2/22/2021 - Excused 5/24/2021 – Excused 10/25/2021 - Excused
Grant L.	McCauley(VC)	06/30/2024	No	2/28/2022 - Excused
Helen E.	Narciso	06/30/2025	Yes	10/25/2021 - Excused 11/22/2021 – Excused 1/24/2022 – Excused
Vacant		06/30/2025	Yes	



Agenda Report

22-1777

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action to Waive First Reading and Introduce an Ordinance of the City of Santa Clara, California, Defining the Composition of the Membership of the Bicycle and Pedestrian Advisory Committee and the Scope of the Bicycle and Pedestrian Advisory Committee's Jurisdiction, Adding a New Section 2.120.170 ("Bicycle and Pedestrian Advisory Committee") and Amending Section 2.120.010 (Names, Membership, Qualifications, and Terms of Office") of Chapter 2.120 ("Boards and Commissions") of Title 2 ("Administration and Personnel") of the Santa Clara City Code and Adopt Changes to the Bicycle and Pedestrian Advisory Committee Policy Guidelines

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

The Bicycle and Pedestrian Advisory Committee (BPAC) is an advisory body to the City Council on matters relative to modifying or expanding the City's public recreational and commuter bikeway and pedestrian walking system. The BPAC's goal is to encourage recreational and commuter bicycling and walking by promoting safe, convenient, well-designed facilities and by evaluating local bicycle and pedestrian related projects. The purpose, membership, and policies/procedures were established through City Council's past approval of the BPAC's Policy Guidelines, with the most recent version being adopted by City Council on March 25, 2014 (Attachment 1).

On September 14, 2020, the Governance and Ethics Committee (Committee) provided direction to staff to formalize policy guidelines for the BPAC. Although the City Council approved the formation of the BPAC and the BPAC Policy Guidelines, there is no City Code section specifically addressing it. The Committee requested that an ordinance be considered to amend the City Code to clearly set forth the composition of the membership and the scope of the BPAC's jurisdiction. The Committee directed staff to bring back a recommendation on formalizing the BPAC through a draft ordinance that reflected the input of both the BPAC and the Committee.

Over the course of the next six months, staff engaged the BPAC on multiple occasions to provide a framework for the proposed ordinance and solicit feedback from members. These engagements took place on October 26, 2020, December 10, 2020, and January 25, 2021. During these meetings the proposed changes to the City Code were refined and the BPAC policy guidelines were updated to align with all other City Boards, Commissions, and Committees. The BPAC also formed a special subcommittee to review the changes and provide further input and recommendations.

At the March 29, 2021 Governance and Ethics Committee meeting, the Committee did not vote on the draft City Code amendments or changes to the policy guidelines, but did vote on the following:

- Member Eligibility - BPAC members be at least 18 years of age, live or work in the City, and do not have to be a qualified elector of the City.
- Membership - BPAC to consist of seven members instead of nine and phase in this change so no current member loses their position during the current term.
- Applications and Appointments - Council to consider whether to continue having BPAC interview applicants, vote for applicants, and make recommendations to Council; or whether Council should interview applicants and make selections similar to other Boards and Commissions
- BPAC Chair - Council to consider whether to continue the practice of having a Councilmember Chair, or whether BPAC should elect their own Chair from the seven members.

At the meeting on December 14, 2021, the Council voted to approve the following:

- Modify BPAC membership eligibility to require that applicants must be at least 18 years of age and live or work in the City.
- Reduce the number of BPAC members from the current maximum of nine members to seven members and phase in this change so no current member loses their position during the current term.
- Modify how BPAC members are interviewed and appointed similar to other Boards and Commissions by having Council interview applicants and make selections.
- Remove the requirement that a Councilmember chair the BPAC and allow the BPAC to select its own chair in July 2025 once all members of the BPAC are comprised of those who were interviewed by Council.
- Direct staff to bring an ordinance and revised BPAC Policy Guidelines formalizing the BPAC for Council consideration

DISCUSSION

Based on the December 14, 2021 Council direction staff is bringing forward the updates to the City Code (enacted by ordinance) and the BPAC Policy Guidelines to align with all other Boards, Commissions, and Committees. Table 1 below summarizes the existing and proposed BPAC procedures.

Table 1. Existing and Proposed BPAC Procedures

Item	Existing BPAC Reference	Updated BPAC Reference	Other Boards Commissions, Committees
Purpose and Membership	BPAC Policy Guidelines	City Code Chapter 2.120	City Code Chapter 2.120
Membership term and meeting rules	BPAC Policy Guidelines	City Charter and Policy Guidelines	City Charter and Policy Guidelines
Membership appointment	Public Works solicits applications, BPAC interviews applicants and recommends appointments to Council	City Clerk procedures and Council interviews and appoints applicants	City Clerk procedures and Council interviews and appoints applicants

The Ordinance (Attachment 2) amends City Code Chapter 2.120 Boards and Commissions and will establish the existence, purpose, and membership of the BPAC. Including the BPAC within the City Code will make it consistent with how other Boards, Commissions, and Committees have been established. The Ordinance will establish BPAC membership eligibility to require that applicants must be at least 18 years of age and live or work in the City as well as reduce the number of BPAC members from the current maximum of nine members to seven members.

The proposed Ordinance will establish changes over time to the BPAC structure with the ultimate goal of setting BPAC membership at 7 members and phasing out the Council Member position by July 1, 2025. Effective immediately, the Ordinance will establish BPAC's purpose and permit individuals 18 years of age or older who are either residents or employed in the City to serve. In addition, the Ordinance delineates how BPAC members will be appointed through 2025 such that only seven (7) members will be appointed.

For example: Three members appointed in December of 2019 shall have a term of office expiring on June 30, 2023 and such 3 members will be filled by the Council; two members appointed in December 2020 will have a term of office expiring on June 30, 2024 and such two members shall be filled by the Council; and the three members appointed in December 2021 will have a term of office expiring on June 30, 2025 and only two members will be filled by Council.

Effective July 1, 2025, the BPAC will transition into its final form of 7 members appointed by the City Council.

The changes to the BPAC Policy Guidelines (Attachment 3 and Attachment 4) will modify procedures to follow membership terms and meeting rules established within the City Charter, to follow the City Clerk's procedures to appoint members, and have Council interview applicants and make selections. The revised BPAC Policy Guidelines will also phase in the change from nine members to seven members so no current member loses their position during the current term, remove the requirement that a Councilmember chair the BPAC, and allow the BPAC to select its own chair in July 2025 once all members of the BPAC are comprised of those who were interviewed by Council.

In summary, the ordinance, and changes to the BPAC Policy Guidelines will formalize the BPAC and implement recommendations approved by Council at the December 14, 2021 meeting.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

There is no fiscal impact with the adoption of this ordinance or changes to the policy guidelines.

COORDINATION

This report was coordinated with the City Manager's Office, 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

1. Waive First Reading and Introduce an Ordinance of the City of Santa Clara, California, Defining the Composition of the Membership of the Bicycle and Pedestrian Advisory Committee and the Scope of the Bicycle and Pedestrian Advisory Committee's Jurisdiction, Adding a New Section 2.120.170 ("Bicycle and Pedestrian Advisory Committee") and Amending Section 2.120.010 (Names, Membership, Qualifications, and Terms of Office") of Chapter 2.120 ("Boards and Commissions") of Title 2 ("Administration and Personnel") of "The Code of the City of Santa Clara, California"; and
2. Adopt Changes to the Bicycle and Pedestrian Advisory Committee Policy Guidelines.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: City Manager's Office

ATTACHMENTS

1. Bicycle and Pedestrian Advisory Committee Policy Guidelines, adopted March 25, 2014
2. Ordinance
3. Changes to the Bicycle and Pedestrian Advisory Committee Policy Guidelines (with redlines)
4. Changes to the Bicycle and Pedestrian Advisory Committee Policy Guidelines (clean)

**City of Santa Clara
Bicycle and Pedestrian Advisory Committee
Policy Guidelines**

The Bicycle Advisory Committee (BAC) was established by the Santa Clara City Council on May 28, 1991. On March 25, 2014 the Bicycle Advisory Committee was changed to the Bicycle and Pedestrian Advisory Committee (BPAC) by the Santa Clara City Council.

Section 1. Purpose

The purpose of the BPAC is to serve as an advisory body to the City Council on matters relative to modifying or expanding the City's public recreational and commuter bikeway and pedestrian walkway system. Its intent shall be to encourage recreational and commuter bicycling and walking in the City by promoting safe, convenient, well-designed facilities, and by evaluating local bicycle and pedestrian related projects.

Section 2. Membership

The BPAC is comprised of nine (9) regular members as appointed by the City Council. The Chairperson or alternate will be the Mayor or Councilperson designated by City Council and shall be considered a member. The remaining eight (8) members shall be citizens at large with a representative from the following groups strongly encouraged to be members: Santa Clara Unified School District and the Silicon Valley Bicycle Coalition. BPAC members must either reside or work in the City of Santa Clara.

Section 3. Term of Office and Removal

The term of office for BPAC members will be three years.

Members may be re-appointed but will be considered along with all other new applicants.

To allow for staggered terms, 2 members appointed by City Council in November of 2011 will have a term of office expiring on December 31, 2014, 3 members appointed in November of 2012 will have a term of office expiring on December 31, 2015, and 3 members appointed on November of 2013 will have a term of office expiring on December 31, 2016.

Any members of the BPAC may be removed from office by a majority vote of the City Council at a regularly scheduled Council meeting.

Section 4. Vacancies

Vacancies will be filled for the unexpired portion of the term, of the member being replaced, in the same manner as the original appointment.

Section 5. Meetings

The BPAC shall hold meetings on the third Wednesday in January, March, June, August and October at 4:00 p.m. at City Hall. The actual date of meeting can be changed or additional meetings can be approved by a quorum of the committee. All meetings shall be open to the public and notices and agendas shall be posted at City Hall as required by law.

Section 6. Quorum

Any five members shall constitute a quorum for voting on action items.

Section 7. Voting

Only the appointed BPAC members have voting authority. The committee shall determine the voting procedure for items prior to voting.

Section 8. Duties of BPAC to be Advisory Only

It is intended that the BPAC shall be an advisory committee to the City Council. Nothing herein contained shall be construed as a limitation on the power of the City Council or the administrative staff of the City in their supervision or authority over property or personnel, which are under their jurisdictions.

Section 9. Assistance of Staff

The City Manager of the City of Santa Clara shall provide the BPAC with information and staff assistance but the BPAC's requests may from time to time be prioritized subject to staff limitations. The City Manager has appointed the Director of Public Works and the Chief of Police or their designees to staff the BPAC.

Section 10. Code of Ethics and Values

The City of Santa Clara adopted a Code of Ethics and Values to provide clear, positive statements of ethical behavior reflecting the core values of the community. The actions and words of members of City's boards, commissions and committees should represent the community's values: ethical, professional, service-oriented, fiscally responsible, organized, communicative, collaborative, and progressive.

Section 11. Amendments

These guidelines may be amended by a quorum of the BPAC membership at any legal BPAC meeting, subject to approval by City Council.

PASSED AND RECOMMENDED FOR ADOPTION by the Bicycle Advisory Committee this 29 day of January, 2014.

PASSED AND ADOPTED by the Santa Clara City Council this 25 day of March, 2014.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, DEFINING THE COMPOSITION OF THE MEMBERSHIP OF THE BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE AND THE SCOPE OF THE BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE'S JURISDICTION, ADDING A NEW SECTION 2.120.170 ("BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE") AND AMENDING SECTION 2.120.010 ("NAMES, MEMBERSHIP, QUALIFICATIONS, AND TERMS OF OFFICE") OF CHAPTER 2.120 ("BOARDS AND COMMISSIONS") OF TITLE 2 ("ADMINISTRATION AND PERSONNEL") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA"

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

WHEREAS, at the May 22, 1991 City Council meeting, the Council approved a Citizens Committee on Bicycles known as the Bicycle Advisory Committee;

WHEREAS, at the February 28, 2006 City Council meeting, the Council approved a Policy Statement for the Bicycle Advisory Committee;

WHEREAS, at the March 4, 2014 City Council meeting, the Council approved to change the Committee to the Bicycle and Pedestrian Advisory Committee (BPAC) and related policy guidelines;

WHEREAS, at the September 14, 2020 Governance and Ethics Committee meeting, the Committee directed staff to bring back a recommendation on formalizing the BPAC that reflects the input of both the Committee and BPAC members;

WHEREAS, at the January 25, 2021 BPAC meeting, the Committee discussed the responsibilities and unanimously voted in support of amending the City Code to formalize the BPAC;

WHEREAS, at the March 29, 2021 Governance and Ethics Committee meeting, the

Committee recommended that the City Council consider an Ordinance that clearly sets forth the composition of the membership of the BPAC and the scope of the BPAC's jurisdiction; and

WHEREAS, at the December 14, 2021 City Council meeting, the Council directed staff to bring back an Ordinance and revised policy guidelines that clearly sets forth the composition of the membership of the BPAC and the scope of the BPAC's jurisdiction.

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

SECTION 1: The Bicycle and Pedestrian Advisory Committee shall consist of nine (9) members until July 1, 2025. Eight (8) members shall not hold any paid or employment in the City Government and one member is a Council Member serving as Chair. All members of the Bicycle and Pedestrian Advisory Committee shall be 18 years of age or older and residents of, or employed within, the City. The Bicycle and Pedestrian Advisory Committee shall have the following powers, functions, and duties:

- (a) Act in an advisory capacity to Council on matters pertaining to modifying, expanding, and maintaining the City's public bicycle and pedestrian transportation systems.
- (b) Recommend to Council on the priority of bicycle and pedestrian projects for which the City will seek funding under Article 3 of the Transportation Development Act, and other state, federal, and local funding programs.
- (c) Review and advise Council on comprehensive bicycle and pedestrian master plans.
- (d) Recommend complete streets features be incorporated into relevant transportation

projects consistent with the City's Complete Streets policy.

(e) Support educational, encouragement, recreational, and cultural activities for bicyclists and pedestrians.

This section shall remain in effect only until July 1, 2025, and as of that date is repealed.

SECTION 2: Changes to the structure of the Bicycle and Pedestrian Advisory Committee membership shall be phased in as follows to achieve seven (7) members by July 1, 2025:

(a) Three (3) members appointed in December of 2019 shall have a term of office expiring on June 30, 2023. Said three (3) vacancies shall be filled by Council appointment.

(b) Two (2) members appointed in December of 2020 will have a term of office expiring on June 30, 2024. Said (2) vacancies shall be filled by Council appointment.

(c) Three (3) members appointed in December of 2021 will have a term of office expiring on June 30, 2025. Of the three (3) member positions only two (2) shall be filled by Council appointment.

(d) Any vacancies from whatever cause arising, shall be filled by appointment of the City Council. Such vacancy shall be for the unexpired portion of a term.

This section shall remain in effect only until July 1, 2025, and as of that date is repealed.

SECTION 3: Section 2.120.010 (entitled "Names, membership, qualifications and terms of office") of Chapter 2.120 (entitled "Boards and Commissions") of Title 2 (entitled "Administration and Personnel") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

"2.120.010 Names, membership, qualifications and terms of office.

There shall be and there is established within the City the following boards, commissions, and committees:

- (a) Planning Commission. (SCCC 2.120.050)
- (b) Parks and Recreation Commission. (SCCC 2.120.060)
- (c) Civil Service Commission. (SCCC 2.120.070)
- (d) Board of Library Trustees. (SCCC 2.120.080)
- (e) Historical and Landmarks Commission. (SCCC 2.120.100)
- (f) Senior Advisory Commission. (SCCC 2.120.110)
- (g) Youth Commission. (SCCC 2.120.130)
- (h) Cultural Commission. (SCCC 2.120.140)
- (i) International Exchange Commission. (SCCC 2.120.150)
- (i) Housing Commission. (SCCC 2.120.160)
- (i) Bicycle and Pedestrian Advisory Committee. (SCCC 2.120.170)

All members of boards, commissions, and committees, except for members of the Youth Commission and Bicycle and Pedestrian Advisory Committee, shall be 18 years of age or older and residents of the City. All members of boards and commissions established by City Charter (i.e., Planning Commission, Parks and Recreation Commission, Civil Service Commission and Board of Library Trustees) shall also be qualified electors of the City.

SECTION 4: Section 2.120.170 is added to Chapter 2.120 (entitled “Boards and Commissions”) of Title 2 (entitled “Administration and Personnel”) of “The Code of the City of Santa Clara, California” to read as follows:

“2.120.170 Bicycle and Pedestrian Advisory Committee.

The Bicycle and Pedestrian Advisory Committee shall consist of seven (7) members. Members shall not hold any paid office or employment in the City. All members of the

Bicycle and Pedestrian Advisory Committee shall be 18 years of age or older and residents of, or employed within, the City. The Bicycle and Pedestrian Advisory Committee shall have the following powers, functions, and duties:

(a) Act in an advisory capacity to Council on matters pertaining to modifying, expanding, and maintaining the City's public bicycle and pedestrian transportation systems.

(b) Recommend to Council on the priority of bicycle and pedestrian projects for which the City will seek funding under Article 3 of the Transportation Development Act, and other state, federal, and local funding programs.

(c) Review and advise Council on comprehensive bicycle and pedestrian master plans.

(d) Recommend complete streets features be incorporated into relevant transportation projects consistent with the City's Complete Streets policy.

(e) Support educational, encouragement, recreational, and cultural activities for bicyclists and pedestrians.

Effective Date: The ordinance codified in this Section 2.120.170 shall take effect on July 1, 2025."

SECTION 5: 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 6: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any

prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 7: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this XX day of XXXXXX, 2022, 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

City of Santa Clara

Bicycle and Pedestrian Advisory Committee

Policy Guidelines

The Bicycle Advisory Committee (BAC) was established by the Santa Clara City Council on May 28, 1991. On March 25, 2014 the Bicycle Advisory Committee was changed to the Bicycle and Pedestrian Advisory Committee (BPAC) by the Santa Clara City Council.

Section 1. Purpose

The purpose and responsibilities of the BPAC are described in Section 2.120.170 of the City Code. ~~The purpose of the BPAC is to serve as an advisory body to the City Council on matters relative to modifying or expanding the City's public recreational and commuter bikeway and pedestrian walkway system.~~ Its intent shall be to encourage recreational and commuter bicycling and walking in the City by promoting safe, convenient, well-designed facilities, and by evaluating local bicycle and pedestrian related projects.

It is intended that the BPAC shall be an advisory committee to the City Council and nothing herein contained shall be construed as a limitation on the power of the City Council or the administrative staff of the City in their supervision or authority over property or personnel, which are under their jurisdictions.

Section 2. Membership

The BPAC is currently comprised of nine (9) members, which consists of eight (89) regular members and one (1) as appointed by the City Council. ~~The~~ Chairperson or alternate that will be the Mayor or Councilperson designated by City Council.

After June 2025, the BPAC shall be comprised of seven (7) members, which consists of seven (67) regular members. One regular member shall be appointed by the BPAC as Chair.

Representatives from Mission College, the Santa Clara Unified School District and the Silicon Valley Bicycle Coalition are encouraged to be members.
~~and shall be considered a member. The remaining eight (8) members shall be citizens at large with a representative from the following groups strongly encouraged to be members: Santa Clara Unified School District and the Silicon Valley Bicycle Coalition. BPAC members must either reside or work in the City of Santa Clara.~~

The City of Santa Clara adopted a Code of Ethics and Values to provide clear, positive statements of ethical behavior reflecting the core values of the community. The actions and words of members of City's boards, commissions and committees should represent the community's values: ethical, professional, service-oriented, fiscally responsible, organized, communicative, collaborative, and progressive. promote and maintain the highest standards of personal and professional conduct in the City's government. All members are required to subscribe to this Code, understand how it applies to their specific responsibilities, and practice its core values in their work.

Section 3. -Term of Office, Vacancies, and Removal

The term of office for BPAC members will be three years. Members shall serve for a term of four years and until their respective successors are appointed and qualified. The maximum time a member may serve is two consecutive full terms.- If an individual is appointed to fill a partial term, they may still serve two additional full terms of office. After a lapse of at least two years, an individual is eligible to reapply to serve on the committee and the same application process would apply as for individuals who had never served.

The application process for membership shall be in accordance with the City of Santa Clara Guide for Board, Commissions, and Committee Applicants.

Members may be re-appointed but will be considered along with all other new applicants.

To allow for staggered terms and to phase in the change to seven (7) members;-2 members appointed by City Council in November of 2011 will have a term of office expiring on December 31, 2014, 3 members appointed in November of 2012 will have a term of office expiring on December 31, 2015, and 3 members appointed on November of 2013 will have a term of office expiring on December 31, 2016.

- Three (3) members appointed in December of 2019 will have a term of office expiring on June 30, 2023. All three (3) vacancies shall be filled
- Two (2) members appointed in December of 2020 will have a term of office expiring on June 30, 2024. All two (2) vacancies shall be filled
- Three (3) members appointed on December of 2021 will have a term of office expiring on June 30, 2025. Two (2) of three (3) vacancies shall be filled

Any members of the BPAC may be removed from office by a majority vote of the City Council at a regularly scheduled Council meeting.

Section 4. Vacancies

~~Vacancies will be filled for the unexpired portion of the term, of the member being replaced, in the same manner as the original appointment. Any vacancies from whatever cause arising, shall be filled by appointment by the City Council. -Upon a vacancy occurring leaving an unexpired portion of a term, any appointment to fill such vacancy shall be for the unexpired portion of such term. -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 members shall be appointed, and shall be subject to removal, by motion of the City Council adopted by at least four affirmative votes.

Section ~~54.~~ Meetings

The BPAC shall hold meetings on the ~~third~~ fourth ~~Monday~~ Wednesday in January, March, June, ~~August~~ August, and October at 4:00 p.m. at City Hall. The actual date of meeting can be changed. ~~_or a~~ Additional meetings can be ~~approved~~ recommended by a quorum of the committee and approved by the City Manager. All meetings shall be open to the public and notices and agendas shall be posted at City Hall as required by law.

Section ~~6.~~ Quorum

~~Any five members shall constitute a quorum for voting on action items.~~
A majority of the members of the BPAC shall constitute a quorum for the transaction of business.

Section ~~7.~~ Voting

~~Only the appointed BPAC members have voting authority. The committee shall determine the voting procedure for items prior to voting.~~
The affirmative or negative vote of a majority of the entire membership shall be necessary for it to take action.

Section ~~8.~~ Duties of BPAC to be Advisory Only

~~It is intended that the BPAC shall be an advisory committee to the City Council. Nothing herein contained shall be construed as a limitation on the power of the City Council or the administrative staff of the City in their supervision or authority over property or personnel, which are under their jurisdictions.~~

Section 95. ~~-~~ Assistance of Staff

The BPAC may utilize City personnel as described in Section 2.120.040 of the City Code.~~The City Manager of the City of Santa Clara shall provide the BPAC with information and staff assistance but -the-~~The BPAC's requests may from time to time be prioritized subject to staff limitations. ~~-~~The City Manager has appointed the Director of Public Works and the Chief of Police or their designees to staff the BPAC.

Section 10. ~~Code of Ethics and Values~~

~~The City of Santa Clara adopted a Code of Ethics and Values to provide clear, positive statements of ethical behavior reflecting the core values of the community. The actions and words of members of City's boards, commissions and committees should represent the community's values: ethical, professional, service oriented, fiscally responsible, organized, communicative, collaborative, and progressive.~~

Section 146. ~~-~~ Amendments

~~These Amendments to the~~ guidelines may be ~~amended~~ recommended by a quorum of the BPAC membership at any legal BPAC meeting, subject to approval by City Council.

~~PASSED AND~~ RECOMMENDED FOR ADOPTION by the Bicycle and Pedestrian Advisory Committee this ____ day of -[MONTH, YEAR].

PASSED AND ADOPTED by the Santa Clara City Council this ____ day of -[MONTH, YEAR].

City of Santa Clara Bicycle and Pedestrian Advisory Committee Policy Guidelines

The Bicycle Advisory Committee (BAC) was established by the Santa Clara City Council on May 28, 1991. On March 25, 2014 the Bicycle Advisory Committee was changed to the Bicycle and Pedestrian Advisory Committee (BPAC) by the Santa Clara City Council.

Section 1. Purpose

The purpose and responsibilities of the BPAC are described in Section 2.120.170 of the City Code. Its intent shall be to encourage recreational and commuter bicycling and walking in the City by promoting safe, convenient, well-designed facilities, and by evaluating local bicycle and pedestrian related projects.

It is intended that the BPAC shall be an advisory committee to the City Council and nothing herein contained shall be construed as a limitation on the power of the City Council or the administrative staff of the City in their supervision or authority over property or personnel, which are under their jurisdictions.

Section 2. Membership

The BPAC is currently comprised of nine (9) members, which consists of eight (8) regular members and one (1) Chairperson or alternate that is the Mayor or Councilperson designated by City Council.

After June 2025, the BPAC shall be comprised of seven (7) members, which consists of seven (7) regular members. One regular member shall be appointed by the BPAC as Chair.

Representatives from Mission College, the Santa Clara Unified School District and the Silicon Valley Bicycle Coalition are encouraged to be members.

The City of Santa Clara adopted a Code of Ethics and Values to promote and maintain the highest standards of personal and professional conduct in the City's government. All members are required to subscribe to this Code, understand how it applies to their specific responsibilities, and practice its core values in their work.

Section 3. Term of Office, Vacancies, and Removal

Members shall serve for a term of four years and until their respective successors are appointed and qualified. The maximum time a member may serve is two consecutive full terms. If an individual is appointed to fill a partial term, they may still serve two additional full terms of office. After a lapse of at least two years, an individual is eligible

to reapply to serve on the committee and the same application process would apply as for individuals who had never served.

The application process for membership shall be in accordance with the City of Santa Clara Guide for Board, Commissions, and Committee Applicants.

To allow for staggered terms and to phase in the change to seven (7) members:

- Three (3) members appointed in December of 2019 will have a term of office expiring on June 30, 2023. All three (3) vacancies shall be filled
- Two (2) members appointed in December of 2020 will have a term of office expiring on June 30, 2024. All two (2) vacancies shall be filled
- Three (3) members appointed on December of 2021 will have a term of office expiring on June 30, 2025. Two (2) of three (3) vacancies shall be filled

Any vacancies from whatever cause arising, shall be filled by appointment by the City Council. Upon a vacancy occurring leaving an unexpired portion of a term, any appointment to fill such vacancy shall be for the unexpired portion of such term. 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 members shall be appointed, and shall be subject to removal, by motion of the City Council adopted by at least four affirmative votes.

Section 4. Meetings

The BPAC shall hold meetings on the fourth Monday in January, March, June, August and October at 4:00 p.m. at City Hall. The actual date of meeting can be changed. Additional meetings can be recommended by a quorum of the committee and approved by the City Manager. All meetings shall be open to the public and notices and agendas shall be posted at City Hall as required by law.

A majority of the members of the BPAC shall constitute a quorum for the transaction of business.

The affirmative or negative vote of a majority of the entire membership shall be necessary for it to take action.

Section 5. Assistance of Staff

The BPAC may utilize City personnel as described in Section 2.120.040 of the City Code. The BPAC's requests may from time to time be prioritized subject to staff limitations. The City Manager has appointed the Director of Public Works and the Chief of Police or their designees to staff the BPAC.

Section 6. Amendments

Amendments to the guidelines may be recommended by a quorum of the BPAC membership at any legal BPAC meeting, subject to approval by City Council.

RECOMMENDED FOR ADOPTION by the Bicycle and Pedestrian Advisory Committee this ____ day of [MONTH, YEAR].

PASSED AND ADOPTED by the Santa Clara City Council this ____ day of [MONTH, YEAR].



Agenda Report

22-352

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action to Waive Second Reading and Adopt Ordinance No. 2041 to Amend Section 18.80.210 of the Zoning Code to Increase the Permissible Height of Digital Billboards

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

BACKGROUND

At the February 22, 2022 Council meeting, proposed Ordinance No. 2041 was introduced and passed for the purpose of publication. Pursuant to City Charter Sections 808 and 812, proposed Ordinance No. 2041 was published on March 16, 2022, and copies were posted in three public places. The Ordinance now comes to Council for final adoption.

DISCUSSION

The Santa Clara City Code prohibits construction of new billboards in most locations within the City, except pursuant to a billboard relocation agreement. The Council Policy Statement for Billboard Relocation Agreements requires the removal of at least three existing billboard faces before a new “replacement” billboard can be installed. The proposed ordinance does not change the existing prohibition or the Council Policy, but going forward would allow such replacement billboards to be built up to a height of 60 feet, where previously the height limit was 35 feet.

The Code amendment would facilitate the installation of a new, 60-foot tall LED digital billboard at 630 Laurelwood Road by Outfront Media, LLC, pursuant to a relocation agreement approved by the Council on February 22, 2022. In exchange for the installation of the billboard at 630 Laurelwood, Outfront Media is removing four billboard faces, three of which have already been removed.

ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) was prepared for the project by the environmental consultant firm Denise Duffy & Associates in accordance with the California Environmental Quality Act (CEQA). The MND, MMRP and Notice of Availability were posted on the City’s website at www.santaclaraca.gov/ceqa and circulated for 20-day review on December 16, 2021 with the Open Comment Period from December 17, 2021 to January 5, 2022, in accordance with CEQA requirements. One comment letter was received from Valley Water on the MND, which raised minor issues. A response to the Valley Water comment letter was prepared and was attached to the February 22, 2022 Report to Council.

The MND examined environmental impacts associated with project development and identified potential air quality, biological, cultural resources, geology and soils, hazards and hazardous

materials, noise, and water quality impacts that with incorporation of mitigation measures into the project would reduce all potential 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 Mitigation Monitoring and Reporting Program (MMRP) for the proposed project.

FISCAL IMPACT

Pursuant to the City Council Policy for Billboard Relocation Agreements, as further consideration for the New Billboard installation, the Advertiser agrees to pay City \$70,000 per new billboard face. The Advertiser shall pay the total amount due prior to the issuance of the building permit for the new billboard. The administrative staff time and expense related to the City's processing of the requested application is covered by processing fees paid by the applicant.

COORDINATION

This report was coordinated with the City Attorney's Office.

PUBLIC CONTACT

A summary of proposed Ordinance No. 2041 was published to the Santa Clara Weekly on March 16, 2022, and copies were posted in three public places and made available for public inspection at the City Clerk's Office.

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

RECOMMENDATION

Waive Second Reading and Adopt Ordinance No. 2041 to Amend Section 18.80.210 of the Zoning Code to allow for increased sign height in conjunction with a Billboard Relocation Agreement.

Reviewed by: Alexander Abbe, Assistant City Attorney

Approved by: City Manager's Office

ATTACHMENTS

1. Ordinance 2041 (Introduction)

ORDINANCE NO. 2041

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA, AMENDING SECTION 18.80.210 OF “THE
CODE OF THE CITY OF SANTA CLARA, CALIFORNIA” TO
INCREASE THE PERMISSIBLE HEIGHT OF DIGITAL
BILLBOARDS**

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

WHEREAS, since 1978, the City has had a policy to limit the number of outdoor advertising signs (commonly referred to as “billboards”);

WHEREAS, pursuant to this policy, the City disallows the construction of new billboards within the City limits, except when a new billboard will replace existing billboards, at a ratio of 1 new billboard face installed for 3 existing billboard faces removed;

WHEREAS, the City would like to facilitate such billboard relocations, but the current height limitation in the City Code does not allow for digital billboards to exceed 35 feet in height, which is insufficient for digital billboards; and,

WHEREAS, the City now wishes to amend the City Code to allow digital billboards up to 60 feet in height.

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

SECTION 1: That Section 18.80.050 (“Height Limitation”) of Chapter 18.80 (entitled “Sign Regulations”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

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“Title 18

Zoning

18.80.050 Height limitation.

(a) Digital billboards. No portion of any free standing digital billboard installed pursuant to Sections 18.80.220 (“Outdoor advertising signs (billboards)”) and 18.80.221 (“Outdoor advertising display relocation agreements”) shall exceed a height of sixty (60) feet above the perpendicular centerline height of the adjacent primary viewing street, road, or highway.

(b) Building signs. On buildings that are four stories or greater in height and that are located in other than residential zoning districts, not more than one sign may be placed on each side of the building above the ground floor level, and it shall be designed to not extend beyond the edge or the top of that building wall.

(c) All other signs. Signs not described in subsections (a) and (b) shall not exceed thirty-five (35) feet above the ground level.”

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.

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SECTION 3: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 22nd day of February, 2022, by the following vote:

AYES: COUNCILORS: Becker, Chahal, Park, and Watanabe,
and Mayor Gillmor

NOES: COUNCILORS: None

ABSENT: COUNCILORS: Hardy and Jain

ABSTAINED: COUNCILORS: None

ATTEST:



NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None



Agenda Report

22-409

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action to Waive Second Reading and Adopt Ordinance No. 2042 Approving a Military Equipment Funding, Acquisition and Use Policy Pursuant to Assembly Bill 481

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

At the March 8, 2022 Council meeting, proposed Ordinance No. 2042 was introduced and passed for the purpose of publication. Pursuant to City Charter Sections 808 and 812, proposed Ordinance No. 2042 was published on March 16, 2022 and copies were posted in three public places. The Ordinance now comes to Council for final adoption.

DISCUSSION

The proposed ordinance would adopt Santa Clara Police Department Policy 706 which describes each piece of military equipment acquired by the Santa Clara Police Department and provides guidelines for the approval, acquisition, and reporting requirements of military equipment. In addition, the ordinance would permit the Santa Clara Police Department to continue its use of military equipment described in Santa Clara Police Department Policy 706. In accordance with the requirements of AB 481, the Santa Clara Police Department has held community engagement meetings at which members of the public were able to discuss and ask questions about the proposed Military Equipment Policy.

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 Police Department secures approximately \$175,000 in asset forfeiture funds and \$500,000 in local, State and Federal grants for education programs, enforcement operations, equipment and training annually.

AB 481 requires law enforcement agencies that seek to continue use of military equipment acquired prior to January 1, 2022, to approve an annual Military Purchase and Equipment Use Policy by May 1, 2022. Without such, the Police Department will be required to cease the use of approximately \$1,093,178 in the Department's operating equipment.

Without City Council approval, the Police Department's ability to respond to a critical incident, and provide mutual aid when called upon, would be detrimental to the safety of the public, involved parties in the incident and increase the City's risk exposure.

COORDINATION

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

PUBLIC CONTACT

A summary of proposed Ordinance No. 2042 was published to the Santa Clara Weekly on March 16, 2022, and copies were posted in three public places and made available for public inspection at the City Clerk's Office.

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

RECOMMENDATION

Waive Second Reading and Adopt Ordinance No. 2042 Approving a Military Equipment Funding, Acquisition and Use Policy Pursuant to Assembly Bill 481.

Reviewed by: Sujata Reuter, Chief Assistant City Attorney

Approved by: City Manager's Office

ATTACHMENTS

1. Ordinance No. 2042 (introduction)

ORDINANCE NO. 2042

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, ADDING SECTION 2.80.080 ENTITLED “MILITARY EQUIPMENT POLICY” TO “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA” IN COMPLIANCE WITH ASSEMBLY BILL 481

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

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481 (creating Government Code Section 7070, et seq.), relating to the use of military equipment by California law enforcement agencies;

WHEREAS, AB 481 seeks to provide transparency, oversight, and an opportunity for meaningful public input on decisions regarding whether and how military equipment is funded, acquired, or used;

WHEREAS, the Santa Clara Police Department is in possession of certain items of equipment that qualify as “military equipment” under AB 481;

WHEREAS, AB 481 requires that a law enforcement agency possessing and using such qualifying equipment prepare a publicly released, written, military equipment use policy document covering the inventory, description, purpose, use, acquisition, maintenance, fiscal impacts, procedures, training, oversight, and complaint process, applicable to the Department’s use of such equipment;

WHEREAS, the Policy and supporting information must be approved by the governing body by ordinance, and reviewed annually; and,

WHEREAS, the City Council of the City of Santa Clara, having received the information required under AB 481 regarding the Santa Clara Police Department’s use of military equipment as defined in said law, deems it to be in the best interest of the City to approve the Military Equipment Policy as set forth herein.

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

SECTION 1: That a new Section 2.80.080 is added to Chapter 2.80 (entitled "Police Department") of Title 2 (entitled "Administration and Personnel") of "The Code of the City of Santa Clara, California" to read as follows:

"2.80.080 Military Equipment Policy.

(a) The City Council has made the following determinations:

(1) The military equipment inventoried and presented to the City Council is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety;

(2) The proposed military equipment use policy ("Policy") will safeguard the public's welfare, safety, civil rights, and civil liberties;

(3) The equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety (if any);

(4) Prior military equipment use complied with the applicable equipment use policy (which included equipment now defined as military equipment) that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

(b) The Police Department has submitted a proposed Policy to the City Council and has made those documents available on the Police Department's website for at least 30 days prior to the public hearing concerning the military equipment at issue.

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(c) The Policy was considered by the City Council as an agenda item in an open session of a regular meeting, noticed in accordance with the Ralph M. Brown Act, at which public comment was permitted.

(d) The Policy shall be made publicly available on the Police Department's website for as long as the military equipment is available for use.

(e) The Police Department shall submit an annual military equipment report to the City Council, containing the information required in Government Code Section 7072, and the City Council shall determine whether each type of military equipment identified in that report has complied with the standards for approval set forth in (a)(1)-(4) above.

(f) The City Council shall review this ordinance, and vote on whether to renew it, on an annual basis at a regular meeting, in accordance with Government Code Section 7071(e)(2)

(g) The City Council approves the use of the Policy, and finds that it satisfies the requirements of Government Code Section 7070(d)."

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 8th day of March, 2022, by the following vote:

AYES:	COUNCILORS:	Becker, Chahal, Hardy, Jain, Park, and Watanabe, and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:



NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Lexipol Policy 706 "Military Equipment" and Inventory of Military Equipment as of January 1, 2022

Military Equipment

706.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

706.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The elected or appointed body that oversees the Department.

Military equipment categories– Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

Santa Clara Police Department

SCPD Policy Manual

Military Equipment

706.2 POLICY

It is the policy of the Santa Clara Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

706.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Santa Clara Police Department (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
 - 1. Publicizing the details of the meeting.
 - 2. Preparing for public questions regarding the department's funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Department will respond in a timely manner.

706.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the Department:

[See attachment: 706.4 MILITARY EQUIPMENT INVENTORY.pdf](#)

706.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

Military Equipment

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

706.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

706.7 ANNUAL REPORT

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

706.8 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

Attachments

706.4 MILITARY EQUIPMENT INVENTORY.pdf

1. Robot (Category 1)

a. **Description, quantity, capabilities, and purchase cost:**

Transcend Tactical Robot, cost: \$24,452.24, Quantify: 1. This equipment is a battery powered, remote operated device. Equipped with two cameras and two-way radio capabilities. This equipment is for (potential) use during high-risk incidents. Use is limited to members of the Departments Special Response Team (SRT). Incidents that may qualify for its use include, but are not limited to, a high-risk warrant service, barricaded subject, and hostage negotiation/rescue. Before entering a structure, particularly in a tactically compromised and dangerous situation, knowledge of a subject's location is very important, and the robot can provide that without placing anyone at risk. Cameras can also help determine if a subject is armed and also if there are other subjects inside that need assistance. The two-way speakers can be used to de-escalate and determine resistance level.

b. **Purpose:**

To be used to remotely gain visual/audio data, deliver CNT phone, open doors, disrupt packages, and clear buildings.

c. **Authorized Use:**

Only assigned operators who have completed the required training shall be permitted to operate the robot. Use is established by the Incident Commander. All other applicable SCPD policies remain in effect, to include, but not limited to, SCPD Policy 311 – Search and Seizure, SCPD Policy 703 – Vehicle Use, SCPD Policy 404 – Special Response Team.

d. **Expected Lifespan:**

10-15 years

e. **Fiscal Impact:**

No known annual maintenance cost.

2. Unmanned Aerial Vehicles (Category 1)

a. **Description, quantity, capabilities, and purchase cost:**

Yuneec H520 unmanned aerial vehicle (UAV), cost: Included with purchase of Transcend Tactical Robot, Quantity: 1. The H520 is a commercial-grade UAV. Commonly used by construction and utility companies for the inspection of buildings, powerlines, windmills and other infrastructure. This UAV is a battery powered, remote operated device. Controller: ST16 All-in-one controller with 7-inch integrated screen. Controller allows operators to control UAV and view live feed from UAV-mounted cameras. Camera: CGOET camera with dual RGB and FLIR capabilities. Camera provides operators ability to switch between standard RGB camera and views based on heat of objects within frame. Flight time of approximately 25-30 minutes per battery, depending on weather and flight conditions. The UAV has also proven to be useful to public safety agencies in firefighting, search and rescue, pre-operational surveillance, and other tactical situations where aerial views enhance the safety and efficiency of law enforcement and fire personnel

b. **Purpose:**

To be deployed when its view would assist officers or incident commanders with the following situations, which include but are not limited to:

- i. major collision investigations.
- ii. search for missing persons.
- iii. natural disaster management.
- iv. crime scene photography.

- v. SWAT, tactical or other public safety and life preservation missions.
- vi. In response to specific requests from local, state or federal fire authorities for fire response and/or prevention.

c. **Authorized Use:**

Only assigned operators who have completed the required training shall be permitted to operate the Yuneec H520 during approved missions. All other applicable SCPD policies remain in effect, to include, but not limited to, SCPD Policy 311 – Search and Seizure, SCPD Policy 316 – Missing Persons, SCPD Policy 606 – Unmanned Aerial System Operations, SCPD Policy 703 – Vehicle Use, SCPD Policy 404 – Special Response Team.

d. **Expected Lifespan:**

10 years

e. **Fiscal Impact:**

No known annual maintenance cost.

3. Armored Personnel Carrier, vehicle with entry apparatus attached (Category 2 & 3)

a. **Description, quantity, capabilities, and purchase cost:**

Lenco Armored Rescue Vehicle, cost: \$309,000, quantity: 1. The ARV is designed to provide ballistic protection during tactical events (designed to withstand multiple bullet strikes from small arms fire as well as low level explosions). Equipped with nuclear/radiological detection devices, self-contained breathing apparatus, explosive gas detection devices, and thermal imaging camera. Equipped with emergency lights/siren and a public address system. Common uses for the ARV include citizen and officer rescues, evacuations, and the deployment of officers and chemical agents. The ARV is currently deployed at every large event in the city of Santa Clara including stadium events, parades, and festivals. The ARV is a regional mutual-aid asset that has been requested and deployed to allied agencies in Santa Clara, San Benito, Monterey, Santa Cruz, Alameda, and San Mateo Counties. The ARV responded high profile events including: The Gilroy Garlic Festival shooting, Super Bowl 50, an armed barricade at Main Jail, the VTA active shooter and several incidents where local officers were killed in the line of duty

b. **Purpose:**

To be used in response to critical incidents to enhance officer and community safety, improve scene containment and stabilization, and assist in resolving critical incidents.

c. **Authorized Use:**

The use of armored vehicles shall only be authorized by a watch commander or SWAT commander, based on the specific circumstances of a given critical incident. Armored vehicles shall be used only by officers trained in their deployment and in a manner consistent with Department policy and training. The driver of the vehicle shall have a valid California driver license. All other applicable SCPD policies remain in effect, to include, but not limited to, SCPD Policy 703 – Vehicle Use, SCPD Policy 404 – Special Response Team.

d. **Expected Lifespan:**

20 years

e. **Fiscal Impact:**

Annual maintenance cost of approximately \$2,500.

4. Command and Control Vehicles (Category 5)

a. **Description, quantity, capabilities, and purchase cost:**

1993 Int. Model 3800, cost: \$13,291, quantity: 1. The vehicle is a two-axel bus style vehicle with a front door and a rear door. It is painted black with police graphics affixed to the front, sides, and the rear of the vehicle. The vehicle has been partitioned into (2) separate workspace areas. The equipment housed in the vehicle includes, but is not limited to, a negotiations control console and accessories, communications throw phone and cables, miscellaneous office supplies, tabletops, chairs, storage space, coffee maker, and refrigerator. The vehicle is capable of being used as a mobile operation and dispatch center. The vehicle is also capable of transporting personnel and equipment. The Mobile Communications Vehicle was placed into service in 2006 after its acquisition from the City of Santa Clara Library (formerly the bookmobile). The Mobile Command Vehicle is used as an auxiliary command vehicle during major incidents. The vehicle is separated into two areas by a walled partition and door. One area is used as a negotiation / communication center by the Crisis Negotiations Team. The second area can be used as a mobile command center aiding in the command, control, and deployment of personnel at a critical incident.

- b. **Purpose:**
To be utilized for critical incident callouts.
- c. **Authorized Use:**
The CNT vehicle used by officers and staff who have been properly trained in the safe handling of the vehicle. The driver of the vehicle shall have a valid California driver license. All other applicable SCPD policies remain in effect, to include, but not limited to, SCPD Policy 703 – Vehicle Use, SCPD Policy 404 – Special Response Team.
- d. **Expected Lifespan:**
25 years (Expired)
- e. **Fiscal Impact:**
Annual maintenance cost of approximately \$5,589

5. Command and Control Vehicles (Category 5)

- a. **Description, quantity, capabilities, and purchase cost:**
2001 Freightliner MT45 – custom upfit by Mattman, cost: \$162,181, quantity: 1. The SRT van is a command vehicle and an equipment storage and transportation vehicle. Computerized screen used for tracking operations on the exterior. Desk with radios for dispatch on the interior. Several storage areas for the different equipment used by SRT. Manual breaching tools / Energetic breaching materials, Water, Generator, Ammunition, Robot / UAV, 40mm launchers and projectiles
- b. **Purpose:**
To be used based on the specific circumstances of a given critical incident, large event, natural disaster or community event that is taking place.
- c. **Authorized Use:**
The SRT Van shall be used by officers trained in their deployment and in a manner consistent with Department policy and training. The driver of the vehicle shall have a valid California driver license. All other applicable SCPD policies remain in effect, to include, but not limited to, SCPD Policy 703 – Vehicle Use, SCPD Policy 404 – Special Response Team.
- d. **Expected Lifespan:**
20 years (expires in March 2022)
- e. **Fiscal Impact:**

Annual maintenance cost of approximately \$2,500

6. Command and Control Vehicles (Category 5)

a. **Description, quantity, capabilities, and purchase cost:**

2018 Ford E450 Super Duty cutaway/stripped chassis with a large built-out cargo box mounted on the chassis. It looks like a typical box style cargo van/truck painted black with police graphics. The CSI van is not used in an enforcement capacity. This vehicle is used for the transportation of investigative equipment including a Total Station laser surveyor and accessories, computer equipment and software, evidence collection materials, and storage space for transporting items to the Santa Clara Police Department. There is a large computer monitor/TV mounted on an interior wall to view photos, diagrams, and to aid in crime scene diagramming. The CSI van is used to transport evidence and investigative tools, and a limited number of personnel, to a major crime scene or a crime scene requiring a vehicle larger than a traditional police vehicle for the purposes of transporting evidence collection materials or crime scene evidence. Once on-scene, the van is used as shelter, supply storage, and evidence storage

b. **Purpose:**

To be utilized for critical incident callouts.

c. **Authorized Use:**

The CSI vehicle is used by officers and staff who have been properly trained in the safe handling of the vehicle. The driver of the vehicle shall have a valid California driver license. All other applicable SCPD policies remain in effect, to include, but not limited to, SCPD Policy 703 – Vehicle Use, SCPD Policy 802 – Property and Evidence.

d. **Expected Lifespan:**

20 years

e. **Fiscal Impact:**

Annual maintenance cost of approximately \$5,770.

7. Breaching Apparatus: Slugs (Category 7)

a. **Description, quantity, capabilities, and purchase cost:**

Royal Arms Tesar-2, cost: \$1,880, quantity: 470. Shotgun breaching rounds are specialty shotgun shells utilized for door breaching. The Royal Arms Tesar-2 rounds contain compressed copper powder and are fired through a specialized breaching shotgun barrel. The copper powder is designed to strike and destroy the lock throw inside of the door, allowing entry into the room or structure. The powder is designed to dissipate after striking the lock throw in order to minimize entry into the target space for the safety of occupants and operators. Designed to breach heavy locks, dead-bolts, and hinges mounted inside of solid oak or steel doors. Royal Arms Tesar-2 rounds are good until expended if stored properly. Shotgun breaching rounds are used to gain rapid access to a room or structure when an emergent law enforcement need exists

b. **Purpose:**

To safely gain entry into a structure.

c. **Authorized Use:**

Explosive breaching may only occur after authorization by the Incident Commander or SWAT Commander in the field, and during training exercises. All other applicable SCPD policies remain in effect, to include, but not limited to,

SCPD Policy 311 – Search and Seizure, SCPD Policy 404 Special Response Team.

d. **Expected Lifespan:**

Until expended

e. **Fiscal Impact:**

Individual unit price of approximately \$4 each. Estimated between \$0 and \$1,880 annually

8. Breaching Apparatus: Energetic Breaching Program (Category 7)

a. **Description, quantity, capabilities, and purchase cost:**

Energetic breaching is used to gain rapid access to a room or structure when an emergent law enforcement need exists. All efforts are made to minimize the amount of energetics applied to a target, while still achieving a positive breach. Energetic breaching materials are used to make breaching charges of various shapes and strength which are specifically designed for the target. The materials release gasses, heat, and light when initiated. The pressure from the gasses released presses against mediums and or the target to cause the structure of the target to fail for a successful breach.

Breaching charges are specially designed to cause structural failure of the desired target. The breaching charges in stock were built in house by the SRT breaching cadre. Various types, configurations, and energetic weights are maintained for use as needed. Older charges are cycled out of stock during monthly training.

- i. 25 grain detonation cord, cost: \$349, quantity 2.4lbs. The detonating cord is a thin, flexible plastic tube usually filled with pentaerythritol tetranitrate (PETN, pentrite). With the PETN exploding at a rate of approximately 6400 m/s, any common length of detonation cord appears to explode instantaneously. It is a high-speed fuse which explodes, rather than burns, and is suitable for detonating high explosives.
- ii. 50 grain detonation cord, cost \$1,915.49, quantity 1 roll. The detonating cord is a thin, flexible plastic tube usually filled with pentaerythritol tetranitrate (PETN, pentrite). With the PETN exploding at a rate of approximately 6400 m/s, any common length of detonation cord appears to explode instantaneously. It is a high-speed fuse which explodes, rather than burns, and is suitable for detonating high explosives.
- iii. Nonel starters, cost: included with 50 grain det cord, quantity: 88. A blasting cap is a small sensitive primary explosive device generally used to detonate a larger, more powerful and less sensitive secondary explosive such as TNT, dynamite, or plastic explosive. Blasting caps come in a variety of types, including non-electric caps, electric caps, and fuse caps
- iv. C2 Prima sheet, cost: \$1,183.50, quantity: 10 lbs. A PETN based sheet explosive

b. **Purpose:**

To safely gain entry into a structure.

c. **Authorized Use:**

Explosive breaching may only occur after authorization by the Incident Commander or SWAT Commander in the field, and during training exercises. All

Breachers shall be licensed as a Blaster by Cal/OSHA. All Breachers will attend an approved "Tactical Energetic Breaching" course. Master Breacher designation upon: Attend an accredited "advanced" Energetic Breaching course or equivalent. Participate in a minimum of 50 documented training breaches, of which at least ten (10) were considered "research and development" shots. Participate in at least 1 operational energetic breach. All other applicable SCPD policies remain in effect, to include, but not limited to, SCPD Policy 311 – Search and Seizure, SCPD Policy 404 Special Response Team.

d. **Expected Lifespan:**

25 grain detonation cord – 5 years

50 grain detonation cord – 5 years

C2 Prima Sheet – Until expended

Nonel Starters – until expended

e. **Fiscal Impact:**

25 grain detonation cord – estimated between \$0 and \$349 annually.

50 grain detonation cord – estimated between \$0 and \$1,915.49 annually

C2 Prima Sheet – estimated between \$0 and \$1,183.50 annually

Nonel Starters – \$0

9. Specialized Firearms and Ammunition (Equipment Category 10)

a. **Description, quantity, capabilities, and purchase cost:**

- I. The Carbine Rifle is a firearm, capable of accurately stopping an armed subject at various distances. The Carbine Rifle is a lightweight, air-cooled, gas operated, magazine fed, shoulder fired weapon, designed for semi-automatic & selective fire. The Carbine Rifle does not have an expiration and will need to be serviced or replaced when the Rifle fails or breaks. The .223 / 5.56 cartridge is used as a lethal option designed to stop a violent encounter. The projectile is capable of penetrating soft body armor being worn by armed subjects. Colt AR-15/M4, cost: \$119,850, quantity: 102, FN-15, cost: \$46,371, quantity: 29
- II. The Hornady .223 Remington, 75 grain, BTHP Tap Precision cartridge is the primary duty ammunition deployed during potential lethal encounters. Cost: \$19,980, quantity: 25,000
- III. The Hornady .223 Remington, 62 grain, Tap Barrier cartridge is the secondary ammunition deployed during potential lethal encounters, when shooting through barriers. Cost: \$3,996, quantity: 5,000
- IV. The Hornady .223 Remington, 55 grain cartridge is the primary training ammunition for the Department. Cost: \$40,176, quantity: 100,000
- V. The Santa Clara Police Department Special Response Team (SRT) was formed in 1975, in response to very dangerous or violent tactical encounters. The Sniper element deploys with precision rifles, which enables the stopping of an armed subject at a safe distance. The Sniper Rifle does not have an expiration and will need to be serviced or replaced when the Rifle fails or breaks. The .308 Winchester cartridge: is a rimless, bottlenecked rifle cartridge. The .308 WIN. cartridge is used as a Lethal option designed to stop a violent encounter. The projectile is capable of penetrating soft body armor being worn by armed subjects. JP

LRP-07 Rifle cost: \$14,276, quantity: 4, TacOps 700, cost: \$3,999, quantity: 1, DT SRS-A1 rifle, cost: \$7,698, quantity: 2, Spartan rifle, cost: \$8,800, quantity: 2.

- VI. The Hornady .308 WIN., 110 grain, Tap Urban cartridge is ammunition deployed during potential lethal encounters, in high collateral risk environments. The 110 grain, Tap Urban offers a unique projectile that allows rapid expansion, fragmentation & low retained weight. It also offers the least penetration, but with substantially more temporary & permanent cavity & fragmentation. Cost: \$6,303, quantity: 5,000
- VII. The Hornady .308 WIN., 168 grain, ELD Match Tap Precision cartridge is ammunition deployed during potential lethal encounters at longer distances. The 168 grain projectile maintains accuracy, while resulting in higher impact velocities, less drop, less wind drift, and more energy on target. Cost: \$18,909, quantity: 15,000.
- VIII. The RUAG .308 WIN., 164 grain, Tactical cartridge is ammunition deployed during potential lethal encounters, when shooting through barriers. The 164-grain projectile is capable of accurately striking targets behind an angled window or windshield, without the risk of unpredictable bullet deflection. Conventional bullets break apart or fragment when penetrating glass, which does not allow an accurate hit. Cost: \$1,512, quantity: 500
- IX. The RUAG .308 WIN., 196 grain, Armor Piercing cartridge is ammunition deployed during potential lethal encounters, when shooting through heavy barriers. The 196 grain projectile is capable of accurately striking targets behind armor, without the risk of unpredictable bullet deflection. Conventional bullets break apart or fragment when penetrating armor, which does not allow an accurate hit. Cost: \$385, quantity: 80
- X. The RUAG .338 Lapua Magnum, 247 grain, Styx Action cartridge is ammunition deployed during potential lethal encounters, in high collateral risk environments. The 247 grain Styx Action cartridge offers a unique projectile that allows rapid expansion, fragmentation & low retained weight. It also offers the least penetration, but with substantially more temporary & permanent cavity & fragmentation. Cost: \$1,618, quantity: 500
- XI. The Hornady .338 Lapua Magnum, 285 grain, ELD Match cartridge, is ammunition deployed during potential lethal encounters at longer distances. The 285-grain projectile maintains accuracy, while resulting in higher impact velocities, less drop, less wind drift, and more energy on target. Cost: \$17,766, quantity: 3,840
- XII. The RUAG .338 Lapua Magnum, 250 grain, Tactical cartridge is ammunition deployed during potential lethal encounters, when shooting through barriers. The 250-grain projectile is capable of accurately striking targets behind an angled window or windshield, without the risk of unpredictable bullet deflection. Conventional bullets break apart or fragment when penetrating glass, which does not allow an accurate hit. Cost: \$953, quantity: 350

- XIII. The RUAG .338 Lapua Magnum, 260 grain, Armor Piercing cartridge is ammunition deployed during potential lethal encounters, when shooting through heavy barriers. The 260-grain projectile is capable of accurately striking targets behind armor, without the risk of unpredictable bullet deflection. Conventional bullets break apart or fragment when penetrating armor, which does not allow an accurate hit. Cost: \$3,240, quantity: 500
- XIV. Selections of which of the above ammunition to use is dependent on the threat and the environment (to include barriers, weather conditions, uninvolved parties, etc.)

b. **Purpose:**

To be used as precision weapons to address a threat with more precision and/or greater distances than a handgun, if present and feasible.

c. **Authorized Use:**

Only members that are POST certified are authorized to use a rifle. All other applicable SCPD policies remain in effect, to include, but not limited to, SCPD Policy 300 – Use of Force, SCPD Policy 306.5 – Firearms Training and Qualifications, SCPD Policy 404 – Special Response Team.

d. **Expected Lifespan:**

- I. Carbine Rifle – No expiration
- II. The Hornady .223 Remington, 75 grain – No expiration
- III. The Hornady .223 Remington, 62 grain, Tap Barrier – No expiration
- IV. The Hornady .223 Remington, 55 grain, – No expiration
- V. Sniper Rifles – No expiration
- VI. The Hornady .308 WIN., 110 grain – No expiration
- VII. The Hornady .308 WIN., 168 grain – No expiration
- VIII. The RUAG .308 WIN., 164 grain – No expiration
- IX. The RUAG .308 WIN., 196 grain – No expiration
- X. The RUAG .338 Lapua Magnum, 247 grain – No expiration
- XI. The Hornady .338 Lapua Magnum, 285 grain – No expiration
- XII. The RUAG .338 Lapua Magnum, 250 grain – No expiration
- XIII. The RUAG .338 Lapua Magnum, 260 grain – No expiration

e. **Fiscal Impact:**

- I. Carbine Rifle – Annual cost between \$19,999 - \$166,221
- II. The Hornady .223 Remington, 75 grain – Annual cost between \$0 - \$19,980
- III. The Hornady .223 Remington, 62 grain, Tap Barrier – Annual cost between \$0 - \$3,996
- IV. The Hornady .223 Remington, 55 grain – Annual cost between \$0 - \$40,176
- V. Sniper Rifle – Annual cost between \$900 - \$34,773
- VI. The Hornady .308 WIN., 110 grain – Annual cost between \$0 - \$6,303
- VII. The Hornady .308 WIN., 168 grain – Annual cost between \$0 - \$18,909
- VIII. The RUAG .308 WIN., 164 grain – Annual cost between \$0 - \$1,512
- IX. The RUAG .308 WIN., 196 grain – Annual cost between \$0 - \$385
- X. The RUAG .338 Lapua Magnum, 247 grain – Annual cost between \$0 - \$1,618
- XI. The Hornady .338 Lapua Magnum, 285 grain – Annual cost between \$0 - \$17,766

- XII. The RUAG .338 Lapua Magnum, 250 grain – Annual cost between \$0 - \$953
- XIII. The RUAG .338 Lapua Magnum, 260 grain – Annual cost between \$0 - \$3,240

10. Flashbangs (Category 12)

a. **Description, quantity, capabilities, and purchase cost:**

A Noise Flash Diversionary Devices (NFDD) is a device that creates a bright flash and loud sound to temporarily divert the attention of subjects in the immediate area. NFDD are used to distract and temporarily incapacitate dangerous suspects by overwhelming their senses of vision and hearing. The distraction allows officers to seize a moment of opportunity to take control of high-risk situations.

- I. NFDD 7290M emits a loud “bang” and a flash of light, cost: \$4,345.97, quantity: 96
- II. NFDD 7290-5 emits a loud “bang” and a flash of light (5) times, cost: \$1,070.13, quantity: 10
- III. NFDD 9593 Multi-effect grenades with a loud blast, bright flash and dispersion of stinging .31 caliber pellets. Can also be configured to dispense an instantaneous cloud of irritant powder. Cost: \$443.30, quantity: 11

b. **Purpose:**

To produce atmospheric over-pressure and brilliant white light and, as a result, can cause short-term (6 - 8 seconds) physiological/psychological sensory deprivation to give officers a tactical advantage.

c. **Authorized Use:**

Diversionary Devices shall only be used:

- i. By SRT officers who have been trained in their proper use.
- ii. In hostage and barricaded subject situations.
- iii. In high risk warrant (search/arrest) services where there may be extreme hazards to officers.
- iv. During other high-risk situations where their use would enhance officer safety.
- v. During training exercises.

All other applicable SCPD policies remain in effect, to include, but not limited to, SCPD Policy 300 – Use of Force, SCPD Policy 404 – Special Response Team.

d. **Expected Lifespan:**

- I. NFDD 7290M – 5 years
- II. NFDD 7290-5 – 5 years
- III. NFDD 9593 – 5 years

e. **Fiscal Impact:**

- I. NFDD 7290M – Annual cost between \$0 - \$4,345.97
- II. NFDD 7290-5 – Annual cost between \$0 - \$1,070.13
- III. NFDD 9593 – Annual cost between \$0 - \$1,070.13

11. Tear Gas (Category 12)

a. **Description, quantity, capabilities, and purchase cost:**

Chemical agent munitions, which are commonly referred to as “tear gas,” are used by the Santa Clara Police Department as a non-lethal tool to disperse rioting suspects and on barricaded suspects.

The Santa Clara Police Department uses chemical agents which are used by law enforcement across the United States: CS (2-Chlorobenzylidenemalononitrile) and OC (Oleoresin Capsicum)

CS is an irritating agent and lachrymator (irritates the eyes and causes tears to flow). CS has been medically tested in the UK and US, specifically by the U.S. Army. There are no known allergic reactions to CS.

OC was de-regulated in California in 1996, is endorsed by the FBI, and is available to civilians to legally possess (2.5oz or less). OC is an inflammatory agent which causes involuntary closure of eyes (open in 2-5 minutes) and respiratory inflammation (subsides in approximately 2 minutes).

- I. 5230B – Pyrotechnic grenade designed for indoor use delivering a maximum amount of irritant smoke throughout multiple rooms with minimal risk of fire. Cost: \$2,412, quantity: 67
- II. 6230 – Pyrotechnic canister grenade emitting smoke through multiple emission ports for 30 to 40 seconds. May be launched or hand thrown. Cost: \$450, quantity: 15
- III. 8230 – The smallest diameter burning grenade that discharges a high volume of smoke and chemical agent through multiple emission ports. Specifically for outdoor use and it should not be deployed on rooftops, in crawl spaces or indoors due to fire producing capability. Can be hand thrown or launched. Cost: \$504, quantity: 21
- IV. 9230 – The 9230 CS Jet-Lite Rubber Ball Grenade is one of the smaller diameter burning grenades that discharges a high volume of chemical agents through multiple emission ports. Specifically for outdoor use and should not be deployed from rooftops, in crawl spaces or indoors due to fire producing capability. Can be hand thrown or launched. Cost: \$725, quantity: 25.
- V. 3330 – Liquid CS filled projectile penetrates intermediate barriers and delivers irritant agents into an adjacent room. Cost: \$735, quantity: 35
- VI. 6340 – This unique grenade delivers an invisible OC vapor and renders an intense respiratory effect to a non-compliant subject. Cost: \$360, quantity 10
- VII. 4330 – Liquid CS filled projectile penetrates intermediate barriers and delivers irritant agents into an adjacent room. Cost: \$1,950, quantity: 75
- VIII. The Spede-Heat™ 40mm Short Range CS Round incorporates an aluminum shell and utilizes black powder as the propellant. The Spede-Heat™ 40mm Short Range Round is designed to deliver one dual-ported chemical canister from a 40mm launcher 75 yards to the intended target zone. Cost: \$420, quantity: 15
- IX. The 6 oz. OC Aerosol Grenade will delivery its payload of 1.3% MC% OC in 20-25 seconds. This is a atomized mist which enhances the pungent 1.3% OC formulation. Cost: \$180, quantity: 10

b. **Purpose:**

To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Situations for use of the less lethal weapon systems may include, but are not limited to:

- i. Self-destructive, dangerous and/or combative individuals.
- ii. Riot/crowd control and civil unrest incidents.

- iii. Circumstances where a tactical advantage can be obtained.
- iv. Potentially vicious animals.
- v. Training exercises or approved demonstrations.

c. **Authorized Use:**

Only officers who have received POST certification in the use chemical agents are authorized to use chemical agents. All other applicable SCPD policies remain in effect, to include, but not limited to, SCPD Policy 300 – Use of Force, SCPD Policy 404 – Special Response Team.

d. **Expected Lifespan:**

- I. 5230B – 5 years
- II. 6230 – 5 years
- III. 8230 – 5 years
- IV. 9230 – 5 years
- V. 3330 – 5 years
- VI. 6340 – 5 years
- VII. 4330 – 5 years
- VIII. The Spede-Heat™ 40mm Short Range CS Round - 5 years
- IX. The 6 oz. OC Aerosol Grenade - 5 years

e. **Fiscal Impact:**

- I. 5230B – estimated between \$0 and \$2,412 annually
- II. 6230 – estimated between \$0 and \$450 annually
- III. 8230 – estimated between \$0 and \$504 annually
- IV. 9230 – estimated between \$0 and \$725 annually
- V. 3330 – estimated between \$0 and \$735 annually
- VI. 6340 – estimated between \$0 and \$360 annually
- VII. 4330 – estimated between \$0 and \$1,950 annually
- VIII. The Spede-Heat™ 40mm Short Range CS Round
- IX. The 6 oz. OC Aerosol Grenade

12. PepperBall Launcher (Category 12)

a. **Description, quantity, capabilities, and purchase cost:**

System that uses high pressure air to deliver PAVA powder projectiles (similar to a paint ball delivery system). System capable of launching projectiles at a subject up to 60'. System capable of area saturation up to 160'. Non-lethal option to offer law enforcement officers to deliver chemical agents and kinetic energy impacts to subjects in a potentially violent encounter. De-Escalation tool used to avoid further injuries or lethal options on a subject. Cost: \$7,500, quantity:

- I. PepperBall LIVE PROJECTILE, The basic PepperBall projectile contains 2% PAVA pepper powder, and is designed for direct impact and area saturation, especially in confined, interior spaces. Discharged from a PepperBall Launcher, the projectile has a velocity of 280-350 FPS. The projectile has a direct impact of 60ft and an area of saturation of 150+ft. The projectile contains 0.5% PAVA Powder.8230. Cost: \$3,412 quantity: 1500
- II. PepperBall VXR LIVE-X PROJECTILE: The VXR Live-X Projectile is a non-lethal round. The projectile contains approximately 10x the PAVA of the VXR LIVE projectile. This projectile is best for direct impact or area saturation. Discharged from a PepperBall Launcher, the projectile has a velocity of 280-425 FPS. The projectile has a direct impact of 150ft and an area of saturation of

390+ft. The projectile contains 2.5% PAVA powder. Cost: \$8,984
quantity: 3000

b. **Purpose:**

To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Situations for use of the less lethal weapon systems may include but, are not limited to:

- i. Self-destructive, dangerous and/or combative individuals.
- ii. Riot/crowd control and civil unrest incidents.
- iii. Circumstances where a tactical advantage can be obtained.
- iv. Potentially vicious animals.
- v. Training exercises or approved demonstrations.

c. **Authorized Use:**

Only those officers who have been trained in the use of PepperBall launchers are authorized to use the PepperBall launchers. All other applicable SCPD policies remain in effect, to include, but not limited to, SCPD Policy 300 – Use of Force.

d. **Expected Lifespan:**

- I. PepperBall Launcher: No expiration
- II. Live Projectile: 1 year
- III. Live-X Projectile: 1 year

e. **Fiscal Impact:**

- I. PepperBall Launcher: estimated between \$0 and \$7,500 annually
- II. Live Projectile: estimated between \$0 and \$3,412 annually
- III. Live-X Projectile: estimated between \$0 and \$9,000 annually

13. Projectile Launch platforms and associated munitions (Category 14)

a. **Description, quantity, capabilities, and purchase cost:**

Penn Arms Launcher: Cost: \$23,650, quantity: 22. The Penn Arms Launcher is not a firearm, but a Less-Lethal systems that uses smokeless powder to deliver 40MM projectiles from a safe distance. The Less-Lethal launcher is capable of launching 40MM munitions at a subject up to 25 yards. The Less-Lethal launcher is a single launcher, which allows the Officer to assess after every spent munition. Less-Lethal launcher does not have an expiration and will need to be serviced or replaced when the launcher fails or breaks. The 40MM munition is a Direct Impact Spin Stabilized Smokeless Sponge Munition. The Sponge Baton munition is used as a Less-Lethal weapon designed to de-escalate a potentially violent encounter. Cost: \$11,454, quantity: 600

b. **Purpose:**

To limit the escalation of conflict where employment of lethal force is prohibited or undesirable.

c. **Authorized Use:**

Situations for use of the less lethal weapon systems may include, but are not limited to:

- i. Self-destructive, dangerous and/or combative individuals.
- ii. Riot/crowd control and civil unrest incidents.
- iii. Circumstances where a tactical advantage can be obtained.
- iv. Potentially vicious animals.
- v. Training exercises or approved demonstrations.

All other applicable SCPD policies remain in effect, to include, but not limited to, SCPD Policy 300 – Use of Force.

d. **Expected Lifespan:**

- I. 40mm Launcher: No expiration
- II. 40mm Sponge Round: 5 years

e. **Fiscal Impact:**

- I. 40mm Launcher: estimated between \$0 and \$23,650 annually
- II. 40mm Sponge Round: estimated between \$0 and \$12,000 annually



Agenda Report

22-309

Agenda Date: 3/22/2022

REPORT TO STADIUM BOARD

SUBJECT

Informational Report on Dates and Purpose of Stadium Authority and Stadium Manager Meetings and Corresponding Minutes for the Period of October 1 to December 31, 2021

BOARD PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

On August 24, 2017, the Stadium Authority approved the Harvey Rose Audit titled "Comprehensive Audit of Stadium". Audit recommendation 1.Q states that "the Stadium Authority Board should direct the Executive Director to require that all meetings, including the date and purpose of the meetings, between Stadium Authority staff and Stadium Manager be documented and reported quarterly or annually to the Stadium Authority Board." Staff has implemented this audit recommendation on a quarterly basis.

Furthermore, at the August 25, 2020 meeting, the Stadium Authority Board directed staff to prepare minutes for all future Stadium Authority/Stadium Manager staff meetings.

DISCUSSION

In accordance with the Board approved audit recommendation, meetings between Stadium Authority staff and Stadium Manager for the period of October 1 to December 31, 2021 are listed below. The minutes for these meetings are included in this report as Attachment 1.

Date	Meeting Purpose
10/1/2021	Financial Management System (FMS) Implementation Follow Up Items & Non-NFL Events Statements Meeting (via Teams)
10/7/2021	Weekly Accounting Status Meeting (via Teams)
10/7/2021	FY 20/21 Non-NFL Events Documentation Review Meeting (via GoTo Meeting)
10/20/2021	FMS Meeting: Open Item Discussion (via Zoom)
10/21/2021	Weekly Accounting Status Meeting (via Teams)
10/27/2021	FY 20/21 Non-NFL Events Documentation Review Meeting (via Teams)
10/28/2021	Weekly Accounting Status Meeting (via Teams)
11/3/2021	FMS Meeting: Final Presentation - Accounting Enablement Assessment Report (via Zoom)
11/4/2021	Weekly Accounting Status Meeting (via Teams)

11/9/2021	FMS Weekly Status Meeting (via Zoom)
11/10/2021	FMS Meeting: Implementation Kickoff (via Zoom)
11/15/2021	FMS Meeting: InTwo Introduction (via Zoom)
11/18/2021	Weekly Accounting Status Meeting (via Teams)
11/23/2021	FMS Minutes Review Meeting (via Teams)
11/23/2021	FMS Meeting: Great Plains Database with InTwo (via Zoom)
12/1/2021	FMS Meeting: Great Plains' Infrastructure Requirements (via Zoom)
12/2/2021	Weekly Accounting Status Meeting (via Teams)
12/6/2021	FMS Meeting: Chart of Accounts Planning (via Zoom)
12/7/2021	FMS Weekly Status Meeting (via Zoom)
12/9/2021	Weekly Accounting Status Meeting (via Teams)
12/13/2021	FMS Meeting: Accounts Payable Planning (via Zoom)
12/14/2021	FMS Weekly Status Meeting (via Zoom)
12/15/2021	FMS Meeting: Reporting Planning (via Zoom)
12/16/2021	Weekly Accounting Status Meeting (via Teams)
12/17/2021	FMS Meeting: Accounts Receivable & Sales Order Processing Planning (via Zoom)

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

There is no fiscal impact related to this report other than the staff time to prepare this report.

COORDINATION

This report has been coordinated with the Treasurer's Office and Chief Assistant City Attorney.

PUBLIC CONTACT

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

RECOMMENDATION

Note and file the quarterly report on Stadium Authority and Stadium Manager meetings and corresponding minutes for the period of October 1 to December 31, 2021.

Reviewed by: Christine Jung, Assistant to the Executive Director

Approved by: Executive Director's Office

ATTACHMENTS

1. Stadium Authority and Stadium Manager Meeting Minutes for the Period 10/1/21 to 12/31/21

FMS Implementation Follow Up Items & Non-NFL Events Statements Meeting

Date: 10/1/2021; 1:00pm to 2:00pm

Teams meeting

Attendees:

SCSA - Kenn Lee and Linh Lam

ManCo - Erin Fernandez, Brent Ghan, Caitlin Ritchie and Darren Wong

Re: FMS Implementation follow up items

Discussion of netting of expenses for Non-NFL Ticketed events and how these should be displayed in the new Financial Management System

- Review of Rolling Stones Profit and Loss entries
- Review of Promoter Guarantee Payout
- Suggestion by Darren for contra revenue and expense accounts.
- Show documentation and contras for the credits for expenses (promoter expenses).

Discussion of Blue Moon/Encore Reporting module

- Module needed for instances of Profit/Loss statement reporting for Ticketed events. Currently done with an MDA and Excel
- Decision that we do not need this extended module

Discussion of how Shared Stadium Expenses payroll would be shown in the new Financial Management System

- Discussion of detail and options
- SCSA request of titles, hours, department, unique IDs by pay period – Darren will discuss with 49ers team

Discussion of Other G&A and NNE payroll data that would be shown in the new system

- Same level of details as the Shared Expenses

Weekly Accounting Status Meeting

Date: 10/07/2021; 2:00pm to 3:00pm

Teams Meeting: Linh Lam (SCSA) and Darren Wong (ManCo)

1. FY 19-20 Non-NFL Events Invoice – Public Safety Payment
2. CapEx Invoice
3. FY 20-21 Shared Expense True-up Invoice
4. BNY Buffet Invoice

SCSA FY2020/21 Non-NFL Event Documentation Review
October 7, 2021 | 3:00 – 5:00 p.m.
GoTo Meeting

Attendees:

SCSA - Kenn Lee, Christine Jung, Jimmy Nguyen and Linh Lam

ManCo - Erin Fernandez, Brent Ghan and Darren Wong

Re: SCSA FY 2020/21 Non-NFL Event Documentation Review

Discussion of Credit Card Fees for canceled events (i.e. Justin Bieber and Monster Jam) and why the refund transaction fees doesn't offsets the original fees for purchases:

- Fees are charged in a lump sum amount daily and they can't be tied to a specific transaction or event
- Fees are prorated based on the individual event's daily cash receipts over the total daily cash receipts
- Refunds are issued and booked at a later date so the fees do not tie to the original transaction
- ManCo to provide SCSA the allocation details for the fees at a later date

Discussion of Labor Charges from Other Departments:

- Non-Event Staff Labor Charges
 - o Reviewed documentation of positions, titles, and hours charged on a spreadsheet
 - o Traced and agreed the time reported on the Non-NFL Events backup to the ABI report summary, which shows the days, hours, and the event (project)
 - Sample included: Compliance Manager, Director of Accounting, Senior Accountant, Finance Manager, Chief Strategy Officer, Director Business Strategy & Analytics, Coordinator, Ticketing, Director of Ticketing & Public Events; Senior Manager for Ticketing and Strategy; Manager SBL; Manager Ticketing; Senior Manager SBL and Strategy; Manager – Mina Tailgate & Membership Services
 - o Provided a brief explanation on the types of work staff performed for Non-NFL Events
 - Compliance Manager reviewed Non-NFL Events' loss for the year and Profit and Loss statements in May and June
 - Finance Manager worked on the year-end close
 - Chief Strategy Officer focus entirely on StadCo but will charge to Non-NFL Events every now and then when they provide some analytics to Non-NFL Events
 - Director Business Strategy & Analytics provided as needed analysis on future gold cup events
 - ManCo delineate Non-NFL Events and Other G&A work based on timing of when staff worked on their designated tasks during the year: Lender budget, O&M billing, Non-NFL Events' Profit & Loss statements, and Quarterly SBL review
 - o ManCo to provide SCSA actual ABI reports for Finance Manager on 5/27/20 for 3.5 hours and Compliance Manager on 4/21/20 for 1.75 hours
 - o ManCo to provide more details on Mina Tailgate & Membership Services and how it relates to Non-NFL Events

- Catered Events Labor – FY 2019-20 Labor Allocation of 84%/16%
 - o Catered Events Labor's 84% allocation is based on the number attendees per Tenant Event (StadCo) and SCSA events
 - Contracts has the number of attendees for each event so ManCo tracks the number of attendees and calculates the labor allocation based on that
 - o Reviewed documentation of allocation calculation on a spreadsheet
 - o ManCo to provide SCSA a spreadsheet of event by event that will show the SCSA attendees for FY2019-20
- Catered Events Labor Charges during the Pandemic
 - o Reviewed documentation of positions, titles, and hours charged on a spreadsheet
 - o Traced and agreed the time reported on the Non-NFL Events backup to the ABI report summary, which shows the days, hours, and the event (project)
 - Sample included: Direct of Special Events; Event Manager; Senior Event Manager; Senior Manager of Special Event Sales; Special Events Sales manager
 - o Event Manager and Senior Event Manager were furloughed in the middle of the year
 - o Senior Manager of Special Event Sales, Special Events Sales Manager, and Director of Special Events stayed through to work with clients to add and reschedule event bookings due to Covid protocol.
- Benefit and Overhead rates
 - o Benefit rate is based on an individual employee's benefits and is calculated at the employee level
 - o Overhead rate was professionally calculated by the Matrix Consulting Group
 - ManCo to let SCSA know if SCSA can have a copy of the Overhead Plan prepared by the Matrix Consulting Group

Discussion of Advertisement charges, how the "clicks" were quantified and what the success rate was for the clicks:

- These are Google Paid Ads that show up at the top of the search results
- Ads are charged based on the number of clicks by users
- Ads ran for a month and was canceled due to the Pandemic

Discussion of Depreciation Expense and why it should be included in the payment to the Stadium Manager as an expense when it was only an accounting entry:

- Refer to previous letters from Scott Sabatino for Depreciation Expense

Discussion of Ticket Sales Revenues and why there were charges from FY 2019-20 in FY 2020-21:

- Charges were ticket sales from Fevo, a third-party vendor that sell back of tickets on the Stadium Authority's behalf
 - o The sales invoices for FY 2019-20 events were received after the year-end close so the receipt was recorded as revenues in FY 2020-21
 - o The chargeback invoices for FY 2019-20 events were received after the year-end close so the expense was recorded in FY 2020-21

Discussion of Luxury Suite Ticket Revenue, complimentary tickets and prior years' cleanup items:

- Complimentary tickets are for Owner Club (Luxury) Suites only
 - o Luxury suites/licenses include the right to attend NFL and Non-NFL Events without additional charges
 - o Suites/licenses were already charged for these benefits

- Tickets show up as complimentary in Artic report so staff can track it
- Other Regular Suites don't get complimentary tickets
 - Regular suite holder gets charged per Non-NFL Event the holder selects to attend
 - ManCo invoices suite holder for each event they select to attend (Accounts Receivables and Revenues) and remit the monies back to the Stadium Authority
- Prior years' cleanup items were for regular suite holders' Non-NFL Events revenues
 - Adjustments were for cancelled attendances that ManCo staff did not charge SCSA back
 - ManCo to provide SCSA the general ledger details to show that these cleanup items were previously recorded as SCSA revenues and remitted to SCSA

Discussion of Parking Revenue and prior years' adjustments:

- Prior years' transactions were reconciled the same time as the Luxury and Regular Suite cleanup process
- Adjustments were for Regular Suite Holders' cancelled Non-NFL Events' parking revenues that ManCo staff did not charge SCSA back
- ManCo to provide SCSA the general ledger details to show that these cleanup items were previously recorded as SCSA revenues and remitted to SCSA

Discussion of Partial Redaction of Non-NFL Events' Documents:

- Refer to previous letters from Compliance Manager for Redaction

Discussion of recent Budget Amendment for Shared Expenses Salaries:

- Confirmed an increase of \$163,000 for Other G&A and Lender Fees line item in the Budget

Follow up items to be discussed at a later meeting:

- ManCo to provide allocation and source documents on Credit card fees
- ManCo to provide download of hours from ABI excluding names
- ManCo to confirm if the Overhead Plan prepared by Matrix Consulting Group can be shared with SCSA
- ManCo to provide more details on Mina Tailgate & Membership Services
- ManCo to provide SCSA catered events attendees for FY2019-2020
- ManCo to provide actual ABI reports for Finance Manager and Compliance Manager
- ManCo to provide Suite Revenues backup to justify prior years' adjustments

**MINUTES FROM
FINANCIAL MANAGEMENT SYSTEM
Open Item Discussion
October 20, 2021 | 3:00 – 4:05 PM
Zoom Meeting**

Stadium Manager Attendees:

Darren Wong, Director of Accounting
Chris Steele, Director of Accounting

Stadium Authority Attendees:

Kenn Lee, Treasurer
Linh Lam, Assistant Director of Finance
Jimmy Nguyen, Management Analyst
David Presley, Accounting Technician

Armanino Attendees:

Giovana Lopez, Project Manager, Consulting
Lauren Nelson, Senior Consultant, Strategy & Transformation
Judy Clarke, Director, Strategy & Transformation
Giles Zollar, Consulting Manager

A G E N D A

Judy Clarke, Director, Strategy & Transformation from Armanino, shared that the meeting agenda was to go through the outstanding questions from Armanino, and the group will discuss about it and decide on the next steps for it.

Subledger Posting Date:

- The team has decided to defer the decision on Subledger Posting Date to the Implementation phase when Armanino review the system configuration in detail.

Cash Management Module:

- The Stadium Authority confirmed that the new Great Plain instance should be setup with three separate checkbooks (Non-NFL Events, SBL, and Shared Stadium Expense). Non-NFL Events and SBL will have full checkbook capability with check printing, and Shared Stadium Expenses' checkbook will be setup as a Prepaid account without check printing capability.
- The Stadium Manager would like to utilize the SAP Conur integration function to pull the invoice backup attachments for Shared Stadium Expenses in their current SAP Concur to the new Great Plains instance to avoid duplicate effort in having to rescan the Shared Stadium Expense invoices into Great Plains again.
 - The Stadium Authority noted that the Stadium Manager will still need to have staff allocate the 50% Shared Stadium Expense to the new Great Plains instance and ensure that the invoice attachment from SAP Concur is accurate. The vendor number and check payment number used in the new Great Plains instance will also need to match with the data from the Stadium Manager's original Shared Expense payment in the Stadium Manager's Great

Plains instance. Additional details will be discussed during the implementation phase.

- The Stadium Authority agreed this integration effort should be included.

Sales Order Processing:

- The Stadium Manager noted that the Sales Order Processing module should be used in the new Great Plains instance to record all the invoice details.
- The Stadium Manager noted that all the Catering Event billing details are stored within Ungerboeck, a subsystem used for catering services, and requested if we can revisit this item for further discussion.
 - The team agreed to defer this item to Implementation to give all parties more time to assess the module.

Ticket Events Revenue Recording:

- The Stadium Authority requested that ticketed events' revenues be recorded at gross instead of net.

Reporting Tools:

- Armanino recommended that the team implement SmartView in reporting since the cost is low and it is a very useful tool to have. The team agreed with the recommendation.
- The Stadium Authority and Stadium Manager agreed that the Stadium Manager will continue to use Multi-Dimensional Analysis to track events, and that a separate project tracking software (i.e., Blue Moon) is not necessary.

Accounts Payable and Purchase Order Approval Workflow:

- The Stadium Authority confirmed that the Stadium Authority would like the Stadium Manager to use the Purchase Order module as discussed in the previous meeting.

Implementation Timeline and Go Live Date:

- The Stadium Authority and Stadium Manager confirmed with Armanino that both parties would like to go live with the new Great Plains instance starting in the new fiscal year in 2022, which is April 1, 2022. The team noted that some items will be implemented at a later date but would start transacting in April 2022.

Weekly Accounting Status Meeting

Date: 10/21/2021; 2:30pm to 3:30pm

Teams Meeting: Linh Lam (SCSA) and Darren Wong (ManCo)

1. FY 20-21 Non-NFL Events
 - a. Can send ABI files – export with dates, job titles, hours worked by day
 - i. Consider redacting confidential information on the ABI report before submitting it to SCSA
 - b. Credit card fees – consider sampling a few days
 - c. Prior year's Suite adjustments – will need backup for all prior year's adjustments
2. FY 21-22 Shared Expenses:
 - a. Utilities Invoice
 - b. Lender Fee & Other G&A Breakout
3. CapEx Invoice
4. KPMG AUP
5. FY 20-21 Shared Expense True-up Invoice
6. BNY Buffet Invoice
7. Lender Budget Worksheet

SCSA FY2020/21 Non-NFL Event Documentation Review
October 27, 2021 | 3:30 – 4:40 p.m.
Teams Meeting

Attendees:

SCSA - Kenn Lee, Christine Jung, Jimmy Nguyen and Linh Lam

ManCo - Erin Fernandez, Brent Ghan and Darren Wong

Re: Continuation of SCSA FY 2020/21 Non-NFL Event Documentation Review

Review of Credit Card fees and statements for two canceled events (i.e., Justin Bieber and Monster Jam):

- Reviewed 12 individual transactions for Justin Bieber and Monster Jam on the monthly statements and performed a walkthrough of how the credit fees from the individual events were charged by the credit card companies.
 - o Event deferred revenues are recognized upon receipt while revenues and expenses are recognized when earned and incurred.
 - o Credit card fees are charged based on transaction volume and at month-end.

Review of Labor Reports from ABI export:

- Reviewed ManCo's timekeeping system's (ABI) time entry report and verified that the Finance Manager (3.5 hours on 5/27/20).

Review of Catered Event Allocation Calculation worksheet:

- Reviewed attendees tracking spreadsheet and traced the attendees amount to the allocation calculation used for Catered Event (84% SCSA / 16% StadCo).

Review of Overhead report:

- Reviewed the cover letter for the Overhead Plan that has the 13.86% overhead rate used for FY 2020-21.
- ManCo to confirm if SCSA can have a copy of the executive summary for the Overhead Plan prepared by the Matrix Consulting Group since SCSA can't have a copy of the report.

Review of general ledger details for prior years' cleanup items in Luxury Suites and Parking Revenue:

- Reviewed 9 original journal entries from ManCo's cleanup items and verified that they were incorrectly recorded in the prior years for Luxury Suites and Parking Revenues.
- ManCo will start recording Luxury Suites and Parking revenues based on scanned attendants rather than reservation report to avoid these types of adjustments.

Discussion of Mina Tailgate & Membership Services and how it relates to Non-NFL Events:

- Confirmed that this item was misclassified as a Non-NFL Event expense. The 6 hours charged belongs to SBL – Shared Stadium Expenses. An adjustment is not necessary since SBL is also a SCSA expense item.

Follow up items for ManCo:

- ManCo to confirm if they can share the Executive Summary pages of the Overhead Plan prepared by Matrix Consulting Group with SCSA.
- ManCo to provide ABI report for Compliance Manager's 1.75 hours charged on 4/21/20.

Weekly Accounting Status Meeting

Date: 10/28/2021; 2:00pm to 2:30pm

Teams Meeting: Linh Lam (SCSA) and Darren Wong (ManCo)

1. FY 21-22 Shared Expenses:
 - a. Utilities Invoice
 - b. Lender Fee
 - c. Other G&A
2. CapEx Invoice
3. KPMG AUP
4. FY 20-21 Shared Expense True-up Invoice
5. BNY Buffet Invoice
6. Unclaimed Checks
7. FY 20-21 Shared Expense Review

**MINUTES FROM
FINANCIAL MANAGEMENT SYSTEM
Final Presentation – Accounting Enablement Assessment Report
November 3, 2021 | 2:00 – 3:05 PM
Zoom Meeting**

Stadium Manager Attendees:

Darren Wong, Director of Accounting
Chris Steele, Director of Accounting

Stadium Authority Attendees:

Kenn Lee, Treasurer
Linh Lam, Assistant Director of Finance
Jimmy Nguyen, Management Analyst
David Presley, Accounting Technician
Christine Jung, Assistant to the Executive Director

Armanino Attendees:

Giovana Lopez, Project Manager, Consulting
Lauren Nelson, Senior Consultant, Strategy & Transformation
Judy Clarke, Director, Strategy & Transformation
Giles Zollar, Consulting Manager

A G E N D A

Judy Clarke, Director, Strategy & Transformation from Armanino, presented the final Accounting Enablement Assessment Report to the team and discussed the next steps for the project.

Project Summary:

- Armanino presented the Accounting Enablement Assessment Report and summarized the project objectives and assessments to date.
 - Armanino performed 6 process focused sessions on General Ledger and Chart of Accounts, Cash Management and Bank Reconciliation, Accounts Receivables and Sales Order Processing, Reporting, Project Tracking, and Accounts Payable and Purchase Orders.
- Armanino provided the following configuration recommendations for the team to consider:
 - Utilize 1 company and use existing segment to identify different sources of income.
 - Utilize Blue Moon Project tracking for Non-NFL and Ticketed Events.
 - Do not utilize SAP Concur for SCSA's shared expense transactions and integration the Stadium Manager's SAP Concur into the new Great Plains instance to view supporting documents instead.
 - Utilize reporting features in Great Plains to minimize the amount of manual work (e.g., SmartList Builder, Smart View, Management Reporter, etc.).
 - Utilize bank reconciliation module to reconcile bank accounts within Great Plains.
 - Utilize the sales order processing module for more detailed reporting on events.

- Utilize SmartConnect if the team plans to import information from Ungerboeck or Blue Moon Project Tracking.
 - Attend training classes for Management Reporter, General Inquiry and Reporting functionality.
- The Stadium Authority and the Stadium Manager noted that the team had previously agreed on setting up three companies (Shared Stadium Expense, Non-NFL Events, and Stadium Builder License) for the Great Plains instance since the three companies serve different purposes and require different tracking mechanisms. This is also more efficient for the Stadium Manager to record the transactions.
 - Armanino agreed that the three companies setup would also work for the business purpose and that the Stadium Authority and the Stadium Manager should go with what is best for the team.
- The Stadium Authority and the Stadium Manager noted that the team had decided to not use Blue Moon Project Tracking and continue to have the Stadium Manager use Multi-Dimensional Analysis to track events since the Stadium Manager already has an existing structure to track the events. The team agreed to revisit the Blue Moon Project Tracking software again with the implementation team and will decide if it is necessary for the project.
- The Stadium Authority requested for Armanino to provide an additional page that has all the reporting software information so the team can review it in detail and determine if it's necessary for implementation.

Next Steps for Dynamics GP Implementation:

- Armanino to align resources for implementation
- Schedule implementation kick-off meeting with stakeholders
- Assign key stakeholders for the team
- SaaS Plaza (InTwo) to provision environment
- Enable log-in and security access to environment for Armanino
- Hold kick-off meeting and begin remaining portion of the plan & analyze phase

Weekly Accounting Status Meeting

Date: 11/4/2021; 2:00pm to 2:30pm

Teams Meeting: Linh Lam (SCSA) and Darren Wong (ManCo)

1. FY 21-22 Shared Expenses:
 - a. Utilities Invoice
 - b. Lender Fee
 - c. Other G&A
2. CapEx Invoice
3. KPMG AUP
4. BNY Buffet Invoice
5. Unclaimed Checks
6. FY 20-21 Shared Expense Review
7. Matrix Report
8. FY 19-20 NNE Loss
9. FMS Setup
 - a. 1 vs. 3 companies
 - b. Encore reporting

**MINUTES FROM
FINANCIAL MANAGEMENT SYSTEM
Weekly Status Meeting
November 9, 2021 | 9:00 – 9:10 AM
Zoom Meeting**

Stadium Manager Attendees:

Darren Wong, Director of Accounting
Chris Steele, Director of Accounting

Stadium Authority Attendees:

Linh Lam, Assistant Director of Finance
Jimmy Nguyen, Management Analyst
David Presley, Accounting Technician

Armanino Attendees:

Lauren Nelson, Senior Consultant, Strategy & Transformation
Judy Clarke, Director, Strategy & Transformation
Giovana Lopez, Project Manager, Consulting

Financial Management System Project Status Updates:

- Armanino presented the updated Accounting Enablement Assessment report to the team.
 - New report included a glossary of all the recommended software for the team to review and research on
- Armanino confirmed with the Stadium Authority that the team can use the Accounting Enablement Assessment report and all the process and configuration documents to assist with the decision making during the project implementation phase.
- Armanino noted that both Judy and Lauren will not be part of the Great Plains implementation team. Giles Zollar and Giovana Lopez will stay on with the team as we move to the project implementation phase.

Accomplishments:

- Completed the Accounting Enablement Assessment report on 11/8/21

Next Steps:

- Start the FMS implementation phase
- FMS implementation kickoff meeting is scheduled for 11/10/21

**MINUTES FROM
FINANCIAL MANAGEMENT SYSTEM
Implementation Kickoff Meeting
November 10, 2021 | 3:00 – 3:50 PM
Zoom Meeting**

Stadium Manager Attendees:

Darren Wong, Director of Accounting
Chris Steele, Director of Accounting
Brent Ghan, Accounting Manager

Stadium Authority Attendees:

Kenn Lee, Treasurer
Linh Lam, Assistant Director of Finance
Jimmy Nguyen, Management Analyst
David Presley, Accounting Technician
Christine Jung, Assistant to the Executive Director

Armanino Attendees:

Giovana Lopez, Project Manager, Consulting
Giles Zollar, Consulting Manager
Jen Cook, Lead Consultant
Linda Schoephoerster, Supporting Consultant
Rebecca Bunas, Account Manager

A G E N D A

Jen Cook, Lead Consultant from Armanino, presented the Kickoff Meeting presentation, introduced the Armanino implementation team, and discussed the next steps for the project with the team.

- Armanino noted that they will treat this project as a brand-new implementation and will include a plan and analyze phase to obtain a complete understanding of the setup.
 - Armanino discussed the deliverables and explained that they will guide the team through the whole implementation process. They will provide a complete walkthrough to ensure a successful migration of data and transactions.
- Armanino, the Stadium Authority and the Stadium Manager reviewed the project scope, budget, and the implementation timeline together. The team agreed that the ideal scenario is to have the Go Live date on April 1, 2022 for this Great Plains instance.
 - Armanino noted the SAP Concur integration work that the Stadium Manager request for is outside of the scope, and the Stadium Authority agreed to pay for the integration work.
- The Stadium Authority and the Stadium Manager confirmed that we will be implementing all three companies' chart of accounts at the same time.

Next Steps for Dynamics GP Implementation:

- Armanino to review and confirm plan and timeline, schedule meetings, and obtain account framework signoff.

**MINUTES FROM
FINANCIAL MANAGEMENT SYSTEM
InTwo Introduction Meeting
November 15, 2021 | 3:15 – 4:11 PM
Zoom Meeting**

Stadium Manager Attendees:

Darren Wong, Director of Accounting

Stadium Authority Attendees:

Linh Lam, Assistant Director of Finance

Armanino Attendees:

Giovana Lopez, Project Manager, Consulting

Giles Zollar, Consulting Manager

Rebecca Bunas, Account Manager

SaaSPlaza (InTwo) Attendees:

Brendan Martise, Customer Success Manager

Kim Nguyen, Cloud Engineer

Leonard Abagat, Cloud Engineer

InTwo Introduction and Database setup:

- Armanino introduced InTwo, formerly known as SaaSPlaza, to the team and had everyone introduced themselves on the call.
- InTwo is the cloud base provider for the new Great Plains database.
 - InTwo confirmed that the contract for the Great Plains database has 6 full user license and 6 limited users. InTwo will also provide two databases (test and production) for the Great Plains instance.
 - InTwo confirmed that the current Great Plains SQL version to be implemented is SQL 2016. The Stadium Manager asked if this can be upgraded to SQL 2019.
- Armanino confirmed that InTwo is responsible for creating the database and hosting it while Armanino is responsible for the configuration setup and support services.
- Armanino confirmed that they will be responsible for the managing upgrades and year-end updates with the Stadium Manager.
- Armanino confirmed to InTwo that the target Go Live date for the implementation is April 1, 2022. Armanino will work with InTwo offline for the database specification requirements.

Next Steps:

- The Stadium Authority agreed to setup a separate meeting with InTwo and the Stadium Authority's information technology staff to discuss the Azure subscription question and any other database related questions.

- The Stadium Authority agreed to setup a separate meeting with InTwo to discuss the SQL 2019 upgrade option.

Weekly Accounting Status Meeting

Date: 11/18/2021; 2:00pm to 3:00pm

Teams Meeting: Linh Lam (SCSA) and Darren Wong (ManCo)

1. FY 21-22 Shared Expenses
2. CapEx Invoice
3. BNY Buffet Invoice
4. FY 20-21 Shared Expense Review
5. FMS IT Infrastructure Setup

FMS Minutes Review Meeting

Date: 11/23/2021; 1:30pm to 2:05pm

Teams Meeting: Linh Lam (SCSA) and Darren Wong (ManCo)

1. Review FMS Meeting Minutes

**MINUTES FROM
FINANCIAL MANAGEMENT SYSTEM
InTwo Introduction Meeting
November 23, 2021 | 9:00 – 9:33 AM
Zoom Meeting**

Stadium Manager Attendees:

Darren Wong, Director of Accounting

Stadium Authority Attendees:

Linh Lam, Assistant Director of Finance

Armanino Attendees:

Giovana Lopez, Project Manager, Consulting

Giles Zollar, Consulting Manager

Great Plains Database:

- Armanino answered some database environment questions raised by the Stadium Manager for the Great Plains instance.
 - Armanino confirmed that this is a Cloud base system where end users access the database through a URL link provided by InTwo.
 - Armanino noted that they will work with the Stadium Manager to configure any existing data import file that the Stadium Manager currently use.
- The Stadium Authority noted that they are working with InTwo to upgrade the Great Plains environment to SQL 2019.

**MINUTES FROM
FINANCIAL MANAGEMENT SYSTEM
Great Plains' Infrastructure Requirements Meeting
December 1, 2021 | 4:00 – 4:24 PM
Zoom Meeting**

Stadium Manager Attendees:

Darren Wong, Director of Accounting

Stadium Authority Attendees:

Linh Lam, Assistant Director of Finance

Gill Norris, Sr. Information Technology Services Manager

Christopher Jackson, Sr. Information Technology Services Manager

Armanino Attendees:

Giovana Lopez, Project Manager, Consulting

Giles Zollar, Consulting Manager

InTwo Attendees:

Brendan Martise, Customer Success Manager

Leonard Abagat, Cloud Engineer

David Flipppo, Cloud Engineer

Meagan Kellner, Cloud and Network Engineer

Great Plains database setup:

- The Stadium Authority confirmed that InTwo would need to create a new server in Azure for the Great Plains instance.
- Armanino took the lead to answer InTwo's questions about the database infrastructure and requirements.
- The Stadium Authority confirmed that we will be implementing all three companies' chart of accounts at the same time and the go live date for the Great Plain instance is April 1, 2022.
- The Stadium Authority requested for InTwo to redo the scope of services with the changes (SQL 2019 vs. SQL 2016, SAP Concur integration, Azure subscription, and additional storage and ram space to support the document attachment feature) that Armanino noted and bring it back to the Stadium Authority to discuss the additional costs.

Next Steps:

- The Stadium Authority and InTwo noted that they will meet to discuss the additional scope and services to the current agreement.
- InTwo will continue creating the three databases for Great Plains.

Weekly Accounting Status Meeting

Date: 12/02/2021; 2:00pm to 2:30pm

Teams Meeting: Linh Lam (SCSA) and Darren Wong (ManCo)

1. December O&M Invoice
2. BNY Buffet Invoice
3. Non-NFL Events DocuSign

**MINUTES FROM
FINANCIAL MANAGEMENT SYSTEM
Chart of Accounts Planning
December 6, 2021 | 3:00 – 4:15 PM
Zoom Meeting**

Stadium Manager Attendees:

Darren Wong, Director of Accounting
Chris Steele, Director of Accounting
Brent Ghan, Accounting Manager

Stadium Authority Attendees:

Kenn Lee, Treasurer
Linh Lam, Assistant Director of Finance
Gill Norris, Senior Information Technology Services Manager

Armanino Attendees:

Giles Zollar, Consulting Manager
Linda Schoephoerster, Supporting Consultant
Jen Cook, Lead Consultant

AGENDA

Jen Cook, Lead Consultant from Armanino, shared that the meeting agenda was to review the Chart of Accounts (COA) layout and decide on the proper COA structure for the new Great Plains instance. Armanino will have an open discussion with the Stadium Manager and Stadium Authority to review the COA requirements and have the group sign off on the COA setup.

Chart of Account structure

- Armanino noted that the team will need to complete the COA setup framework in order for Armanino to move on with the database installation work.
- Armanino recommended that the Stadium Manager setup 10 standard segments using 7 characters for the first 7 segments and 6 characters for the last 4 segments for a total of 66 characters. Setting up the standard segments and characters in the database will allow the Stadium Manager to tap into any unused segments or characters in the future.
 - Armanino confirmed with the Stadium Manager that the database characters in each segment is the maximum allowable characters and that the Company doesn't have to use the all the characters assigned in each segment.
 - The Stadium Manager agreed with the recommendation for the master database setup. The Stadium Manager confirmed that they would like to continue using the same setup as their current Great Plains instance.
 - Segments – will use 4 segments (Company, Department Natural, and Extension)
 - Companies – will setup three separate companies (Non-NFL Events, Seat Builder Licenses, and Shared Stadium Expenses)
 - Departments – will use 12 departments (Balance Sheet, Non-NFL Events, Miscellaneous Unclassified P&L, Other General and Admin, Security,

SBL Sales, Catered Events, SBL Service, Stadium Operations, Engineering, Guest Services, Grounds keeping, and Procurement)

- Natural Accounts – will use natural accounts from Great Plains (Assets, Liabilities, Expenses and Revenues accounts)
 - Extension – will use 000 for all three SCSA companies for now; will need to consider using extension for Non-NFL Events to show the Profit and Loss statements at gross level.
- Armanino noted that the Stadium Authority will need to sign off on the COA setup structure before work can commence.
 - The Stadium Authority agreed with the request and asked the Stadium Manager to provide feedbacks on the COA setup structure and let the Armanino team know what the Stadium Manager wants before the Stadium Authority signs off on the setup.
 - Armanino asked the Stadium Authority to start thinking about the type of reporting that the Stadium Authority wishes to have in the new Great Plains instance and let the team know later.
 - The Stadium Authority will revisit the current reports provided by the Stadium Manager and work with the Stadium Manager to identify any other missing reports and provide a complete list of report samples to Armanino. The team will meet offline to identify the reports and submit it to Armanino once they have it.
 - The Stadium Manager and Stadium Authority confirmed to Armanino that they will only need to bring the prior year's net change (i.e., month to month change in account balance) account balances over to the new Great Plains instance.

**MINUTES FROM
FINANCIAL MANAGEMENT SYSTEM
Weekly Status Meeting
December 7, 2021 | 9:00 – 9:18 AM
Zoom Meeting**

Stadium Manager Attendees:

Darren Wong, Director of Accounting
Chris Steele, Director of Accounting
Brent Ghan, Accounting Manager

Stadium Authority Attendees:

Linh Lam, Assistant Director of Finance

Armanino Attendees:

Giles Zollar, Consulting Manager
Linda Schoephoerster, Supporting Consultant
Jen Cook, Lead Consultant
Giovana Lopez, Project Manager, Consulting

Financial Management System Project Status Updates:

- The team discussed upcoming vacation plans for Armanino, Stadium Manager, and Stadium Authority staff.
- Armanino noted they will send over the Chart of Accounts template to the group for review and sign off later this week.
- Armanino confirmed that the team is on schedule to complete all the implementation interview sessions by December 17th.
- The Stadium Authority confirmed with the Stadium Manager that they will purchase the preferred SQL 2019 version of the Great Plains for the Stadium Manager. The Stadium Authority is scheduled to meet with Intwo's contract manager to discuss upgrading the SQL version from 2016 to 2019.
- Armanino confirmed with the team that they've asked Intwo to setup the Great Plains database by December 20th. This was before the team decided to use SQL 2019 instead of SQL 2016. Armanino noted that we can push the due date back to the end of the year if needed.

Accomplishments:

- Completed first Chart of Accounts planning meeting on 12/6/2021
- Completed introduction meeting with Intwo (formerly known as SaaSplaza) on 12/1/2021

Next Steps:

- The team will continue to meet for the remaining planning sessions.
- Armanino to complete and send over the Chart of Accounts template for the Stadium Manager and Stadium Authority to review and sign off.

Weekly Accounting Status Meeting

Date: 12/09/2021; 2:30pm to 3:00pm

Teams Meeting: Linh Lam (SCSA) and Darren Wong (ManCo)

1. O&M Invoice: G&A
2. Lender Invoice
3. BNY Buffet Invoice
4. Overhead Plan

**MINUTES FROM
FINANCIAL MANAGEMENT SYSTEM
Accounts Payable Planning
December 13, 2021 | 3:00 – 4:00 PM
Zoom Meeting**

Stadium Manager Attendees:

Darren Wong, Director of Accounting
Chris Steele, Director of Accounting
Brent Ghan, Accounting Manager

Stadium Authority Attendees:

Linh Lam, Assistant Director of Finance

Armanino Attendees:

Linda Schoephoerster, Supporting Consultant
Jen Cook, Lead Consultant

AGENDA

Jen Cook, Lead Consultant from Armanino, shared that the meeting agenda was to review the Accounts Payable layout and decide on the proper setup structure for the new Great Plains instance. Armanino will have an open discussion with the Stadium Manager and Stadium Authority to review the setup requirements and have the group sign off on the configuration setup.

Accounts Payable (AP) structure

- The team discussed a list of questions from Armanino's implementation team and answered all the follow up questions.
- The Stadium Manager confirmed that there is no special discount and that they use standard aging reports in the existing Accounts Payable setup.
- The Stadium Manager noted that the Accounts Payable's (AP) check run is done on a weekly basis and that they would import a weekly SAP Conur payment file into Great Plains to initiate the payment.
- The Stadium Authority reiterated that the Stadium Manager would need to attach all the supporting documents to each vendor payment in Great Plains.
- The Stadium Manager noted that they would like to use their existing SAP Concur software to import the Shared Stadium Expense payment information and supporting documents to the new Great Plains instance. Armanino noted that this will be done during implementation.
 - The Stadium Authority confirmed that they would like to see the same payment information (i.e. check number, voucher number, vendor number, and amount) in the

Stadium Manager's Great Plains copied to the new Great Plains. This is so that there is consistency in the payment data in both Great Plain instances.

- The Stadium Manager confirmed that we should show 50% of the Stadium Authority's Shared Stadium Expenses in the new Great Plains and have it record against a prepaid account with the same payment information.
 - The Stadium Authority and the Stadium Manager requested for Armanino to show the team how the SAP Concur integration in Great Plains would work during User Acceptance Testing.
 - Armanino noted that the Great Plains instance would need adequate storage space for this purpose. The Stadium Authority agreed with the assessment and noted that they will review InTwo's contract amendment language with Armanino when the time comes to ensure there is adequate storage space in the Great Plains instance.
- The Stadium Manager reported that the Purchase Order (PO) process is currently done outside of Great Plains. The Stadium Manager currently go to the Board for approval on expenditures and then create a PO outside of Great Plains for the approved purchase.
 - The Stadium Authority requested that the Stadium Manager utilize the PO module in Great Plains. The Stadium Manager can override the PO number in Great Plains and use the same PO number assigned in the procurement process in Great Plains. This will make it easier for the Stadium Manager to track and research the POs, if necessary.
 - The Stadium Authority noted that the Stadium Manager should attach the Board approval in the PO to substantiate that it was has been approved for.

**MINUTES FROM
FINANCIAL MANAGEMENT SYSTEM
Weekly Status Meeting
December 14, 2021 | 9:00 – 9:12 AM
Zoom Meeting**

Stadium Manager Attendees:

Darren Wong, Director of Accounting
Chris Steele, Director of Accounting
Brent Ghan, Accounting Manager

Stadium Authority Attendees:

Linh Lam, Assistant Director of Finance

Armanino Attendees:

Giles Zollar, Consulting Manager
Linda Schoephoerster, Supporting Consultant
Jen Cook, Lead Consultant
Giovana Lopez, Project Manager, Consulting

Financial Management System Project Status Updates:

- The team discussed upcoming vacation plans for Armanino, Stadium Manager, and Stadium Authority staff.
- The Stadium Authority noted that staff is in the process of reviewing the Chart of Accounts configuration document with the Stadium Manager and will send over the final sign off later this week.
- The Stadium Authority noted that InTwo confirmed that they will be able to meet the delivery deadline previously agreed with Armanino. The Stadium Authority requested that Armanino continue to work with InTwo to ensure that the database is ready for configuration on the agreed time.

Accomplishments:

- Completed the General Ledger/Bank Reconciliation planning.

Next Steps:

- The team will continue to meet for the remaining planning sessions.
- Armanino to complete all configuration documents by Monday, 12/20/21.
- The Stadium Authority to sign off on the Chart of Account framework.

**MINUTES FROM
FINANCIAL MANAGEMENT SYSTEM
Reporting Planning
December 15, 2021 | 3:00 – 4:00 PM
Zoom Meeting**

Stadium Manager Attendees:

Darren Wong, Director of Accounting
Chris Steele, Director of Accounting
Brent Ghan, Accounting Manager

Stadium Authority Attendees:

Kenn Lee, Treasurer
Linh Lam, Assistant Director of Finance

Armanino Attendees:

Jen Cook, Lead Consultant
Giles Zollar, Consulting Manager

AGENDA

Jen Cook, Lead Consultant from Armanino, shared that the meeting agenda was to review the Reporting layout and decide on the proper setup structure for the new Great Plains instance. Armanino will have an open discussion with the Stadium Manager and Stadium Authority to review the setup requirements and have the group sign off on the configuration setup.

Reporting

- The Stadium Manager reported that they currently prepare their financial reports through Excel spreadsheets.
 - Armanino noted that the Stadium Manager can continue to do so if they wish. However, they should also use SmartList and SmartView to help them pull in the necessary data since the tools could simplify the reporting function.
 - Armanino noted that they will revisit the agreement with InTwo and check with InTwo to see if the current Great Plains instance has SmartList and what the additional cost for SmartList Builder and SmartView would be.
- Armanino discussed the attachment function in Great Plains and explained to the team how it works in each of the module. Armanino noted the attachment function is simple and can help end user search for supporting documents.
- The Stadium Manager asked if they could carry over the existing Stadium Builder License (SBL) setup in Great Plains rather than duplicating the SBL holder information in Great Plains since it is already in Arctic, the current ticketing and customer information system the ticket sales staff uses. The main customer portal is Arctic so importing the SBL data in Great Plains would duplicate the effort and create additional work for staff to manage and track both systems.
 - The Stadium Authority agreed to have an offline conversation with the Stadium Manager to understand the details behind the SBL setup and the current request.

Additional topics that were discussed but were not on the agenda

- Armanino noted that they are still reviewing the InTwo agreement for the Stadium Authority and will send over the comments by the end of this week.
- The Stadium Manager and Armanino discussed some follow up configuration questions from Armanino.

Weekly Accounting Status Meeting

Date: 12/16/2021; 2:00pm to 2:45pm

Teams Meeting: Linh Lam (SCSA) and Darren Wong (ManCo)

1. Other G&A Costs
2. BNY Buffet Invoice
3. FY 20-21 Non-NFL Events
4. SBL Setup in FMS
5. SCSA Review of FY2020-21 Shared Expense

**MINUTES FROM
FINANCIAL MANAGEMENT SYSTEM
Accounts Receivable and Sales Order Processing Planning
December 17, 2021 | 3:00 – 3:30 PM
Zoom Meeting**

Stadium Manager Attendees:

Darren Wong, Director of Accounting
Chris Steele, Director of Accounting
Brent Ghan, Accounting Manager

Stadium Authority Attendees:

Kenn Lee, Treasurer
Linh Lam, Assistant Director of Finance
Larry Lo, Accounting Division Manager

Armanino Attendees:

Jen Cook, Lead Consultant

AGENDA

Jen Cook, Lead Consultant from Armanino, shared that the meeting agenda was to review the Accounts Receivable layout and decide on the proper setup structure for the new Great Plains instance. Armanino will have an open discussion with the Stadium Manager and Stadium Authority to review the setup requirements and have the group sign off on the configuration setup.

Accounts Receivable (AR)

- Armanino shared the AR configuration document and has the Stadium Manager confirmed some of the setup items. The Stadium Manager doesn't impose or have the following items in the AR module:
 - Non-Sufficient Funds
 - Recurring transactions
 - Lockbox or electronic fund transfer transactions
 - Trade discounts
 - Provide customer accounts statements
 - Provide credit limit to customer

The Stadium Manager has the following items in the AR module:

- Cash receipts
 - Customer refunds
 - Limited sales reporting as it is reported outside of Great Plains through Ungerboeck
- The Stadium Manager and Stadium Authority agreed to meet separately to discuss the required data to be attached from Ungerboeck and whether it's okay to let the event menu and billing data reside outside of Great Plains if the Stadium Authority has access to Ungerboeck.

Additional topics that were discussed but were not on the agenda

- The team confirmed that the Stadium Manager will continue to use the Stadium Manager's current reporting structure and use Multi-Dimensional Analysis (MDA) to track events and prepare their financial reports through Excel spreadsheets.



Agenda Report

22-272

Agenda Date: 3/22/2022

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Action on Stadium Authority Bills and Claims for the Month of December 2021

BOARD PILLARS

Enhance Community Engagement and Transparency
Ensure Compliance with Measure J and Manage Levi's Stadium

BACKGROUND

Disbursements made by the Stadium Authority are based on invoices submitted for payment. Prior to payment, staff reviews all disbursement documents to ensure that they are in compliance with the goods or services provided.

The Bills and Claims listing represents the cash disbursements required of normal and usual operations during the period. Budget control is set by the Stadium Authority Board through the budget adoption process.

DISCUSSION

On April 30, 2019 the Stadium Authority Board directed staff to stop payment of any Stadium Authority invoices for services unless there is substantial documentation of services rendered, which must also be in compliance with State law and City Code. Since April 30, 2019, staff received direction to pay Stadium Authority invoices related to SBL sales and services, insurance, and utilities.

At the March 23, 2021 Stadium Authority Board meeting, the Executive Director was delegated authority to approve budget amendments of \$4.2 million to move funds from the Legal Contingency line item to Shared Expenses after the review of adequate documentations for costs based on Board direction. Subsequent to that direction, Stadium Authority staff met at Levi's Stadium on March 30, 2021 to review documentation for shared expenses. After follow-up meetings with the Stadium Manager, payments related to compensation that were reviewed and approved for monthly payment, totaling \$4.2 million for the fiscal year.

In addition, at the March 23, 2021 Stadium Authority Board meeting, the Board approved staff recommendations to direct the Stadium Manager to provide a procurement plan/schedule that demonstrates the ability to manage the Stadium with the proper standard of care and that addresses the highest priority projects while balancing the potential need for City resources. Subsequent to that direction, the Stadium Manager has submitted requests to the Board for approval; to be awarded purchase order(s) related to capital projects.

Significant expenses in December 2021 include:

- Payments totaling \$221,483.24 to the City of Santa Clara for the following:

- \$195,292.31 for reimbursement of General and Administrative (G&A) City payroll costs (e.g.: Executive Director's Office (City Manager's Office), Counsel's Office (City Attorney's Office), and Treasurer's Office (Finance Department))
 - \$23,330.65 for the Senior and Youth Fees collected (\$0.35 per ticket) for one National Football League (NFL) game.
 - \$2,643.12 for reimbursement of SCSA CapEx Costs - Vehicle Upfits
 - \$217.16 for reimbursement of SCSA CapEx Costs - PPE (Nomex Bottoms)
- Payment totaling \$257,517.21 to Forty Niners SC Stadium Co, LLC for CFD Advance Payment - Interest
- Payments totaling \$14,550.38 to Armanino LLP for CapEx Project - FMS Project
- Payment totaling \$135.00 to Contractor Compliance and Monitoring, Inc for November 2021 Labor Compliance Services
- Payments totaling \$41,175.67 to Dell Marketing L.P. for the following:
 - \$39,358.62 for CapEx Project - Security Command Center Equipment
 - \$1,817.05 for SCSA Laptop (City Manager's Office)
- Payment totaling \$61,514.42 to Fisher Scientific Co. LLC for CapEx Project - Tru Defender Chemical Detector
- Payment totaling \$52,241.85 to J.S. Held LLC for June - August 2021 Audit Services
- Payment totaling \$1,984.43 to L.N. Curtis & Sons for CapEx Project - PPE (Nomex Bottoms)
- Payment totaling \$3,700.00 to Wilson Ihrig for October 2021 Noise Monitoring Services
- Payments totaling \$185,924.21 for September - November 2021 Legal Services

Certain information such as names of law firms have been redacted from the Bills and Claims report. The Supreme Court of California in Los Angeles County Board of Supervisors v. Superior Court, (2016) 2 Cal.5th 282, held that invoices specifying the amounts billed by a law firm to a client fall within the scope of attorney-client privilege while the matters are active. In accordance with the Supreme Court's ruling, the names of law firms retained by the Stadium Authority have been redacted from the public report to maintain confidentiality of billing records for legal services.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

There is a \$841,647.55 fiscal impact to the Stadium Authority.

COORDINATION

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

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's

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

RECOMMENDATION

Approve the list of Stadium Authority Bills and Claims for December 2021.

Reviewed by: Kenn Lee, Treasurer

Approved by: Office of the Executive Director

ATTACHMENTS

1. December 2021 SCSA Bills and Claims

Santa Clara Stadium Authority

Bills and Claims Expenses Paid by Wire Transfer For the Month of December 2021

Payment Date	Vendor	Invoice No.	Description	Fund	Amount	
12/15/2021	Bank of America	N/A	November 2021 bank fees acct 0444	CapEx	1,157.45	
12/15/2021	Bank of America	N/A	November 2021 bank fees acct 0425	Operating	178.26	
12/15/2021	Bank of America	N/A	November 2021 bank fees acct 6280	Operating	103.77	
12/23/2021	Bank of America	N/A	February 2021 bank fees acct 6596 (credit)	Operating	(18.34)	
			Bank of America Subtotal			1,421.14
12/10/2021	City of Santa Clara	N/A	B2123 SCSA Admin Payroll Costs	Operating	67,657.00	
12/16/2021	City of Santa Clara	N/A	B2124 SCSA Admin Payroll Costs	Operating	50,122.94	
12/23/2021	City of Santa Clara	N/A	B2125 SCSA Admin Payroll Costs	Operating	77,512.37	
12/13/2021	City of Santa Clara	N/A	Senior/Youth Fee NFL Game 7	Operating	23,330.65	
12/3/2021	City of Santa Clara	N/A	Reimburse CSC for SCSA CapEx Costs - Vehicle Upfits	CapEx	2,643.12	
12/3/2021	City of Santa Clara	N/A	Reimburse CSC for SCSA CapEx Costs - PPE (Nomex Bottoms)	CapEx	217.16	
						221,483.24
12/17/2021	Forty Niners SC Stadium Co, LLC	N/A	CFD Advance Payment - Interest	Debt Service		257,517.21
12/6/2021	Armanino LLP	754238	CapEx Proj - FMS Project	CapEx	8,400.00	
12/23/2021	Armanino LLP	805191	CapEx Proj - FMS Project	CapEx	6,150.38	
						14,550.38
12/14/2021	Contractor Compliance and Monitoring, Inc	15409	November 2021 Labor Compliance Services	Operating		135.00
12/6/2021	Dell Marketing L.P	10532231520	CapEx Proj - Command Center Equipment	CapEx	39,358.62	
12/23/2021	Dell Marketing L.P	10543615044	SCSA Laptop (City Manager's Office)	Operating	1,817.05	
						41,175.67
12/3/2021	Fisher Scientific Co. LLC	3939504	CapEx Proj - Tru Defender Chemical Detector	CapEx		61,514.42
12/6/2021	J.S. Held LLC	1276059	June - August 2021 Audit Services	Operating		52,241.85
12/3/2021	L.N. Curtis & Sons	INV521937	CapEx Proj - PPE (Nomex Bottoms)	CapEx		1,984.43
12/9/2021	Wilson Ihrig	16125N39	October 2021 Noise Monitoring Services	Operating		3,700.00
Various			September 2021 Legal Services	Operating	64,744.37	
Various			October 2021 Legal Services	Operating	91,412.37	
Various			November 2021 Legal Services	Operating	29,767.47	
						185,924.21
December 2021 Total						\$ 841,647.55



Agenda Report

22-414

Agenda Date: 3/22/2022

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Request from the Stadium Manager to Exercise Option to Extend Term of Agreement with Landmark Event Staffing Services, Inc. for Levi's Stadium Event Security Services

BOARD PILLAR

Ensure Compliance with Measure J and Manage Levi's Stadium

DISCUSSION

On April 17, 2017, the Stadium Authority Board adopted Resolution No. 17-4 (Resolution of the Santa Clara Stadium Authority Consenting to a Service Agreement between Forty Niners Stadium Management Company and Landmark Event Staffing Services, Inc. for Event Security Services) (Attachment 1) with the exception of the agreement's two one-year extensions; and noted and filed an Amendment No. 1 to include the Stadium Authority as additional insured under the Insurance Requirements of the agreement. A copy of the agreement and Amendment No. 1 are attached to this report (Attachments 2-3). Under Section 5, the agreement terminates on March 31, 2022 and provides the Stadium Manager with an option to extend the term for one additional two-year period by notifying Landmark of its desire to exercise the extension option, subject to mutual agreement of rates.

On March 11, 2022, the Stadium Manager submitted the attached written notice (Attachment 4) to request approval from the Stadium Authority Board to exercise its option to extend the term of the existing Agreement for the Performance of Services by and between Landmark Event Staffing Services, Inc. (Landmark) and Forty Niners Stadium Management Company for security services at Levi's Stadium for one additional two-year period through March 31, 2024.

ATTACHMENTS

1. Resolution No. 17-4
2. Agreement with Landmark
3. Amendment No. 1 to Landmark Agreement
4. Stadium Manager's Notice to Landmark to Exercise 2-Year Extension Option

RESOLUTION NO. 17-4 (STADIUM AUTHORITY)

**A RESOLUTION OF THE SANTA CLARA STADIUM
AUTHORITY CONSENTING TO A SERVICE AGREEMENT
BETWEEN FORTY NINERS STADIUM MANAGEMENT
COMPANY AND LANDMARK EVENT STAFFING
SERVICES, INC. FOR EVENT SECURITY SERVICES.**

BE IT RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

WHEREAS, the Santa Clara Stadium Authority ("Authority"), a joint exercise of powers entity, created through Government Code Section 6500 *et seq.*, engaged in activities that led to the development and commencement of operation of a 68,500 seat stadium suitable for professional football ("Stadium Project") on a property located at Tasman and Centennial Drive ("Stadium Site"); and

WHEREAS, the Authority, Forty Niners SC Stadium Company, LLC, a Delaware limited liability company ("StadCo"), and Forty Niners Stadium Management Company LLC, a Delaware limited liability company ("Stadium Manager"), are parties to a certain Stadium Management Agreement effective as of March 28, 2012, as amended by that certain First Amendment to Stadium Management Agreement dated as of November 13, 2012, that certain Second Amendment to Stadium Management Agreement dated as of May 9, 2013, and that certain Third Amendment to Stadium Management Agreement dated as of June 19, 2013, and that certain Fourth Amendment to Stadium Management Agreement dated as of March 18, 2014 (as the same may be, further amended from time to time, the "Stadium Management Agreement"), pursuant to which the Stadium Manager manages the operation of the Stadium year-round on behalf of the Authority and StadCo for the term and on the basis specified in the Stadium Management Agreement; and,

WHEREAS, the Stadium Management Agreement provides the Stadium Manager with the responsibility to solicit and select the professional service vendors for Stadium operations and

authorizes Stadium Manager to enter into professional services agreements in compliance with the Stadium Authority's procurement policies; and,

WHEREAS, the Stadium Manager has conducted a Request for Proposal process and selected a service vendor for security services in general conformance with the Stadium Authority's Procurement Policy and desires to enter into Service Agreement on behalf of StadCo and Stadium Authority for those services; and,

WHEREAS, the Stadium Manager has selected Landmark Event Staffing Services, Inc. to provide security services for Stadium events; and,

WHEREAS, the Authority has determined that the Service Agreement with Landmark Event Staffing Services is in the best interest of the Stadium Authority and desires the Stadium Manager to enter into a Service Agreement; and,

WHEREAS, the Staff Report and Stadium Manager oral presentation provide additional information upon which the findings and actions set forth in this Resolution are based.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

1. That the Board of the Authority hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. The Board of the Authority hereby consents to the Stadium Manager entering into Service Agreement with Landmark Event Staffing Services, Inc. on behalf of the Authority, substantially in the form on file with the Authority Secretary, with such revisions as are reasonably determined necessary by the Executive Director, such determination to be conclusively deemed to have been made by the execution of such agreement by the Authority signatory.

3. Consent to the contract is limited to the term of five years. The Stadium Manager shall not authorize an extension to the contract beyond five years without further express consent of the Stadium Authority.

4. The Executive Director is hereby authorized to take such further actions as may be necessary or appropriate to carry out the Authority's obligations pursuant to this Resolution.

5. The Authority Secretary shall certify to the adoption of this Resolution.

6. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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7. 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 17th DAY OF APRIL 2017, BY THE FOLLOWING VOTE:

AYES:	BOARD MEMBERS:	Caserta, Davis, Kolstad, Mahan, O'Neill, and Watanabe and Mayor Gillmor
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NOES:	BOARD MEMBERS:	None
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ABSENT:	BOARD MEMBERS:	None
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ABSTAINED:	BOARD MEMBERS:	None
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ATTEST:

for



ROD DIRIDON, JR.
SECRETARY OF THE STADIUM AUTHORITY
SANTA CLARA STADIUM AUTHORITY

Attachments incorporated by reference: None

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
STADIUM MANAGER
AND
LANDMARK EVENT STAFFING SERVICES, INC.**

PREAMBLE

This agreement for the performance of services ("Agreement") is made and entered into on this 15th day of February, 2017, ("Effective Date") by and between LANDMARK EVENT STAFFING SERVICES, INC., a Delaware corporation, with its principal place of business located at 4131 Harbor Walk Drive, Fort Collins, CO 80525 ("Contractor"), and the FORTY NINERS STADIUM MANAGEMENT COMPANY LLC, a Delaware limited liability company ("Stadium Manager"), with its principal place of business located at [*insert Stadium address number Marie P. DeBartolo Way, Santa Clara, CA 95054. Stadium Manager and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The CITY OF SANTA CLARA, a municipal corporation ("City") and the SANTA CLARA STADIUM AUTHORITY, a joint exercise of powers entity, created through Government Code sections 6500 et seq. (the "Authority"), are parties to that certain Ground Lease dated as of March 28, 2012, as amended by that certain First Amendment to Ground Lease (Stadium Site) (as the same may be further amended from time to time, the "Ground Lease"), pursuant to which the Authority leases certain real property from the City upon which the Authority has developed and constructed a multi-purpose stadium (the "Stadium").
- B. The Authority and FORTY NINERS SC STADIUM COMPANY, LLC, a Delaware limited liability company ("StadCo"), are parties to that certain Amended and Restated Stadium Lease Agreement dated as of March 28, 2012 as amended and restated as of June 19, 2013 (as the same may be further amended from time to time, the "Stadium Lease"), pursuant to which StadCo is granted the right during the term of the Stadium Lease to use and occupy the Stadium for the operation of an NFL franchise, subject to, and on the basis of, the terms, covenants and conditions set forth in the Stadium Lease.
- C. StadCo and FORTY NINERS FOOTBALL COMPANY LLC, a Delaware limited liability company ("Team") are parties to a certain Sublease Agreement dated as of March 28, 2012, as amended and restated as of June 19, 2013 (as the same may be further amended from time to time, the "Team Sublease"), pursuant to which, during the term of the Team Sublease, the Team shall play its NFL home games at the Stadium, subject to, and on the basis of, the terms, covenants and conditions set forth in the Team Sublease.
- D. The Authority, StadCo, and Stadium Manager are parties to a certain Stadium Management Agreement effective as of March 28, 2012, as amended by that certain First Amendment to Stadium Management Agreement dated as of November 13, 2012, that certain Second Amendment to Stadium Management Agreement dated as of May 9,

[Handwritten signature]

2013, that certain Third Amendment to Stadium Management Agreement dated as of June 19, 2013, and that certain Fourth Amendment to Stadium Management Agreement dated as of March 18, 2014 (as the same may be, further amended from time to time, the "Stadium Management Agreement"), pursuant to which the Stadium Manager will manage the operation of the Stadium year-round on behalf of the Authority and StadCo for the term and on the basis specified in the Stadium Management Agreement.

- E. Pursuant to the Stadium Management Agreement, the Stadium Manager is required to maintain and operate a security force to safeguard the Stadium, areas surrounding the Stadium, and users of the Stadium and, accordingly, desires to secure professional services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services" (the "Services").
- F. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide the Services of the quality and type which meet objectives and requirements of Stadium Manager.
- G. In accordance with the Stadium Management Agreement, the Stadium Manager is authorized to enter into this Agreement on behalf of the Authority and StadCo to engage Contractor to provide the Services; and, accordingly, the Stadium Manager and Contractor desire to enter into this Agreement whereby Contractor shall have the right to provide, and Contractor agrees to provide, the Services, subject to the terms and conditions of this Agreement, the Ground Lease, the Stadium Lease and the Stadium Management Agreement.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. EMPLOYMENT OF CONTRACTOR.

Stadium Manager hereby employs Contractor to perform the Services. Stadium Manager shall pay for all such Services which are consistent with the terms of this Agreement.

2. SERVICES TO BE PROVIDED.

- A. Except as and to the extent expressly set forth in this Agreement, Contractor shall furnish all Services necessary to satisfactorily complete the work required by Stadium Manager at Contractor's own risk and expense. The Recitals above and all of the exhibits referenced in this Agreement are attached and are incorporated by this reference.
- B. Stadium Manager shall provide, or cause to be provided, during the Term designated office and storage space within the Stadium for use by Contractor. The location of such office and storage space shall be in the sole discretion of Stadium Manager, and Stadium Manager may direct that the office and storage space be moved to a new location within the Stadium from time to time as it deems necessary.

- C. Except as expressly provided in Section 10 below, Contractor shall be responsible for all costs and expenses incurred in performing the Services, including costs and expenses of maintaining, repairing and replacing any furniture, fixtures, equipment, or other tangible property and all applicable taxes, staffing (including all managerial and Event staff), and training. Check-in staff, support staff, and managerial personnel including logistics, payroll, and other non-event deployment staffing shall not be billed to Stadium Manager unless otherwise agreed to in advance by Stadium Manager. As described in greater detail in Section 7.F hereof, Contractor agrees to fully abide by all sustainability and reuse programs established for or applicable to the Stadium, as each may be modified from time to time following the Effective Date.
- D. Without limiting the generality of any other provision in this Agreement, Contractor's provision of the Services shall be subject to the reasonable prior approval of Stadium Manager acting in conjunction with Contractor, including but not limited to staffing and the manner of Contractor's performance. Contractor shall not offer exclusivity to any supplier without the prior written approval of Stadium Manager.
- E. If at any time, Contractor fails or is otherwise prevented from providing all or any portion of the Services whether due to a suspension or termination of any licenses or permits or otherwise, then, in addition to any other right of Stadium Manager, Stadium Manager shall have the right, in its sole discretion, without the payment of any kind to Contractor, to provide through any available means the Services, or any portion thereof, until such time as Contractor has resumed its provision of the Services. In the event Stadium Manager exercises its rights pursuant to this Section, Contractor shall, and shall cause its employees and the Management Team (as defined in Section 10.D below), to cooperate and assist Stadium Manager in providing the Services.
- F. Notwithstanding the foregoing, and subject to any restrictions imposed by the Authority, including pursuant to the Stadium Lease and Stadium Management Agreement, the Stadium Manager and its designated agents reserve the right of access to all areas that Contractor is permitted to access, use and occupy hereunder for purposes of operating, inspecting, maintaining and repairing the Stadium (and all improvements therein or thereon) and for the purpose of determining whether the terms, covenants and conditions contained in this Agreement are being fully and faithfully observed and performed by Contractor. Use of any space or property that Contractor is permitted to access, use and occupy hereunder for purposes other than the operations to be conducted under this Agreement, without prior written approval of Stadium Manager in its sole discretion, is prohibited. Contractor shall not interfere with any other contractor, licensee or employee of the Authority, Stadium Manager or any other person working at the Stadium.

3. COMMENCEMENT OF SERVICES.

Contractor shall begin providing the Services upon the April 1, 2017 through the expiration of Term (as defined below) or the termination of this Agreement. Contractor shall complete the Services at the time and in the manner set forth in the Scope of Services or as mutually determined in writing by the Parties.

4. QUALIFICATIONS OF CONTRACTOR – STANDARD OF WORKMANSHIP.

- A. Contractor represents and maintains that it has the necessary expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained in this Agreement, and Stadium Manager expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such Services and duties and obligations in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.
- B. The plans, designs, specifications, estimates, calculations, reports, and other documents furnished under Exhibit A shall be of a quality acceptable to Stadium Manager. To be accepted as provided under this Agreement, any such work shall be a product of neat appearance and shall be well-organized, technically and grammatically correct, and checked, and shall identify the maker and checker. The minimum standard of appearance, organization, and content of the drawings shall be that used by Stadium Manager for similar projects.

5. 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 (the "Term") shall begin on the Effective Date of this Agreement and terminate on **March 31, 2022**, provided however, if this Agreement extends beyond a single fiscal year, the Term for subsequent fiscal years shall be conditioned upon approval of the Authority budget for the applicable fiscal year that includes the amounts due under this Agreement. The Stadium Manager shall have the option, in its sole discretion, to extend the Term for one (1) additional two (2) year period by notifying Contractor in writing of Stadium Manager's desire to exercise said option(s) not more than one hundred twenty (120) days prior to the expiration of the then-current Term, subject to mutual agreement as to rates.

6. WARRANTY.

Contractor expressly warrants that all 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 Stadium Manager when defects are due to the negligence, errors, or omissions of Contractor. If Contractor fails to promptly correct or replace Services, Stadium Manager may make corrections or replace Services and charge Contractor for the cost incurred by Stadium Manager.

7. PERFORMANCE OF SERVICES.

- A. Contractor shall perform all Services in an efficient and expeditious manner and shall work closely with and be guided by Stadium Manager. Contractor shall be as fully responsible to Stadium Manager 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. Contractor will perform all Services in a safe manner and in accordance with all Applicable Laws and safety regulations, the policies and procedures issued by the Stadium Manager relating to the Services, the general operating procedures of the Authority, and any and all other applicable rules, regulations, policies and directives established or implemented by the Authority and/or Stadium Manager, the designees of either of them, or the NFL, from time to time, including scheduling rules, regulations and policies, related to the use or operation of the Stadium (collectively, "Stadium Policies"). The term "Applicable Laws" as used in this Agreement shall mean any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order, whether now or hereafter existing, of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority, whether now or hereafter existing. The term "Governmental Authority" as used in this Agreement shall mean any federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), and any arbitrator to whom a dispute has been presented under Applicable Laws or by agreement of the Parties with an interest in such dispute.
- B. Contractor shall at all times maintain a sufficient number of qualified personnel at the Stadium and, if applicable, the Related Facilities (*e.g.*, offsite parking areas) for the performance of all of Contractor's obligations under this Agreement. Contractor shall cause the members of the Management Team to attend meetings to be scheduled by Stadium Manager at the Stadium from time to time during the Term to review the performance of the Services and to implement Stadium Manager's reasonable recommendations and directives for improving such performance.
- C. Contractor's authorized personnel who are scheduled to work at events at the Stadium as requested by Stadium Manager ("Events") shall be provided with ingress to and egress from the Stadium through a gate or gates designated for such purpose by Stadium Manager, without charge, during all days on which Events are held and at all other times necessary to enable Contractor to prepare for Events and fulfill its responsibilities under this Agreement. Contractor shall be bound by and comply with all rules, policies and procedures relating to security and access rights, including requirements related to screening and identification of Contractor's personnel, established from time to time by Stadium Manager. Nothing herein contained shall be held to limit or qualify the right of the Authority or Stadium Manager to a free and unobstructed use, occupation and control of the Stadium and ingress and egress for itself, its lessees and the public.

- D. Contractor shall obtain on or before the Commencement Date and shall thereafter maintain throughout the Term, at its cost and in its name, all licenses and permits necessary for the performance of the Services and any and all other licenses and permits required to be obtained by Contractor by the terms of the Stadium Lease. Stadium Manager shall cooperate with Contractor in connection with applications submitted by Contractor for any and all licenses and permits and renewals thereof. Contractor shall not submit any application for a permit or license without first providing Stadium Manager a reasonable opportunity to review it. Contractor shall furnish Stadium Manager with copies of such licenses and permits and renewals thereof as are physically maintained at the Stadium, and all other licenses or permits otherwise required under Applicable Laws or this Agreement, and shall surrender all licenses and permits to Stadium Manager upon termination of this Agreement.
- E. In the event that Contractor fails to obtain or maintain in full force and effect any material license or permit necessary for the performance of the Services, including upon a suspension applicable to an Event or revocation thereof, (a) Stadium Manager shall have the right (but no obligation) to perform or have another Person perform the applicable obligation without compensation to Contractor and, whether or not Stadium Manager exercises that right or its termination rights, Contractor shall be responsible to Stadium Manager for the loss of income and all other damages, including consequential and special damages, suffered by Stadium Manager as the result of Contractor's breach of this Agreement, including any loss of income; and (b) Contractor shall be considered in material breach of this Agreement, and Stadium Manager may, in addition to any other rights or remedies it may have, immediately terminate this Agreement.
- F. Contractor shall comply in all respects with the Santa Clara Business and Commercial Recycling Program, as the same shall be amended from time to time, and shall, in partnership with Stadium Manager, prepare and implement a plan (the "**Waste Reduction and Recycling Plan**") that targets 100% diversion of solid waste from all Events, including composting or other diversion of compostable organics. Contractor shall train its employees in the methods and objectives of the Waste Reduction and Recycling Plan and shall direct and cause its employees to not dispose of or discharge recyclables, compostables, waste, garbage, refuse or Hazardous Substances in any area in or outside the Stadium other than in areas specifically designated therefor. Contractor shall be responsible for expeditiously collecting, separating, recycling, bagging and delivering recyclables, compostables, trash and garbage generated within the Stadium by Contractor's employees, and Contractor shall cause its employees to deposit such recyclables, compostables, trash and garbage in appropriate containers or equipment in the locations specified by Stadium Manager, whereupon Stadium Manager shall be responsible for the further delivery and ultimate disposal of such recyclables, compostables, trash and garbage. In addition, Contractor shall separate, compact and recycle the trash generated by Contractor's employees at Events on non-Event days. Contractor shall take all action necessary to: (i) ensure that all such recyclables, compostables, trash and garbage are placed in bags and/or the appropriate receptacles or other containers

(which receptacles and containers shall be provided by Contractor) that are durable for transport and not easily susceptible to breakage or leakage, (ii) notify Stadium Manager when the centralized Stadium recyclable, compostable and garbage receptacles are full and need to be emptied, (iii) prevent recyclables, compostables and trash from piling up around the outside of the receptacles and from using the Stadium receptacles in lieu of transferring the recyclables, compostables and trash to the required locations as described herein and (iv) ensure that recyclables, compostables and trash do not spill out prior to or during transport. Contractor agrees to and is fully committed to participating in the separation and recycling of refuse in the Stadium and to minimize the amount of non-recyclable and non-compostable refuse to be removed from the Stadium. All recyclable, compostable, trash and garbage receptacles within the office area controlled by Contractor shall be provided by Contractor and shall be cleaned and sanitized by Contractor in accordance with the standards reasonably set from time to time by the Authority and/or Stadium Manager, to ensure a consistently high standard of sanitation meeting or exceeding the standards set by the Santa Clara County Public Health Department and/or the City. Contractor will comply with all federal, state and local recycling and composting requirements and such recycling and composting programs implemented from time to time by the Authority and/or Stadium Manager and all rules and regulations applicable to the Stadium's adherence to, and/or certification by, the Leadership in Energy and Environmental Design (LEED) Green Building Rating System. Contractor shall indemnify Stadium Manager and make Stadium Manager whole for any out of pocket costs incurred by Stadium Manager which are solely attributable to any direct and identifiable negligence or intentional act or omission of Contractor or any of its employees with respect to the recycling or trash removal program, including the expense of returned or rejected recyclable, compostable and trash removals due to mixing or contaminating the trash flow in violation of Applicable Laws or specific directives provided to Contractor in writing as part of the Stadium's sustainability and recycling, composting or trash removal programs. Stadium Manager will determine the type, appearance and location of the recyclable, compostable and trash receptacles.

- G. Contractor agrees not to use Hazardous Substances at the Stadium, except in accordance with Applicable Laws, and agrees to indemnify, defend, and hold the Indemnified Parties harmless for all Losses (as defined in Section 22.A below) arising out of its use, generation or storage of Hazardous Substances at the Stadium.

8. MONITORING OF SERVICES.

Stadium Manager may monitor the Services performed under this Agreement to determine whether Contractor's operations conform to Stadium operating policies and directives and to the terms of this Agreement. Stadium Manager may also monitor the Services to be performed to determine whether the Services are being conducted in accordance with applicable Stadium Policies, National Football League requirements, and Applicable Laws.

9. CORRECTION OF SERVICES.

Contractor agrees to correct any incomplete, inaccurate, or defective Services at no cost to Stadium Manager, when such defects are due to the negligence, errors, or omissions of Contractor. If any action of Contractor constitutes a breach, Stadium Manager may terminate this Agreement pursuant to the provisions described herein.

10. RESPONSIBILITY OF CONTRACTOR.

- A. Contractor shall be responsible for the professional quality, technical accuracy, and coordination of the Services furnished by it under this Agreement. Neither Stadium Manager's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Contractor shall be and remain liable to Stadium Manager in accordance with Applicable Laws for all damages to Stadium Manager caused by Contractor failure to perform any of the Services furnished under this Agreement.
- B. Any acceptance by Stadium Manager of plans, specifications, construction contract documents, reports, diagrams, maps, and other material prepared by Contractor shall not in any respect absolve Contractor from the responsibility Contractor has in accordance with customary standards of good professional practice in compliance with Applicable Laws.
- C. Contractor shall comply and otherwise abide by, all emergency and security procedures and protocols of the Stadium Manager, the Authority, the City, the Team, the NFL and promoters of Events as the Stadium Manager or such other Persons shall adopt from time to time. Such procedures and protocols may include, without limitation, (i) employee pat-down and screening, (ii) presentment by Contractor's employees of identification cards or badges issued by Stadium Manager, which may include reporting criteria such as bar codes, "Mag Stripes", "RFID" or other identifier systems; (iii) restricting access to certain parts of the Stadium to specified employees of Contractor as reasonably approved by the Stadium Manager (with respect to security clearance standards); and/or (iv) conduct by Contractor, at its sole expense, of Team-specified minimum background and such other security screening checks on all of Contractor's employees as the Stadium Manager shall request from time to time, which checks may vary as to job function. Contractor shall be required to use Stadium Manager's existing time tracking system to verify all employees working the event and to share all information collected regarding the Stadium Manager's event (with the exception of any proprietary information) with the Stadium Manager. Contractor shall enroll with the Stadium Manager's existing or successive software requirements (as may be updated as reasonably required by Stadium Manager) and Contractor shall be responsible for all such costs associated with its subscription or enrollment. Contractor shall be responsible for utilizing software provided by Stadium Manager to track completion of scheduled tasks for Events, daily work, or as mutually agreed upon by the Parties.

D. Personnel.

- i. Contractor shall hire, employ, train, supervise and discipline any and all persons necessary to provide the Services in accordance with the terms of this Agreement and shall use its best efforts to ensure that its employees continually practice the high standards of safety, courtesy and service customarily followed in the conduct of a first-class operation. Contractor shall use its best efforts to select qualified, competent and trustworthy employees. Any and all persons who furnish services under this Agreement, whether or not employed by Contractor prior to the Effective Date, are exclusively employees, subcontractors and/or non-affiliated third parties employed by Contractor and are not employees of the Authority, the City, StadCo or Stadium Manager. Such persons furnishing services under this Agreement shall be subject to appearance standards mutually acceptable to the parties hereto and as permitted by Applicable Laws, and shall wear, at all times while working at the Stadium, neat and clean uniforms provided by Contractor and approved by Stadium Manager. Such uniforms shall bear such lettering and insignia (including the name and logo of the Stadium, the Stadium naming rights sponsor, if required, and the location of the employee's assignment (*e.g.*, a Club Area or Suite area)) as Stadium Manager may require and shall be of a design reasonably satisfactory to Stadium Manager. Contractor shall cause its employees to conduct themselves in a professional and courteous manner, and not to unreasonably disturb or interfere with Events. Contractor shall at all times maintain accurate records of the names, addresses, employment history and other legal identification of those to whom Contractor issues employee badges, uniforms or other identifying items to ensure the proper identification and legal working status of Contractor's employees at the Stadium. Contractor shall conduct such background and other security screening checks on its employees as Stadium Manager shall reasonably request from time to time and shall not knowingly hire any person who has been previously terminated by the Authority, StadCo, Stadium Manager or any of their respective Affiliates or contractors. Upon Stadium Manager's request, and so long as any such action shall not be contrary to law, Contractor shall immediately remove from the Stadium any employee, agent, contractor or invitee of Contractor and permanently revoke such person's access credentials.
- ii. Contractor shall employ the Management Team, identified in clause (v) of this Section 10.D below, on a full-time, year-round basis. Contractor shall cause the members of the Management Team to be at the Stadium during all Events that Stadium Manager requires the Management Team to attend and during reasonable business hours. All changes in the Management Team shall require the prior written approval of Stadium Manager. Contractor shall, within thirty (30) business days of the removal of a Management Team member, provide Stadium Manager with the resumes of not fewer than three (3) suitable candidates to replace the removed employee. The non-local Management Team shall, on and following the

Effective Date and during the Term, be exclusively responsible for the provision of services under this Agreement and shall hold no job-related responsibilities relating to any other venue or site without Stadium Manager's prior written approval.

- iii. Contractor shall conduct regularly scheduled employee training programs appropriate to the Services provided, including any programs specifically requested by Stadium Manager, for all of its employees working in the Stadium (the "Employee Training Programs"). The Employee Training Programs will be mandatory for all employees, agents and any subcontractors of Contractor and, at a minimum, will include customer service, guest interaction, security procedures and specific job skills training, and will be conducted in such frequency as may be approved or directed by Stadium Manager. Contractor shall cause all Employee Training Programs to be periodically reviewed (no less frequently than annually) and updated to the extent necessary to maintain the standard of service requested by Stadium Manager. All employees of Contractor shall also be required to attend such policy and procedures training sessions as may be held by the Stadium Manager, as well as the Stadium orientation tour and training conducted by the Stadium Manager. Contractor shall not permit any employee, agent or subcontractor to work at an Event prior to his or her completion of the prescribed training sessions and Employee Training Programs.
- iv. Contractor shall promptly notify Stadium Manager upon voluntary or involuntary termination of employment of its employees or contractors and ensure that each such terminated individual is denied further access to the Stadium. In no event shall the Authority, the City, StadCo or Stadium Manager be liable, and Contractor shall indemnify, protect, and hold the Authority, the City, StadCo and Stadium Manager harmless, for Contractor's record keeping (or lack of record keeping), including the legal identification and working status of Contractor's employees and subcontractors, or for any other matters relating to Contractor's employees or subcontractors.
- v. The individuals, and such other individuals as the Stadium Manager may approve, are the "Management Team" for purposes of this Agreement are listed on Exhibit G, entitled "Management Team."

11. COMPENSATION AND PAYMENT.

- A. In consideration for Contractor's complete performance of the Services, Stadium Manager shall pay Contractor for all materials provided and services rendered by Contractor the rates set forth in Exhibit B, entitled "CONTRACTOR COMPENSATION AND FEES." The rates are based upon a four-hour minimum paid per scheduled employee per Event, subject to potential exceptions as mutually agreed upon by the Parties in advance.

- B. Contractor will bill Stadium Manager within 72 hours of the conclusion of Events. All other Service deployments shall be billed on a monthly basis for Services provided by Contractor during the preceding month, subject to verification by Stadium Manager. Except as otherwise expressly provided in Exhibit B, Stadium Manager will pay Contractor within forty-five (45) days of Stadium Manager's receipt of invoice, provided the invoice provided is accurate and free of errors. In the event Contractor's invoice is inaccurate, Stadium Manager will notify contractor of such errors. Stadium Manager will pay Contractor within forty-five (45) days of receipt of the corrected invoice.
- C. The Parties shall meet and confer as to appropriate staffing levels for each Event at least one (1) week prior to such Event, provided that Stadium Manager shall have the sole and final discretion to determine appropriate staffing numbers for each role at each Event. In the event Stadium Manager modifies staffing levels less than twenty-four (24) hours prior to an Event, Contractor shall make best efforts to contact all scheduled employees. Should Contractor be unable to reach an employee and that employee shows for scheduled work, Stadium Manager shall pay to Contractor a minimum of two (2) hours for that employee (subject to exceptions for matters of force majeure).

12. TERMINATION OF AGREEMENT.

- A. In addition to any other rights or remedies Stadium Manager may have, Stadium Manager may terminate this Agreement by written notice to Contractor if:
 - (i) Contractor fails to correct to the reasonable satisfaction of Stadium Manager any condition created or controlled by Contractor that, in Stadium Manager's reasonable judgment, poses a hazardous condition to occupants of the Stadium Complex, any of the Related Facilities (e.g., offsite parking areas), or any portion thereof, within twenty-four (24) hours after receipt of written notice from Stadium Manager; (ii) Contractor fails to perform any material obligation under this Agreement and such failure continues unremedied for a period of ten (10) days after receipt of written notice from Manager of the particular failure to perform (or thirty (30) days in the case that a remedy has commenced but cannot reasonably be accomplished in ten days); (iii) Contractor is placed into bankruptcy either voluntarily or involuntarily (and such involuntary proceeding is not dismissed within sixty (60) days), becomes financially insolvent, takes the benefit of any present or future insolvency statute, makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; (iv) Contractor transfers or permits a transfer of this Agreement in violation of Section 133; (v) Contractor fails to obtain and/or maintain required licenses and permits under Section 7.D; or (vi) Contractor fails to work cooperatively and in good faith with the Authority, Stadium Manager, any of their respective Affiliates or any of subcontractors of any of the foregoing. Contractor and Stadium Manager acknowledge and agree that termination of this Agreement by Stadium Manager pursuant to this Section 11.A shall be "for cause."

- B. Upon the termination or expiration of this Agreement, (1) Contractor shall immediately surrender possession of the Related Facilities, if any (including any and all leasehold and other improvements therein), uniforms, equipment (and related manuals and software) to Stadium Manager, (2) Contractor shall immediately assign to Stadium Manager or its designee(s) all right, title and interest of Contractor in and to all items purchased by Contractor on Stadium Manager's behalf in connection with the Services (including uniforms and equipment), (3) Contractor shall make all payments required to be made by Contractor under this Agreement, (4) to the extent permitted by Applicable Laws, Contractor shall immediately surrender possession of and assign to Stadium Manager all permits and licenses acquired by Contractor in compliance with Section 7.D and any Applicable Laws, and (5) all matters, rights and liabilities existing on the date of termination between the parties hereto shall be determined as of such termination date (except as described above), and discharged as promptly as possible thereafter, including any known claims for damages either party may have against the other for breach of the terms and conditions hereof. Any such surrender shall require delivery of possession in good condition, reasonable and ordinary wear and tear excepted and otherwise in compliance with the terms of this Agreement. Notwithstanding any termination or expiration of this Agreement, all liabilities and obligations of the parties will survive until they are fully satisfied.
- C. If the Stadium is destroyed or otherwise rendered unusable for more than thirty (30) days for any reason (a "Casualty Event"), Stadium Manager shall give Contractor a notice within ninety (90) days after the Casualty Event stating that whether the Authority intends to rebuild or restore the Stadium. If the notice states that the Authority will not rebuild or restore the Stadium, this Agreement shall be terminated. If the notice states that the Authority intends to rebuild or restore the Stadium, the Parties' obligations hereunder shall be abated during that period. If such notice states that the Authority reasonably believes that it will take longer than two (2) years to restore or rebuild the Stadium or, if a shorter amount of time, such amount of time is longer than the remainder of the Term, either party shall have the option of terminating this Agreement by written notice to the other at any time within one hundred and eighty (180) days after Stadium Manager gives such notice, and such termination shall be effective one hundred twenty (120) days after the other party's receipt of such notice. Contractor shall not be entitled to any monetary or other damages or compensation from Stadium Manager in the event of a Casualty Event.
- D. In the event of a material change in the labor market for the Services that significantly impacts Contractor's ability to operate under the terms of this Agreement (a "Market Change"), Contractor shall have the right to terminate this agreement effective March 31, 2020, subject to Contractor providing Stadium Manager notice of the Market Change in writing a minimum of one hundred twenty (120) days prior to termination effective date of March 31, 2020. Upon Stadium Manager's receipt of such notice, the Parties shall work in good faith to reasonably modify the rates under this Agreement to accommodate such Market Change. Should the Parties be unable to reach modified terms mutually agreeable

to the Parties within thirty (30) days of Stadium Manager's receipt of a valid notice of the Market Change, the Agreement will terminate on March 31, 2020.

13. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

- A. Stadium Manager and Contractor bind themselves and their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred by Contractor without the prior written approval of Stadium Manager. Contractor shall not hire subcontractors without express written permission from Stadium Manager.
- B. Stadium Manager may sell, assign, pledge and otherwise transfer or encumber (each, a "**transfer**") this Agreement and any or all of its rights and obligations hereunder to any other Person, including any source of or guarantor or insurer of financing or any trustee, collateral agent or other Person appointed in connection with such financing (each, a "**Manager Assignee**"), whether by security agreement, collateral assignment, transfer or otherwise; provided, that such transfer shall not relieve Stadium Manager of its obligations under this Agreement unless such Manager Assignee assumes in writing Stadium Manager's obligations under this Agreement. Upon reasonable prior notice from Stadium Manager, Contractor shall make any payments due hereunder to such Manager Assignee and shall execute and deliver any documents that Stadium Manager or any Manager Assignee may reasonably request to acknowledge and confirm that upon any such transfer, this Agreement will remain in full force and effect, will continue to be a legal, valid and binding obligation of Contractor enforceable in accordance with its terms (subject to applicable bankruptcy or insolvency laws and general principles of equity), and that (to the extent accurate and correct) neither Contractor, nor to Contractor's knowledge, Stadium Manager is in material breach or violation of this Agreement.
- C. Contractor acknowledges and agrees that, in the event the Stadium Management Agreement is terminated for any reason, the Authority and StadCo shall, in accordance with the Stadium Lease, employ a replacement manager for the Stadium, who shall, following the effective date of such employment, constitute the "Stadium Manager" for all purposes under this Agreement, provided, however, that for any period of time before a replacement manager is appointed, this Agreement may be assigned to the Authority or StadCo.

14. NO THIRD-PARTY BENEFICIARY.

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

15. 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 Stadium Manager, the Authority or StadCo. Contractor has full rights, however, to manage its employees in their performance of Services under this Agreement. All liabilities that may arise as a result of Contractor's status as an employer shall be borne exclusively by Contractor, including liability relating to payments required to be made under, and documents to be filed with respect to, the Federal Insurance Contribution Act and the Federal Unemployment Tax Act or any similar federal, state, city or local legislation or other Applicable Laws. Contractor is not authorized to bind Stadium Manager, the Authority or StadCo to any contracts or other obligations.

16. NO PLEDGING OF STADIUM MANAGER'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of the Stadium Manager or any other of the Indemnified Parties or incur any obligation in the name of such Persons. Contractor shall save and hold harmless the Authority, StadCo, Stadium Manager, their respective Affiliates, and their respective officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of credit by Contractor under this Agreement.

17. 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 Stadium Manager, 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 shall be deemed confidential. Notwithstanding the above, the Contractor acknowledges that the Authority is a California public entity that is subject to the California Public Records Act. Information disclosed to the Authority regarding the Contractor's Services in connection with the performance of this Agreement may be subject to public disclosure in accordance with the Public Records Act.

18. USE OF STADIUM MANAGER NAME OR EMBLEM.

Contractor shall have no right to use the trademarks, symbols, trade names or other intellectual property of the Stadium, the Authority, Stadium Manager or their respective Affiliates, or Stadium tenants or their Affiliates or other Event performers directly or indirectly, in connection with any production, promotion, service or publication, without the written approval of Stadium Manager.

19. OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, and other material developed, collected, prepared, or caused to be prepared under this Agreement shall be the property of Stadium Manager, but Contractor may retain and use copies thereof. Stadium Manager 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 the Services, including, but not limited to, the release of this material to third parties.

20. RIGHT OF STADIUM MANAGER TO INSPECT RECORDS OF CONTRACTOR.

Stadium Manager, through its authorized employees, representatives, or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for Services, to audit the books and records of Contractor for the purpose of verifying any and all charges invoiced 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 invoiced to Stadium Manager. Any invoiced charges not incurred by Contractor shall be disallowed by Stadium Manager. If such charges were paid by Stadium Manager, then contractor must refund all such charges, plus interest of one percent (1%) per month, within 60 days of identification of such charges.

Contractor shall submit to Stadium Manager any and all reports concerning its performance under this Agreement that may be requested by Stadium Manager in writing. Contractor agrees to assist Stadium Manager in meeting Stadium Manager's reporting requirements with respect to Contractor's Services hereunder.

21. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of Applicable Law.

22. HOLD HARMLESS/INDEMNIFICATION.

- A. Contractor shall indemnify, defend and hold harmless the Authority, Stadium Manager and the Additional Indemnitees, and their respective officers, directors, managers, members, partners, owners and employees ("**Indemnified Parties**") from and against all losses, costs, suits, actions, claims, damages, amounts paid in settlement, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "**Losses**"), resulting to, imposed upon, asserted against or incurred by any of them (including in any action between the parties) in connection with or arising out of (i) any breach by Contractor under this Agreement, (ii) any activity, inactivity, work or thing done or permitted by Contractor or its employees, agents or contractors in or upon the Stadium or Related Areas, including the performance of the Services, or (iii) any injury or damage to any Person or to the property of any Person caused by any action or omission of Contractor or its employees, agents or contractors.
- B. If any claim, demand, action or proceeding is made or commenced by any third party (a "**Third Party Claims**") against any Indemnified Party, the Indemnified Party shall give Contractor prompt notice thereof; the failure to give such notice

shall not affect the liability of Contractor under this Agreement except to the extent the failure materially and adversely affects the ability of Contractor to defend the Third Party Claim. Contractor shall have the right to assume the defense and resolution of the Third Party Claim, provided that (i) the Indemnified Party shall have the right to participate in the defense of the Third Party Claim at its own expense through counsel of its choice (control of the defense will remain with Contractor), (ii) Contractor shall not consent to the entry of any judgment or enter into any settlement that would require any act or forbearance on the part of the Indemnified Party or which does not unconditionally release the Indemnified Party from all liability in respect of the Third Party Claim or would otherwise bring dishonor or disrepute upon Authority, Stadium Manager, any of their respective Affiliates, without the prior written consent of the Indemnified Party, and (iii) the Indemnified Party may undertake the defense of the Third Party Claim, at Contractor's expense, if Contractor fails to (A) assume the defense within ten (10) business days after notice from the Indemnified Party or (B) diligently prosecute the defense.

23. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall purchase and maintain in full force and effect, at no cost to Stadium Manager insurance policies with respect to employees and vehicles assigned to the performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

24. AMENDMENTS.

This Agreement may be amended only with the written consent of both Parties.

25. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between Stadium Manager and Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of Stadium Manager prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon Stadium Manager.

26. 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.

27. WAIVER.

Contractor agrees that waiver by Stadium Manager 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.

28. NOTICES.

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

Name: Forty Niners Stadium Management Company LLC
Attention: Jim Mercurio
Address: 4949 Marie P. DeBartolo Way
Santa Clara, CA 95054

With a CC to: Legal Affairs
4949 Marie P DeBartolo Way
Santa Clara, CA 95054

And to Contractor addressed as follows:

Name: Landmark Event Staffing Services, Inc.
Attention: Michael Harrison
Address: 4790 Irvine Blvd.
Ste 105-323
Irvine, CA 92620

If notice is sent via email, a signed, hard copy of the material shall also be mailed. The workday the email was sent shall control the date notice was deemed given if there is a computer-generated confirmation of receipt returned to the sender on the date of transmission. An email transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

29. CAPTIONS.

The captions of the various sections, paragraphs, and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

30. LAW GOVERNING CONTRACT AND VENUE.

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

31. DISPUTE RESOLUTION.

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and Stadium Manager regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs, and cost of suit through mediation only. In the event of litigation, the prevailing Party shall recover its reasonable costs of suit, expert's fees, and attorney's fees. If mediation does not resolve the dispute, the Parties agree that the matter shall be litigated in a court of law, and not subject to the arbitration provisions of the Public Contracts Code.

32. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH STADIUM MANAGER"; and,
- B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

33. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Contractor certifies that to the best of its knowledge, no Stadium Manager, StadCo, Team, Authority, or City officer, employee, or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise Stadium Manager if a conflict arises.

34. SUPPLEMENTAL PROVISIONS

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

[Signatures continued on next page]

IN WITNESS WHEREOF, the Parties have caused this agreement for the performance of services to be executed by their duly appointed representatives as of the Effective Date.

STADIUM MANAGER:

FORTY NINERS STADIUM MANAGEMENT COMPANY LLC,
a Delaware limited liability company

DocuSigned by:

46F43190F711442...
By: _____
Name: Scott Sabatino
Title: Chief Financial Officer


4949 Marie P. DeBartolo Way
Santa Clara, CA 95054

Telephone: (408) 562-4949
Fax Number: (408) 727-4937

4/18/2017

CONTRACTOR:

LANDMARK EVENT STAFFING SERVICES, INC.,
a Delaware corporation


By: _____
Name: Michael Harrison
Title: Chief Executive Officer

4790 Irvine Blvd.
Ste 105-323
Irvine, CA 92620

Telephone: (714) 293-4248
Fax Number: (888) 709-5730

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
STADIUM MANAGER,
AND
LANDMARK EVENT STAFFING SERVICES, INC.**

ADDENDUM ONE

DEFINITIONS

The following terms shall have the meanings set forth below:

Affiliate: shall mean any Person directly or indirectly controlling or controlled by or under direct or indirect common control with a Person. For purposes of this definition, "control" when used with respect to any entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

Additional Indemnitees: shall mean the Authority's Affiliates (including without limitation, the Authority's Board of Directors, the City, its City Council, and all City or Agency commissions, officers, employees, volunteers and agents), the Bayshore North Project Enhancement Authority, the Successor Agency to the Santa Clara Redevelopment Agency, StadCo and its Affiliates, the Team and any Additional Team (*i.e.*, an additional NFL franchise that plays its "home" games at the Stadium) (and their respective Affiliates), Manager's Affiliates (if not any of the previously mentioned Persons), each other tenant of the Stadium and each Event promoter, and any mortgagee, bond trustee or other financial institution from time to time holding a lien or indenture upon Manager's interest in the Stadium, the Stadium Lease or the Stadium Management Agreement.

Default Rate: shall mean a rate per annum equal to the lesser of (i) fifteen percent (15.0%) and (ii) the maximum non-usurious rate permitted by applicable law, with adjustments in that varying rate to be made on the same date as any change in that rate.

Fiscal Year: shall mean the twelve (12) month period commencing April 1 of each year after the execution of this Agreement, except that the first Fiscal Year will commence on the Commencement Date of the Stadium Lease and end on the next following March 31. If this Agreement expires or terminates on a date other than March 31 of a particular year, there shall be a partial last Fiscal Year ending on the date of such termination.

Hazardous Substance: shall mean, as of any date: (a) any petroleum or petroleum products, flammable explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs); (b) any chemicals or other materials or substances which as of such date are defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants,"

MB

“infectious wastes,” “pollutants” or words of similar import under any environmental law; and
(c) any other chemical or other material or substance, exposure to which or use of which as of
such date is prohibited, limited or regulated under any environmental law.

Holidays: shall mean New Year’s Day, MLK Day, Cesar Chavez Day, President’s Day,
Easter Sunday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas
Eve, Christmas Day, New Year’s Eve.

Person: shall mean any individual, corporation, partnership, limited liability company,
association, trust or other entity whatsoever

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**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
STADIUM MANAGER
AND
LANDMARK EVENT STAFFING SERVICES, INC.**

EXHIBIT A

SCOPE OF SERVICES

1. Contractor Services: For each Event at the Stadium, Contractor shall provide the number of personnel that Stadium Manager requests for each of the roles listed below. All personnel provided by Contractor shall be certified by the California Bureau of Security and Investigative Services.
 - A. Management: Contractor shall employ the Management Team listed in Exhibit G and such other managers as are required to manage and operate the Services at the highest standards of employee competency, conduct and integrity. All manager and supervisors shall be Trained Crowd Manager (TCM) and National Incident Management System (NIMS) certified and shall have received at least eight hours of training on supervisory duties.
 - B. Event Manager: Contractor shall provide an Event Manager who works with Stadium Manager to manage the venue crowd management program. He or she directs Contractor's operations by passing on instructions to the event supervisors, who direct the staff in executing the crowd management plan. This individual is responsible for quality control at the venue. This is accomplished by moving around the venue to oversee Contractor's employees performing their jobs.
 - C. Supervisor: The Contractor shall provide Supervisory personnel who are responsible for directing the Event staff in providing a safe and enjoyable environment for guests. They direct and oversee the implementation of facility policies and procedures by the Event staff. They make decisions on the implementation of facility policy during event activities, incidents and emergencies. They communicate with Event staff personnel to execute the instructions of the Event Manager and the venue. They ensure that the staff is following the rules of the venue and are providing high quality guest services to the fans. They also mitigate and intercede to resolve any guest issues.
 - D. Event Security: The Contractor shall provide personnel who will assist the facility in providing a safe and enjoyable environment for the tenants and guests by implementing the policies and procedures of the facility. They are responsible for access control, assisting guests and answering questions, enforcing venue rules, responding to event staff and guest issues and cases of emergency and

communicating with law enforcement, emergency services and the public in a polite and courteous manner.

- E. Off Duty Officers: Contractor shall provide Off Duty Officers who shall (i) intervene and resolve any security situation within the Stadium, including conflicts and crowd control; (ii) have achieved success in a documented training course in screening techniques; (iii) communicate with patrons effectively and courteously, including in using radios and managing confrontation; (iv) effectuate Stadium Security policies (e.g., credential system, evacuation plans); (v) and have documented training history in (A) safe restraint and arrest techniques; and (B) Stadium Operating procedures and evacuation plan
 - F. Ushers: The Contractor shall provide Ushers who will welcome the guests and help guests find their assigned seats and other locations requested. They are responsible for assisting guests and answering questions, directing guests during the events, assisting guests in cases of emergency and communicating with the guest in a polite and courteous manner.
 - G. Ticket Takers: The Contractor shall provide staff who will examine admission tickets to verify authenticity. They are to refuse admission to individuals without proper tickets or event credential. They are responsible for assisting guests and answering questions, directing the guests during the events, assisting guests in cases of emergency and communicating with the guest in a polite and courteous manner.
 - H. Parking Security: The Contractor shall provide Parking Security staff personnel who will assist in providing a safe and enjoyable environment for the tenants and guests by implementing the policies and procedures of the facilities Parking Lots. They are responsible for access control, assisting guests and answering questions, enforcing venue parking rules, responding to event staff and guest issues and cases of emergency and communicating with law enforcement, emergency services and the public in a polite and courteous manner.
 - I. Parking Attendants and Flaggers: The Contractor shall provide Parking Attendants and Flaggers who will welcome the guests and help guests find available parking spaces and other locations requested. They are responsible for assisting guests and answering questions, directing guests during the events, assisting guests in cases of emergency and communicating with the guest in a polite and courteous manner.
2. Trainings: In addition to the above-listed role-specific trainings, Contractor shall pay one-half of the cost (as determined by Stadium Manager) for all personnel to be certified in the following trainings:
- A. NFL Best Practices.
 - B. 49ers Services Training.
 - C. Techniques for Effective Alcohol Management (TEAM).

D. Conflict Management (Conflict Management training shall be provided by Contactor through any documented conflict management training).

3. Radios: Contractor shall rent radios from Stadium Manager's official vendor and shall follow Stadium Manager's instructions regarding radio frequencies.

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**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
STADIUM MANAGER
AND
LANDMARK EVENT STAFFING SERVICES, INC.**

EXHIBIT B

CONTRACTOR COMPENSATION AND FEES

Compensation and fees for Services performed by Contractor under this Agreement shall be billed at the following rates for Year 1 (April 2017 – March 2018) of the Term:

- | | |
|--|--------------|
| 1. Event Manager | \$35.90/hour |
| 2. Supervisor | \$33.70/hour |
| 3. Off-Duty Law Enforcement Officer | \$47.80/hour |
| 4. Usher, Ticket Taker, Parking Security,
Parking Flagger, Parking Attendant,
Event Security | \$30.47/hour |

Compensation and fees for Services performed by Contractor under this Agreement shall be billed at the following rates for Year 2 (April 2018 – March 2019) of the Term:

- | | |
|--|--------------|
| 1. Event Manager | \$37.50/hour |
| 2. Supervisor | \$35.23/hour |
| 3. Off-Duty Law Enforcement Officer | \$49.75/hour |
| 4. Usher, Ticket Taker, Parking Security,
Parking Flagger, Parking Attendant,
Event Security | \$31.90/hour |

Compensation and fees for Services performed by Contractor under this Agreement shall be billed at the following rates for Year 3 (April 2019 – March 2020) of the Term:

- | | |
|--|--------------|
| 1. Event Manager | \$39.39/hour |
| 2. Supervisor | \$37.05/hour |
| 3. Off-Duty Law Enforcement Officer | \$52.01/hour |
| 4. Usher, Ticket Taker, Parking Security,
Parking Flagger, Parking Attendant,
Event Security | \$33.63/hour |

not

Compensation and fees for Services performed by Contractor under this Agreement shall be billed at the following rates for Year 4 (April 2020 – March 2021) of the Term:

- | | |
|--|--------------|
| 1. Event Manager | \$40.11/hour |
| 2. Supervisor | \$37.73/hour |
| 3. Off-Duty Law Enforcement Officer | \$52.97/hour |
| 4. Usher, Ticket Taker, Parking Security,
Parking Flagger, Parking Attendant,
Event Security | \$34.24/hour |

Compensation and fees for Services performed by Contractor under this Agreement shall be billed at the following rates for Year 5 (April 2021 – March 2022) of the Term:

- | | |
|--|--------------|
| 1. Event Manager | \$40.85/hour |
| 2. Supervisor | \$38.42/hour |
| 3. Off-Duty Law Enforcement Officer | \$53.96/hour |
| 4. Usher, Ticket Taker, Parking Security,
Parking Flagger, Parking Attendant,
Event Security | \$34.87/hour |

Subject to prior approval from Stadium Manager, time worked by an individual in direct performance of the in excess of eight (8) hours in a day shall be compensated as follows:

- such time between eight (8) hours and twelve (12) hours shall be compensated at one dollar (\$1.00) above the base rates listed above;
- such time greater than twelve (12) hours shall be compensated a twice (2x) the base rates listed above.

Base rates shall be increased by fifty percent (50%) for Services performed on Holidays as defined herein.



**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
STADIUM MANAGER
AND
LANDMARK EVENT STAFFING SERVICES, INC.**

EXHIBIT C

INSURANCE REQUIREMENTS

At all times during the term hereof, Contractor shall keep and maintain in full force and effect the following types of insurance coverage and/or bonds:

1. Commercial general liability insurance, including property damage, against liability for personal injury, bodily injury, death and damage to property occurring in or about the property in the amount of One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate.
2. Automobile liability in the amount of One Million Dollars (\$1,000,000) with respect to owned, hired and non-owned vehicles.
3. Workers compensation insurance, as required by applicable law.
4. Employer's liability in the amount of One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, by disease, and One Million Dollars (\$1,000,000) policy aggregate by disease.
5. Employment practices liability with limits of Five Million Dollars (\$5,000,000) including third party coverage.
6. Crime insurance including employee dishonesty covering all of Contractor's agents, contractors, managers and other employees in the amount of Five Hundred Thousand Dollars (\$500,000).
7. Liability insurance covering claims arising out of errors and omissions by vendors rendering professional services, in the amount of Five Million Dollars (\$5,000,000) each occurrence including contractual liability coverage, with all coverage retroactive to the earlier of the date of agreement or commencement of Contractor's services.
8. Umbrella or excess liability insurance in the amount of Ten Million Dollars (\$10,000,000) providing excess coverage over general liability, auto liability, garage liability and employer's liability specified above.

The above stated limits may be achieved by a combination of primary and excess/umbrella coverage. Any deductible or self-insured retention amounts are the sole responsibility of the Contractor.

At Stadium Manager's request from time to time (and in any event not less than 15 (fifteen) days prior to the expiration dates of any expiring policies or bonds furnished by Contractor), Contractor shall furnish to Stadium Manager certified copies or duplicate originals of all policies of insurance and bonds then maintained by Stadium Manager hereunder, or a certificate supplied by each such insurer and surety showing that the insurance and bonds required hereunder are in full force and effect and showing the limits thereof and that all such policies and bonds contain the provisions and endorsements required hereunder.

All insurance policies and bonds required to be maintained by Contractor shall be issued by insurers or sureties (as the case may be) reasonably satisfactory to client, authorized to do business in the state of California and having an AM Best rating and financial size category of A-/VII or better. All policies of the vendor shall be (i) primary and non-contributing with respect to any policies carried by client; (ii) with respect to liability insurance only, a provision including Stadium Manager as Additional Insured; (iii) a waiver by the insurer of any right to subrogate against Stadium Manager (iv) a severability of interest or endorsement; (v) a provision that the insurer will not cancel or change the coverage provided by such without giving the Stadium Manager thirty (30) days' prior written notice; and (vi) general liability be an "occurrence form" policy. Any policy of insurance required to be carried by Contractor that names Stadium Manager as Additional Insured shall not be subject to a deductible or self-insured retention, it being the intent of the parties that such insurance shall fully and completely insure such additional insured entities for all loss or expense.



**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
STADIUM MANAGER
AND
LANDMARK EVENT STAFFING SERVICES, INC.**

EXHIBIT D

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN
AGREEMENT WITH STADIUM MANAGER**

Termination of Agreement for Certain Acts.

- A. Stadium Manager may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Applicable Law;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a Stadium Manager contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.
 2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with Contractor can

¹ For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

be imputed to Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of Contractor, with Contractor's knowledge, approval or acquiescence, Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

- B. Stadium Manager may also terminate this Agreement in the event any one or more of the following occurs:
1. Stadium Manager determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or
 2. If Stadium Manager determines that Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with Stadium Manager, including, but not limited to, Contractor's failure to maintain a required State-issued license, failure to obtain a Stadium Manager business license (if applicable), or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the action to the Authority by filing a written request with the Authority Secretary within ten (10) days of the notice given by Stadium Manager to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the Authority Secretary. Contractor will have the burden of proof on the appeal. Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by Stadium Manager for the successful performance of the obligations of Contractor to Stadium Manager.

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**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
STADIUM MANAGER
AND
LANDMARK EVENT STAFFING SERVICES, INC.**

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I, Michael Harrison being first duly sworn, depose and state I am Executive VP/CEO of Landmark Event Staffing Services, Inc. and I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category (i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.) has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

LANDMARK EVENT STAFFING SERVICES, INC.

By: _____

Name: _____

Title: _____

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of OrangeOn 02/15/2017 before me, Laurie H. Ertmann

Date

Here Insert Name and Title of the Officer

personally appeared Michael Harrison

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature: Laurie H. Ertmann

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached DocumentTitle or Type of Document: Affidavit of Compliance with Ethical Standards

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)Signer's Name: Michael Harrison

Signer's Name: _____

☒ Corporate Officer — Title(s): CEO☐ Corporate Officer — Title(s): _____☐ Individual☐ Individual☐ Partner — ☐ Limited ☐ General☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Attorney in Fact☐ Trustee☐ Trustee☐ Guardian or Conservator☐ Guardian or Conservator☐ Other: _____☐ Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**
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**RIGHT THUMBPRINT
OF SIGNER**
Top of thumb here

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN
STADIUM MANAGER
AND
LANDMARK EVENT STAFFING SERVICES, INC.**

EXHIBIT G

MANAGEMENT TEAM

President/COO	Peter Kranske
Executive VP/CEO	Michael Harrison
VP/Operations	Grant Haskell
Director of Development	Brian Campbell
Regional Manager	Nick Bermensolo
Branch Manager	Erik Rodriquez
ODO Manager	John Crabtree
Admin Manager	Christine Ho

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FIRST AMENDMENT TO AGREEMENT FOR THE PERFORMANCE OF SERVICES

This FIRST AMENDMENT TO AGREEMENT FOR THE PERFORMANCE OF SERVICES (this "First Amendment"), effective as of March 10, 2017 (the "First Amendment Effective Date"), amends the AGREEMENT FOR THE PERFORMANCE OF SERVICES, dated as of February 15, 2017 (the "Agreement"), by and between **Forty Niners Stadium Management Company LLC** ("Stadium Manager"), a Delaware limited liability company, with principal offices at 4900 Marie P. DeBartolo Way, Santa Clara, CA 95054, and **Landmark Event Staffing Services, Inc.**, a Delaware corporation, with its principal place of business located at 4131 Harbor Walk Drive, Fort Collins, CO 80525 ("Contractor"). Capitalized terms not defined herein have the meaning given to them in the Agreement.

WHEREAS, Stadium Manager and Contractor have agreed to modify certain insurance requirements under the Agreement;

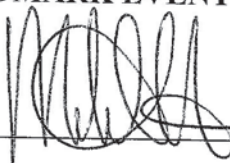
NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the sufficiency of which is hereby acknowledged, the Stadium Manager and Contractor agree to modify the Agreement as follows:

1. Exhibit C to the Agreement shall be amended and restated in its entirety as attached to this First Amendment.

Except as expressly set forth in this First Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

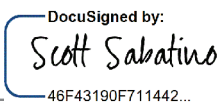
IN WITNESS WHEREOF, Stadium Manager and Contractor have caused this First Amendment to be executed by an authorized representative as of the First Amendment Effective Date.

LANDMARK EVENT STAFFING SERVICES, INC.

By: 

Name: Michael Harrison
Title: Chief Executive Officer

FORTY NINERS STADIUM MANAGEMENT COMPANY LLC

By:  DocuSigned by:
46F43190F711442...

Name: Scott Sabatino
Title: Chief Financial Officer

4/18/2017

EXHIBIT C

INSURANCE REQUIREMENTS

At all times during the term hereof, Contractor shall keep and maintain in full force and effect the following types of insurance coverage and/or bonds:

1. Commercial general liability insurance, including property damage, against liability for personal injury, bodily injury, death and damage to property occurring in or about the property in the amount of One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate.
2. Automobile liability in the amount of One Million Dollars (\$1,000,000) with respect to owned, hired and non-owned vehicles.
3. Workers compensation insurance, as required by applicable law.
4. Employer's liability in the amount of One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, by disease, and One Million Dollars (\$1,000,000) policy aggregate by disease.
5. Employment practices liability with limits of Five Million Dollars (\$5,000,000) including third party coverage.
6. Crime insurance including employee dishonesty covering all of Contractor's agents, contractors, managers and other employees in the amount of Five Hundred Thousand Dollars (\$500,000).
7. Liability insurance covering claims arising out of errors and omissions by vendors rendering professional services, in the amount of Five Million Dollars (\$5,000,000) each occurrence including contractual liability coverage, with all coverage retroactive to the earlier of the date of agreement or commencement of Contractor's services.
8. Umbrella or excess liability insurance in the amount of Ten Million Dollars (\$10,000,000) providing excess coverage over general liability, auto liability, garage liability and employer's liability specified above.

The above stated limits may be achieved by a combination of primary and excess/umbrella coverage. Any deductible or self-insured retention amounts are the sole responsibility of the Contractor.

At Stadium Manager's request from time to time (and in any event not less than 15 (fifteen) days prior to the expiration dates of any expiring policies or bonds furnished by Contractor), Contractor shall furnish to Stadium Manager certified copies or duplicate originals of all policies of insurance and bonds then maintained by Stadium Manager hereunder, or a certificate supplied by each such insurer and surety showing that the insurance and bonds required hereunder are in full force and effect and showing the limits thereof and that all such policies and bonds contain the provisions and endorsements required hereunder.



All insurance policies and bonds required to be maintained by Contractor shall be issued by insurers or sureties (as the case may be) reasonably satisfactory to client, authorized to do business in the state of California and having an AM Best rating and financial size category of A-/VII or better. All policies of the vendor shall be (i) primary and non-contributing with respect to any policies carried by client; (ii) with respect to liability insurance only, a provision including Stadium Manager, Santa Clara Stadium Authority, Forty Niners SC Stadium Company LLC and Forty Niners Football Company LLC as Additional Insured; (iii) a waiver by the insurer of any right to subrogate against Stadium Manager, Santa Clara Stadium Authority, Forty Niners SC Stadium Company LLC and Forty Niners Football Company LLC (iv) a severability of interest or endorsement; (v) a provision that the insurer will not cancel or change the coverage provided by such without giving the Stadium Manager thirty (30) days' prior written notice; and (vi) general liability be an "occurrence form" policy.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a single name or set of initials.



FORTY NINERS STADIUM MANAGEMENT COMPANY

March 8, 2022

VIA CERTIFIED MAIL

Landmark Event Staffing Services, Inc.
Attn: Michael Harrison
4790 Irvine Blvd.
Ste 105-323
Irvine, CA 92620

Dear Mr. Harrison,

We are writing to provide formal written notice that Forty Niners Stadium Management Company LLC is hereby exercising its option, under Section 5 of the Agreement for the Performance of Services by and between Landmark Event Staffing Services, Inc. and Forty Niners Stadium Management Company LLC dated February 15, 2017 (the "Agreement"), to extend the Term of our Agreement for an additional two (2) year period through March 31, 2024 at the rates contained in SCHEDULE 1 to this letter.

All other terms and obligations shall remain unchanged during the extended Term of the Agreement.

We look forward to continuing our partnership with you and your team.

Sincerely,

JIM MERCURIO

Executive Vice President, General Manager
Forty Niners Stadium Management Company LLC

Acknowledged and Agreed:

Landmark Event Staffing Services, Inc.

Date: 3/8/22



FORTY NINERS STADIUM MANAGEMENT COMPANY

SCHEDULE 1

Compensation and fees for Services performed by Contractor during the extended Term of the Agreement shall be billed at the following rates (which shall replace the rates contained in Exhibit B to the Agreement):

4/1/2022 – 3/31/2023

- | | |
|--|--------------|
| 1. Event Manager | \$40.85/hour |
| 2. Supervisor | \$39.76/hour |
| 3. Off-Duty Law Enforcement Officer | \$61.07/hour |
| 4. Usher, Ticket Taker, Parking Security,
Parking Flagger, Parking Attendant,
Event Security | \$36.09/hour |

4/1/2023 – 3/31/2024

- | | |
|--|--------------|
| 1. Event Manager | \$40.85/hour |
| 2. Supervisor | \$40.76/hour |
| 3. Off-Duty Law Enforcement Officer | \$61.69/hour |
| 4. Usher, Ticket Taker, Parking Security,
Parking Flagger, Parking Attendant,
Event Security | \$36.99/hour |

Subject to prior approval from Stadium Manager, time worked by an individual in direct performance of the in excess of eight (8) hours in a day shall be compensated as follows:

- Such time between eight (8) hours and twelve (12) hours shall be compensated at two dollars (\$2.00) above the base rates listed above; and
- Such time greater than twelve (12) hours shall be compensated a twice (2x) the base rates listed above.

Base rates shall be increased by fifty percent (50%) for Services performed on Holidays as defined herein.



Agenda Report

22-415

Agenda Date: 3/22/2022

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Report from Stadium Authority for Action on the Stadium Manager's Request to Exercise Option to Extend Term of Agreement with Landmark Event Staffing Services, Inc. for Levi's Stadium Event Security Services

BOARD PILLAR

Ensure Compliance with Measure J and Manage Levi's Stadium

BACKGROUND

On October 8, 2019, the Stadium Authority Board (Board) approved Ordinance No. 2005 amending Chapter 17.30 of the City Code (Stadium Authority Procurement Policy), which rescinded the delegation to the Executive Director to enter into agreements without prior Board approval. As result of Ordinance No. 2005, the Stadium Manager is also required to request Board approval before entering into agreements on behalf of the Stadium Authority. As of the effective date of the Ordinance (November 8, 2019), all Stadium Authority agreements for services, supplies, materials, and equipment require the approval of the Stadium Authority Board.

As the Stadium Manager, Forty Niners Stadium Management Company, LLC is responsible for maintaining "the Stadium in the Required Condition and operate the Stadium as a quality NFL and multi-purpose public sports, public assembly, exhibit and entertainment facility" as required by the Management Agreement between the Stadium Authority and Stadium Manager.

On April 17, 2017, the Stadium Authority Board adopted Resolution No. 17-4 (Resolution of the Santa Clara Stadium Authority Consenting to a Service Agreement between Forty Niners Stadium Management Company and Landmark Event Staffing Services, Inc. for Event Security Services) with the exception of the agreement's two one-year extensions; and noted and filed an Amendment No. 1 to include the Stadium Authority as additional insured under the Insurance Requirements of the agreement. Under Section 5 - Term of Agreement, the agreement terminates on March 31, 2022 and provides the Stadium Manager with an option to extend the term for one additional two-year period by notifying Landmark of its desire to exercise the extension option, subject to mutual agreement of rates.

The Stadium Manager is now requesting approval to exercise its option to extend the term of the existing Agreement for the Performance of Services by and between Landmark Event Staffing Services, Inc. (Landmark) and Forty Niners Stadium Management Company for security services at Levi's Stadium for one additional two-year period through March 31, 2024.

Chapter 17.30.070 of the City Code states that, "Except for reserved purchase order numbers assigned by the purchasing officer, the purchasing officer shall not issue any purchase order or

award any contract for supplies, materials, or equipment unless there exists an unencumbered appropriation in the proper account of the Stadium Authority to which the purchase is to be charged.” However, Section 5 of the agreement provides that, “...if this Agreement extends beyond a single fiscal year, the Term for subsequent fiscal years shall be conditioned upon approval of the Authority budget for the applicable fiscal year that includes the amounts due under this Agreement.”

DISCUSSION

As described in an April 4, 2017 report to the Board regarding the original agreement, the Stadium Manager conducted a Request for Proposal (RFP) process for security services for pre-event, event, and post-event services for the stadium and surrounding areas and invited six security firms to participate. Companies submitting proposals provided information on their experience, training, local management, cost and organizational approach and Landmark was selected as the firm best able to perform the required scope of work.

Security services are critical to the ongoing operation of Levi’s Stadium. Landmark has provided security services for Levi’s Stadium since 2014. Under the existing agreement’s scope of work, Landmark provides personnel in the following categories as requested by the Stadium Manager for each event at Levi’s Stadium: Management, Event Manager, Supervisor, Event Security, Off Duty Officers, Ushers, Ticket Takers, Parking Security, and Parking Attendants and Flaggers. The agreement requires that all personnel provided by Landmark be certified by the California Bureau of Security and Investigative Services.

The agreement with Landmark is based on an hourly schedule on a per event basis for StadCo for NFL events and Stadium Authority for Non-NFL events. The agreement outlines a schedule of fee for each year of services. The proposed rates for April 1, 2022 through March 31, 2023 and April 1, 2023 through March 31, 2024 are outlined under Schedule 1 in the written notice provided by the Stadium Manager (attached to corresponding report #22-414). Landmark’s staffing rates for FY 2017/18 through FY 2021/22, as outlined in the existing agreement, and proposed rates for FY 2022/23 through FY 2023/24, as outlined in the written notice that is pending the Board’s approval, are summarized in Table 1:

Table 1: Landmark Staffing Rate Summary

Job Category	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
Event Manager	\$35.90	\$37.50	\$39.39	\$40.11	\$40.85	\$40.85	\$40.85
Supervisor	\$33.70	\$35.23	\$37.05	\$37.73	\$38.42	\$39.76	\$40.76
Off-Duty Law Enforcement Officer	\$47.80	\$49.75	\$52.01	\$52.97	\$53.96	\$61.07	\$61.69
Usher, Ticket Taker, Parking Security, Parking Flagger, Parking Attendant, Event Security	\$30.47	\$31.90	\$33.63	\$34.24	\$34.87	\$36.09	\$36.99

Staff recommends approval of the Stadium Manager’s request to exercise its option to extend the term of the agreement with Landmark by one additional two-year period through March 31, 2024 to ensure continuity of security services for Levi’s Stadium events. The Stadium Authority will require full supporting documentation before releasing public funds upon procurement of supplies and services. This requirement is consistent with the Stadium Authority Board’s March 27, 2019 direction to staff to stop payment of any additional invoices for services unless there is substantial documentation of services rendered which must also be in compliance with State law and City Code.

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 existing agreement does not include a not to exceed amount. However, the costs of the Landmark agreement are based on an hourly schedule on a per event basis for both Stadium SC Stadium Company (StadCo) for NFL events and Stadium Authority for Non-NFL events. StadCo will be responsible to the Stadium Manager for costs associated with NFL events. It is expected that the cost for Non-NFL event services will be borne either by the event promoter or by the revenue generated from the event.

The projected net revenues from the Non-NFL events at the Stadium are accounted for in the FY 2022/23 Stadium Authority Operating Budget under the Net Non-NFL Events line item which aligns with Stadium Manager’s verbal communication to staff that the costs of the security services are included in the FY 2022/23 budget.

There are also planning costs from meetings between the Stadium Manager and Landmark management that are charged to Shared Stadium Expenses and split 50/50 between the Stadium Authority and StadCo. The FY 2022/23 Operating Budget, Shared Expenses takes into consideration the new rates. Service costs for FY 2023/24 will be subject to future budget appropriations.

COORDINATION

This report has been coordinated with the City’s Police Department and the Stadium Authority Counsel and Treasurer’s Offices.

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.

RECOMMENDATION

1. Approve the Stadium Manager’s request to exercise its option to extend the term of the agreement with Landmark by one additional two-year period through March 31, 2024, and authorize staff to approve and process the reimbursement of such costs upon receiving final invoices and supporting documentation from the Stadium Manager.

Prepared by: Christine Jung, Assistant to the Executive Director

Reviewed by: Office of the Executive Director



Agenda Report

22-358

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Report and Presentation from the Independent Redistricting Commission on the 2020 Census Redistricting Process and its Adoption of a Final Map; Action on the Introduction of an Ordinance Adopting the New Council District Map

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

Every ten years, after the U.S. Census is conducted, city council district lines must be reviewed and possibly adjusted to ensure each council district contains approximately the same number of residents. This process is known as redistricting. The redistricting process is a non-political process of reviewing census data and ensuring that council district lines are accurately drawn so that each district contains a fairly equal population. The City is required to adopt its final map 205 days before the next regular election. Deadline for submittal of final map for November 8, 2022 election is April 17, 2022.

The City must adopt boundaries for all council districts so that the districts will be substantially equal in population. According to the FAIR MAPS Act, districts must meet the following requirements:

District Map Criteria

- Comply with federal requirements of population equality and the Voting Rights Act
- Have districts that are geographically contiguous (connected).
- Maintaining the geographic integrity by minimizing division of local neighborhoods and communities of interest.
- Have districts that are easily identifiable, and to the extent practicable, bonded by natural and artificial barriers, streets, and boundaries.
- Draw districts that are geographical compactness where nearby areas of population are not bypassed in favor of more distant populations.
- Do not favor or discriminate against a political party.

On July 6, 2021, the City Council approved the formation of an Independent Redistricting Commission (Commission) that was tasked to redraw the Council district boundaries and adopt a final map. The Commission is composed of seven members and one alternate representing each of the six Council districts and one citywide member, all of whom are Santa Clara residents. They have dedicated the past 7 months to completing the redistricting process on behalf of the City.

DISCUSSION

To assist staff with resourcing the redistricting process, the City secured Lapkoff & Gobalet

Demographic Research, Inc. (Lapkoff and Gobalet). Lapkoff and Gobalet has supported redistricting projects since 1990 including redistricting work after the 1990, 2000, and 2010 U.S. Censuses. The firm previously worked with the City on its past City Charter Review Committees, the City Ad-Hoc Redistricting Committee and assisted with the development of the map that was court-ordered in 2018. Lapkoff and Gobalet has been instrumental in facilitating and assisting the City and the Commission through the redistricting process.

Public Notices and Outreach

While conducting the redistricting process, the City took steps to coordinate specific outreach requirements that must be met. At a minimum, four public hearings are required. One of these public hearings must be held prior to issuing the first draft map, two must be held after the draft map is issued, and one must be held on a weekend or weeknight after 6:00 p.m. Live translation is also required if requested at least 48 or 72 hours in advance depending on how much notice is provided. In addition to the four required public hearings, the City created a specific redistricting process webpage, and provided an opportunity for residents to provide input through promote public hearings, ecomment, city calendar alerts, etc., and established an email address for feedback. Additional public hearings were held.

The City took steps to encourage public participation including a good faith effort to provide information to local media and social media. City staff used social media by posting information on the City's redistricting process and opportunities for public participation on a variety of platforms including Facebook, Instagram, and Twitter. The City published public notices in the Santa Clara Weekly informing the public of the public hearings and prior to the adoption of the Final Map. The City also took steps to provide information in multiple languages including Spanish, Chinese and Vietnamese. The Public had the opportunity to seek live translation services if needed at any of the Commission meetings. In accordance to Elections Code 21628, the proposed final map was published on the City's Independent Redistricting website for at least seven days prior to adoption.

Public Hearings

Public hearings were held on October 23, 2021, December 9, 2021, January 13, 2022, and January 29, 2022, February 10, 2022, and February 28, 2022 where presentations were provided by staff and Lapkoff and Gobalet, on the redistricting process and criteria and the 2020 Census data; demonstration of mapping tools available for public participation; and direction was provided to staff and our demographers by the Commission on district boundary mapping alternatives to be explored. Additionally, these hearings provided opportunities for public participation, input, comment, and testimony on the redistricting process, communities of interest, and potential district boundary adjustments for consideration.

During the February 10, 2022 public hearing, the Commission considered the fifteen (15) draft district maps and submaps submitted by the public, commissioners, and Lapkoff and Gobalet. The Commission also took into consideration testimony from the community provided at each of the Redistricting Commission Meetings. Following the close of the public hearing, the Commission selected Map 4A as the proposed final map. It should be noted that the criteria in the FAIR MAPS Act were carefully considered, as well as the Commission's desire to maintain local neighborhoods and existing communities of interest.

Map 4A (Adopted Plan) changes the City Council boundaries in two areas:

1. Area moved from District 2 to District 1 (population = 1,638): This area's boundaries are:

- Highway 101 (northern boundary),
- the railroad tracks (southern boundary),
- San Tomas Expressway (eastern boundary),
- the city's western City limits.

2. Area moved from District 4 to District 5 (population = 572): This area's boundaries are:

- El Camino Real (northern boundary),
- Homestead Rd. (southern boundary)
- San Tomas Expressway - Madera Dr. - Las Palmas Dr. - Arroyo Dr. - White Dr. (eastern boundary)
- Saratoga Creek - Kiely Blvd (western boundary)

(Census 2020 population data, adjusted by the California Statewide Database)

The February 28, 2022 duly noticed public hearing represents the sixth public hearing in order to complete the redistricting process. At the February 28 public hearing, the Commission reviewed Map 4A and unanimously approved Map 4A as the Final Map for the City of Santa Clara's district based elections.

Santa Clara Independent Redistricting Commission Meeting Summary

Date		Action
September 23, 2021	Workshop	Independent Redistricting Commission overview and training on Brown Act, Public Records Act and Redistricting Process
October 23, 2021	Hearing	Review of Fair Maps Act requirements, process and criteria, Presentation on Communities of Interest, Review of New Census Data, Presentation regarding the Pieces Tool for Plan Drawing; public input and comments
December 9, 2021	Hearing	Review of Fair Maps Act requirements, process and criteria, public input and comments on communities of interest
January 13, 2022	Hearing	Review of Fair Maps Act requirements, process and criteria, Presentation of Demographer's Draft Map, Review of Public Submitted Maps; public input and comments

January 29, 2022	Hearing	Review of Criteria for a District Map, Review of Demographer and Public Submitted Maps; Review of Neighborhood Maps and Plan Comparisons; public input and comments
February 10, 2022	Hearing	Review of maps and Commission selection of the proposed final draft map; public input and comments
February 28, 2022	Hearing	Reviewed Map 4A and Adopted Map A as the Final Map for the City

The Commission has completed the redistricting process and has adopted a final map. The City Council will now need to adopt an ordinance to update the existing district map with the newly adopted Council District Map.

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 was coordinated with the Independent Redistricting Commission, City Manager's Office 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

Approval of the introduction of an ordinance adopting a new City Council District map describing the district boundaries for the City of Santa Clara's By-District elections.

Approved by: Hosam Haggag, City Clerk

ATTACHMENTS

1. Ordinance
2. Exhibit a - Final map 4A

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA, ADJUSTING THE CITY COUNCIL VOTING
DISTRICT BOUNDARIES FOLLOWING THE 2020
DECENNIAL CENSUS, ADOPTING A NEW CITY COUNCIL
DISTRICT MAP DESCRIBING DISTRICT BOUNDARIES
FOR THE CITY OF SANTA CLARA'S BY-DISTRICT
ELECTIONS**

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

WHEREAS, California Elections Code section 21601 requires that following the release of the 2020 decennial census data, all local governments that elect by district must redraw their district lines to assure that all districts have nearly equal population;

WHEREAS, the California Elections Code section 21622 requires that the City complete its redistricting process by April 17, 2022;

WHEREAS, on July 6, 2021, the City Council adopted Resolution 21-8988 of the City of Santa Clara establishing an Independent Redistricting Commission to conduct public engagement and to adopt a City Council District Map following review of the 2020 US Census Data;

WHEREAS, the Independent Redistricting Commission held public hearings on October 23, 2021 and December 9, 2021 to receive public input regarding the composition of the City's voting districts before any maps were drawn;

WHEREAS, the Independent Redistricting Commission held public hearings on January 13, 2022, January 29, 2022, and February 10, 2022, where the public was invited to provide input on the composition of the Council Districts and on the proposed public submitted boundary maps, in addition to the maps prepared by the City's retained demographer;

WHEREAS, on February 28, 2022, the Independent Redistricting Commission held a final public hearing on the proposal to establish district boundaries, reviewed additional public input, adopted the City Council District Map 4A, incorporated in, and set forth in this Ordinance; and

WHEREAS, the City of Santa Clara desires to adopt an Ordinance setting forth the new City Council District Map adopted by the City of Santa Clara Independent Redistricting Commission.

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

SECTION 1: For the election of members of the City Council, except for the Mayor, to be held in November 2022 and for each election thereafter, there shall be 6 (six) districts each of which shall be represented by one Council Member. Such districts shall be as designated on that certain map adopted by the City of Santa Clara Independent Redistricting Commission dated February 28, 2022, as the boundaries of such districts shall be amended through a redistricting process following each decennial United States Census. A copy of the map is attached hereto as Exhibit A and incorporated by reference.

SECTION 2: City Staff, including the City's retained demographer when working with the Registrar of Voters during plan implementation and adjustment of precinct configurations, are authorized to make required technical amendments to the new redistricting plan that do not substantively affect the populations in the districts, the district boundaries, or the intent of this ordinance, and shall advise the City of any such amendments that are bound to be required in plan implementation.

SECTION 3: 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 4: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 5: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this XX day of XXXXXX, 2022, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Exhibit A – Independent Redistricting Commission Adopted Final Map 4A

City of Santa Clara
Redistricting Plan 4A

Lapkoff & Gobalet Demographic Research, Inc.
2/14/2022

Plan 4A changes the City Council boundaries in two areas:

1. Area moved from District 2 to District 1: This area's boundaries are

- Highway 101 (northern boundary),
- the railroad tracks (southern boundary),
- San Tomas Expressway (eastern boundary),
- the city's western City limits.

(Census 2020, adjusted by the California Statewide Database, counted 1,638 persons in this area)

2. Area moved from District 4 to District 5: This area's boundaries are

- El Camino Real (northern boundary),
- Homestead Rd. (southern boundary)
- San Tomas Expressway – Madera Dr. – Las Palmas Dr. – Arroyo Dr. – White Dr. (eastern boundary)
- Saratoga Creek – Kiely Blvd (western boundary)

(Census 2020, adjusted by the California Statewide Database, counted 572 persons in this area)

Appended are:

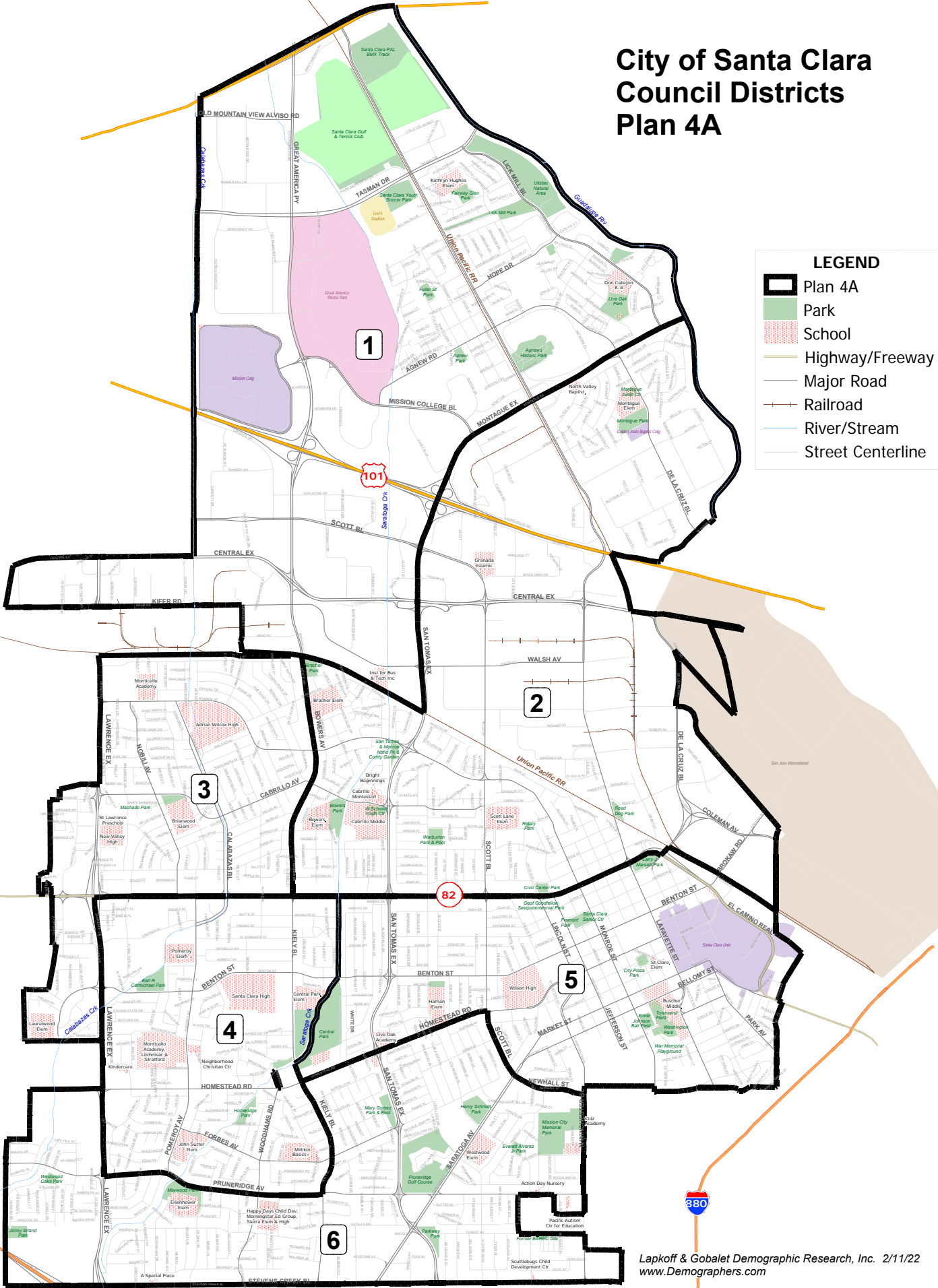
An overview map of Plan 4A

Two maps that show neighborhoods

Map that shows areas where Plan 4A would adjust current Council district

Data table, showing the total population and race/ethnic distribution of each council district.

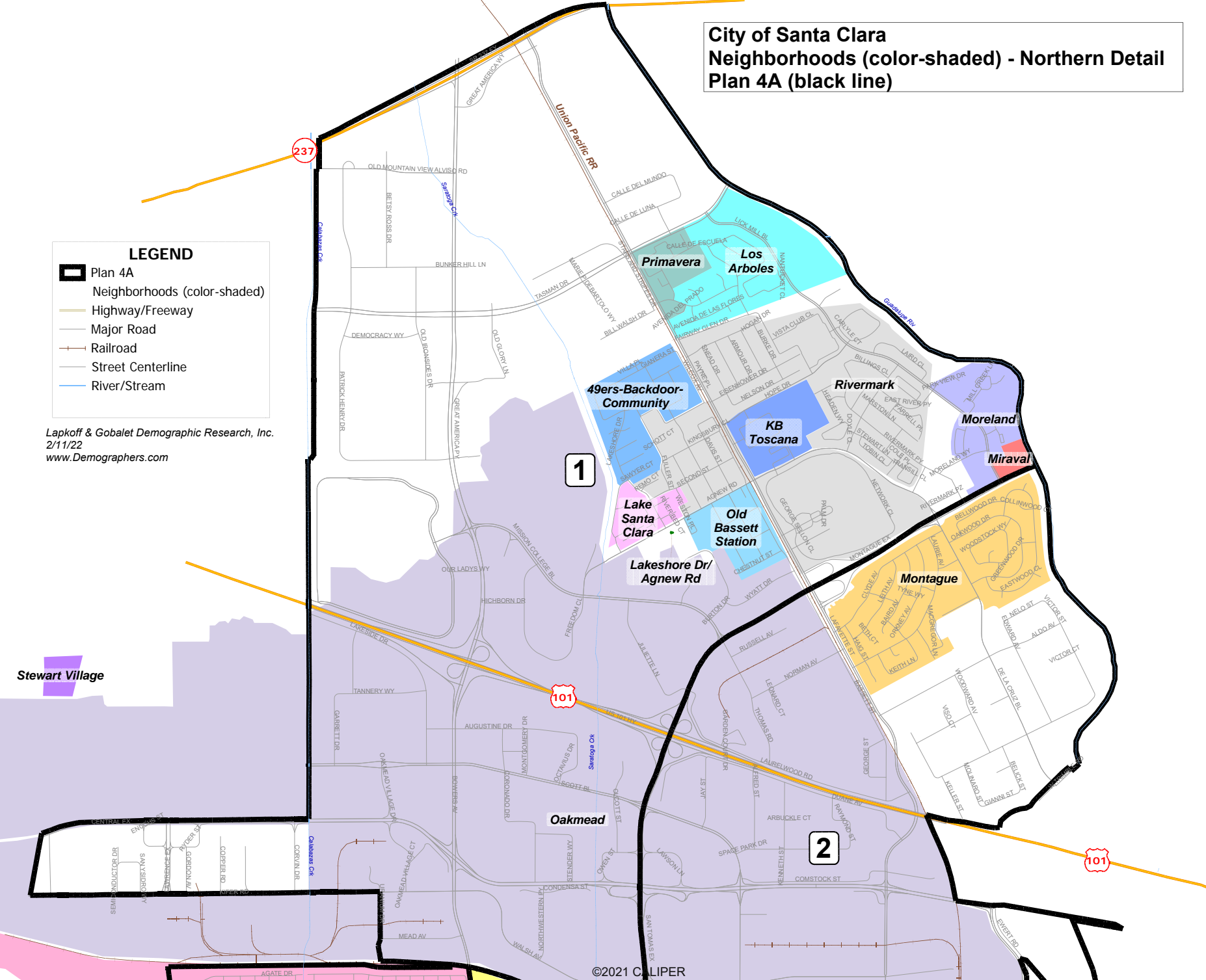
City of Santa Clara Council Districts Plan 4A



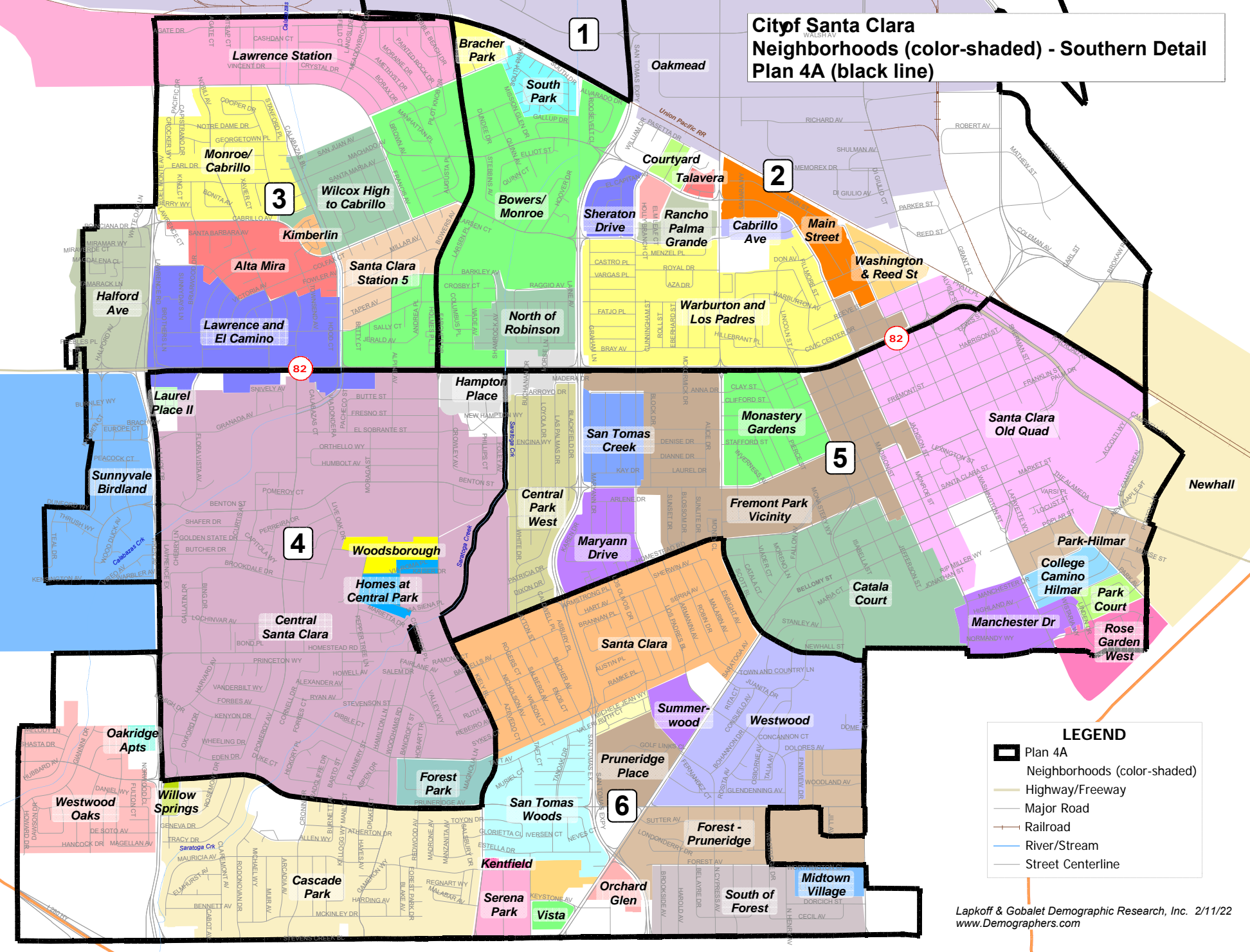
City of Santa Clara
Neighborhoods (color-shaded) - Northern Detail
Plan 4A (black line)



Lapkoff & Gobalet Demographic Research, Inc.
2/11/22
www.Demographers.com



City of Santa Clara Neighborhoods (color-shaded) - Southern Detail Plan 4A (black line)



LEGEND

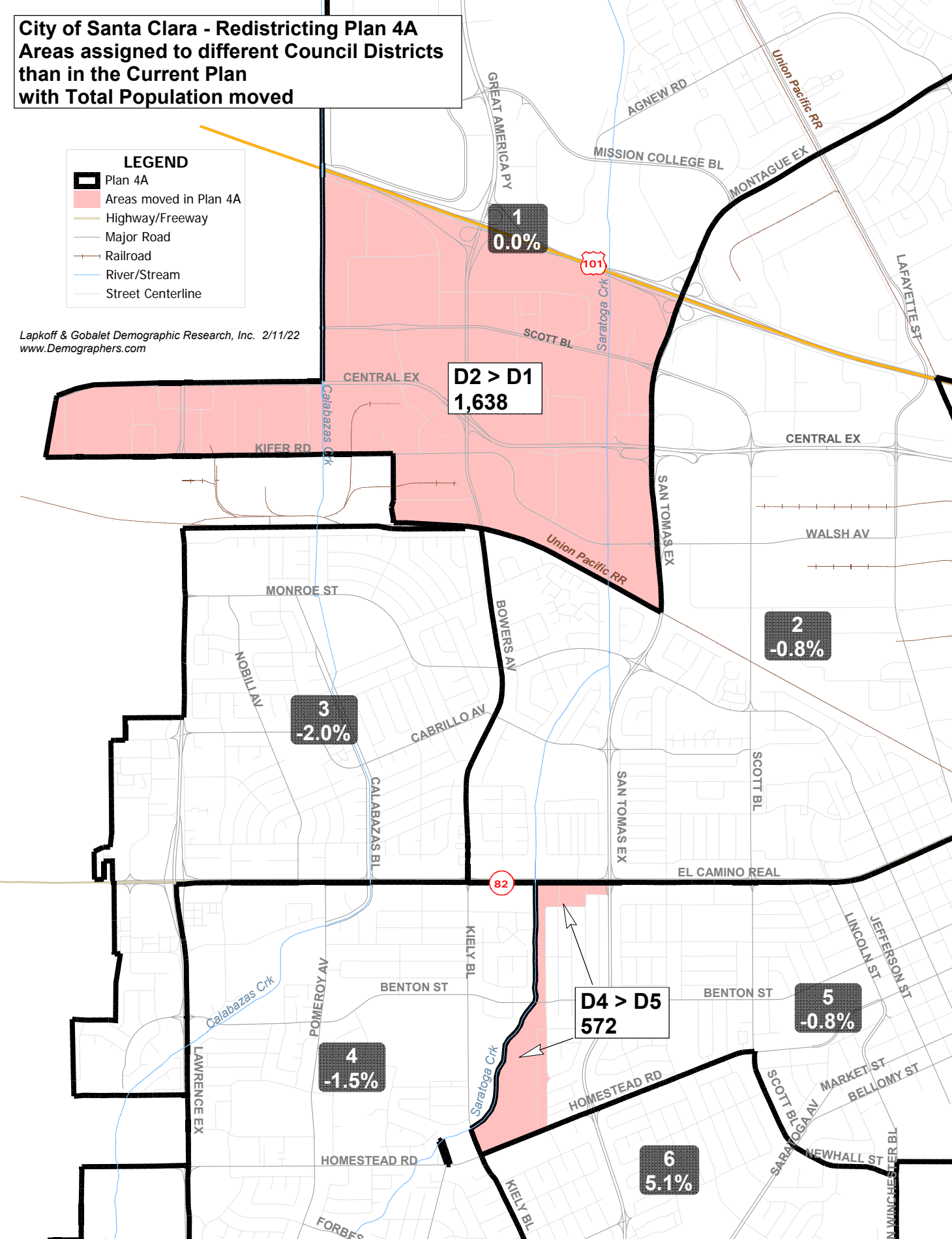
- Plan 4A
- Neighborhoods (color-shaded)
- Highway/Freeway
- Major Road
- Railroad
- River/Stream
- Street Centerline

City of Santa Clara - Redistricting Plan 4A
Areas assigned to different Council Districts
than in the Current Plan
with Total Population moved

LEGEND

- Plan 4A
- Areas moved in Plan 4A
- Highway/Freeway
- Major Road
- Railroad
- River/Stream
- Street Centerline

Lapkoff & Gobalet Demographic Research, Inc. 2/11/22
www.Demographers.com



Santa Clara Plan 4A

		Non-Hispanic					
	Total	Latino/					
District	Population	Hispanic	White	Black	Asian	Other	Total
Total Population Percentages							
1	21,319	10%	20%	3%	64%	2%	100%
2	21,141	28%	22%	3%	44%	3%	100%
3	20,879	19%	24%	2%	53%	2%	100%
4	20,992	15%	28%	2%	53%	2%	100%
5	21,137	22%	41%	3%	31%	3%	100%
6	22,386	13%	33%	2%	49%	3%	100%
Total	127,854	18%	28%	3%	49%	3%	100%
Age 18+ (Voting Age) Population Percentages							
1	17,089	10%	21%	3%	65%	2%	100%
2	16,932	25%	24%	3%	45%	3%	100%
3	16,821	17%	26%	2%	52%	2%	100%
4	17,001	14%	29%	2%	52%	2%	100%
5	17,779	20%	44%	3%	30%	3%	100%
6	17,754	12%	36%	2%	47%	3%	100%
Total	103,376	16%	30%	3%	48%	3%	100%
Citizens of Voting Age (CVAP) Percentages							
1	11,098	9%	33%	5%	47%	6%	100%
2	12,658	22%	34%	4%	32%	7%	100%
3	11,299	15%	37%	3%	40%	5%	100%
4	10,903	17%	41%	2%	35%	4%	100%
5	16,893	20%	50%	4%	20%	5%	100%
6	12,815	10%	50%	2%	33%	5%	100%
Total	75,666	16%	42%	4%	33%	5%	100%

Santa Clara Plan 4A

	Total	Spanish	All Asian	Korean	Japanese	Chinese	Indian	Vietnamese	Filipino
District	Population	Surname	Surname						
Registered Voters									
1	8,389	14%	34%	3%	1%	10%	9%	6%	6%
2	10,152	20%	27%	2%	1%	6%	7%	6%	5%
3	9,217	18%	27%	3%	1%	8%	7%	5%	3%
4	9,361	13%	26%	4%	1%	9%	5%	4%	3%
5	9,747	18%	15%	1%	1%	4%	3%	3%	3%
6	11,673	11%	24%	2%	2%	10%	6%	3%	2%
Total	58,539	16%	25%	2%	1%	8%	6%	4%	3%
Actual Voters									
1	6,967	13%	35%	2%	1%	11%	9%	6%	6%
2	8,216	19%	27%	2%	1%	6%	7%	7%	5%
3	7,599	17%	27%	2%	2%	8%	7%	5%	3%
4	7,704	13%	26%	3%	1%	9%	5%	5%	2%
5	8,042	17%	15%	1%	1%	4%	3%	3%	3%
6	9,977	11%	24%	2%	2%	9%	6%	3%	2%
Total	48,505	15%	25%	2%	1%	8%	6%	5%	3%
District	Total Pop	Deviation	% Deviation						
1	21,319	10	0.0%						
2	21,141	-168	-0.8%						
3	20,879	-430	-2.0%						
4	20,992	-317	-1.5%						
5	21,137	-172	-0.8%						
6	22,386	1,077	5.1%						
Total	127,854								
Ideal	21,309	1,507	7.1%						



Agenda Report

22-1757

Agenda Date: 3/22/2022

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 2021-2022

BACKGROUND

On February 22, 2022, the Council adopted a resolution declaring weeds a nuisance in accordance with Chapter 8.15 of the City code, setting March 22, 2022 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 2022 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 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 that fail to abate their own properties are placed in the abatement program for a 3-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 3-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 2022 Amended and Restated 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. The Fire Department will absorb the City's pro-rata share costs in its Community Risk Reduction Division's Operating Budget. 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. The notice of Public Hearing was published in the Santa Clara Weekly newspaper on March 9, 2022 and March 16, 2022 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: City Manager's Office

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 March 22, 2022, 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 February 22, 2022, 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, "Amended and Restated Agreement between the County of Santa Clara and the City of Santa Clara for Weed Abatement Services," most recently approved on February 22, 2022, 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 _____, 2022, 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

22-69

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Action on the Patrick Henry Drive Specific Plan Including: Determination of the Adequacy of the Environmental Impact Report (EIR) and Adoption of a Statement of Overriding Considerations and an Associated Mitigation Monitoring and Reporting Program (MMRP); Adoption of the Patrick Henry Drive Specific Plan; Adoption of General Plan Amendments to Create New General Plan Land Use Designations and Change the General Plan Land Use Diagram from Light Industrial to Various Residential Designations; Waive First Reading and Introduce an Ordinance to Add a New Chapter 18.27 to the Zoning Code to Create Zoning Regulations for the Patrick Henry Drive Area Specific Plan and Rezoning of the Patrick Henry Drive Specific Plan Area

BACKGROUND

The proposed Patrick Henry Drive Specific Plan is intended to support the development of a new high-density, mixed-use urban neighborhood in close proximity to jobs, retail, services and entertainment, and to support alternative travel modes based on its proximity to the Tasman VTA Light Rail line within the Patrick Henry Drive Future Focus Area as identified in the General Plan. The Patrick Henry Drive Area is bounded by Mission College to the south, Great America Parkway to the East, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west. The General Plan calls for the preparation of a Specific Plan to implement the City's vision for Patrick Henry Drive and to implement related General Plan goals and policies (General Plan Policy 5.4.7.P1).

The proposed Patrick Henry Drive Specific Plan includes a land use framework to develop the area into a transit-oriented neighborhood with up to 12,000 residential units and up to 310,000 square feet of non-residential uses. A second scenario would substitute office for high-density residential along the east edge of the Plan Area, amounting to an approximate total of 10,300 net new residential units, 785,000 net new square feet of office, and 310,000 net new square feet of other nonresidential uses.

The City Council is being asked to conduct a public hearing and take four actions related to preparation of a Specific Plan for the City's Patrick Henry Drive Focus Area:

- 1) Determination of the adequacy of the Environmental Impact Report (EIR) prepared to analyze the potential environmental impacts for the project and adoption of CEQA Findings, a Statement of Overriding Considerations, and an associated Mitigation Monitoring and Reporting Program;
- 2) Adoption of the Specific Plan;
- 3) Adoption of the following associated General Plan Land Use Designations: Village Residential (60-149 DU/AC), Urban Village (100-149 DU/AC), Urban Center (120-250 DU/AC), and High Density Flex (60-149 DU/AC, or up to 2.0 FAR), and application of those designations to the Specific Plan project area, along with the preexisting designation of Very High Density Residential (50-100 DU/AC); and
- 4) Adoption of Chapter 18.27 of the Zoning Code, Regulations for the Patrick Henry Drive Area

(PHD) Zoning Districts, including development standards, allowed uses and parking requirements for the following zoning districts: R5 - Very High Density Residential, VR - Village Residential, UV - Urban Village, UC - Urban Center, and HD Flex - High Density Flex; and application of those zoning districts to the Specific Plan project area as an implementation action for the Specific Plan.

DISCUSSION

The Planning Commission heard and deliberated on the Patrick Henry Drive Specific Plan on January 26, 2022. The following discussion summarizes the Planning Commission hearing discussion and actions. Additional staff analysis is provided in the attached Report to the Planning Commission (Attachment 2).

Staff provided a presentation on the proposed project and highlighted two letters from the public received prior to the hearing (Attachment 3). One letter, received from the attorney for O2Micro, addressed removal of the alternate land use diagram that includes a roadway connection from Patrick Henry Drive to the Mission College campus. The second letter, from the President of the Silicon Valley MEPS, a labor union representing local tradespeople, requested the inclusion of an additional planning principle within the Specific Plan encouraging the use of a local construction workforce, including apprentices from state-approved local training programs.

Public speakers at the Planning Commission meeting included Jonathon Evans and Jan Hintermeister, members of the Board of Library Trustees, Alicia Guerra, attorney for O2 Micro, reiterating the comments from her letter; and a half-dozen speakers endorsing the addition of local construction workforce language in the plan, including John Dalrymple, speaking for the Union of Electricians, Plumbers, Pipe Fitters and Sheet Metal workers.

Commission Deliberation

The Commission discussed several issues, including questions to staff, which were addressed as follows:

- Recommendation for a school within the plan area. Staff responded that the location of the school was contingent on the District's ability to purchase land;
- The location of a potential library. Staff answered that the City has analyzed the possibility of a 45,000 square foot library/community center at a programmatic level, but does not have a funding plan developed;
- The proposed character of the pedestrian connection to Mission College. Staff explained that the Plan includes a small park at that location which will also accommodate bicycle circulation;
- Treatment of archaeological resources encountered during construction. Staff noted that no resources were identified through a literature search with Sonoma State University, but that if any archaeological remains are discovered during construction, the EIR includes mitigation measures for avoidance and preservation of resources;
- Transportation Demand Management (TDM) measures and their implementation. Staff noted that the Specific Plan includes a requirement to provide a shuttle or other transit supportive service for Patrick Henry Drive and the wider North Santa Clara area. The Specific Plan will also require the creation of a Transportation Management Association (TMA), including the proposed triggers for the creation of a TMA, and the threshold and timing for the beginning of a shuttle service; and
- Locations for drop-off parking spaces, given the demand for food delivery services, especially

after work hours. Staff noted that this would be addressed as specific projects go through the entitlement process.

Following public testimony, Commissioner Cherukuru made a motion to recommend adoption of the Environmental Impact Report (EIR), and the motion passed unanimously. Chair Biagini then made a motion to adopt the Specific Plan, including the local workforce goal language endorsed by Commissioner Herro and several of the public speakers. The Planning Commission also recommended that the Affordable Housing requirement be a total of 15% affordable units split between three affordability levels, 50%, 80%, and 120% Area Median Income (AMI). That change is reflected in both the Specific Plan and in the Zoning Code amendment. Commissioner Saleme made a friendly amendment to the motion to request text changes to the document to clearly indicate that implementation of the alternate land use diagram, including the roadway connection to the Mission College campus, would require the approval of the Mission College Board of Trustees.

Planning Commission Action

By a vote of 7-0, the Commission recommended approval of the Specific Plan and associated environmental clearance and land use changes as recommended by staff with three modifications:

- 1) Change the affordable housing inclusionary requirement from 15% at an average Area Median Income (AMI) of 80% to a requirement for 5% Very Low (50% AMI), 5% Low (80% AMI) and 5% Moderate (120% AMI) units;
- 2) Addition of clarifying language that a roadway connection to the Mission College campus was an alternative studied in the plan and not part of the proposed alternative; and
- 3) Addition of a planning principle within the Specific Plan encouraging the use of a local construction workforce, including apprentices from state-approved local training programs.

The Planning Commission recommendations are shown in the recommendation section below as Alternatives 5-8.

Staff Recommendation

The staff recommendation is presented below as Alternatives 1-4. The Staff Recommendation does not include the local workforce goal language, but it does include the other two Planning Commission amendments to the original staff recommendation.

Subsequent to the Planning Commission meeting, staff worked with the Patrick Henry Drive stakeholders to refine the language in the Transportation Demand Management section of the plan, Section 7.3. The changes to that section do not affect the triggers or requirements for transportation demand management, but they were made to more clearly delineate individual stakeholder responsibilities toward the Transportation Management Association (TMA). The changes agreed to by the stakeholders and staff have been incorporated into the February 2022 version of the plan, and a strikethrough and underline version of the affected pages is included as Attachment 4.

ENVIRONMENTAL REVIEW

An Environmental Impact Report (EIR) was prepared for the Patrick Henry Drive Specific Plan and related approvals (the "project") in accordance with the California Environmental Quality Act (CEQA) (Attachment 1). The EIR analyzes program-level impacts of the Patrick Henry Drive Specific Plan. The EIR and Notice of Availability were circulated for a 45-day period from July 30, 2021, to September 13, 2021, in accordance with CEQA requirements. The EIR provides a comprehensive analysis of the potential environmental impacts for the project, and addresses topics identified within the General Plan policies for Patrick Henry Drive including land use compatibility and provision of

public facilities and parks and open space (Policy 5.4.7-P6, 5.4.7-P7, 5.4.7-P8, and 5.4.7-P9).

The EIR found that there would be significant and unavoidable environmental impacts to:

- Air Quality emissions (toxic air contaminant emissions)
- Potential destruction or degradation of Historic Resources
- Noise (increases in traffic noise levels from Specific Plan development)

The project would also result in the following significant unavoidable cumulative impacts:

- Air Quality emissions (criteria pollutant emissions)

All of the other potentially significant impacts can be mitigated to a less than significant level. The mitigation measures are included in their entirety as a part of the proposed Mitigation Monitoring and Reporting Program (MMRP). A detailed discussion of the potential impacts and mitigation measures to be applied to the project is specified in the EIR and would be implemented through project conditions of approval and the MMRP for the proposed project.

The Draft EIR comment period ran from July 30, 2021, to September 13, 2021. A total of five comments were received during the comment period. None of the comment letters have identified a new significant impact or have provided substantial evidence that the CEQA analysis is otherwise inadequate. Recirculation of the EIR is therefore not required. Responses to the Draft EIR comments, as well as minor text changes and clarifications, in the form of a Final EIR, was made available to the public through the City's website on January 12, 2022, and have been forwarded on to any commenters on the Draft EIR.

FISCAL IMPACT

Consultant costs borne by the City for the preparation of the Specific Plan have been funded through a reimbursement agreement with the stakeholders of the Patrick Henry Drive plan area.

The proposed change in land uses would significantly increase land values and the property tax base as well as demand for services, having both positive and negative fiscal impacts upon the City. The addition of retail services and an increased local population will add to more sales tax revenue for the City. It is understood that residential land uses generally have a net negative fiscal impact (as increased land value revenue does not completely offset increased costs for service), but infill development and higher density development, particularly utilizing Type I or Type III construction, provides for more efficient delivery of services and can be revenue neutral or even positive in some circumstances. Furthermore, the Plan will include private maintenance of park spaces and a significant private investment for infrastructure that will also provide fiscal benefits. On the whole, implementation of the Specific Plan is expected to have a relatively minor net fiscal impact to the City and will provide housing necessary for Santa Clara's ongoing economic vitality.

COORDINATION

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

PUBLIC CONTACT

Public contact was made by publishing a hearing notice in the Santa Clara Weekly on January 12, 2022, and by mailing a hearing notice to properties within a 500-foot radius of the plan area. The Planning Commission agenda was also posted 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>>.

In addition to City Council and Planning Commission study sessions, the City held two community meetings on the plan: A virtual community meeting was held on March 11, 2021 to present the draft plan to the community. There were approximately 70 attendees. Speakers at the meeting expressed concern with traffic impacts, the potential roadway connecting the plan area to Mission College Boulevard, and planning for future pandemics. An earlier community meeting, held on February 25, 2019 for the City North Area, was attended by approximately 28 people. That early meeting helped to define the vision for the Patrick Henry Drive plan.

ALTERNATIVES

(Staff Recommendation)

1. Adopt a resolution approving and certifying the Final EIR prepared for the Patrick Henry Drive Specific Plan (SCH # 2019120515), including CEQA Findings and a statement of overriding considerations.
2. Adopt a resolution approving the PHD Specific Plan, a specific plan consistent with Government Code Sections 65450-65457 that incorporates text in the Alternate Circulation Diagram (4.6.2-ALT: CIRCULATION) "Subject to the Approval of the Mission College Board of Trustees"; and incorporates affordable housing language as follows: 15% affordable units split equally between three affordability levels of 50%, 80%, and 120% AMI.
3. Adopt a resolution approving General Plan text amendments creating the following land use designations: Village Residential (60-149 DU/AC), Urban Village (100-149 DU/AC), Urban Center (120-250 DU/AC), and High Density Flex (60-149 DU/AC, or up to 2.0 FAR), updating the Climate Action Plan to recognize those Land Use Designations, and amending the General Plan Land Use diagrams for Phases II and III to reflect the land use designations in the Patrick Henry Drive Specific Plan.
4. Waive first reading and introduce an ordinance amending the Zoning Code to create a new Chapter 18.27 of the Zoning Code, Regulations for the Patrick Henry Drive Area (PHD) Zoning Districts, including development standards, allowed uses and parking requirements for the following zoning districts: R5 - Very High Density Residential, VR - Village Residential, UV - Urban Village, UC - Urban Center, and HD Flex - High Density Flex, and rezoning the Project Site using the new districts as indicated in the Patrick Henry Drive zoning map, incorporating affordable housing language as follows: 15% affordable units split equally between three affordability levels of 50%, 80%, and 120% AMI.

OR:

(Planning Commission recommendation)

5. Adopt a resolution approving and certifying the Final EIR prepared for the Patrick Henry Drive Specific Plan (SCH # 2019120515), including CEQA Findings and a statement of overriding considerations.
6. Adopt a resolution approving the PHD Specific Plan, a specific plan consistent with Government Code Sections 65450-65457, with the addition of a seventh principle to the Specific Plan: "7. Building a Vibrant Middle Class: Encourage the use of a local construction workforce and local business sourcing in the buildout within the Plan area. The employment of a local construction workforce that pays family-supporting wages will generate sales tax revenue for the City as those wages are recirculated within the City's business community. The availability of a trained construction workforce is essential for the success in implementing the Plan therefore the

employment of apprentices in State of California approved training programs will also be encouraged”; incorporate text in the Alternate Circulation Diagram (4.6.2-ALT: CIRCULATION) “Subject to the Approval of the Mission College Board of Trustees”; and incorporate affordable housing language as follows: 15% affordable units split equally between three affordability levels of 50%, 80%, and 120% AMI.

7. Adopt a resolution approving General Plan text amendments creating the following land use designations: Village Residential (60-149 DU/AC), Urban Village (100-149 DU/AC), Urban Center (120-250 DU/AC), and High Density Flex (60-149 DU/AC, or up to 2.0 FAR), updating the Climate Action Plan to recognize those Land Use Designations, and amending the General Plan Land Use diagrams for Phases II and III to reflect the land use designations in the Patrick Henry Drive Specific Plan.
 8. Waive first reading and introduce an ordinance amending the Zoning Code to create a new Chapter 18.27 of the Zoning Code, Regulations for the Patrick Henry Drive Area (PHD) Zoning Districts, including development standards, allowed uses and parking requirements for the following zoning districts: R5 - Very High Density Residential, VR - Village Residential, UV - Urban Village, UC - Urban Center, and HD Flex - High Density Flex, and rezoning the Project Site using the new districts as indicated in the Patrick Henry Drive zoning map, incorporating affordable housing language as follows: 15% affordable units split equally between three affordability levels of 50%, 80%, and 120% AMI.
- OR:
9. Direct staff to return to City Council with a modified version of the proposed project.

RECOMMENDATION

Alternatives 1-4:

1. Adopt a resolution approving and certifying the Final EIR prepared for the Patrick Henry Drive Specific Plan (SCH # 2019120515), including CEQA Findings and a statement of overriding considerations;
2. Adopt a resolution approving the PHD Specific Plan, a specific plan consistent with Government Code Sections 65450-65457 that incorporates text in the Alternate Circulation Diagram (4.6.2-ALT: CIRCULATION) “Subject to the Approval of the Mission College Board of Trustees”; and incorporates affordable housing language as follows: 15% affordable units split equally between three affordability levels of 50%, 80%, and 120% AMI;
3. Adopt a resolution approving General Plan text amendments creating the following land use designations: Village Residential (60-149 DU/AC), Urban Village (100-149 DU/AC), Urban Center (120-250 DU/AC), and High Density Flex (60-149 DU/AC, or up to 2.0 FAR), updating the Climate Action Plan to recognize those Land Use Designations, and amending the General Plan Land Use diagrams for Phases II and III to reflect the land use designations in the Patrick Henry Drive Specific Plan; and
4. Waive first reading and introduce an ordinance amending the Zoning Code to create a new Chapter 18.27 of the Zoning Code, Regulations for the Patrick Henry Drive Area (PHD) Zoning Districts, including development standards, allowed uses and parking requirements for the following zoning districts: R5 - Very High Density Residential, VR - Village Residential, UV - Urban Village, UC - Urban Center, and HD Flex - High Density Flex, and rezoning the Project Site using the new districts as indicated in the Patrick Henry Drive zoning map, incorporating affordable housing language as follows: 15% affordable units split equally between three affordability levels of 50%, 80%, and 120% AMI.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Office of the City Manager

ATTACHMENTS

1. Draft Patrick Henry Drive Specific Plan
2. Patrick Henry Drive Planning Commission Report
3. Letters received prior to the January 26, 2022 Planning Commission meeting
4. Transportation Demand Management Section of the Patrick Henry Drive Plan (strikethrough/underline)
5. Environmental Impact Report
6. Patrick Henry Drive EIR Resolution
7. CEQA Findings and Statement of Overriding Considerations
8. Mitigation Monitoring or Reporting Program
9. Patrick Henry Drive Specific Plan Resolution (staff recommendation)
10. Patrick Henry Drive General Plan Amendment Resolution
11. Patrick Henry Drive Zoning Ordinance Amendments
12. Patrick Henry Drive Zoning Map
13. General Plan Future Focus Area Goals and Policies
14. Draft Plan Land Use Plan
15. Draft Plan Urban Design Framework
16. Street Section from the Patrick Henry Drive Plan
17. Patrick Henry Drive Specific Plan Resolution (Planning Commission recommendation)
18. Supplemental Correspondence Received

Draft Patrick Henry Drive Specific Plan

<https://www.santaclaraca.gov/our-city/departments-a-f/community-development/planning-division/specific-plans/patrick-henry-drive>



Agenda Report

22-1115

Agenda Date: 1/26/2022

REPORT TO PLANNING COMMISSION

SUBJECT

Action on: the Patrick Henry Drive Specific Plan; Creation of new General Plan Designations and General Plan Amendments to change the General Plan Land Use Diagram from Light Industrial to Various Residential Designations to Implement the Patrick Henry Drive Specific Plan; Creation of New Patrick Henry Drive Zoning Districts and Rezoning of the Patrick Henry Drive Area Using those Zoning Districts; an Environmental Impact Report and Statement of Overriding Considerations; and a Mitigation Monitoring and Reporting Program

EXECUTIVE SUMMARY

The proposed Patrick Henry Drive Specific Plan enables the redevelopment of an approximately 74 acre industrial area (62 acres net) bounded by Mission College to the south, Great America Parkway to the east, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west. Because of its close proximity to the Tasman light rail line, the proposed Patrick Henry Drive Specific Plan includes a land use framework to develop the area into a transit-oriented neighborhood with up to 12,000 residential units and up to 310,000 square feet of non-residential uses. The Plan includes flexibility to allow new commercial development along Great America Parkway through a second scenario that substitutes office for high-density residential along the east edge of the Plan Area, amounting to an approximate total of 10,300 net new residential units, 785,000 net new square feet of office, and 310,000 net new square feet of other nonresidential uses.

The City began preparation of the Patrick Henry Drive Specific Plan in 2018. The Specific Plan process has provided multiple opportunities for community input including two general community meetings, eight City Council study sessions, and two Planning Commission study sessions. Plan area property owners and stakeholders have been active participants in the Specific Plan process, including multiple developers interested in utilizing the Specific Plan to redevelop properties. Other community members have also participated and provided input through the community meetings and public hearings. The contents of the draft Specific Plan have been shaped through this stakeholder input as well as the direction provided by the City Council.

Staff is recommending adoption of the Specific Plan so that development may move forward within the Specific Plan area to realize the vision set forth in the City's General Plan and to meet the City's goal of providing housing in an amenity rich urban environment that is close to transit and employment opportunities.

BACKGROUND

The Planning Commission is being asked to conduct a public hearing and make recommendations on four actions related to preparation of a Specific Plan for the City's Patrick Henry Drive Plan Area:

- 1) Determination of the adequacy of the Environmental Impact Report (EIR) prepared to analyze the potential environmental impacts for the project and an associated Mitigation Monitoring

- and Reporting Program;
- 2) Adoption of the Specific Plan;
 - 3) Adoption of the following associated General Plan Land Use Designations: Village Residential (60-149 DU/AC), Urban Village (100-149 DU/AC), Urban Center (120-250 DU/AC), and High Density Flex (60-149 DU/AC, or up to 2.0 FAR), and application of those designations to the Specific Plan project area; and
 - 4) Adoption of the Chapter 18.27 of the Zoning Code, Regulations for PHD, the Patrick Henry Drive Zoning Districts, including development standards, allowed uses and parking requirements for the following zoning districts: R5 - Very High Density Residential, VR - Village Residential, UV - Urban Village, UC - Urban Center, and HD Flex - High Density Flex; and application of those zoning districts to the Specific Plan project area as an implementation action for the Specific Plan.

The City of Santa Clara 2010-2035 General Plan identifies nine geographic Focus Areas within Santa Clara. The Focus Areas are intended to accommodate a significant amount of the City's growth and to directly support the City's quality of life and economic vitality. The Patrick Henry Drive Future Focus Area is bounded by Mission College to the south, Great America Parkway to the East, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west, and is specifically intended to support new residential development in close proximity to jobs, retail, services and entertainment, and to support alternative travel modes based on its proximity to the Tasman VTA Light Rail line. The General Plan calls for the preparation of a Specific Plan to implement the City's vision for Patrick Henry Drive and to implement related General Plan goals and policies (General Plan Policy 5.4.7-P1).

Project Description

Specific Plans can provide policy guidance, regulatory requirements, and design direction. The proposed Patrick Henry Drive Specific Plan addresses each of these elements, including land use and design policies, land use and development standards, street width and street section standards, and design guidelines for bulk, massing and articulation of buildings.

Also proposed is an accompanying new chapter in the zoning code that is consistent with the Patrick Henry Drive General Plan land use designations and the Specific Plan, and includes allowed land uses and development standards which can be used to implement the Plan. The zoning chapter is described in the Creation of a Patrick Henry Drive Zoning Chapter section and includes the zoning districts relevant to the Patrick Henry Drive plan area.

Individual development projects within the Specific Plan area would be subject to architectural review approval through the City's Development Review Hearing, including the possibility of an appeal to the City Council. To approve an individual development project, the Director of Planning will be required to make findings that individual development proposals are consistent with the design direction of the Specific Plan.

The full draft Specific Plan is available at

<https://www.santaclaraca.gov/our-city/departments-a-f/community-development/planning-division/specific-plans/patrick-henry-drive>.

Plan Area Context

The Plan area consists of an approximately 74-acre industrial area (62 acres net) bounded by

Mission College to the south, Great America Parkway to the East, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west. With its close proximity to the Tasman light rail line, the proposed Patrick Henry Drive Specific Plan includes a land use framework to develop the area into a transit-oriented neighborhood with up to 12,000 residential units and up to 310,000 square feet of non-residential uses. A second scenario would substitute office for high-density residential along the east edge of the Plan Area, amounting to an approximate total of 10,300 net new residential units, 785,000 net new square feet of office, and 310,000 net new square feet of other nonresidential uses.

As the Plan area is located in the northern part of Santa Clara, it is generally proximate to a large number of employment uses, as well as the Santa Clara Youth Soccer Park, Levi's© Stadium, the City's convention center, the Great America theme park, and other potential major development projects in northern Santa Clara, including Kylli immediately to the North, the Freedom Circle Focus Area/Greystar project across Great America Parkway, and the Related Santa Clara project and the Tasman East Specific Plan Area to the east on Tasman Drive.

City Council Study Sessions

The City Council has conducted several study sessions to discuss and provide input on different content areas of the Specific Plan:

April 9, 2019	Reviewed proposed objectives for the Specific Plan and directed staff to proceed
Dec 10, 2019	Reviewed a detailed project description prior to the City's issuance of (NOP) for EIR
Dec 17, 2019	Adopted a Resolution supporting the PHD area as one of six new ABAG/MTC PDAs.
April 28, 2020	Accepted a proposed land use plan, land use designations, circulation plan, and parkland and open space plan for preparation for the plan EIR
Dec 16, 2020	Approved an expansion of the contract with MIG to expand the scope of analysis in the EIR to include a land use plan without a Mission College roadway connection
August 24, 2021	Approved contract amendment to expand services on EIR, Traffic, & Sewer Model Run
April 20, 2021	Provided feedback at Study Session on more parkland; mobility options; breakdown of affordability levels
December 7, 2021	Provided input on the Land Use Plan, roadway network, parkland and open space strategy, public facilities, a local shuttle, and affordable housing

DISCUSSION

The primary issues for the Planning Commission to consider in evaluating the proposed Specific Plan are its consistency with the General Plan and the strength of the Plan's implementation framework to implement the Plan vision. The Planning Commission should also consider how the content of the Plan has been shaped through stakeholder input and direction provided by the City Council at previous Council study sessions.

In summary, the vision set forth for Future Focus Areas in the General Plan and in the draft Specific Plan is to create a new high-density residential neighborhood in Santa Clara focused on an inviting streetscape and urban amenities, including retail uses with outdoor seating, parks that complement the built environment and act as focal points for the neighborhood, and a network of greenways and

low-speed streets that allow for additional pedestrian connections through the neighborhood (General Plan Goal 5.4.7-G1, Policies 5.4.7-P6, 5.4.7-P7, 5.4.7-P8, and 5.4.7-P9). Existing public streets within the Specific Plan area will include wide sidewalks, park strips with trees, and ample space for businesses to place tables, chairs and umbrellas. Parks, plazas, and other open space amenities will have an urban character and are planned to support a wide variety of placemaking activities.

The following discusses the Plan content according to key topic areas.

Comparison to General Plan Growth Assumptions

When adopted in 2010, the 2010-2035 General Plan anticipated and accommodated growth within Santa Clara for a total of 154,300 jobs and 60,345 residential units through the year 2035. Since adoption of the General Plan in 2010, the City has approved 16 General Plan Amendments that resulted in additional capacity for approximately 13,841 additional jobs and 7,102 additional residential units, raising the total General Plan planned capacity to 168,141 jobs and 67,447 residential units.

A defining characteristic of the Specific Plan is the proposed residential capacity of 12,000 dwelling units. While the General Plan anticipated the development of only 2,550 residential units within the Plan area, through the Specific Plan process and engagement with the City Council, 12,000 dwelling units was established as the maximum capacity for the Specific Plan. The proposed General Plan Amendment will change the land use designation for the Plan area from High Density Residential (37 to 50 dwelling units per acre) to four residential land use designations and one flexible residential/commercial designation:

- Very High Density (51-100 du/ac)
- Village Residential (60-149 du/ac)
- Urban Village Residential (100-150 du/ac)
- Urban Center Residential (120-250 du/ac); and
- High Density Flex designation (60-149 du/ac or up to a 2.0 floor area ratio of commercial development).

Adoption of the Patrick Henry Drive Specific Plan would also support 310,000 square feet of new non-residential uses, which could support retail and institutional uses such as a school, library, and community center. In combination with the increased capacity for 12,000 units, this would add a net of 9,450 residential units and 451 jobs to the General Plan capacity.

Jobs/Housing balance

One objective of the Patrick Henry Drive Specific Plan is to assist in balancing the presence of jobs and housing in Santa Clara. The most common measure used to describe the jobs-housing balance is the jobs-to-employed-residents ratio. A balanced community would have a jobs-to-employed resident ratio of one. Specifically, one job would exist for each employed resident. Historically, the City of Santa Clara has not been balanced, with a greater proportion of jobs than employed residents, although that ratio has been improving over time. This imbalance translates to quality of life impacts such as more congestion on local and regional roads as individuals travel longer distances from residential areas to reach jobs in Santa Clara and to neighboring job rich cities to the west without sufficient housing opportunities to live within proximity to the regional concentration of jobs or a transportation network that can fully support this level of daily travel.

As recently as the year 2000, the jobs-to-employed residents ratio for the City was 2.22. However, the City's General Plan indicates that the ratio had improved to 1.90 as of 2008 (at the start of the most recent General Plan comprehensive update process). More recent job data is available from the US Census Bureau and the American Community Survey. The Census Bureau's 2020 data indicates that there are a total of 120,323 jobs and 79,262 employed residents in the City for a jobs-to-employed-residents ratio of 1.51 (120,323 / 79,262), a further decrease from 2008.

The City's General Plan identified opportunities for concentrated residential development in General Plan Focus Areas as a strategy to address Santa Clara's jobs-housing imbalance by providing significant amounts of new housing capacity in proximity to employment areas. However, the General Plan also anticipates and recognizes the benefits of strong jobs growth through the life of the General Plan, and supports intensification of other jobs areas so that under its current buildout scenario, the City would have a jobs-to-employed-residents ratio of 1.77 in 2035.

The most recent American Community Survey (2020) indicates that Santa Clara has 79,262 employed residents living in 50,229 housing units, or 1.57 employed residents per housing unit. From discussing development plans and timeframes with Patrick Henry Drive stakeholders, the City is expecting 7,200 dwelling units to be built by 2035, which is the time horizon of the General Plan. Assuming a continuation of these demographic trends, the anticipated 7,200 dwelling units would add 11,300 employed residents, potentially lowering the City's jobs-to-employed-residents ratio to 1.32 (120,323/(79,262+11,300)). Adoption of the Plan would thus further the City's goal of improving its jobs-housing balance.

Land Use Designations

Consistent with the Specific Plan capacity of 12,000 residential units, the envisioned urban character of the Plan area and the goal of providing flexibility for a variety of housing types, allowed residential densities in the neighborhood are planned to range from 51 to 250 dwelling units per acre (DU/AC). The area of the developable parcels within the Specific Plan is approximately 67 acres, with 5 of those acres dedicated to private road network and sidewalk easements and an additional 14.5 acres planned for parks and useable open space, leaving approximately 47.5 acres of land available for development. The area available for development suggests a net density of 250 dwelling units per acre (DU/AC) to achieve 12,000 units.

The proposed General Plan land use designations will accommodate a broad range of development types, including wood frame podium and wrap buildings, steel-frame towers and possibly reinforced concrete construction. Buildings in all the General Plan density ranges are expected to be 5-12 stories in height, with the exception of the Urban Center Residential designation (120-250 DU/AC), where buildings are expected to be 12-25 stories in height.

The Specific Plan Land Use diagram also identifies potential locations for park space, greenways, the requirement for mixed-use buildings along the eastern end of Patrick Henry Drive and other public amenities, as shown in Attachment 10. The 5.25-acre park at the center of the Specific Plan area will be a focal point for the new neighborhood. Ground floor retail can be proposed anywhere in the plan area; however retail and active uses are required on the ground floor along the southern stretch of Patrick Henry Drive, which will provide retail with the highest visibility location in the Specific Plan and also provide for a lively street presence with areas for spill over seating.

As provided for in the proposed Specific Plan and associated zoning chapter, the existing industrial

and commercial uses within the Plan area can continue operation and even undergo expansion until redevelopment. New development would need to conform to the standards of the Specific Plan.

Roadways and Access

The Land Use Plan makes use of the existing street rights-of-way but also identifies new vehicular and multimodal circulation roads and/or paseos throughout the plan area. These new circulation routes will allow additional routes of travel within the Plan area, promote pedestrian and bicycle use, and break up the superblock layout of the existing light industrial area to support the creation of a mixed-use neighborhood. The new roads are intended for low-speed vehicular use, emphasizing shared facilities where pedestrians, bicycles and cars all have an equal ability to use the rights-of-way. New greenway connections are also proposed in the interior of the central block to promote pedestrian and bicycle circulation and break up the massing of future development.

As mentioned in the January 10, 2022 Study Session report, the Mission College Board of Trustees meeting voted unanimously to not approve a proposed connection between the Patrick Henry Drive and the Mission College private driveway from the Patrick Henry Drive plan area. The recommended alternative of the Patrick Henry Drive plan has been adjusted to reflect the decision by the Mission College Board of Trustees to not support the connector roadway.

Street sections incorporated into Chapter 5, the Design Guidelines of the Specific Plan, clearly delineate expectations for the sidewalk widths, tree wells and street life dimensions, and lanes of travel including bicycle lanes. These guidelines address depths of retail spill-out spaces and proposed lighting guidelines, as well as other design features that support an attractive pedestrian environment. See Attachment 12 for a representative street section from the plan.

The Specific Plan land uses will leverage proximity to the Tasman Drive Light Rail line, utilizing a robust Transportation Demand Management (TDM) Plan to minimize vehicle trips (Chapter 7.3 of the plan). All development projects are required to participate in a Transportation Management Agency (TMA) to help coordinate VMT-reduction programs between multiple property owners. All development projects will also be required to participate in a local shuttle program or micro-transit solution that connects residents with commercial, transit, and employment centers.

As the Specific Plan is implemented, new individual development projects will be required to incorporate measures to address the evolving nature of transportation, including commuter behavior, availability of first and last mile connections to transit, and other advancements such as ride hailing and ride sharing technology. The vehicle miles traveled ("VMT") reduction goals proposed for the Patrick Henry Drive General Plan land use designations include a total of 20%, with 10% coming from locational advantages (such as proximity to transit), and 10% coming from TDM strategies.

Collectively, these physical improvements and policy actions established within the Specific Plan will advance the goals set forth in the General Plan for the Future Focus Areas, encouraging alternative modes of transportation and reducing the impacts of new development upon the vehicular transportation network (e.g., Policy 5.4.7-P9).

Transportation Management Association

Through the development of the Specific Plan, property owners will demonstrate advancement of the formation and implementation of a privately funded and administered Transportation Management Association (TMA). The TMA will be launched by property owners implementing projects in the

Patrick Henry Drive Specific Plan but will also include funding and participation by other pipeline projects in North Santa Clara. The TMA will implement a fixed shuttle or on-demand micro transit option that will reduce single occupant vehicle trips within the Northern Santa Clara area. The shuttle or micro transit option will begin implementation prior to the issuance of certificate of occupancy for the 3,300th unit in the PHD Specific Plan or prior to the issuance of the Certificate of Occupancy for the 1,500th unit in the PHD Specific Plan Area when a minimum of 5,000 units (inclusive of units issued Certificates of Occupancy in the PHD Specific Plan) contributing to the TMA funding and/or administration have been issued Certificates of Occupancy. Prior to the completion of the first four years of operation, the TMA will be evaluated by the City and alternative methods of single vehicle trip reduction could be considered.

Park Spaces, Greenways and Other Open Space

Public parkland or publicly accessible privately maintained open space is proposed to constitute a minimum of 22% of the land area available within the Specific Plan area, consistent with the approach taken with the adopted Tasman East Specific Plan, and endorsed by the City Council. The Patrick Henry Specific Plan will provide public parkland and accessible open space amenities through two strategies: 1) dedication of parkland to the City through the City's Parkland and Recreational Amenities Dedication Ordinance (PDO); and 2) the incorporation of private open space areas, including privately owned public open space areas (POPOS). At least 11% of the net site area of the Plan area will be dedicated Parkland and in combination with other various types of private open space, a minimum of 22% of the Plan area will be open space. The net site area of a parcel is the area after roadway dedications and public sidewalk easements are excluded from the total.

The proposed dedicated Parkland includes a centrally located neighborhood park running north/south through the center of the new neighborhood and three smaller parks distributed within the Specific Plan area, and a proposed Art Garden on the SummerHill property.

The net site area of the Specific Plan area is 62.3 acres, and 22% is 14.5 acres. The Land Use Plan includes parkland as follows:

- A 5.25 acre central park shared across four properties including Menlo Equities, Marriott Center Owners Association, Z&L Properties, and Sares-Regis.
- A 1.75 acre park on the west side of the north-south leg of Patrick Henry Drive, which will provide more direct access to the Calabazas Creek pedestrian bridge from the plan area.
- A 1.1 acre park on the Pearlman property, to be developed if the property is redeveloped with residential uses.
- A new 1.25 acre park has now been added on the southeast corner of the plan area, split proportionally between properties owned by Dollinger and New Hope Church.
- Summerhill, located along the center southern portion of the plan area also now is providing 9,250 square feet (0.21 acres) of dedicated parkland along the western border of their site, adjacent to a proposed public use community room.
- Drawbridge on the northeast corner of the plan area has offered approximately 13,000 square feet of land (0.30 acres) that staff is analyzing for the feasibility of for park use.
- A new 15,800 square foot park (0.36 acres) on the O2 Micro property, substituting for the roadway connection that was not supported by the Mission College Board of Trustees. This parkland is immediately adjacent to the parkland dedication on the Summerhill property, which will create one contiguous park of 0.57 acres. A potential bicycle and pedestrian path through

this park connecting to Mission College's property will be explored during the park design phase. Such a path would require coordination and support of Mission College.

Assuming the Drawbridge land dedication is feasible, the added areas would create a total of 10.23 acres of dedicated parkland. The remaining private open space obligation provided in part through POPOS to meet the 22% target, is 2.94 acres. At full build-out of the Land Use Plan, the amount of POPOS will exceed this amount as individual developers provide paseos and private open space in fulfillment of Specific Plan requirements.

Staff has begun working with the stakeholder group to further develop the design, treatment and amenities to be included within the publicly accessible, private open space areas. Private open space areas include a greenway along Patrick Henry Drive that would utilize an existing gas line easement that does not allow structures, and other internal greenways that will help to break up the massing of buildings, support pedestrian and bicycle circulation, and provide amenity space.

Collectively these features will implement the General Plan policies to provide Patrick Henry Drive residents with a high degree of access to open space (e.g., Policy 5.4.7-P6, 5.4.7-P8).

Public Facilities & Recreational Amenities - New Library, Gymnasium, Community and Senior Center

The City Council previously reviewed objectives for the Patrick Henry Drive Specific Plan that included measures to support the quality of life for future residents by providing a new branch library as part of the Specific Plan. At the subsequent City Council meeting on December 17, 2019, during review of the proposed Notice of Preparation for the Plan, the Council, noting that one of the Plan area developers, Z&L, was proposing to develop at a density significantly higher than otherwise allowed within the Plan, suggested that the addition of a library within the project could be tied to the Z&L proposal as a "community benefit" justification for granting the increased density.

Staff subsequently met several times with Z&L to discuss the incorporation of a library space of up to 40,000 square feet within their project. While Z&L initially expressed an openness to this approach and hired an architect to explore it with the City, Z&L has since indicated that due to evolving market conditions they have reconsidered the project's feasibility and will not be moving forward with a high-rise project in the near-term or with a library within their project. At the same time, staff considered that it would be appropriate to develop a joint library-community center as a stand-alone facility that would be located within the new central neighborhood park within the Plan area.

Staff has conducted a preliminary analysis of developing a new joint 47,000 square foot public facility containing space for library, gymnasium, community and senior serving recreation programs and parking as part of the Plan's implementation.

Given the central location, access, adjacent roadways and compatible uses, a site identified for the public facility (library/community center) would be provided on land shown as dedicated public parkland to accompany future development of the Z&L and Sares Regis properties.

In addition to the joint library-community center facility, the Specific Plan includes a proposed 5,000 square foot visual arts center for the public incorporated within the Summerhill project located at southern center of the plan area. Summerhill would provide a cold shell space within the ground floor

of their project that would be dedicated to the City to program for classroom, studio, and gallery space. The City would manage this visual arts space, which would be adjacent to Summerhill's dedicated parkland, and which could function as an area for periodic outdoor art displays curated by the City.

Creation of Patrick Henry Drive Zoning Districts

As a part of the Patrick Henry Drive planning process, the City is proposing to create a series of new zoning districts that are consistent with the proposed General Plan land use designations. The proposed Zoning Districts are flexible and allow for the variety of housing types the Plan anticipates. The zoning code chapter includes development standards for the maximum heights and densities of the district. The districts will be applied to all the parcels in the Patrick Henry Drive area, consistent with the proposed zoning map (Attachment 8). The zoning will be effective on Patrick Henry Drive properties thirty days after the Council adoption of the zoning ordinance creating the new district.

Because Patrick Henry Drive supports a variety of housing types, including high-density mixed use, towers, and podium development, setbacks that reflect the urban context have been included in the ordinance. In general, consistent with the General Plan policies, zoning districts will require 10-foot setbacks for residential buildings and zero setbacks for mixed-use buildings.

The Specific Plan is expected to be implemented over a 20-year timeline and accordingly the Patrick Henry Drive zoning district includes provisions for the continuation and possible expansion of existing industrial uses within the area. Once industrial parcels convert to residential uses, industrial uses on those parcels will no longer be allowed and any proposed development shall conform to the Specific Plan.

The parking provisions within the zoning district reflect the desired urban character of the district. Generally residential uses are required to provide a minimum of one space per unit regardless of the number of bedrooms. For units under 500 square feet in area, the required parking is proposed to be 0.5 parking spaces per unit. For developments subject to the standard parking ratio, the City is requiring developers to offer partially-unbundled parking, meaning each unit, regardless of size, will be rented with one parking space, and renters can choose to rent a second space, regardless of the number of bedrooms in their unit. For efficiency units subject to the 0.5 space parking requirement, parking will be required to be fully unbundled. As an alternative, developers could implement a parking preference program, where prospective renters without cars are put on a separate waiting list from renters with cars, with renters being chosen alternately from the two lists. The list of renters without cars should be shorter and renters without cars should get a unit more quickly.

The required parking for office uses in the High-Density Flex District is one parking space per 500 square feet of gross floor area. For ground floor retail and office space in mixed use buildings, no additional parking is required.

Bicycle parking is required in the plan area consistent with Council direction to provide Class 1 parking (enclosed, secured parking) at a rate of one Class 1 space per residential unit. Required bicycle parking ratios are also specified for Class 1 spaces for mixed use and office projects and for Class 2 spaces (racks) for all uses, at rates equivalent to the VTA's Bicycle Technical Guidelines.

Design Guidelines

While the Specific Plan and zoning regulations will establish some mandatory development or design

criteria, the implementation of the Specific Plan's vision will be further accomplished through the use of design guidelines for issues that require flexibility based upon project context and the inter-relationship between design objectives.

The City intends to rely on the design direction in the Patrick Henry Drive plan for private development and for the public realm. Chapter 5 of the Patrick Henry Drive plan includes dimensioned street sections for both roadways in the existing street network and for proposed new private roadways in the plan area. These street sections were vetted through a rigorous inter-departmental process with stakeholders to ensure both a positive public realm and constructability.

Affordable Housing

An objective of the Specific Plan is to promote a range of housing options and affordability levels to realize the vision for a mixed-use, mixed-income community along the corridor. As such, this Plan includes an inclusionary housing policy that goes above and beyond the City's Affordable Housing Ordinance to promote the provision of units at deeper levels of affordability within the Patrick Henry Drive plan area. Specifically, the inclusionary requirement will be that 15% of the new units be designated as affordable rental units with a mix of units affordable for extremely low, very low, low, and moderate-income households. The affordability requirement could be based on all units conforming to an average of 80% of Area Median Income (AMI) or alternatively, as previously discussed by the City Council, require that 5% of units be designated as affordable at each of the three levels (e.g. 50% AMI for very low, 80% AMI for low and 120% AMI for moderate). Either approach represents a deeper level of affordability than required by the citywide ordinance which requires 15% of units be affordable at an average of 100% of AMI.

ALUC Review

At the September 23, 2021 Airport Land Use Commission (ALUC) meeting, the County Airport Land Use Commission found the Patrick Henry Drive Specific Plan to be consistent with the policies of San Jose Airport Comprehensive Land Use Plan (CLUP), with the following modifications:

- Prior to approval of project specific development within the Urban Village, Urban Center or High-Density Flex areas, City staff shall check with the FAA to ensure a No Hazard Determination is not required. If a No Hazard Determination is required, one shall be obtained prior to the issuance of a building permit.
- Future project-specific development within the Airport Influence Area of San Jose International Airport, shall be required to obtain an Aviation Easement prior to the issuance of a building permit.

These requirements will be implemented through the land use entitlement process for specific projects.

Infrastructure Fee

Should the City Council approve the Specific Plan, staff will bring forward a subsequent infrastructure fee for City Council review and approval. The infrastructure fee will require individual developers to contribute a pro-rata share of the costs of the various infrastructure improvements, such as the costs of sewer improvements and new private roadways that are required to implement the Specific Plan vision and are best borne collectively by all development within the Specific Plan area. In addition to the new private roadways, the fee also includes potable water lines, recycled water, and

transportation improvements, and street improvements to support residential development.

Conclusion

The draft Patrick Henry Drive Specific Plan, General Plan Amendments, accompanying zoning districts and project EIR have been prepared through an extensive planning process which has provided a significant amount of time for discussion of the various components of the Specific Plan. The Specific Plan will provide a land use policy framework to support the development of a new high-quality urban district within Santa Clara consistent with the City's vision and the goals and policies set forth in the General Plan.

ENVIRONMENTAL REVIEW

An Environmental Impact Report (EIR) was prepared for the Patrick Henry Drive Specific Plan and related approvals (the "project") in accordance with the California Environmental Quality Act (CEQA) (Attachment 1). The EIR analyzes program-level impacts of the Patrick Henry Drive Specific Plan. The EIR and Notice of Availability were circulated for a 45-day period from July 30, 2021 to September 13, 2021 in accordance with CEQA requirements. The EIR provides a comprehensive analysis of the potential environmental impacts for the project, and addresses topics identified within the General Plan policies for Patrick Henry Drive including land use compatibility and provision of public facilities and parks and open space (Policy 5.4.7-P6, 5.4.7-P7, 5.4.7-P8, and 5.4.7-P9).

The EIR found that there would be significant and unavoidable environmental impacts to:

- Air Quality emissions (toxic air contaminant emissions)
- Potential destruction or degradation of Historic Resources
- Noise (increases in traffic noise levels from Specific Plan development)

The project would also result in the following significant unavoidable cumulative impacts:

- Air Quality emissions (criteria pollutant emissions)

All the other potentially significant impacts can be mitigated to a less than significant level. The mitigation measures are included in their entirety as a part of the proposed Mitigation Monitoring and Reporting Program (MMRP).

The Draft EIR comment period ran from July 30, 2021 to September 13, 2021. A total of five comments were received during the comment period.

None of the comment letters have identified a new significant impact, or have provided substantial evidence that the CEQA analysis is otherwise inadequate. Recirculation of the EIR is therefore not required.

Responses to the Draft EIR comments, as well as minor text changes and clarifications, in the form of a Final EIR, was made available to the public through the City's website on January 12, 2022, and have been forwarded on to any commenters on the Draft EIR.

A detailed discussion of the potential impacts and mitigation measures to be applied to the project is specified in the EIR and would be implemented through project conditions of approval and the MMRP for the proposed project.

FISCAL IMPACT

Consultant costs borne by the City for the preparation of the Specific Plan have been funded through a reimbursement agreement with the stakeholders of the Patrick Henry Drive plan area.

The proposed change in land uses would significantly increase land values as well as demand for services, having both positive and negative fiscal impacts upon the City. The addition of retail services and an increased local population will add to more sales tax revenue for the City. It is understood that residential land uses generally have a net negative fiscal impact (as increased land value revenue does not completely offset increased costs for service), but infill development and higher density development, particularly utilizing Type I or Type III construction, provides for more efficient delivery of services and can be revenue neutral or even positive in some circumstances. Furthermore, the Plan will include private maintenance of park spaces and a significant private investment for infrastructure that will also provide fiscal benefits. On the whole, implementation of the Specific Plan is expected to have a relatively minor net fiscal impact to the City and will provide housing necessary for Santa Clara's ongoing economic vitality.

COORDINATION

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

PUBLIC CONTACT

Public contact was made by publishing a hearing notice in the Santa Clara Weekly on January 13, 2022, and by mailing a hearing notice to properties within a 500-foot radius of the plan area. The Planning Commission agenda was also posted 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.

In addition to City Council and Planning Commission study sessions, the City held two community meetings on the plan: A virtual community meeting was held on March 11, 2021 to present the draft plan to the community. There were approximately 70 attendees. Speakers at the meeting expressed concern with traffic impacts, the potential roadway connecting the plan area to Mission College Boulevard, and planning for future pandemics. An earlier community meeting, held on February 25, 2019 for the City North Area, and was attended by approximately 28 people. That early meeting helped to define the vision for the Patrick Henry Drive plan.

ALTERNATIVES

That the Planning Commission adopts Resolutions recommending that the City Council:

1. Adopt a resolution approving and certifying the Final EIR prepared for the Patrick Henry Drive Specific Plan (SCH # 2019120515), including CEQA Findings and a statement of overriding considerations.
2. Adopt a resolution approving the PHD Specific Plan, a specific plan consistent with Government Code Sections 65450-65457.
3. Adopt a resolution approving General Plan text amendments creating the following land use

designations: Village Residential (60-149 DU/AC), Urban Village (100-149 DU/AC), Urban Center (120-250 DU/AC), and High Density Flex (60-149 DU/AC, or up to 2.0 FAR), updating the Climate Action Plan to recognize those Land Use Designations, and amending the General Plan Land Use diagrams for Phases II and III to reflect the land use designations in the Patrick Henry Drive Specific Plan.

4. Adopt an ordinance amending the Zoning Code to create of the Chapter 18.27 of the Zoning Code, Regulations for PHD, the Patrick Henry Drive Zoning Districts, including development standards, allowed uses and parking requirements for the following zoning districts: R5 - Very High Density Residential, VR - Village Residential, UV - Urban Village, UC - Urban Center, and HD Flex - High Density Flex, and rezoning the Project Site using the new districts as indicated in the Patrick Henry Drive zoning map.

or

5. Provide direction to staff to make modifications to the Specific Plan and/or Zoning districts for City Council consideration.

That the Planning Commission adopt Resolutions recommending that the City Council:

1. Approve and certify the Final EIR prepared for the PHD Specific Plan (SCH # 2019120515), including CEQA Findings and a Statement of Overriding Considerations.
2. Approve the Patrick Henry Drive Specific Plan, a specific plan consistent with Government Code Sections 65450-65457.
3. Approve a General Plan text amendment creating the following land use designations: Village Residential (60-149 DU/AC), Urban Village (100-149 DU/AC), Urban Center (120-250 DU/AC), and High Density Flex (60-149 DU/AC, or up to 2.0 FAR), updating the Climate Action Plan to recognize those Land Use Designations, and amending the General Plan Land Use diagrams for Phases II and III to reflect the land use designations in the Patrick Henry Drive Specific Plan; and
4. Adopt an ordinance amending the Zoning Code to create of the Chapter 18.27 of the Zoning Code, Regulations for the PHD, the Patrick Henry Drive Zoning Districts, including development standards, allowed uses and parking requirements for the following zoning districts: R5 - Very High Density Residential, VR - Village Residential, UV - Urban Village, UC - Urban Center, and HD Flex - High Density Flex, and rezoning the Project Site using the new districts as indicated in the Patrick Henry Drive zoning map.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Environmental Impact Report
2. Patrick Henry Drive Planning Commission EIR Resolution
3. CEQA Findings and Statement of Overriding Considerations
4. Patrick Henry Drive Planning Commission Specific Plan Resolution
5. Patrick Henry Drive Planning Commission General Plan Amendment Resolution
6. Patrick Henry Drive Planning Commission Zoning Resolution
7. Patrick Henry Drive Zoning Ordinance Amendments
8. Patrick Henry Drive Zoning Map
9. General Plan Future Focus Area Goals and Policies
10. Draft Plan Land Use Plan
11. Draft Plan Urban Design Framework

- 12. Street Section from the Patrick Henry Drive Plan
- 13. Draft Patrick Henry Drive Specific Plan

Patrick Henry Drive Environmental Impact Report:

[Patrick Henry Drive Specific Plan | Environmental Review/CEQA | City of Santa Clara
\(santaclaraca.gov\)](#)

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL APPROVE AND CERTIFY A FINAL ENVIRONMENTAL IMPACT REPORT, MAKE FINDINGS WITH RESPECT THERETO, AND ADOPT A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE PATRICK HENRY DRIVE SPECIFIC PLAN

SCH #2019120515

PLN2019-14257 (CEQA Resolution, Specific Plan, General Plan Amendment, and Zoning Amendment)

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

WHEREAS, the City of Santa Clara (the “City”) is contemplating the adoption of the Patrick Henry Drive Specific Plan (the “Project”), a specific plan for a transit-oriented pedestrian-friendly neighborhood of up to 12,000 residential units with supportive retail uses, located on approximately 62 net acres of land located within one-half mile of the Tasman Drive light rail line that are currently developed with industrial uses;

WHEREAS, the proposed Specific Plan also includes an alternative development scenario that allows for up to 10,300 residential units, with up to 785,000 square feet of office space, and 310,000 square feet of other non-residential uses; and

WHEREAS, under the proposed Specific Plan, the Patrick Henry Drive area is intended to be a walkable urban neighborhood, with parking reflective of a variety of available transit modes, including bicycle parking; and

WHEREAS, the Patrick Henry Drive area will include a variety of forms of urban housing, including podium buildings, residential towers, and residential mixed-use buildings;

WHEREAS, the proposed Patrick Henry Drive Specific Plan is consistent with the Goals and Policies of the Future Focus Areas section in the General Plan;

WHEREAS, as a part of implementing the Specific Plan, the City is contemplating the adoption of a General Plan Amendment (“GPA”) to amend the General Plan land use diagram by changing the existing land use designations of the Project Site from Light Industrial to a variety of residential designations that would allow dwelling unit densities of 51 to 250 Dwelling Units per acre, with supportive retail uses, along with a High Density flex designation that would allow either residential densities of between 60 to 149 DU/AC, or a non-residential Floor Area Ratio (FAR) of up to 2.0;

WHEREAS, the GPA includes an amendment to Appendix 8.13 (the Climate Action Plan) setting forth vehicle trip reduction targets for the new land use designations applicable to the Patrick Henry Drive area; and

WHEREAS, the City is contemplating the amendment of SCCC Title 18, the Zoning Code to create new Patrick Henry Drive zoning districts that implement and are consistent with the proposed General Plan designations, and to apply those zoning designations across the Project Site;

WHEREAS, Santa Clara City Charter Section 1007 and Government Code Section 65353 require that the Planning Commission provide input to the City Council on any proposed General Plan Amendment;

WHEREAS, the Project approvals will include a resolution certifying the EIR; a resolution approving the General Plan Amendment; a resolution approving the Patrick Henry Drive Specific Plan; and an ordinance amending the Zoning Code to correspond to the Specific Plan (collectively, the “Approvals”);

WHEREAS, implementation of the Project will also require separate applications for individual development approvals and Tentative and/or Vesting Tentative Subdivision Maps for City review and approval that are not part of this application;

WHEREAS, on December 19, 2019, the City distributed a Notice of Preparation of a Draft Environmental Impact Report (“DEIR”) for the Patrick Henry Drive Specific Plan that

contemplated either up to 12,000 net new residential units and 310,000 net new square feet of non-residential uses, including retail and education facilities, or a second scenario which would substitute office for high-density residential along the east edge of the Plan Area, amounting to an approximate total of 10,300 net new residential units, 785,000 net new square feet of office, and 310,000 net new square feet of other nonresidential uses; and

WHEREAS, on December 19, 2019, the City posted the Notice of Preparation at the Santa Clara County Clerk's office, soliciting guidance on the scope and content of the environmental information to be included in the DEIR;

WHEREAS, on January 8, 2020, the City hosted a public scoping meeting to obtain community input on the scope and content of the DEIR;

WHEREAS, the DEIR was prepared in accordance with CEQA and the City circulated copies of the DEIR and Notice of Availability to the public agencies which have jurisdiction by law with respect to the Project, as well as to other interested persons, organizations and agencies, and the City sought the comments of such persons, organizations and agencies on July 30, 2021 for a 45-day review period, ending on September 13, 2021 (the "Comment Period");

WHEREAS, the City prepared written responses to the comments received during the Comment Period and included those responses in a Final Environmental Impact Report ("FEIR"). The FEIR consists of a list of agencies and organizations to whom the DEIR was sent, a list of the comment letters received on the DEIR, revisions to the text of the DEIR, responses to comments received on the DEIR, and copies of comment letters. The FEIR was distributed to commenting parties and to the public on January 12, 2022;

WHEREAS, the DEIR and FEIR constitute the EIR for the Project;

WHEREAS, the EIR identified certain significant and potentially significant adverse effects on the environment that would be caused by the Project as proposed;

WHEREAS, the EIR outlined various mitigation measures that would substantially lessen or avoid the Project's significant effects on the environment, as well as alternatives to the Project as proposed that would provide some environmental advantages;

WHEREAS, the City is required, pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 et seq.), to adopt all feasible mitigation measures or feasible project alternatives that can substantially lessen or avoid any significant environmental effects of the Project;

WHEREAS, the EIR analyzed a "No Project" alternative for the Patrick Henry Drive area that considers full build-out under the existing land use designation (No Project/Light Industrial Development), along with an All Commercial Office Development alternative, an All Residential Development Alternative and a Reduced Overall Development Alternative ;

WHEREAS, significant and unavoidable air quality, historic resources, and traffic noise impacts would remain with the proposed project;

WHEREAS, Public Resources Code § 21081, subdivision (a) requires a lead agency, before approving a project for which an EIR has been prepared and certified, to adopt findings specifying whether mitigation measures and, in some instances, alternatives discussed in the EIR, have been adopted or rejected as infeasible;

WHEREAS, the "CEQA Findings" attached to this Resolution is a set of Findings of Fact and a Statement of Overriding Considerations prepared in order to satisfy the requirements of Public Resources Code § 21081, subdivision (a);

WHEREAS, as the CEQA Findings explain, the Planning Commission intends to recommend that the City Council adopt the Specific Plan, associated General Plan Amendments, and Zoning Ordinance Amendment (the "Project");

WHEREAS, the Planning Commission has determined that none of the alternatives addressed in the EIR, would be both feasible and environmentally superior to the Project as proposed. Neither the No Project alternative, nor the Reduced Development alternative, nor the All

Residential nor the All Commercial alternatives would sufficiently satisfy the Project Objectives.

The details supporting these determinations are set forth in the CEQA Findings;

WHEREAS, in taking this course, the Planning Commission has acted consistent with the CEQA mandate to look to project mitigations and/or alternatives as a means of substantially lessening or avoiding the environmental effects of projects as proposed;

WHEREAS, many of the significant and potentially significant environmental effects associated with the Project can either be substantially lessened or avoided through the inclusion of mitigation measures proposed in the EIR;

WHEREAS, the Planning Commission, in reviewing the Project, recommends that the City Council adopt all mitigation measures set forth in the EIR;

WHEREAS, the significant effects that cannot be avoided or substantially lessened by the adoption of feasible mitigation measures will necessarily remain significant and unavoidable;

WHEREAS, as detailed in the CEQA Findings, the Planning Commission has determined that, despite the occurrence of significant unavoidable environmental effects associated with the Project, as mitigated and adopted, there exist certain overriding economic, social and other considerations for approving the Project which justify the occurrence of those impacts and render them acceptable;

WHEREAS, notice of the public hearing on the proposed project was published in the Santa Clara Weekly, a newspaper of general circulation for the City, on January 12, 2022;

WHEREAS, notices of the public hearing on the proposed project were mailed to all property owners within 500 feet of the Project Site, according to the most recent assessor's roll, on January 13, 2022; and

WHEREAS, the Planning Commission reviewed the EIR and Mitigation Monitoring and Reporting Program, attached as the "MMRP", as well as a set of CEQA Findings and a Statement of Overriding Considerations, in accordance with the requirements of CEQA, along with the City Staff report pertaining to the EIR for the Project (SCH #2019120515), and all

evidence received at a duly noticed public hearing on January 26, 2022. All of these documents and evidence are incorporated herein by reference into this Resolution.

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

1. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the Planning Commission hereby finds that the EIR has been completed in compliance with CEQA.
3. That the Planning Commission hereby finds the EIR has been presented to the Planning Commission, which reviewed and considered the information and analysis contained therein before making its determination, and that the EIR reflects the Commission's independent judgment and analysis.
4. That the Planning Commission hereby finds, pursuant to Public Resources Code Section 21081 and California Code of Regulations, Title 14, Section 15091, that many of the proposed mitigation measures described in the EIR are feasible, and therefore will become binding upon the City and affected landowners and their assigns or successors in interest as conditions of approval when the Project is approved.
5. That the Planning Commission hereby finds that none of the Project Alternatives set forth in the EIR can feasibly substantially lessen or avoid those significant adverse environmental effects not otherwise lessened or avoided by the adoption of all feasible mitigation measures.
6. That, in order to comply with Public Resources Code Section 21081.6, the Planning Commission recommends that the City Council adopt the Mitigation Monitoring and Reporting Program as set forth in the attached "MMRP". The MMRP is designed to ensure that, during project implementation, the City, affected landowners, their assigns and successors in interest and any other responsible parties comply with the feasible mitigation measures identified. The

MMRP identifies, for each mitigation measure, the action to be taken and the party responsible for implementation.

7. That the Planning Commission hereby finds that the EIR set forth program and cumulative environmental impacts that are significant and unavoidable that cannot be mitigated or avoided through the adoption of feasible mitigation measures or feasible alternatives. As to these impacts, the Planning Commission finds that there exist certain overriding economic, social and other considerations for approving the Project that justify the occurrence of those impacts, as detailed in the "CEQA Findings" exhibit attached hereto.

8. Based on the findings set forth in this Resolution, the evidence in the City Staff Report, and the attached CEQA Findings, the Planning Commission hereby recommends that the City Council approve and certify the EIR, make findings concerning mitigation measures, adopt the MMRP, make findings concerning alternatives and make findings that there exist certain overriding economic, social and other considerations for approving the Project that justify the occurrence of those associated impacts and adopt the CEQA Findings and Statement of Overriding Considerations, all in accordance with CEQA for the Project.

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 26th DAY OF JANUARY, 2022, BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

ATTEST: _____
ANDREW CRABTREE
DIRECTOR OF COMMUNITY DEVELOPMENT
CITY OF SANTA CLARA

Attachments Incorporated by Reference:

1. Mitigation Monitoring and Reporting Program (MMRP)
2. CEQA findings and Statement of Overriding Considerations

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**FINDINGS OF FACT REGARDING THE ENVIRONMENTAL IMPACT REPORT
FOR THE PATRICK HENRY DRIVE SPECIFIC PLAN PROJECT**

City of Santa Clara Project No. PLN2019-14257

(EIR, Specific Plan, General Plan Amendment, and Zoning Amendment)

SCH # 2019120515

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

**FINDINGS OF FACT REGARDING THE ENVIRONMENTAL IMPACT REPORT
(STATE CLEARINGHOUSE NUMBER 2019120515) FOR THE PATRICK HENRY
DRIVE SPECIFIC PLAN PROJECT (CITY PROJECT NUMBER PLN2019-14257)**

I. INTRODUCTION

The California Environmental Quality Act of 1970 (“CEQA”), Public Resources Code section 21081 *et seq*, and the Guidelines for Implementation for the California Environmental Quality Act, Title 14 California Code of Regulations, section 15091 *et seq* (“CEQA Guidelines”) require that a public agency consider the environmental impacts of a project before a project is approved and make specific findings. Public Resources Code section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]” The same statute provides that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.” Section 21002 goes on to provide that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

The mandate and principles announced in Public Resources Code section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required. For each significant environmental effect identified in an EIR for a project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The CEQA Guidelines section 15091 specifically provides as follows:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
 - 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the EIR.
 - 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can or should be adopted by such other agency.
 - 3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers,

make infeasible the mitigation measures or project alternatives identified in the final EIR.

- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.
- (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.
- (e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- (f) A statement made pursuant to section 15093 does not substitute for the findings required by this section.

CEQA Guidelines section 15093 further provides as follows:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."
- (b) Where the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/ or other information in the record. This statement of overriding considerations shall be supported by substantial evidence in the record.
- (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to section 15091.

Public Resources Code section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors.” CEQA Guidelines section 15364 adds another factor: “legal” considerations. See also *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 565 (*Goleta II*). The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417; *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1506-1509 (court upholds CEQA findings rejecting alternatives in reliance on applicant’s project objectives); see also *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 (CNPS) (“an alternative ‘may be found infeasible on the ground it is inconsistent with the project objectives as long as the finding is supported by substantial evidence in the record’”) (quoting Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* [Cont.Ed.Bar 2d ed. 2009] (Kostka), § 17.39, p. 825); *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165, 1166 (*Bay-Delta*) (“[i]n the CALFED program, feasibility is strongly linked to achievement of each of the primary project objectives”; “a lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal”). Moreover, “‘feasibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.” *City of Del Mar, supra*, 133 Cal.App.3d at p. 417; see also *CNPS, supra*, 177 Cal.App.4th at p. 1001 (“an alternative that ‘is impractical or undesirable from a policy standpoint’ may be rejected as infeasible”) (quoting *Kostka, supra*, § 17.29, p. 824); *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 17.

For purposes of these findings, the term “avoid” refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less than significant level. Although CEQA Guidelines section 15091 requires only that approving agencies specify that a particular significant effect is “avoid[ed] or substantially lessen[ed],” these findings, for purposes of clarity, in each case will specify whether the effect in question has been “avoided” (i.e., reduced to a less than significant level).

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where such changes are infeasible or where the responsibility for modifying the project lies with some other agency. CEQA Guidelines § 15091(a), (b).

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project’s “benefits” rendered “acceptable” its “unavoidable adverse environmental effects.” CEQA Guidelines §§ 15093, 15043(b); see also Pub. Resources Code § 21081(b). The California Supreme Court has stated, “[t]he wisdom of approving . . . any development project, a delicate task which requires a

balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced.” *Goleta II, supra*, 52 Cal.3d at p. 576. The EIR (as defined below) for the Project (as defined below) concluded the Project would create significant and unavoidable impacts; thus, a Statement of Overriding Considerations is required.

These Findings of Fact (sometimes referred to herein as “Findings”) constitute the City of Santa Clara’s (City’s) evidentiary and policy bases for its decision to approve the Project in a manner consistent with the requirements of CEQA. To the extent that these Findings conclude that various mitigation measures outlined in the Final EIR are feasible and have not been modified, superseded or withdrawn, the City hereby binds itself to ensuring that these measures are implemented by the appropriate party(ies). These Findings, in other words, are not merely informational, but rather constitute a binding set of obligations that will come into effect when the City adopts a resolution approving the Project.

In addition, a Mitigation Monitoring and Reporting Program (“MMRP”) has been prepared for the Project, and is being approved by the City Council by the same Resolution that has adopted these Findings. The City will use the MMRP to track compliance with Project mitigation measures. The Mitigation Monitoring and Reporting Program will remain available for public review during the compliance period. The Final Mitigation Monitoring and Reporting Program is attached to and incorporated into the environmental document approval resolution and is approved in conjunction with certification of the EIR and adoption of these Findings of Fact.

Having received, reviewed, and considered the Draft Environmental Impact Report (“Draft EIR”) and the Final Environmental Impact Report (“Final EIR” and, together with the Draft EIR, the “EIR”) for the Patrick Henry Drive Specific Plan (the “Project”), State Clearinghouse (“SCH”) No. 2019120515, as well as other information in the record of proceedings on this matter, the City of Santa Clara City Council, in its capacity as the decision-making body of the CEQA Lead Agency hereby finds, determines, and declares the following Findings and Facts, in accordance with Section 21081 of the Public Resources Code.

These Findings set forth the environmental basis for the discretionary actions to be undertaken by the County for the development of the Project. These actions include the approval of the following for the Patrick Henry Drive Specific Plan Project:

- Environmental Impact report (SCH No. 2019120515)
- Patrick Henry Drive Specific Plan
- General Plan Amendment
- Zoning Amendment

A. Document Format

These Findings have been organized into the following sections:

- (1) Section I provides an introduction to these Findings.
- (2) Section II provides a summary of the Project, overview of the discretionary actions required for approval of the Project, and a statement of the Project's objectives.
- (3) Section III provides a summary of environmental review related to the Project and a summary of public participation in the environmental review for the Project
- (4) Section IV sets forth findings regarding the potential impact areas identified in the EIR. This section details findings for those impacts for which the County has determined that there is no impact or the impact is less than significant and thus no mitigation is required; findings regarding potentially significant environmental impacts identified in the EIR that the County has determined can be feasibly mitigated to a less than significant level through the imposition of mitigation measures; and findings regarding those significant or potentially significant environmental impacts identified in the EIR that will or may result from the Project and which the County has determined will remain significant and unavoidable, despite the identification and incorporation of all feasible mitigation measures.

In order to ensure compliance and implementation, all of the mitigation measures will be included in MMRP for the Project and adopted as conditions of the Project by the Lead Agency. Where potentially significant impacts can be reduced to a less than significant level through mitigation, these findings specify how those impacts would be reduced to an acceptable level.

- (5) Section V sets forth findings regarding alternatives to the Project
- (6) Section VI sets forth findings regarding the growth-inducing impacts of the Project.
- (7) Section VII sets forth findings regarding recirculation of the Draft EIR.
- (8) Section VIII sets forth findings regarding rejection of recommended mitigation measures.
- (9) Section IX contains the findings pursuant to Public Resources Code section 21082.1(c)(3).
- (10) Section X contains the Statement of Overriding Considerations for the Project pursuant to CEQA Guidelines section 15093.

B. Custodian and Location of Records

The Patrick Henry Drive Specific Plan Environmental Impact Report consists of:

1. Draft Environmental Impact Report (Draft EIR) and Appendices 25.1 through 25.6, dated July, 2021; and
2. Final Environmental Impact Report (Final EIR) dated December, 2021.

The following Findings of Fact are based in part on the information contained in EIR for the Project, as well as additional facts found in the complete record of proceedings. The EIR is hereby incorporated by reference and is available for review at Santa Clara City Hall, 1500 Warburton Avenue, Santa Clara, California, 95050 during normal business hours.

For the purposes of CEQA, and the findings herein set forth, the administrative record for the Project consists of those items listed in Public Resources Code Section 21167.6, subdivision (e). The record of proceedings for the City's decision on the Project consists of the following documents, at a minimum, which are incorporated by reference and made part of the record supporting these Findings:

- The NOP and all other public notices issued by the City in conjunction with the Project;
- The Draft EIR for the Project and all documents relied upon or incorporated by reference;
- All comments submitted by agencies or members of the public during the 45-day comment period on the Draft EIR;
- All comments and correspondence submitted to the City during the public comment period on the Draft EIR, in addition to all other timely comments on the Draft EIR;
- The Final EIR for the Project, including the Planning Commission staff report, minutes of the Planning Commission public hearing; City Council staff report; minutes of the City Council public hearing; comments received on the Draft EIR; the City's responses to those comments; technical appendices; and all documents relied upon or incorporated by reference;
- The MMRP for the Project;
- All findings and resolutions adopted by the City in connection with the Project, and all documents cited or referred to therein;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the Project prepared by the City, consultants to the City, or responsible or trustee agencies with respect to the City's compliance with the requirements of CEQA and with respect to the City's action on the Project;
- All documents submitted to the City by other public agencies or members of the public in connection with the Project, up through the close of the public hearing;
- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the City in connection with the Project;

- Any documentary or other evidence submitted to the City at such information sessions, public meetings and public hearings;
- All resolutions adopted by the City regarding the Project, and all staff reports, analyses, and summaries related to the adoption of those resolutions;
- The City's General Plan and applicable Specific Plans and all updates and related environmental analyses;
- Matters of common knowledge to the City, including, but not limited to Federal, State, and local laws and regulations;
- The City Code;
- Any documents expressly cited in these Findings, in addition to those cited above; and
- Any other materials required for the record of proceedings by Public Resources Code section 21167.6, subdivision (e).

The documents and other materials that constitute the administrative record for the City's actions related to the Project are at Santa Clara City Hall, 1500 Warburton Avenue, Santa Clara, California, 95050. The City is the custodian of the Administrative Record for the Project.

The City has relied on all of the documents listed above in reaching its decisions on the proposed Project, even if not every document was formally presented to the City Council or City Staff as part of the City files generated in connection with the Project. Without exception, any documents set forth above not found in the Project files fall into one of two categories. Many of them reflect prior planning or legislative decisions of which the City Council was aware in approving the Project. See *City of Santa Cruz v. Local Agency Formation Commission* (1978) 76 Cal.App.3d 381, 391-391; *Dominey v. Department of Personnel Administration* (1988) 205 Cal.App.3d 729, 738, fn. 6. Other documents influenced the expert advice provided to City Staff or consultants, who then provided advice to the Planning Commission and the City Council as final decision makers. For that reason, such documents form part of the underlying factual basis for the City's decisions relating to approval of the Project. See Pub. Resources Code § 21167.6(e)(10); *Browning-Ferris Industries v. City Council of City of San Jose* (1986) 181 Cal.App.3d 852, 866; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 153, 155.

II. PROJECT SUMMARY

A. Project Location

The Patrick Henry Drive Specific Plan covers approximately 73.59 acres and currently contains predominantly commercial uses such as research and development (R&D) and light industrial (electronics and computer software development). Other commercial uses include offices (professional services, architects, legal, and personnel/employment support) and a restaurant. In addition, there is a church in the southern part of the Plan Area.

The Patrick Henry Drive Specific Plan Area, much like the surrounding neighborhood, is characterized by several “superblocks” with ample surface parking, significant setbacks, and significant separation between buildings. The Plan Area is relatively flat and developed with buildings ranging in height from one and two stories, in the south and west, to four- and five-story buildings, in the east. The building stock was developed primarily in the 1970s and 1980s. The Plan Area is generally underutilized, and some buildings are vacant. There are no residential land uses, public parks, or historic structures located on-site. Private automobiles predominate the suburban streetscape environment that is defined by limited pedestrian and bicycle accessibility. Visible infrastructure on-site includes local streets and utilities, such as streetlights, as well as the Hetch Hetchy right-of-way that runs along the Plan Area’s northern border. Due to the large-lot industrial development pattern and limited number of roadways within the Plan Area, linkages and connectivity across the Plan Area are limited.

The proposed Patrick Henry Drive Specific Plan, which has been under development since 2018, enables the redevelopment of an approximately 76 acre industrial area (62 acres net) bounded by Mission College to the south, Great America Parkway to the East, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west. With its close proximity to the Tasman light rail line, the proposed Patrick Henry Drive Specific Plan includes a land use framework to develop the area into a transit-oriented neighborhood with up to 12,000 residential units and up to 310,000 square feet of non-residential uses. A second scenario would be the same as the first but would substitute office for high-density residential along the east edge of the Plan Area, amounting to an approximate total of 10,300 net new residential units, 785,000 net new square feet of office, and 310,000 net new square feet of other nonresidential uses.

The Patrick Henry Drive Area is identified as a Future Focus Area in Phase III of the City’s General Plan (2023-2030), and the PDHSP provides an opportunity for the City to reach housing goals identified in the City’s share of the state-required Regional Housing Needs Allocation (“RHNA”) and for meeting demand for housing that has resulted from job and retail growth in the City and region. The Specific Plan is a prerequisite to development of the Patrick Henry Drive Focus Area with residential uses. The Plan Area is currently classified Light Industrial in the Santa Clara General Plan and is designated in Phase III (2023-2030) of the General Plan for High Density Residential land use, which allows 37-50 du/ac. Parcels in the Plan Area are currently zoned Light Industrial (ML). On April 9, 2019, the City Council of the City of Santa Clara directed City staff to proceed with the preparation of a Specific Plan in advance of the Phase III time horizon due to significant developer interest in the area.

B. Project Description

With its close proximity to the Tasman light rail line, the proposed Patrick Henry Drive Specific Plan includes a land use framework to develop the area into a transit-oriented neighborhood with up to 12,000 residential units and up to 310,000 square feet of non-residential uses. A second scenario would be the same as the first but would substitute

office for high-density residential along the east edge of the Plan Area, amounting to an approximate total of 10,300 net new residential units, 785,000 net new square feet of office, and 310,000 net new square feet of other nonresidential uses.

The Plan area consists of an approximately 76-acre industrial area (62 acres net) bounded by Mission College to the south, Great America Parkway to the East, the Hetch-Hetchy right-of-way to the north, and Calabasas Creek to the west.

As the Plan area is located in the northern part of Santa Clara, it is generally proximate to a large number of employment uses, as well as the Santa Clara Youth Soccer Park, Levi's® Stadium, the City's convention center, the Great America theme park, and other potential major development projects along in northern Santa Clara, including Kylli immediately to the North, the Freedom Circle Focus Area/Greystar project across Great America Parkway, and the Related Santa Clara project and the Tasman East Specific Plan Area to the East on Tasman Drive.

C. Discretionary Actions

Implementation of the Project within the City will require several actions by the City, including:

- **Environmental Assessment:** To certify an FEIR that analyzes the environmental effects of the proposed Project.
- **General Plan Amendment:** To amend the Santa Clara General Plan, adopted by the City Council on November 16, 2010, to create the following land use designations:
 - Very High Density (51-100 du/ac)
 - Village Residential (60-150 du/ac)
 - Urban Village Residential (100-150 du/ac)
 - Urban Center Residential (120-250 du/ac); and
 - High Density Flex designation (60-150 du/ac or up to a 2.0 floor area ratio of commercial development).

The General Plan Amendment includes the amendment of the Land Use Diagram and text amendment (as well as amendments to the City's Climate Action Plan).

- **Specific Plan:** To adopt the Patrick Henry Drive Specific Plan, in order to regulate development through its development standards and regulations in conjunction with Title 18 of the Santa Clara City Code.
- **Zoning Amendment:** To amend the Santa Clara City Code of Chapter 18.27 of the Zoning Code, Regulations for PHD, the Patrick Henry Drive Zoning Districts, including development standards, allowed uses and parking requirements for the following zoning districts: R5 – Very High Density Residential, VR – Village Residential, UV – Urban Village, UC – Urban Center, and HD Flex – High Density Flex; Approval of these zoning amendments, together with adoption of the Specific Plan, would establish the land use regulations and development standards applicable to the Plan Area.

Prior to Project implementation, additional permits and/or approvals may be required from various governmental entities, including the following:

- Santa Clara Valley Transportation Authority (VTA)
- Santa Clara Water & Sewer Utilities Department
- Silicon Valley Power (SVP)
- County of Santa Clara Department of Environmental Health
- Santa Clara County Airport Land Use Commission (ALUC)
- San Francisco Bay Regional Water Quality Control Board (RWQCB)
- Bay Area Air Quality Management District (BAAQMD)
- Department of Toxic Substances Control (DTSC)
- California Department of Transportation (Caltrans)
- California Department of Fish and Wildlife (CDFW)
- United States Fish and Wildlife Service (USFWS)

D. Statement of Project Objectives

The statement of objectives sought by the Project and set forth in the Final EIR is provided as follows:

- Ensure an economically vibrant, safe, healthy, and sustainable neighborhood that supports a range of users, including residents, business owners, and visitors.
- Bring clarity and consistency to the regulation of individual development proposals within the [Patrick Henry Drive] PHD Specific Plan Area boundaries.
- Foster strong connectivity, access, and circulation for a mix of travel modes, including walking, cycling, driving, and transit.
- Plan parkland and open space standards consistent with City Code 17.35 to support a high quality of life within an urban environment.
- Provide community amenities and public facilities to support a “complete” neighborhood.
- Adopt infrastructure and funding plans to ensure infrastructure will adequately support planned densities and intensities.

- Support the City’s affordable housing goals by requiring 15 percent of all developed residential units to be affordable to households at or below 80 percent of the Average Median Income (AMI).
- Engage the entire community in a robust, creative, and ongoing participation process.

III. ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION

The Final EIR, dated January 2022, includes the Draft EIR dated July 2021, written comments on the Draft EIR that were received during the public review period, written responses to these comments, clarifications/changes to the Draft EIR, and the MMRP. In conformance with CEQA, the City conducted an extensive environmental review of the Project, as described below:

- The City issued a Notice of Preparation of a Draft Environmental Impact Report (“NOP”) on December 19, 2019, to federal, state, regional, and local government agencies and interested parties to solicit comments and to inform agencies and the public of the Project during a 30-day public review period that extended from December 19, 2019 to January 21, 2020.
- The Project, as it was envisioned in 2019, was described in the NOP; potential environmental effects associated with Project approval and implementation were identified; and agencies and the public were invited to review and comment on the Initial Study, NOP, and NOP mailing list.
- Based on the Notice of Preparation and responses, a determination was made that the EIR would contain a comprehensive analysis of the following environmental issues, identified in Appendix G of the CEQA Guidelines: aesthetics, air quality, biological resources, cultural and Historical resources (including Tribal Cultural Resources, geology and soils, greenhouse gas emissions and energy, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, population and housing, public services, recreation, transportation/traffic, and utilities and service systems.
- An Environmental Impact Report (EIR) was prepared for this project in accordance with the CEQA Guidelines. As required by CEQA, the EIR includes appropriate review, analysis, and mitigation measures for the environmental impacts of the proposed project. The Final EIR could be utilized by other permitting agencies in their capacity as Responsible and Trustee agencies under CEQA.
- A Draft EIR was prepared and circulated for a 45-day public review period, beginning on July 30, 2021, and ending on September 13, 2021. The Draft EIR was distributed to responsible and trustee agencies, other affected agencies, surrounding jurisdictions, interested parties, and other parties who requested a copy of the EIR in accordance with California Public Resources Code Section 20192.

- The Draft EIR was available for public review on the City's webpage and, during normal business hours, at City Hall located at 1500 Warburton Avenue, Santa Clara, CA, 95050. During this review period, the document was reviewed by various state, regional, and local agencies, as well as by interested organizations and individuals. Comment letters on the Draft EIR were received from 4 agencies and 1 law firm representing a property owner within the plan area. Comment letters and responses to comments are included in the FEIR, which was issued in January 2022.

IV. FINDINGS REGARDING PROJECT ENVIRONMENTAL EFFECTS

The following potentially significant impacts were analyzed in the EIR, and the effects of the Project were considered. For some impacts, the City has determined that the Project impacts have no impact on the environment or have a less than significant impact on the environment and thus no mitigation is required.

Other potentially significant impacts have been determined by the City to be reduced to a level of less than significant because of the environmental analysis of the Project and identification of project design features, compliance with existing laws, codes, and statutes, and the identification and incorporation of feasible mitigation measures. The City has thus found for these impacts – in accordance with CEQA section 21081(a)(1) and CEQA Guidelines section 15091(a)(1) – that “Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment. Where the City has determined – pursuant to CEQA section 21081(a)(2) and CEQA Guidelines section 15091(a)(2) – that “Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency,” it has also designated the impact as less than significant with mitigation.

Where, as a result of the environmental analysis of the Project, the City has determined that either (1) even with the identification of project design features, compliance with existing laws, codes and statutes, and/or the identification of feasible mitigation measures, potentially significant impacts cannot be reduced to a level of less than significant, or (2) no feasible mitigation measures or alternatives are available to mitigate the potentially significant impact, the City has found in accordance with CEQA section 21081(a)(3) and CEQA Guidelines section 15091(a)(3) that “Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.” These impacts have been designated significant and unavoidable.

A. Aesthetics

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

The Project would not substantially degrade the existing visual character or quality of the site and its surroundings. Existing, limited vistas within the Plan Area include views of distant hills, but due to the generally flat, urbanized nature of Santa Clara, these vistas are often blocked by buildings, trees, power poles, and walls. Public views of these features occasionally emerge along view corridors created by long, straight roads along the perimeter of the Plan Area (e.g., Great America Parkway) or selectively between buildings and other structures.

The Specific Plan would not result in significant impacts on the existing visual character and quality of the Plan Area and its surroundings, and the Specific Plan would not conflict with applicable zoning or other regulations governing scenic quality. The Specific Plan proposes new zoning and regulations governing scenic quality and, if approved, the development anticipated by the Specific Plan would be consistent with these new provisions. The Patrick Henry Drive Specific Plan would serve to achieve a coordinated, connected environment within the Plan Area while increasing land use intensity through frameworks and unified, context-sensitive design standards and guidelines, which would result in the efficient use of existing resources and infrastructure. Plan components are purposely designed to achieve and maintain a cohesive, compatible visual identity and sense of place in the Plan Area, as well as provide smooth transitions with adjacent neighborhoods and areas.

The Specific Plan would not significantly increase daytime or nighttime light or glare in a way that would adversely affect daytime or nighttime views in the area. Specific Plan lighting characteristics are not expected to represent a source of substantial new light or glare which would adversely affect views and vision. The area is already developed with urban uses that are sources of daytime and nighttime light and glare and does not contain uses sensitive to light or glare.

2. Project impacts determined to be less than significant with mitigation incorporated

None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

Buildout of the Plan Area would not substantially block views of scenic vistas or resources beyond existing conditions. Due to the distance between cumulative projects, and the intervening development, vegetation, and flat topography of the area, there is not

anticipated to be a cumulative impact to visual character. Projects in the City and adjoining jurisdictions are subject to architectural review, design guidelines and development standards, and municipal codes, including standards to prevent light and glare impacts. Thus, the Project would *not* cumulatively contribute to a significant visual impact.

B. Air Quality

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

Consistency with the 2017 Clean Air Plan. The Project would not conflict with or obstruct implementation of the applicable air quality plan. Implementation of the proposed Patrick Henry Drive Specific Plan would be consistent with and not hinder the implementation of any applicable 2017 Clean Air Plan Control Measures. In addition, the proposed Specific Plan's growth in service population would be greater than the increase in trip generation within the Planning Area, and the Specific Plan would not promote disparities in health risks. Based on the preceding analysis, the proposed Patrick Henry Drive Specific Plan would be consistent with the 2017 Clean Air Plan.

Criteria Pollutants. As described under Impact 5-2, the proposed Specific Plan would generate cumulatively considerable operational criteria air pollutant emissions for which the region is designated nonattainment; however, these operational criteria air pollutant emissions would not expose receptors to substantial operational pollutant concentrations. Aside from mobile source emissions, which are anticipated to become cleaner over time due to actions taken at the state and federal level, the next largest sources of criteria air pollutant emissions are anticipated to come from the use of consumer products and landscaping equipment. Neither of these sources would be used at the frequency nor magnitude required to result in criteria air pollutant emissions that would be harmful to one's health. Therefore, implementation of the proposed Specific Plan would not exacerbate or contribute to significant health risks at or in proximity of the Plan Area, nor would it increase the number of state or national ambient air quality standard exceedances (as shown in Table 5-3).

Odors. According to the BAAQMD's CEQA Air Quality Guidelines land uses associated with odor complaints include agricultural operations, wastewater treatment plants, landfills, and certain industrial operations (such as manufacturing uses that produce chemicals, paper, etc.). Implementation of the proposed Patrick Henry Drive Specific Plan would result in new residential, retail, commercial, office, and other community serving land uses. It would not permit the land uses identified in the BAAQMD's CEQA Air Quality Guidelines identified as generating odor. No impact would occur.

2. Project impacts determined to be less than significant with mitigation incorporated

(a) Potential Impact:

Impact 5-2: Result in a Cumulatively Considerable Net Increase in Criteria Pollutants for which the Region is Non-Attainment. Implementation of the Patrick Henry Drive Specific Plan could result in growth in the Plan Area that exceeds the level of growth accounted for in the City's General Plan and, therefore, could generate a cumulatively considerable net increase in criteria air pollutants for which the region is in non-attainment. This represents a potentially significant impact.

Construction activities related to the Project could result in an exceedance of applicable thresholds for criteria pollutants for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors) due to dust generation and emissions of the criteria pollutants such as Reactive Organic Gases (ROG), nitrogen oxides (NO_x), and particulate matter (PM).

Finding: Mitigation measures would reduce impacts due to cumulatively considerable net increases of criteria pollutants for which the region is non-attainment to less than significant levels. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

The Bay Area is non-attainment for ground level ozone and particulate matter of 2.5 microns or less (PM_{2.5}) under both the federal Clean Air Act and the California Clean Air Act. The area is also non-attainment for particulate matter of 10 microns or less (PM₁₀) under the California Clean Air Act. ROG and NO_x are precursor pollutants to ozone. Implementation of the Project would result in temporary emissions from construction activities associated with development, including demolition, site grading, asphalt paving, building construction, construction equipment, and architectural coating. These activities would create emissions of NO_x, ROG, and PM. Architectural coatings and application of asphalt pavement would release ROG. The combination of temporary dust from activities and diesel exhaust from construction equipment and related traffic may lead to an exceedance of BAAQMD's project-level thresholds for PM_{2.5} and/or PM₁₀. In addition, NO_x and ROG emissions may exceed the BAAQMD NO_x thresholds. Mitigation Measure 5-2A would reduce this impact to less than significant by requiring BMPs for during construction to reduce dust, emissions from idling, and construction emissions, and by requiring criteria pollutant quantification for individual development projects once details of those projects are available to ensure criteria pollutant emissions do not exceed BAAQMD's thresholds. This impact would thus be less than significant with implementation of **MM 5-2A, MM 5-2B, and MM5-2C**.

Mitigation Measures

The following mitigation measures shall be implemented on a project-by-project basis to control dust and reduce construction TAC and criteria pollutant emissions during construction:

Mitigation Measure 5-2A: Implement BAAQMD Basic Construction Mitigation Measures. The City shall require new development projects occurring under implementation of the Patrick Henry Drive Specific Plan to implement the BAAQMD's Basic Control Mitigation Measures to address fugitive dust emissions that would occur during earthmoving activities associated with project construction. These measures include:

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
4. All vehicle speeds on unpaved roads shall be limited to 15 mph.
5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
8. Post a publicly visible sign with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

Mitigation Measure 5-2B: Require a Project-level Construction Assessment for New Development Proposed Under Implementation of the Patrick Henry Drive Specific Plan. The City shall require applicants to submit a quantitative project-level construction criteria air pollutant and toxic air contaminant emissions analysis for future development proposed under implementation of the Patrick Henry Drive Specific Plan. The estimated construction criteria air pollutant and toxic air contaminant emissions shall be compared against the thresholds of significance maintained by the Bay Area Air Quality Management District (BAAQMD) and, if emissions are shown to be above BAAQMD thresholds, the City shall require the implementation of mitigation to reduce emissions below BAAQMD thresholds or to the maximum extent feasible. Mitigation measures to reduce emissions could include, but are not limited to:

- Selection of specific construction equipment (e.g., specialized pieces of

equipment with smaller engines or equipment that will be more efficient and reduce engine runtime);

- Requiring equipment to use alternative fuel sources (e.g., electric-powered and liquefied or compressed natural gas), meet cleaner emission standards (e.g., U.S. EPA Tier IV Final emissions standards for equipment greater than 50-horsepower), and/or utilizing added exhaust devices (e.g., Level 3 Diesel Particular Filter);
- Minimizing the idling time of diesel-powered construction equipment to two minutes;
- Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM;
- Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy-duty diesel engines; and
- Application of Low-VOC paints to interior and/or exterior surfaces (e.g., paints that meet SCAQMD Rule 1113 "Low-VOC" or "Super-Compliant" requirements).

Mitigation Measure 5-2C: Use Low- and Super Compliant VOC Architectural Coatings. The City shall require the use of Low- and Super-Compliant VOC Architectural Coatings in maintaining buildings in the Patrick Henry Drive Specific Plan Area through Covenants Conditions and Restrictions (CC&Rs) and Ground Lease. Developed parcels shall require within their CC&Rs and/or ground leases requirements for all future interior spaces to be repainted with architectural coatings that meet the "Low-VOC" or "Super-Compliant" requirements. "Low-VOC" refers to paints that meet the more stringent regulatory limits of South Coast Air Quality Management District AQMD Rule 1113. "Super-Compliant" refers to paints that have been reformulated to levels well below the "Low-VOC" limits.

3. Project impacts determined to be significant and unavoidable

- (a) Impact 5-3: Generate Toxic Air Contaminant Emissions that Expose Sensitive Receptors to Substantial Pollutant Concentrations During Construction.** Implementation of the Patrick Henry Drive Specific Plan would result in construction activities over the next approximately 20 years that generate toxic air contaminant emissions and could expose sensitive receptors to substantial pollutant concentrations. These activities represent a *potentially significant impact*.

Finding: There are no feasible and reasonable mitigation measures which would reduce this impact to a less than significant level. The City hereby determines that this impact would be *significant and unavoidable*.

Facts in Support of Finding

Mitigation Measure 5-2B would require the preparation of a project-specific air quality assessment to evaluate potential TAC construction emissions associated with the development project. Although future development projects would be required to implement Mitigation Measure 5-2B, it cannot be definitively known or stated at this time that all development projects occurring under implementation of the Specific Plan would be able to reduce potential TAC emissions to levels that are below BAAQMD thresholds. For example, should a development project involving new residential receptors be undertaken on the eastern side of Plan Area early on in the Specific Plan's implementation, future development projects upwind of that site (i.e., to the west / northwest; see Figure 5-1) would generate emissions that could adversely affect the new receptors and exceed applicable BAAQMD thresholds of significance. Therefore, despite the implementation of Mitigation Measure 5-2B, TAC construction emissions associated with the proposed Patrick Henry Drive Specific Plan could result in significant adverse health risks at receptor locations. This impact would be significant and unavoidable.

Mitigation Measures

Refer to **MM 5-2B** above.

C. Biological Resources

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

(a) Impact 6-1: Impacts on Riparian Habitat, Sensitive Natural Communities, Wetlands, Fish and Wildlife Corridors, and Fish and Wildlife Nursery Sites.

The Patrick Henry Drive Specific Plan Area is outside the nearest known HCP, approximately one mile west of the of the Santa Clara Valley Habitat Plan permit area. Two Natural Communities of Special Concern, as identified by CDFW, occur within the vicinity of the Plan Area: northern coastal salt marsh and sycamore alluvial woodland. However, these sensitive natural communities do not occur in or adjacent to the Plan Area.

The California Natural Diversity Database (CNDDDB) and U.S. Fish and Wildlife Service Information for Planning and Conservation (IPaC) databases did not identify any habitat types that could occur in the Plan Area that would be able to support special-status species.

Implementation of the Patrick Henry Drive Specific Plan would have a less-than-significant impact on riparian habitat, sensitive natural communities, wetlands, fish and wildlife corridors, and fish and wildlife nursery sites with mitigation incorporated.

- (b) **Impact 6-5: Impacts on Protected Trees, Plants, and Shrubs.** There are no City-designated heritage trees in the Patrick Henry Drive Specific Plan Area (General Plan Table 8.10). However, Section 12.35 (Trees and Shrubs) of the City of Santa Clara Municipal Code is an ordinance pertaining to all trees, plants, and shrubs along streets or public places within the city. Any of these trees, plants, or shrubs planned for removal must first obtain written permission from the superintendent of streets. Finally, Section 12.35 states “No person without such authorization shall trench around or alongside of any such tree, plant or shrub with the intent of cutting the roots thereof or otherwise damaging the same.” The ordinance was adopted by the City and is implemented as applicable. Under CEQA, the ordinance is considered a uniformly applicable development regulation implemented to avoid or reduce impacts on trees, plants, and shrubs along city streets and within public spaces. Permission to alter or remove vegetation is generally based on the vegetation’s potential hazard (e.g., may fall and damage property or injure people); or, in the case of development proposals, on vegetation replacement and landscaping plans. On obtaining a written permit from the superintendent of streets before altering or removing any trees, plants, or shrubs along streets or public portions of the Patrick Henry Drive Specific Plan Area, a project would be in compliance with all local policies and ordinances for preserving trees. Therefore, Patrick Henry Drive Specific Plan implementation would have a ***less-than-significant impact*** on trees, plants, and shrubs.

Mitigation 6-5. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

- (a) **Potential Impact: Impact 6-2:** Potential Impacts on Threatened and Endangered Habitat. Development facilitated by the Patrick Henry Specific Plan could degrade the habitat of rare, threatened, or endangered species (also referred to as “special-status”) potentially present on a project site, and conflict with Policy 5.10.1-P1 of the Santa Clara General Plan, to require environmental review prior to approval of any development with the potential to degrade the habitat of any threatened or endangered species.

Finding: Mitigation measures would require environmental review prior to approval of any development with the potential to degrade the habitat of any threatened or endangered species. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

The absence of City evaluation of the need for further biological resource surveys would be in violation of City policy and is therefore considered a potentially significant impact.

Mitigation Measures

Mitigation 6-2. In order to keep current the biological resource evaluation prepared for the Patrick Henry Drive Specific Plan EIR, upon receiving applications for site-specific projects within the Specific Plan Area, the City shall evaluate the need for a specific biological resource survey of the project site and adjacent area that may be indirectly impacted by project work. If no biological resources are determined to be at risk as determined by a qualified biologist, no further survey shall be required. However, if the City determines that biological resources within the project area require further analysis, the project proponent shall be required to conduct a biological resource survey of the habitat and special-status species that may be impacted by project activities, either directly or indirectly. A report shall be provided to the City detailing survey methods, results, and avoidance and minimization measures required to protect any special-status species with potential to be impacted, in accordance with the regulatory protocols of the responsible jurisdictional agencies for the resource in question, including, but not limited to: USFWS, CDFW, and USACE. If no further surveys/investigation is requested by a permitting or other regulatory agency upon receipt of biological survey report, work may proceed as planned. Implementation of this measure would reduce the impact to a less-than-significant level.

- (b) Potential Impact:** Impact 6-3: Potential Impacts on Special-Status Plants. There is a low potential for Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*; California Rare Plant Rank 1B.2) and arcuate bush mallow (*Malacothamnus arcuatus*; California Rare Plant Rank 1B.2) to occur within the Specific Plan Area, especially if the area is left undisturbed for a long period of time (i.e., a year or longer). Without a proactive mitigation procedure in place, Plan implementation could inadvertently result in the removal of special-status plants. This is considered a potentially significant impact.

Finding: Mitigation measures would reduce impacts to Congdon's tarplant to less than significant levels. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

Mitigation measures would require that a qualified botanist shall conduct site-specific, focused surveys according to CDFW guidelines before any project work within the Specific Plan Area begins, to determine presence or absence of special-status plant species on the individual project site and any adjacent potential area of disturbance

Mitigation Measures

Mitigation 6-3. Before any project work within the Specific Plan Area, a qualified botanist shall conduct site-specific, focused surveys according to CDFW guidelines

to determine presence or absence of special-status plant species on the individual project site and any adjacent potential area of disturbance. A comprehensive, site-wide survey should be conducted within May to September before project work begins, to encompass the Congdon's tarplant and arcuate bush mallow's blooming periods. Following the completion of the surveys, a survey results report shall be prepared and provided to the City. This report should include, but should not be limited to, the following: (1) a description of the survey methodology; (2) a discussion of the survey results; and (3) a map showing the survey area and the location of any special-status plants encountered. If no rare plants are found, then no further mitigation would be required.

If rare plants are found during the survey, the number of individuals present shall be documented and the limits of population shall be marked with flagging. The flagged border of the population shall be avoided by construction personnel for the duration of the project. If the species cannot be avoided or may be indirectly impacted, the applicant shall notify CDFW to discuss avoidance, minimization, and mitigation measures as appropriate for each species population, including measures to be taken and protocols to be followed if special-status plants are inadvertently disturbed during construction activities.

CDFW may require the preparation and implementation of a mitigation plan that details avoidance, preservation, and/or compensation for the loss of individual special-status plant species. Mitigation may include the purchase of mitigation bank credits, preserving and enhancing existing on-site populations, creation of off-site populations through seed collection and/or transplantation and monitoring these populations to ensure their successful establishment, and/or preserving occupied habitat off-site in perpetuity. Specific amounts and methods of mitigation and/or credits shall be determined in formal consultation with CDFW and USFWS.

Implementation of this measure would reduce the impact to a **less-than-significant level**.

- (c) **Potential Impact:** Impact 6-4: Potential Impacts on Nesting Birds or Roosting Bats. The Federal Migratory Bird Treaty Act and California Fish and Game Code sections 3503, 3503.5, 3513, 3800, and 4150 protect migratory and nesting birds, as well as roosting bats. Although the Patrick Henry Drive Specific Plan does not specify which trees or buildings might be removed under individual projects facilitated by the Plan, trees (potential nesting and roosting habitat) or buildings could be disturbed or removed by Plan implementation. The possibility of removing trees and/or buildings that contain nests or roosting bats is identified here as a potentially significant impact. Any direct removal of trees or indirect disturbance by construction or operational activities during the nesting season that causes nest abandonment and/or loss of reproductive effort (killing or abandonment of eggs or young) is considered a "take."

There is a low potential for burrowing owl (*Athene cunicularia*; California species of special concern), white-tailed kite (*Elanus leucurus*; California Fully-Protected Species), pallid bat (*Antrozous pallidus*), and Townsend's big-eared bat (*Corynorhinus townsendii*; California species of special concern) to utilize the landscaped habitat within the Specific Plan Area for roosting and/or nesting, especially if the area is left undisturbed for a long period of time. In addition, many common bird species without a special status, though protected by the MBTA, MBPA, and California Fish and Game Code (CFGF), may utilize buildings, gravel substrates, and the landscaped vegetation within the Plan Area for nesting, foraging, and roosting. Common bat species protected by the CFGC may also rarely utilize vegetation within the Specific Plan Area for individual roosting. Without a proactive mitigation procedure in place, Plan implementation could inadvertently result in the removal of existing trees containing nests or eggs of migratory birds, raptors, or bird species during the nesting season, or roosting bats, which would be considered unlawful take under the MBTA and the CFGC (see Regulatory Setting above). This is considered a potentially significant impact.

The mitigation measure below would reduce this potentially significant impact to on Nesting Birds or Roosting Bats to a less-than-significant level.

Finding: Mitigation measures would reduce impacts on Nesting Birds or Roosting Bats to less than significant levels. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

Although the Patrick Henry Drive Specific Plan does not specify which trees or buildings might be removed under individual projects facilitated by the Plan, trees (potential nesting and roosting habitat) or buildings could be disturbed or removed by Plan implementation. The possibility of removing trees and/or buildings that contain nests or roosting bats is identified here as a potentially significant impact. Any direct removal of trees or indirect disturbance by construction or operational activities during the nesting season that causes nest abandonment and/or loss of reproductive effort (killing or abandonment of eggs or young) is considered a "take."

There is a low potential for burrowing owl (*Athene cunicularia*; California species of special concern), white-tailed kite (*Elanus leucurus*; California Fully-Protected Species), pallid bat (*Antrozous pallidus*), and Townsend's big-eared bat (*Corynorhinus townsendii*; California species of special concern) to utilize the landscaped habitat within the Specific Plan Area for roosting and/or nesting, especially if the area is left undisturbed for a long period of time. In addition, many common bird species without a special status, though protected by the MBTA, MBPA, and California Fish and Game Code (CFGF), may utilize buildings, gravel substrates, and the landscaped vegetation within the Plan Area for nesting, foraging, and roosting. Common bat species protected by the CFGC may also rarely utilize vegetation within the Specific Plan Area for individual roosting. Without a proactive

mitigation procedure in place, Plan implementation could inadvertently result in the removal of existing trees containing nests or eggs of migratory birds, raptors, or bird species during the nesting season, or roosting bats, which would be considered unlawful take under the MBTA and the CFGC (see Regulatory Setting above).

Mitigation Measures

Mitigation 6-4. The demolition of any buildings, disturbance of gravel substrate, and/or removal of trees, shrubs, or weedy vegetation shall be avoided during the February 1 through August 31 bird nesting period to the extent possible. If no demolition, gravel disturbance, vegetation, or tree removal is proposed during the nesting period, no further action is required. If it is not feasible to avoid the nesting period, the project applicant shall retain a qualified wildlife biologist to conduct a survey for nesting birds at most 14 days prior to the start of removal of trees, shrubs, grassland vegetation, or buildings, including prior to grading or other construction activity. If demolition of buildings, disturbance of gravel substrate, or vegetation removal efforts do not begin within the 14 days following the nesting bird survey, another survey shall be required. The area surveyed shall include all construction sites, access roads, and staging areas, as well as reasonably accessible areas within 150 feet outside the boundaries of the areas to be cleared or as otherwise determined by the biologist and dependent on species' life history requirements.

If an active nest is discovered in the areas to be directly physically disturbed, or in other habitats within the vicinity of construction boundaries and may be disturbed by construction activities (as determined by the qualified biologist), clearing and construction shall be postponed until the qualified biologist has determined that the young have fledged (left the nest), the nest fails, or the nest is otherwise determined to be inactive by the biologist (i.e. predation).

To avoid impacts to roosting bats that may rarely utilize the Specific Plan Area vegetation and/or vacant buildings for day roosting, the project applicant shall retain a qualified wildlife biologist to conduct a survey for roosting bats at most 14 days prior to the start of demolition of any vacant buildings left with entry and egress points accessible to bats or removal of suitable bat roosting vegetation. If roosting bats are detected, the biologist shall enact a minimum of a 150-foot no-work buffer and confer with CDFW to determine potential roost protection or roost eviction practices. After conferring with CDFW, the protective buffer may be adjusted based on specific roost needs. Once bats have been suitably protected by a buffer and/or safely evicted from roosting sites (as approved by CDFW), construction may resume outside the buffered area.

A nesting bird and roosting bat survey report prepared with the methods and results of the pre-project survey will be submitted to the City for review and approval prior to commencement of construction activities. Any additional construction monitoring, as determined through any necessary

coordination/discretionary approvals with the resource agencies, will be documented per requirements set forth in an approved mitigation monitoring and reporting program.

Implementation of this measure would reduce the impact to a ***less-than-significant level***.

3. Project impacts determined to be significant and unavoidable

(a) None.

4. Cumulative impacts

(a) None.

D. Cultural Resources

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

None.

2. Project impacts determined to be less than significant with mitigation incorporated

(a) Potential Impact: Impact 7-2: Potential for Disturbance of Buried Archaeological Resources, Including Human Remains, and Tribal Cultural Resources. Development facilitated by the Patrick Henry Drive Specific Plan could disturb unrecorded sensitive archaeological resources or tribal cultural resources in the Plan Area. This possibility represents a ***potentially significant impact***.

Finding: Mitigation measures would reduce impacts due to a substantial adverse change in the significance of an archaeological resource to less than significant levels. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

The City of Santa Clara notified the Native American tribes traditionally and culturally affiliated with the Patrick Henry Drive Specific Plan Area, including providing a copy of the EIR Notice of Preparation (NOP). The Native American tribes notified include the Amah Mutsun Tribal Band, Amah Mutsun Tribal Band of Mission San Juan Bautista, Muwekma Ohlone Indian Tribe of the San Francisco Bay Area, Ohlone Indian Tribe, North Valley Yokuts Tribe, and Indian Canyon Mutsun Band of Costanoan. No comments were received by the City during the NOP 30-day review period (December 2019 to January 2020), nor have any subsequent comments been received.

Though almost all of the Specific Plan Area is developed, with some areas of manicured vegetation, there is a possibility that as-yet unrecorded prehistoric cultural resources or tribal cultural resources could exist beneath the surface of the Plan Area. Contact with such resources during construction activities could result in a significant impact. The mitigation below would reduce the impact to a less-than-significant level.

Mitigation Measures

Mitigation 7-2. During the City's standard project-specific review process for all future, discretionary, public improvement and private development projects in the Patrick Henry Drive Specific Plan Area, the City shall determine the possible presence of, and the potential for new or substantially more severe impacts of the action on, archaeological resources and tribal cultural resources. The City shall require individual project applicants or environmental consultants to contact the California Historical Resources Information System (CHRIS) to determine whether the particular project is located in a sensitive area. Future discretionary development projects that CHRIS determines may be located in a sensitive area - i.e., on or adjoining an identified archaeological site - shall proceed only after the project applicant contracts with an archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards, to conduct a determination in regard to cultural values remaining on the site and warranted mitigation measures, as described directly below.

In general, to make an adequate determination in these instances, the archaeologist shall conduct a preliminary field inspection to (1) assess the amount and location of visible ground surface, (2) determine the nature and extent of previous impacts, and (3) assess the nature and extent of potential impacts. Such field inspection may demonstrate the need for some form of additional subsurface testing (e.g., excavation by auger, shovel, or backhoe unit) or, alternatively, the need for on-site monitoring of subsurface activities (i.e., during grading or trenching).

In addition, the City shall continue to notify the Native American tribes traditionally and culturally affiliated with the Specific Plan Area of the discretionary, public improvement and private development projects if those proposed improvements or projects are subject to a CEQA Negative Declaration (including Mitigated Negative Declaration) or Environmental Impact Report (EIR), in accordance with California Assembly Bill 52, and if a Native American tribe requests consultation, conduct a good faith consultation.

Following field inspection and completion of all necessary phases of study as determined by the archaeologist and the City, damage to any identified archaeological resources shall be avoided or mitigated to the maximum extent possible. Preservation in place to maintain the relationship between the artifact(s) and the archaeological context is the preferred manner of mitigating impacts on an archaeological site. Preservation may be accomplished by:

- Planning construction to avoid the archaeological or tribal cultural site;
- Incorporating the site within a park, green space, or other open space element;
- Covering the site with a layer of chemically stable soil; or
- Deeding the site into a permanent conservation easement.

When in-place mitigation is determined by the City to be infeasible, a *data recovery plan*, which makes provisions for adequate recovery of culturally or historically consequential information about the site (including artifacts discovered on the site), subject to review and approval by the City, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be submitted to the CHRIS Northwest Information Center. If Native American artifacts are indicated, the studies shall also be submitted to the Native American Heritage Commission (NAHC). CHRIS and NAHC are recognized as experts in their respective disciplines.

Identified cultural resources shall be recorded on form DPR 422 (archaeological sites). Mitigation measures recommended by these two groups (CHRIS and NAHC), as reviewed and approved by the City, shall be undertaken prior to and during construction activities. Although the precise details of the mitigation measures would be specific to the particular project site, the measures shall be consistent with the avoidance and mitigation strategies described above in this programmatic mitigation measure.

A *data recovery plan* and data recovery for a historic resource shall not be required if the City determines that testing or studies already completed have adequately recovered the necessary data, provided that the data have already been documented in an EIR or are available for review at the CHRIS Northwest Information Center (CEQA Guidelines section 15126.4[b]).

Resource identification training procedures shall be implemented for construction personnel, conducted by an archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards. In the event that subsurface cultural resources are otherwise encountered during approved ground-disturbing activities for a Plan Area construction activity, work within 50 feet shall be stopped and a qualified archaeologist retained to evaluate the finds following the procedures described above. Project personnel shall not collect cultural resources. Although work may continue beyond 50 feet, the archaeologist shall be empowered to temporarily halt or redirect construction activities to ensure avoidance of adverse impacts to archaeological resources.

If human remains are found, the rules set forth in State Health and Safety Code section 7050.5 and CEQA Guidelines section 15126.4(b) apply and shall be followed.

Implementation of this measure would reduce the impact to a ***less-than-significant level***.

3. Project impacts determined to be significant and unavoidable

- (b) **Impact 7-1: Destruction/Degradation of Historic Resources.** There may be one or more properties or features within the Specific Plan Area, now or in the future, that meets the CEQA definition of a historic resource, including properties or features eligible for listing in a local, State, or Federal register of historic resources. Future development projects that are otherwise consistent with the proposed Patrick Henry Drive Specific Plan may cause substantial adverse changes in the significance of one or more such historic resources. Substantial adverse changes that may occur include physical demolition, destruction, relocation, or alteration of one or more historic resources or its immediate surroundings such that the resource is "materially impaired." The significance of a historic resource would be considered potentially "materially impaired" when and if an individual future development project proposes to demolish or materially alter the physical characteristics that justify the determination of its significance (CEQA Guidelines section 15064.5[b]). Such adverse changes in the significance of a CEQA-defined historic resource would be a **significant impact**.

Finding: Without knowing the characteristics of the potentially affected historic resource or of the future individual development proposal, the City cannot determine with certainty that complying with the Secretary of Interior's *Standards for the Treatment of Historic Properties* or relocation of the resource would be considered feasible. Consequently, this impact is currently considered **significant and unavoidable**.

Facts in Support of Finding

The identification of historic resources must account for change over time. Today's newer buildings may be recognized as historic within the lifetime of the Specific Plan. Today's older buildings may attain historic significance as more is uncovered about their past. Currently non-historic buildings may be recognized as historic in the future if the people or events associated with those buildings become historically or culturally distinguished. All these possibilities are accounted for in CEQA Guidelines section 15064.5 (Determining the Significance of Impacts to Archaeological and Historical Resources).

Consistent with the perspective described above, the California Office of Historic Preservation notes, "There is a common misconception that resources 50 years or older need to be evaluated, but anything younger cannot be considered significant....[T]he California Register criteria (CCR section 4852) state that in order for a resource to achieve significance within the past 50 years, sufficient time must have passed to obtain a scholarly perspective on the events or individuals associated with the resource....Specifically, the California Register statute allows CEQA Lead Agencies [in the case of this EIR, the City of Santa Clara] a fair amount of

flexibility in justifying that a resource is significant, even if that resource is less than 50 years old.”¹

At of time of writing (July 2021), there are currently no buildings older than 45 years within the Specific Plan Area.²

Due to the possibilities described above, the potential for a substantial adverse change to a historic resource due to individual discretionary development projects proposed under the Specific Plan would be evaluated by a qualified professional on a case-by-case basis in accordance with CEQA Guidelines section 15064.5 to determine whether projects would have new or substantially more severe impacts to historic resources.

Under CEQA, conformance with the Secretary of the Interior’s Standards will normally mitigate impacts on a historic resource to a less-than-significant level. Under the *Standards for Rehabilitation*, new additions, alterations, or adjacent new construction must not destroy character-defining features, spaces, and spatial relationships. New work must be differentiated from the old and must be compatible with the historic materials, features, size, scale, proportion, and massing. New additions, alterations, and construction must be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

In some cases, it can be challenging to accommodate the needs of new uses while fully adhering to the *Standards for Rehabilitation* and, in many situations, it can be infeasible. In addition, changes to the eligibility, identification, and condition of historic resources and their surroundings between now and the time that individual development proposals are received for specific properties could affect potential impacts on historic resources. As a result, it cannot be determined at this time, without consideration of a current, specific development proposal, whether it would be feasible to mitigate to a less-than-significant level the impacts of any given subsequent development project under the Patrick Henry Drive Specific Plan involving properties that may contain historic resources. (As noted above under the Setting section, 7.1, no building or structure in the Plan Area is on a local or State historic resource inventory.) Although the following mitigation measures are intended to mitigate impacts on historic resources from implementation of the Specific Plan to the extent feasible, the impacts on historic resources may still remain significant and unavoidable. This conservative approach is consistent with CEQA.

¹California Office of Historic Preservation, CEQA Case Studies, September 2015 (Volume VI).

²Historic Aerials, 2020.

Mitigation Measures

Mitigation 7-1. For any individual project within the Patrick Henry Drive Specific Plan Area that the City determines may involve a property that contains a potentially significant historic resource, the resource shall be assessed by a professional who meets the Secretary of the Interior's Professional Qualifications Standards to determine whether the property is a significant historic resource and whether or not the project may have a potentially significant adverse effect on the historic resource. If, based on the recommendation of the qualified professional, the City determines that the project may have a potentially significant effect, the City shall require the applicant to implement the following mitigation measures:

(a) Adhere to at least one of the following Secretary of the Interior's Standards:

- Secretary of Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings*; or
- Secretary of Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*.

The qualified professional shall make a recommendation to the City as to whether the project fully adheres to the Secretary of the Interior's Standards, and any specific modifications necessary to do so. The final determination as to a project's adherence to the Standards shall be made by the City body with final decision-making authority over the project. Such a determination of individual project adherence to the Secretary of the Interior's Standards will constitute mitigation of the project historic resource impacts to a ***less-than-significant level*** (CEQA Guidelines section 15064.5).

(b) If measure (a) is not feasible, the historic resource shall be moved to a new location compatible with the original character and use of the historic resource, and its historic features and compatibility in orientation, setting, and general environment shall be retained, such that a substantial adverse change in the significance of the historic resource is avoided.³ Implementation of measure (b) would reduce the impact to a ***less-than-significant level***.

³One example of a substantial adverse change would be the loss of eligibility for listing on the California Register. The State Historical Resources Code encourages the retention of historic resources on-site and discourages the non-historic grouping of historic buildings into parks or districts. However, it is recognized that moving a historic building, structure, or object is sometimes necessary to prevent its destruction. Therefore, a moved building, structure, or object that is otherwise eligible may be listed in the California Register if it was moved to prevent its demolition at its former location and if the new location is compatible with the original character and use of the historic resource. A historic resource should retain its historic features and compatibility in orientation, setting, and general environment.

(California Office of Historic Preservation, *California Register and National Register: A Comparison*, Technical Assistance Series 6; Sacramento, CA: California Department of Parks and Recreation, 2001)

If neither measure (a) nor measure (b) is feasible, then the City shall, as applicable and to the extent feasible, implement the following measures in the following order:

(c) Document the historic resource before any changes that would cause a loss of integrity and loss of continued eligibility. The documentation shall adhere to the Secretary of the Interior's *Standards for Architectural and Engineering Documentation*. The level of documentation shall be proportionate with the level of significance of the resource. The documentation shall be made available for inclusion in the Historic American Building Survey (HABS) or the Historic American Engineering Record (HAER) Collections in the Library of Congress, the California Historical Resources Information System (CHRIS), and the Bancroft Library, as well as local libraries and historical societies.

(d) Retain and reuse the historic resource to the maximum feasible extent and continue to apply the Secretary of the Interior's Standards to the maximum feasible extent in all alterations, additions, and new construction.

(e) Through careful methods of planned deconstruction to avoid damage and loss, salvage character-defining features and materials for educational and interpretive use on-site, or for reuse in new construction on the site in a way that commemorates their original use and significance.

(f) Interpret the historical significance of the resource through a permanent exhibit or program in a publicly accessible location on the site or elsewhere within the Specific Plan Area.

Implementation of measures (b), (c), (d), (e), and/or (f) would reduce a significant impact on historic resources, but not to a less-than-significant level. Without knowing the characteristics of the potentially affected historic resource or of the future individual development proposal, the City cannot determine with certainty that measure (a) or (b) above would be considered feasible. Consequently, this impact is currently considered ***significant and unavoidable***.

4. Cumulative impacts

None.

E. Geology and Soils

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

- (a) Impact 8-1: Effects of Strong Seismic Ground Shaking.** The Specific Plan Area could experience strong seismic ground shaking and related effects in the event of an earthquake on the regional fault system. The Specific Plan would not exacerbate the existing risk of strong seismic ground shaking. Mandated project compliance

with the stringent seismic design provisions of the latest California Building Standards Code (CBSC), as adopted by the City, would reduce the risk of property loss or hazards to occupants and adjacent property to a ***less-than-significant level***.

Mitigation 8-1. No significant impact has been identified; no mitigation is required.

- (b) Impact 8-2: Potential Soil Erosion and Loss of Topsoil.** Grading and construction activities may result in minor erosion or the minor loss of some topsoil. City-required standard grading- and construction-period erosion control techniques (e.g., for reducing surface water runoff over exposed soil, which could include a combination of techniques such as minimizing active construction areas during the rainy season, preservation of existing vegetation, soil stabilization methods—soil binders, straw mulch, etc.—as well as project landscaping after construction), consistent with Best Management Practices (BMPs) in the California Stormwater Quality Association (CASQA) Stormwater Best Management Practice Handbook, would mitigate this potential impact to a ***less-than-significant level***.

Mitigation 8-2. No significant impact has been identified; no additional mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

- (a) Impact 8-3: Potential Ground Instability Impacts.** The potential for ground instability can depend on specific, highly localized underlying soil conditions. Determination of differential settlement, liquefaction, lateral spreading, and subsidence potential in the Specific Plan Area would require site-specific geotechnical studies for future individual development proposals. Possible ground instability conditions, if not properly engineered for, could result in associated significant damage to project buildings, other improvements, and adjacent property, with direct or indirect risks to life or property, representing a ***potentially significant impact***.

Facts in support of the finding:

Although an earthquake would affect an area larger than the Plan Area, any potential for earthquake-induced differential settlement, liquefaction, lateral spreading, and subsidence, and associated damage to proposed buildings or other improvements would be localized (i.e., generally restricted to the area where the building foundation or other improvement has been constructed) and can be mitigated to a less-than-significant level through implementation of City-required geotechnical investigations and associated engineering design standards, specifications, and measures. Geotechnical mitigation requirements identified here include completion of detailed studies to address specific concerns as future site-specific project designs are refined. There is substantial, reasonable, historical information to support the conclusion that the specific subsequent

geotechnical/geologic investigations, inspections, and specific formulations required to meet City-adopted standards would adequately mitigate related impacts to less-than-significant levels. Information pertaining to soil testing, soil treatments, building foundations, structural strengthening, subsurface design, construction methods, etc., has been developed and refined by the California Building Standards Commission (through the California Building Code) and the California Geological Survey (especially Special Publication 117A, “Guidelines for Evaluating and Mitigating Seismic Hazards in California 2008”), and research continues at universities and colleges, as well as professional organizations such as the Association of Environmental & Engineering Geologists. The City of Santa Clara requires such geotechnical/geologic investigations and specifications as part of its development review under its building code. Individual measures are typically, and most efficiently, specified at a later, more detailed level of design when foundation locations and building architecture is known.

Under the City's grading permit and building permit provisions, requirements, and regulations, an individual development project cannot be given final approval without project compliance with geotechnical/geologic requirements. These requirements and related City inspection and verification procedures prior to project operation provide reasonable, professional assurances that projects would incorporate the design and engineering refinements necessary to reduce the degree of impacts to less-than-significant levels by either avoiding identified soil and geologic impact areas altogether (i.e., basic project design changes), or by rectifying the impact through conventional engineering and construction procedures (e.g., suitable foundation design and construction) prior to issuance of permits.

Mitigation Measures applicable:

Mitigation 8-3. Subject to City review and approval, complete and implement the geotechnical mitigation recommendations identified in the required individual project- and site-specific geotechnical investigations and engineering studies for site-specific proposals, in coordination with City grading permit and building permit performance standards. Such recommendations shall address design- and construction-level details regarding engineering issues and solutions such as the type of building foundation, the extent of subsurface excavation, the details of retaining structures, and any need for subsurface water extraction. Incorporation of this mitigation requirement would reduce this impact to a ***less-than-significant level***.

- (b) Impact 8-4: Potential for Disturbance of Paleontological Resources.** Development facilitated by the Patrick Henry Drive Specific Plan could disturb unrecorded paleontological resources in the Plan Area. This possibility represents a ***potentially significant impact***.

Facts in Support of Finding

Santa Clara's surficial geologic units include alluvial and Bay mud deposits, and Pleistocene alluvial deposits, with the underlying Santa Clara Formation that may potentially contain paleontological resources; in addition, Pleistocene alluvial deposits and the Santa Clara Formation have high paleontological sensitivity. Although an on-line archival search indicated no records of recorded fossil sites within the Plan Area, it is possible that paleontological resources could be discovered during ground-disturbing activities. Contact with such fossil resources during ground-disturbing activities could result in significant impacts. The mitigation below would reduce the impact to a less-than-significant level.

Mitigation Measures Applicable

Mitigation 8-4. For all public improvement and private development projects in the Patrick Henry Drive Specific Plan Area, the following measures shall be implemented:

(1) *Education Program.* Project applicants shall implement a program that includes the following elements:

- Resource identification training procedures for construction personnel, conducted by a paleontologist who meets the Secretary of the Interior's Professional Qualifications Standards;
- Spot-checks and monitoring by a qualified paleontologist of all excavations deeper than seven feet below ground surface; and
- Procedures for reporting discoveries and their geologic context.

(2) *Procedures for Resources Encountered.* If subsurface paleontological resources are encountered, excavation shall halt within a buffer area of at least 50 feet around the find, where construction activities will not be allowed to continue until the project paleontologist evaluates the resource and its stratigraphic context. Work shall be allowed to continue outside the buffer area; however, the paleontologist shall be empowered to temporarily halt or redirect construction activities to ensure avoidance of adverse impacts to paleontological resources. During monitoring, if potentially significant paleontological resources are found, "standard" samples shall be collected and processed by a qualified paleontologist to recover micro vertebrate fossils. If significant fossils are found and collected, they shall be prepared to a reasonable point of identification. Excess sediment or matrix shall be removed from the specimens to reduce the bulk and cost of storage.

Itemized catalogs of material collected and identified shall be provided to a local museum repository with the specimens. Significant fossils collected during this work, along with the itemized inventory of these specimens, shall be deposited in a local museum repository for permanent curatorship and storage. A report

documenting the results of the monitoring and salvage activities, and the significance of the fossils, if any, shall be prepared. The report and inventory, when submitted to the City, shall signify the completion of the program to mitigate impacts on paleontological resources.

Implementation of this measure would reduce the impact to a ***less-than-significant level***.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

None

F. Greenhouse Gas Emissions and Energy

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

(a) Impact 9-1: GHG Emissions and Plan Consistency.

Implementation of the proposed Specific Plan would result in emissions that are below an interpolated Service Population GHG efficiency metric, both from a net emissions perspective (when compared to potential GHG emissions associated with existing land uses in Year 2040) as well as on a standalone basis, and would not conflict, obstruct, or otherwise interfere with the implementation of a plan, policy, or regulation for the purposes of reducing GHG emissions. Thus, the proposed Specific Plan would result in a ***less-than-significant impact*** with regard to GHG emissions and no mitigation is required.

(b) Impact 9-2. Wasteful, Inefficient, or Unnecessary Consumption of Energy Resources.

Implementation of the proposed Specific Plan would increase the demand for electricity and natural gas within the Plan Area and gasoline consumption in the region during construction and operation of new land use developments.

Although growth would occur within the Plan Area over the next approximately 20 years, new development would be required to comply with statewide mandatory energy requirements outlined in Title 24, Part 6, of the California Code of Regulations (the CalGreen Code), which would decrease estimated natural gas consumption in new and/or retrofitted structures. Energy is a necessary component of building operation, and any natural gas consumption by proposed land uses in the Specific Plan would not be used in an unnecessary, inefficient, or wasteful manner and would be more efficient than under existing conditions.

Fuel use by construction equipment would be the primary energy resource consumed during development activities, and VMT associated with the transportation of construction materials (e.g., deliveries) and worker trips would also result in petroleum consumption. Whereas on-site, heavy-duty construction equipment and delivery trucks would predominantly use diesel fuel, construction workers would generally rely on gasoline-powered vehicles to travel to and from construction sites. State regulations such as the LCFS would reduce the carbon intensity of transportation-related fuels, and all construction projects would be required to comply with CARB's Airborne Toxic Control Measures, which restrict heavy-duty diesel vehicle idling to five minutes. Since petroleum use during construction would be temporary at each location and required to conduct development activities, it would not be unnecessary, wasteful, or inefficient, and no mitigation is required.

- (c) **Impact 9-3. Conflict with or Obstruct a State or Local Plan for Renewable Energy or Energy Efficiency.** The Project would not conflict with nor obstruct a state or local plan adopted for the purposes of increasing renewable energy or energy efficiency.

The Title 24 Building Code contains energy efficiency standards for residential and non-residential buildings. These standards address electricity and natural gas efficiency in lighting, water, heating, and air conditioning, as well as the effects of the building envelope (e.g., windows, doors, walls and roofs, etc.) on energy consumption. The latest update to these standards, codified in the 2019 Title 24 Building Code, requires the installation of solar panels on new residential development under three stories. The City would enforce the applicable Title 24 Building Code (currently 2019) during design review and project approval processes. In addition, as discussed above under "GHG Emissions and Plan Consistency" the proposed Specific Plan contains numerous standards and guidelines that address sustainability for future projects in the Plan Area. The Specific Plan would also support the City's post-2020 Climate Action Plan measures, which support energy efficiency in the City.

As discussed above, the Specific Plan would support the State's goals of decreasing energy consumption for each of its residents, increasing energy efficiency, and would not conflict with a state or local plan for renewable energy. This impact would be *less than significant*.

Mitigation 9-3. No significant impact has been identified; no mitigation is required.

2. **Project impacts determined to be less than significant with mitigation incorporated**

None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

Past, present, and future development projects worldwide contribute to global climate change. No single project is sufficient in size to, by itself, change the global average temperature. Therefore, due to the nature of GHG impacts, a significant project impact is a significant cumulative impact. As discussed above, development under the Specific Plan would not generate significant levels of GHG emissions at a project level and thus the Project would *not* have a cumulative impact on GHG emissions.

G. Hazards and Hazardous Materials

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

- (a) Impact 10-1: Project-Related Potential Impacts Due to Hazardous Materials Transport, Use, Storage, and Disposal.** The proposed land uses permitted under the Specific Plan are not expected to involve the routine transport, use, storage, or disposal of hazardous materials to the extent that a significant public or environmental hazard would occur. Operations in the Plan Area may involve the occasional transport, use, storage, or disposal of common hazardous substances such as fuel, paint, and solvents. These normal activities would be subject to applicable local, State, and federal regulations. Construction of future project proposals under the Specific Plan would likely involve the intermittent transport, use, and disposal of potentially hazardous materials, including fuels and lubricants, paints, solvents, and other materials commonly used in construction and maintenance. During construction activities, any on-site hazardous materials that may be used, stored, or transported would also be subject to applicable local, State, and federal regulations that require standard protocols (as determined by the U.S. EPA, California Department of Health and Safety, Santa Clara County, and the City) for maintaining health and safety.

With implementation of adopted, standard procedures and regulations, the potential for associated hazardous materials impacts would be ***less-than-significant***.

Mitigation 10-1. No significant impact has been identified; no mitigation is required.

- (b) Impact 10-2: Potential Exposure to Existing Hazardous Materials Contamination.** There is always a possibility that new construction could encounter contamination and expose construction workers to existing spilled,

leaked, or otherwise discharged hazardous materials or wastes. Each project applicant in the Plan Area would be required to comply with all applicable, existing City-, County-, regional-, and State-mandated site assessment, remediation, removal, and disposal requirements for soil, surface water, and/or groundwater contamination. Compliance with these established requirements would prevent exacerbation of existing contamination or accidental release, and ensure that this possible health and safety impact would be *less-than-significant*.

Typically, implementation of these standard procedures would involve the following steps. As explained above, these steps are consistent with standard procedures required as part of City-, County-, regional-, and State-mandated requirements. The steps are not considered additional mitigations required by this EIR because the steps are existing development standards applied uniformly to all applicable projects.

(a) *Soil Contamination.* In order to avoid or substantially reduce potential health hazards related to construction personnel or future occupant exposure to soil contamination, as well as to prevent accidental release to surrounding areas, project applicants would complete the following steps for each site proposed for disturbance as part of construction activity in the Plan Area:

Step 1. Investigate the site to determine whether it has a record of hazardous material discharge into soils, and if so, characterize the site according to the nature and extent of soil contamination that is present before development activities proceed at that site.

Step 2. Based on the proposed activities associated with the proposed project, determine the need for further investigation and/or remediation of the soil conditions on the contaminated site. For example, if the site is slated for commercial land use, such as retail, the majority of the site will be paved and there will be little or no contact with contaminated soil. Industrial cleanup levels would likely be applicable. If the slated development activity could involve human contact with soils, such as may be the case with residential use, then Step 3 should be completed. If no human contact is anticipated, then no further mitigation is necessary.

Step 3. If it is determined that extensive soil contact would accompany the intended use of the site, undertake a Phase II Environmental Assessment investigation, involving soil sampling at a minimum, at the expense of the project applicant, property owner, or responsible party. Should further investigation reveal high levels of hazardous materials in the site soils, mitigate health and safety risks according to City of Santa Clara and regulatory agency requirements. This would include site-specific health and safety plans prepared prior to undertaking any building or utility construction. Also, if buildings are situated over soils that are significantly contaminated, undertake measures to either remove the chemicals or prevent contaminants from entering and collecting within the building. If

remediation of contaminated soil is infeasible, a deed restriction would be necessary to limit site use and eliminate unacceptable risks to health or the environment.

(b) Surface or Groundwater Contamination. In order to reduce potential health hazards due to construction personnel or future occupant exposure to surface water or groundwater contamination, or accidental transmission to other properties, project applicants would complete the following steps for each site proposed for disturbance as part of construction activity in the Plan Area:

Step 1. Investigate the site to determine whether it has a record of hazardous material discharge into surface or groundwater, and if so, characterize the site according to the nature and extent of contamination that is present before development activities proceed at that site.

Step 2. Install drainage improvements in order to prevent transport and spreading of hazardous materials that may spill or accumulate on-site.

Step 3. If investigations indicate evidence of chemical/environmental hazards in site surface water and/or groundwater, then measures acceptable to the City and the other applicable regulatory agencies would be required to ensure the site is properly remediated prior to development activity.

Step 4. Inform construction personnel of the proximity to recognized contaminated sites and advise them of health and safety procedures to prevent exposure to hazardous chemicals in surface water/groundwater.

Implementation of these required, standard procedures would result in a ***less-than-significant impact*** associated with potential soil and surface/groundwater contamination.

Mitigation 10-2. No significant impact has been identified; no mitigation is required.

- (c) Impact 10-3: Project-Related Potential Asbestos and PCB Exposure.** Removal or disturbance of asbestos-containing material (ACM) and/or transformers during alteration, renovation, or demolition of existing structures within the Plan Area could expose construction workers and the general public to friable asbestos and/or polychlorinated biphenyls (PCBs). Therefore, in compliance with General Plan Policy 5.10.5-P26 ("Survey pre-1980 buildings and abate any lead-based paint and asbestos prior to structural renovation and demolition, in compliance with all applicable regulations") and as a condition of alteration, renovation, or demolition permit approval for buildings within the Plan Area, the City requires the project applicant to coordinate with the Bay Area Air Quality Management District (BAAQMD) as appropriate to determine if ACM and/or PCBs are present, in conformance with BAAQMD established protocols and consistent with the explanation below.

Ensuring proper identification and removal of ACM and PCBs requires each project applicant to complete the following steps. As explained above (“Project-Related Potential Exposure to Existing Hazardous Materials Contamination”), these steps are standard procedures required as part of City-, County-, regional-, and State-mandated requirements; the steps are not mitigation required by this EIR.

Step 1. Thoroughly survey the project site and existing structures for the presence of ACM and PCBs. The survey shall be performed by a person who is properly certified by the Occupational Safety and Health Administration (OSHA) and has taken and passed an Environmental Protection Agency (EPA) approved building inspector course.

Step 2. If building elements containing any amount of ACM or PCBs are present, prepare a written ACM/PCB Abatement Plan describing activities and procedures for removal, handling, and disposal of these building elements using the most appropriate procedures, work practices, and engineering controls.

Step 3. Provide the ACM and PCB survey findings, the written ACM/PCB Abatement Plan (if necessary), and notification of intent to demolish to the City and BAAQMD at least ten days prior to commencement of demolition.

Step 4. Remove any on-site transformers prior to demolition of buildings.

Implementation of these required, standard procedures would result in a ***less-than-significant impact*** associated with potential ACM and PCB exposure.

Mitigation 10-3. No significant impact has been identified; no mitigation is required.

(d) Impact 10-4: Project-Related Potential Lead-Based Paint Exposure. If lead-based paint is present and has delaminated (split into thin layers) or chipped from surfaces, airborne lead particles could be released during alteration, renovation, or demolition of existing structures within the Plan Area. California OSHA (CalOSHA) regulations would be applied, and each site-specific project would implement the following standard, mandatory procedures in accordance with those CalOSHA regulations:

- Notify the City's Building and Fire Safety Division prior to starting work, describing the nature, location, and schedule of the work;
- Post a sign at all work locations where lead containment is required, stating that lead-based paint abatement is in progress and public access is prohibited;
- Notify the tenant(s) where the lead-based paint abatement work will be performed on a residential property occupied by one or more tenants; and

- Notify the property owner when work on a residential project will disturb lead-based paint.

Lead abatement performance standards are included in the *Guidelines for Evaluation and Control of Lead-Based Paint Hazards* (U.S. Department of Housing and Urban Development). Accordingly, HEPA vacuums may be required for abrasive blasting, water blasting, scraping, or sanding. Burning, torching, and similar activities are prohibited. Following completion of lead-based paint abatement, all visible lead-based paint particles must be removed from the site.

The City may inspect lead-based paint abatement activities at any time during construction. These personnel are also responsible for addressing citizen complaints related to lead-based paint abatement activities and may issue a Notice of Violation, a Stop Work order, or a fine.

Implementation of these required, standard procedures would result in a ***less-than-significant impact*** associated with potential lead-based paint exposure.

Mitigation 10-4. No significant impact has been identified; no mitigation is required.

- (e) **Impact 10-5: Potential for Hazardous Materials Near Schools.** See the impact discussions above. Existing schools are located within one-quarter mile of the Plan Area; however, the land uses permitted under the Specific Plan are not expected to involve the routine transport, use, storage, or disposal of hazardous materials to that extent that a significant public or environmental hazard would occur. In addition, as discussed in Impact 10-1 above, although future construction under the Specific Plan would likely involve the intermittent transport, use, storage, and disposal of potentially hazardous materials, including fuels and lubricants, paints, solvents, and other materials commonly used in construction and maintenance, these projects would be required to comply with applicable local, State, and federal regulations. Also, the regulatory requirements described above (section 10.2) would be implemented as applicable. Specific to schools, State regulations on the siting of hazardous materials facilities limit their location in proximity to schools; conversely, CEQA (section 21151.8, School Site Acquisition or Construction) and other State regulations impose restrictions on where new schools can be constructed. The impact of hazardous materials on schools would be ***less-than-significant***.

Mitigation 10-5. No significant impact has been identified; no mitigation is required.

- (f) **Impact 10-6: Protocols for Government Code Section 65962.5 Sites.** A review of the Cortese List data resources conducted on March 5, 2020 indicated no sites in

the Plan Area in any of the Cortese List data resources (see section 10.1.1, Hazardous Materials, above). The California Department of Toxic Substances Control (DTSC) maintains the EnviroStor database, which lists and includes data on hazardous materials sites compiled pursuant to Government Code section 65962.5 (Cortese List); such sites are regulated by DTSC because hazardous materials investigations and/or cleanup actions are planned, active, or have been completed at these sites (see Table 10-1 under “Setting,” above). The site-specific mitigation protocols administered by DTSC and other jurisdictional agencies (including the Santa Clara Fire Department) – in conformance with federal, State, regional, and local regulations (see “Regulatory Setting,” above) – are intended to ensure that the cleanup of such sites would result in *less-than-significant impacts*.

Mitigation 10-6. No significant impact has been identified; no mitigation is required.

Impact 10-7: Consistency with the San Jose Airport Comprehensive Land Use Plan. Approximately 12 acres of the eastern third of the Plan Area (northeast of Old Ironsides Drive and Patrick Henry Drive) are in the San Jose International Airport Influence Area (AIA). The rest of the Plan Area, south of Patrick Henry Drive and west of Old Ironsides Drive, is not located within the AIA.

The Airport Comprehensive Land Use Plan (CLUP) establishes development standards related to noise, structure height, and safety that are applicable to development in areas surrounding the airport. While the Plan Area is not located in a mapped safety or noise area, parts of the Plan Area are within the CLUP Height Restriction Area, which uses the Federal Aviation Administration’s (FAA) Federal Aviation Regulations (FAR) Part 77 imaginary surfaces to delineate the area within which structures above a maximum structure height may constitute a safety hazard.

Federal Aviation Regulations, Part 77, “Objects Affecting Navigable Airspace” (commonly referred to as FAR Part 77) sets forth standards and review requirements for protecting the airspace for safe aircraft operation, particularly by restricting the height of proposed structures and minimizing other potential hazards to aircraft such as reflective surfaces, flashing lights, and electronic interference. These regulations require that the FAA be notified of certain proposed construction projects located within an extended zone defined by an imaginary slope radiating outward for several miles from an airport’s runways, or which would otherwise stand at least 200 feet in height above ground.

CLUP Policy H-1 states that any structure, existing or proposed, that penetrates (i.e., is above the maximum structure height) the FAR Part 77 imaginary surfaces would be considered an incompatible use, barring a determination from the FAA that the proposed structure or object does not present a hazard to air navigation. Based on preliminary review of the Plan Area by the City of San Jose Airport Department, the FAR Part 77 airspace surface notification requirement would apply to structures whose proposed height would exceed from 150 feet to 170 feet above ground

(assuming a ground elevation of roughly 20 feet), and therefore would require review of project plans by the FAA (which would consider other factors besides height, such as flight direction and trajectory). Notification to the FAA would therefore be required for individual proposed structures that would exceed this airspace surface, such as for buildings in the Urban Center designation where allowable heights of 12-plus stories have the potential to reach 150-170 feet. FAA review and issuance of determinations that a proposed structure would not be a hazard to air navigation, and project compliance with any conditions set forth in such FAA determinations, would ensure that the structure would not be an air safety hazard.

Additional CLUP policies related to land use compatibility include Policy G-6, which prohibits uses within an AIA that may cause hazards to aircraft due to electrical interference, high intensity lighting, attraction of birds, and activities that produce smoke, dust, or glare, among others. Projects proposed in the Plan Area that are within the San Jose International Airport AIA would need to be referred to the ALUC for a consistency review with the San Jose International Airport CLUP.

Based on the discussion above and the adopted, standard protocols under the CLUP, this land use compatibility and safety impact is considered ***less-than-significant***.

Mitigation 10-7. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

Cumulative projects located in the vicinity of the Plan Area do not include manufacturing facilities or operations that would use significant quantities of hazardous materials. The cumulative projects, therefore, would not create a significant hazard to the environment through the routine use, transport, or reasonably foreseeable accidents related to hazardous materials use. Hazardous materials contamination impacts are specific to the individual sites within the Specific Plan area as impacts vary by site characteristics, site history, and proposed land use, and are subject to local, County, State and Federal regulations.

Redevelopment in the Plan Area therefore would *not* make a considerable contribution to a significant cumulative hazardous materials impact.

H. Hydrology and Water Quality

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

- (a) Impact 11-1: Construction Period Water Quality Impacts.** The Regional Water Quality Control Board (RWQCB) and City of Santa Clara water quality protection requirements and conditions applicable to Specific Plan implementation are intended to reduce any potential construction period water quality impacts to a *less-than-significant level*, consistent with federal and State water quality regulations and plans.

Development facilitated by the Patrick Henry Drive Specific Plan would implement site-specific, mandated measures (uniformly applied development standards) to protect water quality, including but not limited to those measures required under the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP).

Any project grading activities involving disturbance of more than one acre would require a Notice of Intent (NOI) and a National Pollution Discharge Elimination System (NPDES) permit from the San Francisco Bay Regional Water Quality Control Board (RWQCB, Region 2 for Santa Clara). The RWQCB administers the NPDES stormwater permitting program in the Bay Area, including the Municipal Regional Stormwater NPDES Permit and C.3 (stormwater compliance) Permit. Project owners submit a Notice of Intent (NOI) to the RWQCB to be covered by the General Construction Permit prior to the beginning of construction. The General Construction Permit requires the preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For a project entailing disturbance of more than one acre, the SWPPP must be prepared before construction begins, usually during the planning and design phases of a project, and must include specifications for Best Management Practices (BMPs) that would be implemented during project construction to control contamination of surface flows and the potential discharge of pollutants from commencement of construction through project completion. The SWPPP document itself remains on-site during construction. After completion of the project, the owners are required to submit a Notice of Termination to the RWQCB to indicate that construction is completed.

Also, depending on individual development proposals, grading permits would be required. For all grading permits, the City mandates site-specific measures (uniformly applied development standards) to be implemented during grading to minimize construction period erosion, including a site-specific erosion and sediment control plan subject to City review and approval. Erosion and sediment control plans typically show what BMPs are proposed to be used and where, and are customarily superimposed on a project grading plan. Because project sites and site

conditions vary, the measures could include a combination of techniques such as erosion control blankets, fiber rolls, silt fences, storm drain inlet protection, and stabilized construction exit(s), and would generally address how to minimize impacts from active construction areas during the rainy season (i.e., stockpiling and protecting site soils), preservation of existing vegetation and revegetation of disturbed areas afterward, use of soil stabilization methods (soil binders, straw mulch, etc.), as well as sediment control measures (such as silt fences or straw wattles) to prevent residual silt runoff to storm drains or waterways and measures to clean equipment and prevent off-site tracking of construction-related soil and other debris.

The temporary use of hazardous materials (e.g., diesel fuel) and heavy equipment, which represent a secondary component of construction, could introduce materials that might be spilled in the Specific Plan Area and subsequently washed into water bodies, such as Calabazas Creek, San Tomas Aquino Creek, and, ultimately, San Francisco Bay. These substances could have a direct, adverse effect on water quality in water bodies. Implementation of the standard, required NPDES, SCVURPPP, and City construction period measures to reduce the risk of construction period pollutants would reduce this risk to a *less-than-significant level*.

As noted above, individual development projects would be required to treat and detain stormwater runoff on a site-specific basis. Road resurfacing and sidewalk repair and/or replacement are exempt from the NPDES C.3 Permit requirements if the work is within the existing impervious area footprint. Where Specific Plan-facilitated improvements include new roadway impervious surfaces outside existing impervious areas, the NPDES C.3 Permit requirements must be implemented.

Based on the above discussion, construction period water quality impacts resulting from Specific Plan implementation would be ***less-than-significant***

Mitigation 11-1. No significant impact has been identified; no mitigation is required.

- (b) Impact 11-2: Long-Term Water Quality Impacts from Project Operation.** Specific Plan long-term implementation could result in contamination of Plan Area stormwater runoff with petroleum and other contaminants from motor vehicles. Development facilitated by the Specific Plan would be required to comply with RWQCB- and City-mandated post-construction, non-point source pollution control measures (uniformly applied development standards; also known as facilities and maintenance practices) that would ensure that such impacts would be reduced to a *less-than-significant level*.

Plan implementation could result in the deposition by motor vehicles of oil and other contaminants along Plan Area streets and in parking areas. Rainfall has the potential to wash these contaminants into the municipal storm drainage system, potentially contaminating downstream waterways, in particular San Tomas Aquino

Creek where stormwater runoff from the Plan Area is conveyed, although during major storm events with high levels of rainfall, storm drain networks can interact through overflow connections and surface flows. Such non-point pollution is typically controlled through a combination of source controls (generally through the use of infiltration devices, such as infiltration trenches or basins, which are designed to transmit runoff directly to subsurface soils and thereby prevent pollutants from entering the waterways).

Under the terms of the countywide Municipal Regional Stormwater NPDES Permit (MRP) that the City of Santa Clara is subject to, each development project must also implement post-construction measures to prevent or control pollutants in runoff (recommended measures are included in the Stormwater C.3 Guidebook), and identify a plan to inspect and maintain these measures. Project designs, subject to review and approval by the City, would be required to include the on-site collection of runoff from all parking facilities and, if feasible, its on-site treatment (oil/grease traps, filters, oil/water separators, or similar in-line filtration systems), and an associated periodic clean out/maintenance program that ensures acceptable trap efficiencies, specifies appropriate disposal procedures, and adequately reduces the risk that the traps become sinks for pollutants. A regular schedule of parking facility sweeping would also be required. In addition, source control features such as roofed trash enclosures would be required to keep pollutants from contacting stormwater. These mandated, uniformly applied stormwater treatment measures would also need to meet engineered sizing criteria approved by the City Engineer.

Permanent post-construction Best Management Practices (BMPs) are required for all new projects that create or replace between 2,500 and 10,000 square feet ("small projects") or more ("large projects") of roofs or pavement, including new development, redevelopment, and commercial and industrial sites. Permanent treatment BMPs can include, for example:

- rainwater harvesting and re-use,
- biofiltration swales,
- detention basins,
- bioretention areas, and
- flow-through planter boxes.

Low Impact Development (LID) features can be integrated with BMPs, control measures, and permit requirements. LID features reduce impervious surfaces and can include pervious pavements, landscape features, and green roofs. Parking stalls and plaza areas in the Plan Area would utilize pervious asphalt, pervious concrete, or permeable pavers. Medians would be landscaped to increase permeability. Landscaped open space also would contribute to reductions in impervious surfaces.

The Specific Plan components identified in section 11.3.2 above are consistent with these water quality measures. All of the above BMPs and LID features, which are discussed in more detail below, are also compatible with the other Patrick Henry Drive Specific Plan frameworks, standards, and guidelines.

Given the existing level of urbanization and the potential development under the Specific Plan, BMPs can complement the Plan's development standards and guidelines, and address existing constraints. For example, bioretention planter areas may be used to treat roadway runoff, and flow-through planter boxes may be used to treat roof runoff. Or, depending on site-specific conditions and proposed plans, BMPs and LID features could include those listed above (BMP: rainwater harvesting and re-use, etc.; LID: pervious pavement, landscape features, etc.) or a combination of these or other feasible and effective techniques. As part of the standard City development process, future project applicants would be required to submit, for City review and approval, a Santa Clara "C.3" data form, which would be used to determine whether C.3 requirements apply (i.e., projects meeting or exceeding the size threshold for impervious surfaces) and to identify which site design measures, pollutant source controls, and/or stormwater treatment measures are proposed to prevent runoff pollution.

During design, the Stormwater C.3 Guidebook shall be referenced for acceptable BMPs, design considerations, design criteria, and operation and maintenance information. In addition to the C.3 Guidebook, individual development proposals shall determine if drainage would discharge to a water body impacted by specific pollutants, as identified on the C.3 data form (see above), and would be required to demonstrate compliance with RWQCB requirements to reduce stormwater runoff water quality impacts to a less-than-significant level. The 303(d) List of Impacted Water Bodies, prepared and issued by the RWQCB, includes Calabazas and San Tomas Aquino creeks. The Municipal Regional Permit (MRP) provides more detailed information. Based on the discussion above, the effects of contaminated site runoff on water quality in the local (municipal) storm drainage system would represent a *less-than-significant impact*.

Mitigation 11-2. No significant impact has been identified; no mitigation is required.

- (c) **Impact 11-3: Effects on Groundwater Recharge and Groundwater Management.** Currently, the Specific Plan Area is covered almost entirely with structures, surface parking (asphalt paving), and introduced landscaping. Based on Plan stormwater treatment components in coordination with C.3 requirements and BMPs, Plan implementation would be expected to decrease the proportion of the Plan Area that is covered with impervious surface through application of LID techniques that would increase permeable area as well as the introduction of new landscaped, open space, and park areas.

The Specific Plan Area would not conflict with or obstruct implementation of the 2016 Santa Clara Valley Water District Groundwater Management Plan because the Plan Area is not an area designated by Valley Water for groundwater recharge.

Also, the increased use of groundwater is one of several options available to the City to meet short-term water supply deficiencies. The City currently monitors groundwater levels at all City production wells and meters groundwater pumping. If the City determines the need to pump additional groundwater, this groundwater monitoring, in addition to the existing groundwater recharge program, would reduce the potential to substantially decrease groundwater supplies and ensure that the groundwater basin would not approach overdraft conditions.

Therefore, the impact on groundwater recharge and groundwater management would be *less-than-significant*.

Mitigation 11-3. No significant impact has been identified; no mitigation is required.

- (d) **Impact 11-4: Drainage Patterns and Risk of Flooding.** Because the Specific Plan Area is already covered with structures, paved surface parking, and introduced landscaping, development under the Plan would not significantly alter the total volume or rate of stormwater runoff into the existing municipal storm drain system or substantially alter drainage patterns, particularly because implementation of stormwater control measures would slow down the rate and reduce the volume of stormwater runoff, especially when compared to the existing hardscape areas. In addition, the Specific Plan proposes additional landscaped, open space, and park areas with pervious surfaces.

The currently mapped FEMA Flood Zones indicate that most of the Plan Area is located in Zone X (“Area with Reduced Flood Risk Due to Levee”) – i.e., not in the 1% annual flood hazard zone.

The Specific Plan Infrastructure Program indicates that stormwater flows generated by future development under the Patrick Henry Drive Specific Plan would be adequately received by existing off-site storm drain systems. In addition, because the Plan Area is currently developed, no pipeline extensions are anticipated to serve the Plan Area.

The City applies uniformly applicable stormwater management regulations to avoid or reduce the potential for flood flow or drainage impacts of development, including erosion and siltation impacts, which provide for incorporating in projects one or a combination of BMPs such as rainwater harvesting and re-use, biofiltration swales, detention basins, bioretention areas, and flow-through planter boxes, and/or LID features such as use of pervious pavement, landscape features, and green roofs. The City’s Flood Damage Prevention Code (City Code chapter 15.45) requires

development in Special Flood Hazard Areas to meet City standards related to anchoring of structures, construction methods and materials, elevation of structures, and floodproofing (as applicable to reduce or eliminate flood damage). Compliance with these City Code standards would also reduce risks from hazards resulting from inundation by regulating uses (including new construction and other development activities) that may increase flood heights or velocities or otherwise obstruct or redirect flood water in a manner that could lead to potential release of pollutants. City erosion and sediment control plan requirements would reduce the potential for erosion and/or sedimentation resulting from any changes in drainage patterns.

Also, for individual developments, the City requires a utility plan addressing, among other infrastructure components, the storm drain system. Practices include controlling the amount and timing of runoff from development sites (e.g., see the BMPs and LID features described above, which control runoff quantities as well as improve water quality) and raising the elevation of buildings or other flood protective measures as described above. Implementation of these development standards would be required as a condition of individual development project approval, prior to issuance of grading or building permits. Also, because development under the Specific Plan would be required to prevent increases in runoff flows from new development and redevelopment projects (e.g., comply with NPDES C.3 requirements), Specific Plan effects on existing drainage patterns would be less-than-significant.

Based on the above discussion, the impacts of drainage patterns and potential flooding are considered ***less-than-significant***.

Mitigation 11-4. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

(a) None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

The Project would not have a cumulatively considerable impact on hydrology or water quality. All development projects (including future development under the Specific Plan) are required to undertake steps to avoid, minimize, and/or mitigate flooding and water quality impacts. Projects north of the Plan Area, including City Place, shall be designed to have no impacts to upstream water surface elevations

and therefore will cause no negative flooding impacts to the project site. In addition, the Project will have no impact on hydrology or water quality with implementation of the mitigation measures discussed above. Future upstream projects would not impact the Plan Area as they would not significantly alter the existing hydrologic (i.e. flow path) conditions of those areas and are subject to NPDES regulations for treatment and retention of stormwater runoff. Therefore, cumulative hydrological impacts would be considered *less than significant*.

J. Land Use and Planning

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

(a) Impact 12-1: Project Effects on the Physical Arrangement of the Community.

The analyses and findings in this EIR indicate that future development activity under the Patrick Henry Drive Specific Plan would not disrupt or divide the physical arrangement of the community. The Plan Area is generally an internally focused collection of large, self-contained parcels. Specific Plan-facilitated development identified in the Project Description would occur within the Plan Area. Implementation of the Specific Plan would establish integrated physical and functional connections between Specific Plan Area parcels and with the adjacent community.

The Patrick Henry Drive Specific Plan, in concert with the Santa Clara General Plan, is intended to provide for the expansion of housing choices by encouraging compact, transit-accessible, pedestrian-oriented housing and mixed-use (housing/retail/office) development in the Plan Area at densities and heights greater than currently developed. The Plan is designed to ensure that this housing and mixed-use development is conveniently located near public transportation, shopping, employment, and other community facilities.

The Specific Plan land use provisions and development standards and guidelines would be expected to encourage substantial beneficial land use effects in (1) revitalizing the Specific Plan Area; (2) facilitating development where services and infrastructure can be most efficiently provided by promoting higher residential densities within or near existing employment and public transportation areas; (3) and promoting compact, transit-accessible, pedestrian-oriented, mixed-use development patterns and land use. These Patrick Henry Drive Specific Plan land use characteristics epitomize the principles and policies of the Association of Bay Area Governments (ABAG) Plan Bay Area, and would represent a ***beneficial land use effect***.

Mitigation 12-1. The Patrick Henry Drive Specific Plan would result in beneficial land use and planning effects. No mitigation pertaining to environmental impacts on the physical arrangement of the community is required.

- (b) **Impact 12-2: Project Consistency with Land Use Plans, Policies, and Regulations Adopted for the Purpose of Avoiding or Mitigating Environmental Effects.** CEQA requires environmental impacts to be analyzed compared to *existing conditions on the ground*. Both the Santa Clara General Plan and the Patrick Henry Drive Specific Plan identify the Plan Area as the location of future higher-density, higher-intensity, mixed-use development, which may result in building heights and massing greater than existing conditions. The General Plan policies listed in each environmental topic chapter (e.g., Hazards and Hazardous Materials, Land Use, Noise, Public Services, Utilities) of the EIR apply to the proposed Specific Plan.

The Specific Plan includes components that would avoid or reduce potential land use and planning impacts. The Plan is intended to implement the basic project objectives identify improvements, and adopt frameworks, standards, guidelines, and implementation actions which can be consistently applied throughout the Plan Area. The Plan is designed to ensure that housing and mixed-use development is conveniently located near public transportation, retail and services, employment, and open space and community facilities, both in the Plan Area and the surrounding community.

New development throughout the Plan Area would include a combination of residential, retail, flex, office, community, and open space uses. Residential uses would be located throughout the Plan Area. New uses could include combinations of, for example, residential, retail, restaurant, and office uses in single or mixed-use buildings.

The parks, recreation and open space framework for the Patrick Henry Drive Specific Plan “includes policies and requirements to create a diverse network of public parks, green infrastructure, and private recreational spaces that support the physical, social and environmental health of the neighborhood while integrating with the community-wide City public parks and recreation system”.

As discussed in the EIR topic chapters, the Specific Plan is substantially consistent with adopted land use plans, policies, and regulations. However, there could be some potential conflicts related to air quality and cultural and historic resources:

- Air Quality – potential conflicts. As discussed in chapter 5, Air Quality, implementation of the Specific Plan would result in construction emissions that could be substantial and result in significant health impacts, which would represent a potential conflict with BAAQMD regulatory thresholds.
- Cultural and Historic Resources – potential conflicts. As discussed in chapter 7, Cultural and Historic Resources, although EIR-identified mitigation measures would generally ensure compliance with applicable, adopted local, regional, State, and federal plans and regulations, there is the possibility that a future individual project could result in a substantial adverse change in the significance of the historic resource that cannot be avoided (for instance, an as-yet unidentified

historic resource that cannot be moved or otherwise preserved or rehabilitated), which would represent a potential conflict.

The remaining topics, Biological Resources (chapter 6), Geology and Soils (chapter 8), Greenhouse Gas Emissions and Energy (chapter 9), Hazards and Hazardous Materials (chapter 10), Hydrology and Water Quality (chapter 11), Land Use (chapter 12), Noise (chapter 13), Population and Housing (chapter 14), Public Services (chapter 15), Recreation (chapter 16), Transportation (chapter 17), and Utilities and Service Systems (chapter 18) do not identify potential conflicts with land use plans, policies, and regulations adopted for the purpose of avoiding or mitigating environmental effects.

For a discussion of Specific Plan consistency with other adopted plans and policies, see chapter 19, Project Consistency with Local and Regional Plans, of this EIR.

The Patrick Henry Drive Specific Plan would serve to achieve a coordinated, connected environment within the Plan Area while increasing land use intensity through frameworks and unified, context-sensitive design standards and guidelines, which would result in the efficient use of existing resources and infrastructure. Plan components are purposely designed to achieve and maintain a cohesive, compatible land use pattern and sense of place in the Plan Area, as well as provide smooth transitions with adjacent neighborhoods and areas. The impact of the Specific Plan on land use and planning is considered a *beneficial land use effect*.

Mitigation 12-2. The Patrick Henry Drive Specific Plan would result in beneficial land use and planning effects. No additional mitigation pertaining to project consistency with land use plans, policies, and regulations adopted for the purpose of avoiding or mitigating environmental effects is required beyond those mitigation measures already identified in the environmental topic chapters of the EIR (see Mitigation Measure 5-3, which addresses potential construction-period air quality impacts, and Mitigation Measure 7-1, which addresses potential impacts to historic resources).

2. Project impacts determined to be less than significant with mitigation incorporated

None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

The Project would not result in any impact to mineral resources, agriculture, and forestry resources, therefore, the Specific Plan would not result in cumulative

impacts to these resources. The Project would not contribute to cumulative projects that would divide an established community given the uses surrounding the cumulative projects and the nature of the proposed developments. Although several of the cumulative projects would be inconsistent with the General Plan because they propose growth that is unaccounted for in their respective City's General Plans, the PHDSP would not make a cumulatively considerable contribution to such an impact. The PHDSP, although proposing additional growth beyond that considered in the General Plan, would assist the City in meeting its regional housing needs and addressing the jobs/housing imbalance in Santa Clara. Several projects in the cumulative analysis, including City Place Santa Clara and Phases II and III of the General Plan which includes residential development near the Lawrence Expressway Caltrain Station and PHDSP, identified land use impacts related to the regional jobs-housing imbalance. Over the past few decades, regional job growth has greatly exceeded housing capacity, leading to traffic congestion and air pollution from vehicles as workers commute long distances from outlying areas with more affordable housing. Both City Place Santa Clara and Phases II and III of the General Plan contain substantial employment-based land uses, which would exacerbate indirect impacts related to traffic and air pollution. Though some job-creating land uses are proposed under PHDSP, development under PHDSP would improve the regional jobs/housing imbalance by creating 12,000 dwelling units. Therefore, this cumulative impact would be *less than significant*.

K. Noise and Vibration

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

- (a) Impact 13-5: Operational Vibrations.** The Plan Area does not currently include any substantial vibration generating equipment. The Specific Plan would add a mix of residential, mixed-use, flex, and/or office land uses to the Plan Area over time, reaching full development by 2040. These new land uses could involve machinery and equipment such as pumps, compressors, generators, and other fixed equipment that produce vibrations; however, this equipment would not generate vibration levels that could exceed the City's vibration perception threshold. Potential pumps, generators, and other typical equipment would be securely mounted and not large enough to generate substantial vibrations beyond the immediate vicinity of the equipment. The Specific Plan does not propose or support any large vibration-inducing equipment or land use activities and would not result in excessive ground-borne vibration levels. This represents a *less-than-significant impact*.

Mitigation 13-5. No significant impact has been identified; no mitigation is required.

- (b) Impact 13-6: Exposure to Airport-Related Noise.** The San Jose International Airport CLUP establishes the 65 CNEL contour as the noise restriction area for residential land uses, and the City's General Plan (Policy 5.10.6-P8) encourages safe

and compatible land uses within the airport's noise restriction area. As described in Section 13.1.7, the part of the Plan Area north of Patrick Henry Drive and east of Old Ironsides Drive lies within the Norman Y. Mineta San Jose International Airport influence area; however, the Plan Area is not located within the 65 CNEL contour associated with San Jose International Airport (SCC ALUC 2016; Figure 5). Accordingly, future development within the Plan Area would not be subjected to excessive airport-related noise levels.

Consistent with the CLUP (Policy N-5), future owners in the Plan Area that own property in the airport influence area and who rent or lease property for residential use will be required to include a disclosure in the rental/lease agreement with the tenant that the property is within a high noise area associated with airport operations and may be exposed to airport-related noise levels greater than 65 CNEL.

The Plan Area is not located within two miles of a private airstrip or related facility.

The Specific Plan would not expose people living or working in the Plan Area to excessive airport-related noise levels. This impact is considered a ***less-than-significant impact***.

Mitigation 13-6. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

- (a) Impact 13-1: Plan-Related Temporary Construction Noise Levels.** The implementation of the Patrick Henry Drive Specific Plan could result in construction and development activities in the Plan Area that generate noise levels above City standards and/or otherwise result in a substantial, temporary increase in ambient noise levels in the vicinity of the Plan Area. This represents a ***potentially significant impact***.

Finding: Mitigation measures would reduce impacts due to construction-related vibration impacts to less than significant levels. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

With regard to construction noise, demolition, site preparation, and grading phases typically result in the highest temporary noise levels due to the use of heavy-duty equipment such as dozers, excavators, graders, loaders, scrapers, and trucks. The use of specialized equipment such as impact or vibratory pile drivers can also generate high noise levels during initial foundation work stages. The worst-case L_{eq} and L_{max} noise levels associated with the operation of a dozer, excavator, scraper, etc., are predicted to be approximately 82 and 85 dBA, respectively, at a distance of

50 feet from the equipment operating area. At an active construction site, it is not uncommon for two or more pieces of construction equipment to operate at the same time and in close proximity. The concurrent operation of two or more pieces of construction equipment would result in noise levels of approximately 85 to 88 dBA at a distance of 50 feet from equipment operating areas. The magnitude of each individual future project's temporary and periodic increase in ambient noise levels would be dependent upon a number of project-specific factors that are not known at this time, including: the amount and type of equipment being used; the distance between the area where equipment is being operated and the location of the specific land use, receptor, etc., where noise levels are being evaluated; the time of day construction activities are occurring; the presence or absence of any walls, buildings, or other barriers that may absorb or reflect sound waves, the total duration of the construction activities, and the existing ambient noise levels near construction areas.

Typically, sustained construction noise levels of 80 to 85 dBA or higher would require the implementation of construction noise control practices such as staging area restrictions (e.g., siting staging areas away from sensitive receptors), equipment controls (e.g., covered engines and use of electrical hook-ups instead of generators), and/or the installation of temporary noise barriers of sufficient height, size (length or width), and density to achieve targeted noise reductions. In general, typical construction equipment activities could exceed the City's significance thresholds at residential and commercial land uses within 400 feet and 200 feet of work areas, respectively, assuming the construction activity would last for more than one year (which may or may not be the case depending on the project. The use of pile driving equipment, if necessary, could exceed residential and commercial thresholds at distances of 500 and 400 feet, respectively. While all projects in the Planning Area would be subject to the permissible construction hours established by the Municipal Code, construction activities could result in temporary increases in noise levels above ambient conditions of 10 to 30 dBs or more during permissible time frames, which would be perceived by noise-sensitive land uses as doubling or quadrupling of loudness, respectively. This is considered a potentially significant impact.

Mitigation Measures

Mitigation 13-1: Reduce Construction Noise Levels. To reduce potential noise levels from Specific Plan related construction activities, the City shall ensure future development projects within the Plan Area:

- 1) Notify Residential and Commercial Land Uses of Planned Construction Activities. This notice shall be provided at least one week prior to the start of any construction activities, describe the noise control measures to be implemented by the Project, and include the name and phone number of the designated contact for the Applicant/project representative and the City of Santa Clara responsible for handling construction-related noise complaints (per Section 8). This notice shall be

provided to: A) The owner/occupants of residential dwelling units within 500 feet of construction work areas; B) The owner/occupants of commercial buildings (including Mission College) within 200 feet of construction work areas or within 400 feet of construction work areas if pile driving equipment will be used; and C) Mission College when construction work areas are within 500 feet of College athletic fields.

2) Notify Calabazas Creek Trail Users of Construction Activities. Prior to the start of construction activities within 500 feet of Calabazas Creek Trail, signs shall be posted along the trail warning of potential temporary elevated noise levels during construction. Signs shall be posted within 250 feet of impacted trail segments (i.e., portions of the trail within 500 feet of a work area) and shall remain posted throughout the duration of all substantial noise generating construction activities (typically demolition, grading, and initial foundation installation activities).

3) Restrict Work Hours. All construction-related work activities, including material deliveries, shall be subject to the requirements of City Municipal Code Section 9.10.230. Construction activities, including deliveries, shall occur only during the hours of 7:00 AM to 6:00 PM, Monday through Friday, and 9 AM to 6 PM on Saturday, unless otherwise authorized by City permit. The applicant/project representative and/or its contractor shall post a sign at all entrances to the construction site informing contractors, subcontractors, construction workers, etc. of this requirement.

4) Control Construction Traffic and Site Access. Construction traffic, including soil and debris hauling, shall follow City-designated truck routes and shall avoid routes (including local roads in the Plan Area) that contain residential dwelling units to the maximum extent feasible given specific project location and access needs.

5) Construction Equipment Selection, Use, and Noise Control Measures. The following measures shall apply to construction equipment used in the Plan Area: A) To the extent feasible, contractors shall use the smallest size equipment capable of safely completing work activities; B) Construction staging shall occur as far away from residential and commercial land uses as possible; C) All stationary noise-generating equipment such as pumps, compressors, and welding machines shall be shielded and located as far from sensitive receptor locations as practical. Shielding may consist of existing vacant structures or a three- or four-sided enclosure provide the structure/barrier breaks the line of sight between the equipment and the receptor and provides for proper ventilation and equipment operations; D) Heavy equipment engines shall be equipped with standard noise suppression devices such as mufflers, engine covers, and engine/mechanical isolators, mounts, etc. These devices shall be maintained in accordance with manufacturer's recommendations during active construction activities; E) Pneumatic tools shall include a noise suppression device on the compressed air exhaust; F) The applicant/project

representative and/or their contractor shall connect to existing electrical service at the site to avoid the use of stationary power generators; G) No radios or other amplified sound devices shall be audible beyond the property line of the construction site.

6) Implement Construction Activity Noise Control Measures: The following measures shall apply to construction activities in the Plan Area: A) Demolition: Activities shall be sequenced to take advantage of existing shielding/noise reduction provided by existing buildings or parts of buildings and methods that minimize noise and vibration, such as sawing concrete blocks, prohibiting on-site hydraulic breakers, crushing, or other pulverization activities, shall be employed to the maximum extent feasible; B) Demolition Site Preparation, Grading, and Foundation Work: During all demolition, site preparation, grading, and structure foundation work activities within 500 feet of a residential dwelling unit or 250 feet of a commercial building (including Mission College), a physical noise barrier capable of achieving a minimum 10 dB reduction in construction noise levels shall be installed and maintained around the site perimeter to the maximum extent feasible given site constraints and access requirements. Potential barrier options capable of achieving a 10 dB reduction in construction noise levels could include, but are not limited to: i) A six-foot-high concrete, wood, or other barrier installed at-grade (or mounted to structures located at-grade, such as a K-Rail), and consisting of a solid material (i.e., free of openings or gaps other than weep holes) that has a minimum rated transmission loss value of 20 dB; ii) Commercially available acoustic panels or other products such as acoustic barrier blankets that have a minimum sound transmission class (STC) or transmission loss value of 20 dB; iii) any combination of noise barriers and commercial products capable of achieving a 10 dBA reduction in construction noise levels during demolition, site preparation, grading, and structure foundation work activities; iv) The noise barrier may be removed following the completion of building foundation work (i.e., it is not necessary once framing and typical vertical building construction begins provided no other grading, foundation, etc. work is still occurring on-site); and C) Pile Driving: If pile driving activities are required within 500 feet of a residential dwelling unit or 400 feet of a commercial building (including Mission College), the piles shall be pre-drilled with an auger to minimize pile driving equipment run times.

7) Prepare Project-Specific Construction Noise Evaluation. Prior to the start of any specific construction project lasting 12 months or more, the City shall review and approve a project-specific construction noise evaluation prepared by a qualified acoustical consultant that: A) Identifies the planned project construction sequence and equipment usage; B) Identifies typical hourly average construction noise levels for project construction equipment; C) Compares hourly average construction noise levels to ambient noise levels at residential and commercial land uses near work areas (ambient noise levels may be newly measured or presumed to be consistent with those levels shown in Table 13-2 and 13-3 of the Patrick Henry Drive Specific Plan Draft Environmental Impact Report (EIR); and D) Identifies construction noise control measures incorporated into the project that ensure: i) activities do not

generate noise levels that are above 60 dBA Leq at a residential dwelling unit and exceed the ambient noise environment by at least 5 dBA Leq for more than one year; and ii) activities do not generate noise levels that are above 70 dBA Leq at a commercial building (including Mission College) and exceed the ambient noise environment by at least 5 dBA Leq for more than one year. Such measures may include, but are limited to: a) The requirements of Sections 4, 5, 6, and 8; B) Additional project and/or equipment-specific enclosures, barriers, shrouds, or other noise suppression methods. The use of noise control blankets on building facades shall be considered only if noise complaints are not resolvable with other means or methods.

8) Prepare a Construction Noise Complaint Plan. The Construction Noise Complaint Plan shall: A) Identify the name and/or title and contact information (including phone number and email) for a designated project and City representative responsible for addressing construction-related noise issues; B) Includes procedures describing how the designated project representative will receive, respond, and resolve construction noise complaints; C) At a minimum, upon receipt of a noise complaint, the project representative shall notify the City contact, identify the noise source generating the complaint, determine the cause of the complaint, and take steps to resolve the complaint; D) The elements of the Construction Noise Complaint Plan may be included in the project-specific noise evaluation prepared to satisfy Section 7 or as a separate document.

9) Owner/Occupant Disclosure: The City shall require future occupants/tenants in the Plan Area receive disclosure that properties in the Plan Area may be subject to elevated construction noise levels from development in the Plan Area. This disclosure shall be provided as part of the mortgage, lease, sub-lease, and/or other contractual real-estate transaction associated with the subject property.

With implementation of these measures, this impact would be *less than significant*.

- (b) Potential Impact: Impact 13-2: Plan-Related Temporary Construction Vibration Levels.** The implementation of the Patrick Henry Drive Specific Plan could result in construction and development activities in the Plan Area that generate vibration levels above City standards and/or otherwise result excessive ground-borne vibration levels. This represents a *potentially significant impact*.

Finding: Mitigation measures would reduce impacts due to construction-related vibration impacts to less than significant levels. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

Construction activities have the potential to result in varying degrees of ground vibration, depending on the specific construction equipment used and activities involved. Vibration generated by construction equipment spreads through the

ground and diminishes with increases in distance. The effects of ground vibration may be imperceptible at low levels, result in low rumbling sounds and detectable vibrations at moderate levels, and can disturb human activities such as sleep and vibration sensitive equipment at high levels. Ground vibration can also potentially damage the foundations and exteriors of existing structures even if it does not result in a negative human response. Pile drivers and other pieces of high impact construction equipment are generally the primary cause of construction-related vibration impacts. The use of such equipment is generally limited to sites where there are extensive layers of very hard materials (e.g., compacted soils, bedrock) that must be loosened and/or penetrated to achieve grading and foundation design requirements. The need for such methods is usually determined through site-specific geotechnical investigations that identify the subsurface materials within the grading envelope, along with foundation design recommendations and the construction methods needed to safely permit development of a site.

As indicated under Impact 13-1, since project specific information is not available at this time, potential short-term construction-related vibration impacts can only be evaluated based on the typical construction activities associated with residential, commercial, and retail development. Potential construction equipment and activity vibration levels were developed based on methodologies, reference noise levels, and equipment usage and other operating factors documented and contained in the FTA's Transit Noise and Vibration Impact Assessment document and Caltrans' Transportation and Construction Vibration Guidance Manual (FTA 2018 and Caltrans 2020).

Construction vibration impacts generally occur when construction activities occur in close proximity to buildings and vibration-sensitive areas, during evening or nighttime hours, or when construction activities last extended periods of time. Construction activities associated with the proposed project would occur in multiple phases and may last several years in total, with full development of the Plan Area anticipated to occur by 2040. In general, construction activities in the Plan Area would not be located near residential or commercial buildings or structures because the Plan Area is bordered by a parking lot on the north, Great America Parkway to the east, Mission College parking areas and athletic fields to the south, and the Calabazas Creek Trail to the east. The exception to this is the southeast corner of the Plan Area, where construction activities could occur within 50 feet of an existing, adjacent commercial building. The closest residential building facades are approximately 195 feet to the west of the Plan Area, across the Calabazas Creek; however, the Kylli Mixed Use Development Project borders the Plan Area to the north and could result in future buildings adjacent to the Plan Area. In addition, future land uses envisioned by the Specific Plan (e.g., residential dwelling units, library use, commercial buildings) could be located near construction work areas within the Plan Area and affected by construction vibration.

Mitigation Measures

In addition to adhering to the City Code for construction hours, the future development projects would be required to implement the following standard construction noise control measures to reduce construction noise levels at nearby land uses:

Mitigation 13-2: Reduce Construction Vibration Levels. To reduce potential vibration-related structural damage and other excessive vibration levels from Specific Plan related construction activities, the City shall ensure future development projects within the Plan Area:

- 1) Notify Residential and Commercial Land Uses of Planned Construction Activities. See Patrick Henry Drive Specific Plan Draft Environmental Impact Report (EIR) Mitigation Measure 13-1, Section 1.
- 2) Restrict Work Hours. See Patrick Henry Drive Specific Plan Draft EIR Mitigation Measure 13-1, Section 2.
- 3) Prohibit Vibratory Equipment if Feasible. The use of large vibratory rollers, vibratory/impact hammers, and other potential large vibration-generating equipment (e.g., hydraulic breakers/hoe rams) shall be prohibited within 100 feet of any residential building façade and 50 feet of any commercial building façade during construction activities. Plate compactors and compactor rollers are acceptable, and deep foundation piers or caissons shall be auger drilled.
- 4) Prepare Project-Specific Construction Vibration Evaluation Plan. If it is not feasible to prohibit vibratory equipment per Section 3) due to site- or project-specific conditions or design considerations, the City shall review and approve a project-specific construction vibration evaluation that: A) Identifies the project's planned vibration-generating construction activities (e.g., demolition, pile driving, vibratory compaction); B) the potential project-specific vibration levels (given project-specific equipment and soil conditions, if known) at specific building locations that may be impacted by the vibration-generating work activities (generally buildings within 50 feet of the work area); C) Identifies the vibration control measures incorporated into the project that ensure equipment and work activities would not damage buildings or result in vibrations that exceed Caltrans' strongly perceptible vibration detection threshold for peak particle velocity (PPV) of 0.1 inches/second (in/sec). Such measures may include, but are not limited to: i) the requirements of Sections 1, 2, and 3; ii) the use of vibration monitoring to measure actual vibration levels; iii) the use of photo monitoring or other records to document building conditions prior to, during, and after construction activities; and iv) the use of other measures such as trenches or wave barriers; D) Identifies the name (or title) and contact information (including phone number and email) of the

Contractor and City-representatives responsible for addressing construction vibration-related issues; and E) Includes procedures describing how the construction contractor will receive, respond, and resolve to construction vibration complaints. At a minimum, upon receipt of a vibration complaint, the Contractor and/or City representative described in the first sub-bullet above shall identify the vibration source generating the complaint, determine the cause of the complaint, and take steps to resolve the complaint by reducing ground-borne vibration levels to peak particle velocity levels that do not exceed accepted guidance or thresholds for structural damage that are best applicable to potentially impacted buildings, including Caltrans' strongly perceptible vibration detection threshold.

With implementation of these measures, this impact would be *less than significant*.

- (c) **Impact 13-3: On-site Noise Levels from Specific Plan Development.** The implementation of the Patrick Henry Drive Specific Plan could result in new roadway and infrastructure improvements and new residential, office, and other land uses that generate noise from on-site equipment, activities, or other operations in excess of applicable City standards. This represents a *potentially significant impact*.

Facts in Support of Finding

Although the proposed Specific Plan could increase the amount of noise sources and noise-generating activities compared to existing conditions, the project would have a limited potential to generate significant on-site noise levels for the following reasons:

- In general, residential land uses (including the proposed high-density residential land uses) are not a substantial noise-generating land use type because:
 - They do not involve substantial noise-generating activities during the nighttime;
 - Mechanical equipment associated with elevators, residential amenities such as pools, and other building systems are typically enclosed within the closets, sheds, or equipment rooms; and
 - HVAC equipment is typically screened from public view by landscaping, fences, or walls and, therefore, shielded from adjacent property lines.
- The Plan Area would support residential and recreational land uses along shared property lines with Mission College, the Calabazas Creek Trail, and lands to the north of the Plan Area (which are currently commercial but may transition to residential in the future).
- The proposed high density flex land uses, which may consist of office/commercial developments with commercial-grade HVAC equipment, back-up generators, or other mechanical equipment, would be located along the eastern edge of the Plan Area, between Old Ironsides Drive and Great America Parkway, and would have little to no potential to impact on- or off-site receptors due to the distance

between flex use boundaries and other nearby properties (estimated to be a minimum of 100 feet).

- The proposed mixed-use overlay, which would permit residential development with ground-floor retail, flex, or community uses, would support an active street environment, and primarily provide local-serving retail and neighborhood services and amenities to meet the day-to-day needs of residents. These retail, flex, and community uses would be located on the interior of the Plan Area (along local roads) and would be unlikely to require substantial loading or unloading facilities or large, stationary sources of equipment.
- The Specific Plan includes design standard and guidelines for building orientation (Standard 5.5.2.5), building frontages and setbacks (Standard 5.5.3.3 and Standard 5.5.3.5), and alleys/service access (Guideline 5.5.4.11 and Standard 5.5.4.12) that screen residential uses from noise generating activities such as garage entrances and loading areas (see Section 13.3.2).
- The City's General Plan establishes procedures and standards to protect noise sensitive land uses from noise intrusion (see Section 13.2.4.1) and the City's Municipal Code establishes specific numeric standards for residential and commercial lands that are not be exceed by stationary equipment (see Section 13.2.4.2).

As explained above, the proposed Specific Plan is considered to have a limited potential to include on-site sources or activities that could generate noise levels that exceed City standards or otherwise substantially increase existing ambient noise levels; however since project-specific information is not available at this time, the potential exists for future development projects to include noise-generating equipment or involve noise generating activities that could exceed the City's standards or otherwise substantially exceed the ambient noise environment if not adequately mitigated. The implementation of Mitigation Measure 13-3 would require development projects in the Plan Area to include site design, noise attenuation, and/or other noise control measures to ensure project-specific fixed noise source levels do not exceed City standards. This impact would be less than significant with mitigation.

Mitigation 13-3: Control Fixed and Other On-site Noise-Generating Sources and Activities. To ensure on-site, operations-related equipment and activities associated with the Specific Plan do not generate noise levels that exceed City standards or otherwise result in a substantial permanent increase in ambient noise levels, future development projects shall submit a project-specific operational noise analysis to the City for review and approval prior to the issuance of the first building permit for the project, or as otherwise determined by the City. The noise analysis shall be prepared by a qualified acoustical consultant and shall identify all major fixed machinery and equipment, non-residential truck docks/dedicated loading zones, waste collection areas, and above ground parking garages included in the final project design/site plan. The noise analysis shall also document how project noise sources and activities will comply with the exterior sound limits established in Municipal Code Section 9.10.040, Schedule A and the noise compatibility guidelines in General Plan Table 8.14-1. Fixed machinery and equipment may include, but is not limited to, pumps, fans (including air intake or exhaust fans in parking garages), compressors, air conditioners, generators, and refrigeration equipment. The control of noise from such equipment may be accomplished by selecting quiet equipment types, siting machinery and equipment inside buildings, within an enclosure (e.g., equipment cabinet or mechanical closets, or behind a parapet wall or other barrier/shielding. Truck docks/dedicated loading zones consist of a loading dock or other dedicated area for the regular loading and unloading of retail, commercial, or other non-residential goods from delivery trucks. The control of noise from such truck docks/loading areas, waste collection areas, and parking garages may be accomplished by placing such areas away from sensitive land uses, restricting activities or operating hours for certain areas, or other design means.

With implementation of these measures, this impact would be *less than significant*.

3. Project impacts determined to be significant and unavoidable

- (a) **Impact 13-4: Increases in Traffic Noise Levels from Specific Plan Development.** The implementation of the Patrick Henry Drive Specific Plan could generate vehicle trips that substantially increase existing and future No Project traffic noise levels and/or exceed City noise and land use compatibility standards. This represents a *potentially significant impact*.

Facts in Support of Finding

The Specific Plan would have the potential to change the existing amounts and types of land uses within the Plan Area. These potential land use changes would increase residents and employees within the City and lead to an increase in vehicle trips and traffic-related noise levels that could pose land use compatibility issues and/or otherwise represent a substantial permanent increase in traffic noise levels on roadways used to access the Plan Area.

Mitigation Measures

No feasible mitigation is possible.

L. Population and Housing

(a) Impact 14-1: Effects on Population Growth. Based on the forecasted development capacity under the proposed Specific Plan (see chapter 3, Project Description, of this EIR), the Plan is anticipated to result in up to the following new development in the Plan Area:

- 10,300 (Scenario B) to 12,000 (Scenario A) residential units,
- 150,000 square feet (sq. ft.) of new retail space,
- 90,000 sq. ft. of new flex space (residential, retail, and/or office),
- 70,000 sq. ft. of new community/civic space, and
- 785,000 sq. ft. of new office space (Scenario B only).

Both the Patrick Henry Drive Specific Plan and this EIR assume these numbers represent the maximum capacity for future anticipated development. As such, the City would monitor new development approvals to ensure that there is remaining capacity as new projects are approved. Should the Plan Area approach capacity, the City would reevaluate both the Plan and the EIR and amend them as necessary to address and mitigate growth above and beyond these capacity numbers.

The Specific Plan assumes an average of 2.23 persons per new household (pph) in the Plan Area, based on demographic and economic research prepared for the Plan.⁴ Using this factor, Plan implementation could accommodate up to approximately 22,970 (Scenario B) to 26,760 (Scenario A) new residents in the Plan Area by the year 2040 (the estimated Plan buildout horizon). The General Plan identified the Plan Area as a “future focus area” designated for “change from existing underutilized office and industrial uses to higher-density residential and mixed-use neighborhoods,” with objectives outlined to establish the necessary infrastructure, amenities, and services to support potential growth, and the Plan Area has been included in the “General Plan Land Use Assumptions.”⁵ Due to the predominately residential nature of growth anticipated under the Specific Plan, the projected

⁴“Persons Per Household By Unit Type, City of Santa Clara, CA,” provided by the City based on California Department of Finance Estimates for City of Santa Clara (as of 1/1/2018) and Persons Per Household by Unit Type for Santa Clara County from U.S. Census Bureau, American Community Survey, 2012-2016 Public Use Microdata Sample [PUMS] data set for Santa Clara County.

⁵As noted in the General Plan, potential development for areas north of U.S. 101 is anticipated to include greater intensification than under existing land use designations, with some areas expected to propose expansion from their allowed uses. The three General Plan phases (Phase I, Phase II, Phase III) were designed to provide opportunities to refine strategies and objectives as the City assesses new needs and conditions through an iterative planning process, such as the comprehensive planning process required prior to development approval in a future focus area, as is the case with this Specific Plan.

increase in residential units would help to address the balance between housing and jobs in the city (i.e., the shortage of affordable housing discussed in section 14.1.2).

As described throughout this EIR (e.g., chapter 3 - Project Description; chapter 17 - Transportation; chapter 18 - Utilities and Service Systems), Plan implementation would not extend roads or infrastructure through undeveloped or low-density areas and, therefore, would not induce substantial population growth beyond the Plan Area boundaries. Rather, Specific Plan implementation would facilitate the projected residential, commercial, and community growth within a mixed-use Plan Area identified for such growth in the Santa Clara General Plan. Therefore, this impact is considered *less-than-significant*.

Mitigation 14-1. No significant impact has been identified; no mitigation is required.

- (b) Impact 14-2: Population and Housing Displacement Effects.** As of October 2020, there is no housing in the Plan Area, and the Specific Plan would not displace any residents or housing. The Patrick Henry Drive Specific Plan is an integrated long-term plan of frameworks and design standards and guidelines. Development potential under the Plan would be initiated voluntarily by property owners. Infrastructure, roadway, open space, and other public improvements proposed under the Plan would not require the displacement of any housing. The mixed-use focus of the Specific Plan would provide for the addition of up to 10,300 to 12,000 residential units in the Plan Area. The Plan is intended to lower transportation costs for future residents currently dependent on private automobiles by providing a mixture of housing types near existing public transportation infrastructure, while also improving access and connectivity to these support services for existing residents through bicycle and pedestrian infrastructure improvements.

The Specific Plan framework noted above (subsection 14.3.2, “Relevant Patrick Henry Drive Specific Plan Components”) would proactively facilitate affordable housing.

Based on the discussion above, impacts on population and housing displacement are considered *less-than-significant*.

Mitigation 14-2. No significant impact has been identified; no mitigation is required.

- (c) Impact 14-3: Temporary Employment Impacts.** Temporary construction jobs would be created over the timeframe of Plan implementation. It is anticipated that an adequate construction work force will continue to exist within commute distance of the Plan Area, thereby making highly unlikely a substantial increase in population due to project construction. The actual number of construction jobs facilitated by the Plan would depend on the construction dollars spent and the construction schedules; these variables cannot be accurately quantified at this time.

Nevertheless, these project-generated employment opportunities would represent a beneficial temporary economic effect of the Patrick Henry Drive Specific Plan. In itself, any population growth associated with construction activity under the Plan would represent a ***less-than-significant environmental impact***.

Mitigation 14-3. No significant environmental impact has been identified; no mitigation is required.

M. Public Services

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

(a) Impact 15-1: Increase in Fire Protection/Emergency Medical Service Demands

The increase in demand for SCFD services resulting from Specific Plan buildout would be expected to generate additional calls for fire protection and suppression/EMS assistance that would require additional staff in order to maintain acceptable service ratios or response times. The SCFD has determined that 25 additional firefighters (FTE) would be sufficient to meet the fire protection and suppression/EMS assistance needs of the Specific Plan; in addition, the SCFD has also determined that three vehicles would also be required: one Fire Department EMS response vehicle or ambulance for Phase 1; a second Fire Department EMS response vehicle or ambulance for Phase 2; and one tiller aerial ladder truck for Phase 3.

Demand for additional fire protection/EMS equipment resulting from Patrick Henry Specific Plan implementation (e.g., for higher buildings than allowed under current zoning) would be funded by the plan's infrastructure fee. In addition, as discussed in Specific Plan Chapter 7 (Implementation Plan), the City has several options to ensure adequate funds will be available for facilities required by Specific Plan development, including approaches and policies for both one-time and on-going costs of public infrastructure, improvements, and services. New development projects under the Specific Plan would be required to pay their share of the costs associated with provision of these facilities through the required infrastructure fee on a per unit basis.

Based on the above uniformly applied fire protection/EMS standards and regulations, the proximity of existing fire stations, the planned expansion and relocation of Fire Station 10, and the City's commitment to providing adequate fire/EMS service, Specific Plan impacts on fire protection/EMS demands are considered ***less-than-significant***.

Mitigation 15-1. No significant impact has been identified; no mitigation is required.

(b) Impact 15-2: Impacts to Police Services

The Patrick Henry Specific Plan does not propose new or expanded police facilities, the construction of which would cause significant environmental impacts; any decision whether to build a new facility or expand an existing facility would be the responsibility of the City Council. The SCPD has noted that more vehicle traffic from anticipated development in the city is expected to occur (along with an associated increase in service calls due to traffic-related enforcement and accident investigations and potentially increased service call response times), which would contribute to the need for additional staff.

Demand for additional police personnel or equipment resulting from Patrick Henry Drive Specific Plan implementation (e.g., to account for an increased residential population) would be funded by established annual City General Fund budget review and allocation. Any potential future need for a separate development impact fee for police services is a policy issue under the purview of the City Council. Under CEQA, the Specific Plan impacts on police service demands are considered ***less-than-significant***.

Mitigation 15-2. No significant impact has been identified; no mitigation is required.

(c) Impacts 15-3: Impacts to School Facilities

New or physically altered school facilities determined necessary by the SCUSD to accommodate students generated by future development under the Specific Plan could cause significant environmental impacts; however, any School District proposal for a new school would be subject to its own evaluation under the California Environmental Quality Act (CEQA), which would be expected to involve an evaluation of environmental impact topics similar to that provided in this EIR.

The SCUSD is responsible for levying impact fees on new development. The residential and commercial development in the Plan Area would be required to pay the State-authorized school impact fees approved by the SCUSD. Pursuant to section 65995(3)(h) of the California Government Code (Senate Bill 50, chaptered August 27, 1998), the payment of statutory school impact fees "*...is deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization....*" Therefore, subsequent to payment of statutory fees, school impacts would be considered ***less-than-significant***.

Mitigation 15-3. No significant impact has been identified; no mitigation is required.

(d) Impact 15-4: Impacts on Parks and Recreational Facilities.

The City ensures a project meets its dedication requirements through the development review process. Parkland, as required, must be included as part of a project's "land use plan" with the location identified on the project property. A

project that does not comply with the parkland dedication requirement would not be approved. In addition, the City requires that parkland be improved (i.e., “turn-key”) and dedicated to the City prior to issuance of a Certificate of Occupancy. Therefore, mandatory, future development of parkland and open space in the Specific Plan Area plus individual project payment of City adopted in-lieu park fees and/or dedication of parkland would ensure that impacts on parks and recreational facilities would be *less-than-significant*.

Mitigation 15-4. No significant impact has been identified; no mitigation is required. See “Construction Period Impacts” below.

- (e) **Impact 15-5: Impacts on Other Public Facilities.** The Specific Plan-facilitated increase in residential, commercial, and public activity in the Plan Area, and associated job creation and increase in business activity, would result in a corresponding incremental increase in demand for other public, municipal services (e.g., Santa Clara Public Libraries). However, the City is requiring the Plan to include approximately 45,000 square feet of additional City library facilities to accommodate anticipated incremental library service demand. The Specific Plan has identified areas where community facilities (including a library) would be located; however, particular library development plans would be subject to discussions between the City and a future project applicant. Funding options could include those provided in Specific Plan Chapter 7 (Implementation), which discusses options for ensuring adequate funds for facilities required by Specific Plan development, including approaches and policies for both one-time and on-going costs of public infrastructure and related improvements. As an option, the City could consider working out a separate arrangement with a property owner for providing a “community benefit,” though the precise terms of such a future arrangement are beyond the scope of this analysis. A future library facility proposal would be subject to its own evaluation under the California Environmental Quality Act (CEQA); however, because the site would be in the Plan Area, then library construction would be required to follow the mitigation measures already identified elsewhere in this EIR (chapters 5 [Air Quality], 6 [Biological Resources], 7 [Cultural and Historical Resources], etc.), and review would be limited to ensuring consistency with the provisions of this EIR (see below for construction period impacts). Therefore, this impact would be *less-than-significant*.

Mitigation 15-5. No significant impact has been identified; no mitigation is required.

- (f) **Impact 15-6: Construction Period Impacts.** The construction of Plan-related open space, parkland, and recreational and other public facilities would be temporary and would occur within either existing public rights-of-way or on City property, a project development site, or private property subject to a municipal easement. Construction period air emissions (dust), noise, and traffic interruption typically associated with parks and recreational facilities construction would be reduced through mandatory, uniformly applied City of Santa Clara construction

standards and regulations, as well as mitigations already identified elsewhere in this EIR, which analyzes both operational and construction impacts.

Mitigation 15-6. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

The Project would not have a considerable contribution to a significant cumulative public services impact. The General Plan EIR discussed the cumulative impact on public services from the buildout of the General Plan (which includes a portion of the development and growth proposed by the PHSP) and concluded that future development, consistent with existing regulations, would not result in significant impacts to public facilities. The proximate City Place project would provide for public services on its site or pay in-lieu fees. The in-lieu fees paid by projects developed under the Specific Plan would reduce cumulative impacts to school and park facilities and there would be no impacts to fire, police, or library services. For these reasons, implementation of the Project would *not* have a considerable contribution to a significant cumulative public services impact.

N. Recreation

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

(a) Impact 16-1: Impacts on Parks and Recreational Facilities

The City ensures that a project meets its dedication requirements through the development review process. Parkland, as required, must be included as part of a project's "land use plan" with the location identified on the project property. A project that does not comply with the parkland dedication requirement would not be approved. In addition, the City requires that parkland be improved (i.e., "turn-key") and dedicated to the City. Therefore, mandatory, future development of public parks in the Specific Plan Area plus individual project payment of City adopted park in-lieu fees and/or dedication of parkland to the City in fee title and free of encumbrances would ensure that impacts on parks and recreational facilities would *less-than-significant*.

Mitigation 16-1. No significant impact has been identified; no mitigation is required. See “Construction Period Impacts” below.

- (b) **Impact 16-2: Construction Period Impacts.** No specific project development application has been advanced, and any future specific park or recreational facility proposal would be speculative at this time. However, construction of Plan-facilitated open space, parkland, and recreational facilities would be considered temporary and would occur within either existing public rights-of-way, City property, a project development site, or private property subject to a municipal easement. Construction period air emissions (dust), noise, and traffic interruption typically associated with parks and recreational facilities construction would be reduced through mandatory, uniformly applied City of Santa Clara construction standards and regulations, as well as mitigations already identified elsewhere in this EIR, which analyzes both operational and construction impacts.

Mitigation 16-2. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

The Project would not have significant impacts on recreation facilities. The General Plan EIR discussed the cumulative impact on recreation facilities from the buildout of the General Plan (including the Plan Area) and concluded that future development, consistent with existing regulations, would not result in significant impacts to recreational facilities. The previously approved City Place project includes an approximately 31-acre park to provide for recreational facilities north of US 101 and the Project will provide on-site park and recreational space and payment of parkland dedication fees such that there is no project-level impact on recreational facilities. Therefore, the Project would *not* result in significant cumulative recreation impacts.

0. Transportation/Traffic

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

(a) Impact 17-1: Impacts Related to Vehicle Miles Traveled; Conflict With Adopted Policies, Plans, or Programs Regarding Roadways.

The Patrick Henry Drive Specific Plan qualifies as a transit supportive project and is presumed to have a less- than-significant impact on VMT due because it meets the criteria established by the City related to proximity to transit, density, multimodal transportation networks, transit-oriented design elements, parking, and affordable housing, as discussed below.

Proximity to Transit. Transit supportive projects must be located within ½ mile of an existing Major Transit Stop⁶ or an existing transit stop along a High-Quality Transit Corridor,⁷ as those terms are defined by Public Resources Code sections 21064.3 and 21155. Several parcels in the Plan Area are within ½ mile of the Old Ironsides LRT station, which meets the definition of a Major Transit Stop. In addition, VTA provides frequent bus service via Route 57, which runs along Great America Parkway, and meets the definition of a High-Quality Transit Corridor. All parcels in the Plan Area are within ½ mile of the nearest Route 57 bus stops on Great America Parkway at either Patrick Henry Drive or Old Glory Lane.

Density. For office/R&D projects, transit supportive projects must have a minimum floor area ratio (FAR) of 0.75. Similarly, residential projects must have a minimum density of 35 dwelling units per acre (DU/ac). Residential densities within the Plan Area are proposed to range from a minimum of 65 DU/ac to a maximum of 250 DU/ac. Under Scenario A, flex space would be permitted in addition to proposed residential and community-oriented development. Under Scenario B, 785,000 square feet of office space would be allowed on a 9.86-acre parcel, in place of the residential use designated on that parcel under Scenario A. The office development on this parcel would have an FAR of approximately 1.83. Thus, development densities permitted within the Plan Area would meet the minimum requirements to be considered a transit supportive project.

Multimodal Transportation Networks. City Policy requires that transit supportive projects promote multimodal transportation networks. The Specific Plan would provide balanced, multimodal internal circulation as well as convenient access to nearby destinations and transit stations. The Specific Plan would include the following policies to support safe, active, and sustainable travel options for residents and visitors:

⁶“Major transit stop” means a site containing any of the following: (a) an existing rail or bus rapid transit station; (b) the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods; or (c) a major transit stop that is included in Plan Bay Area 2040. Pub. Res. Code §§ 21064.3, 21155(b).

⁷“High-Quality Transit Corridor” means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. Pub. Res. Code § 21155(b).

- Prioritize the comfort and safety for pedestrians and cyclists;
- Retrofit the right-of-way to accommodate all travel modes including walking, cycling, driving, micro-mobility, and transit;
- Support access to transit stops on Tasman Drive and Great America Parkway;
- Improve infrastructure for pedestrians, cyclists, and micro-mobility (e.g., scooters) to mitigate the impact of urban-scale development on traffic congestion;
- Improve connections to the Calabazas Creek Trail and other trails and greenways;
- Design flexible street environments that allow for innovative transit and ride-share options (e.g., jitneys) as well as emerging technology (e.g., autonomous vehicles);
- Use Transportation Demand Management (TDM) strategies in partnership with area employers and property owners to minimize vehicle miles traveled;
- Limit vehicle parking spaces for residences and businesses; and
- Reduce carbon emissions from transportation.

Transit-Oriented Design Elements. Transit supportive projects would be required to include transit-oriented design elements. The Specific Plan proposes design guidelines and standards to ensure a pedestrian-oriented, mixed-use residential neighborhood that is walkable, with convenient connections to transit. The following urban design principles would ensure the Specific Plan is a transit-oriented development:

- Create a human-scaled public realm with a distinctly urban feel;
- Enliven the street environment and create multi-use activity nodes;
- Prioritize the safety and comfort of pedestrians of all ages and abilities;
- Create a fine-grained network of pedestrian paths;
- Use landscaping to create a comfortable pedestrian realm and contribute color and depth; and
- Use signage appropriate in scale and orientation to the primary audience (i.e., pedestrians versus motorists).

Parking. Transit supportive projects may not include more parking for use by residents, customers, or employees than required by the City Code. Because no specific development applications have been submitted for consideration under the Specific Plan, the proposed on-site parking supply is not known. However, the Specific Plan would not require parking at a higher rate than code requirements in effect in other areas, and therefore, it is assumed that future development in the Plan Area would not include excess parking and would qualify as transit supportive under this metric. Future development proposals would undergo City review, and any applications proposing excess parking would not qualify as transit supportive and would then be subject to separate evaluation of their potential impacts on VMT.

Because the Specific Plan qualifies as a transit supportive project and is substantially consistent with City General Plan policies regarding transportation, this impact would be *less-than-significant*.

Mitigation 17-1. No impact has been identified; no mitigation is required.

- (b) **Impact 17-2: Impacts on Transit.** Existing transit service for the Plan Area includes an ACE shuttle and three VTA routes along Great America Parkway (though service is currently limited due to COVID-19). The Plan Area is about a 10-minute walk (approximately one-half mile) from the Old Ironsides light rail station on Tasman Drive. Bus stops are currently located within the Plan Area on Patrick Henry Drive and Old Ironsides Drive, with additional bus stops on Great America Parkway and Mission College Boulevard. The Specific Plan would not interfere or conflict with these transit facilities and would be consistent with VTA Transit Service Guidelines, which guide VTA service planning, including route determination, service levels, and capacity (ridership coverage).

The Specific Plan proposes to contribute to grade separation projects at intersections with light rail in the median, HOV-type signal improvements that could support future bus rapid transit facilities, and transit signal priority at signalized intersections. While the VTA's "New Transit Service Plan" (2019) does not call for transit service within the Plan Area, the Specific Plan proposes to include "shuttle stops" along Patrick Henry Drive and Old Ironsides Drive that would allow for shuttle or other micro transit services provided by VTA, a Transportation Management Agency (TMA), or a private provider. Thus, the project is expected to have a positive effect on transit services.

Therefore, this impact would be *less-than-significant*.

Mitigation 17-2. No significant impact has been identified; no mitigation is required.

- (c) **Impact 17-3: Impacts on Bicycle Facilities.** The Specific Plan proposes to add a grid system of new streets, which would include the addition of Class IV protected bike lanes on Patrick Henry Drive and Old Ironsides Drive within the Plan Area. Internal Plan Area streets would also be designated as Class III bike routes. Some of the new streets would be designed only for pedestrians and bicycles.

Because the Specific Plan would improve bicycle facilities in the Plan Area and provide safer conditions for bicyclists relative to existing conditions, consistent with the City's General Plan and the Bicycle Master Plan Update 2018, this would be a *beneficial effect*.

Mitigation 17-3. No significant impact has been identified; no mitigation is required.

(d) Impact 17-4: Impacts on Pedestrian Facilities.

As described earlier in the setting (section 17.1), the Specific Plan proposes to add a grid system of new streets, which would be designed with new continuous sidewalk facilities and high visibility crosswalks at intersections. Some of the new streets would be designed only for pedestrians and bicycles. Where currently present, sidewalks would be improved. All of these intersections would be upgraded to ensure they comply with current ADA standards.

The Specific Plan also proposes a new greenway west of Patrick Henry Drive that would connect the Plan Area to the Calabazas Creek Trail. There is a bridge across Calabazas Creek which allows the Sunnyvale residents on the other side of the creek to walk to Mission College and Mercado Shopping Center. Additional greenways would be added along the entire length of Patrick Henry Drive and Old Ironsides Drive, and for the proposed Specific Plan parks.⁸

Because the Specific Plan would improve pedestrian facilities in the Plan Area and provide safer conditions for pedestrians relative to existing conditions, consistent with the City's General Plan and the City of Santa Clara Pedestrian Master Plan 2019, this would be a *beneficial effect*.

Mitigation 17-4. No significant impact has been identified; no mitigation is required.

(e) Impact 17-5: Hazards Due to Design Features or Incompatible Uses. Conflicts between modes would be reduced through better accommodations, including Specific Plan elements such as new and/or improved sidewalks, bike lanes, and more accessible and comfortable bus stops. The Specific Plan proposes an improved internal roadway network designed to accommodate vehicular traffic that is balanced with other modes (including walking, cycling, micro-mobility, and transit).

In particular, the Specific Plan includes roadway standards to ensure safe, comfortable mobility options through a coordinated network of streets, roadways, greenways, and bicycle paths.

Designs would be subject to City review as detailed site plans are not yet available; however, compliance with Specific Plan and City standards would be required, which would ensure adequacy of circulation patterns and safety standards; reduce potential conflicts between vehicles, pedestrians, bicyclists, and buses; and remove potential hazards due to design features (i.e., insufficient sightlines or distances) or incompatible uses. Therefore, this impact would be *less-than-significant*.

⁸As noted in chapter 3, Project Description, Specific Plan section 4.5.1 (Parks, Recreation and Open Space Policies) includes the following policy: "Connect parks and plazas with publicly accessible private greenways to provide safe, comfortable access while supporting connectivity throughout the PHD Specific Plan Area."

Mitigation 17-5. No significant impact has been identified; no mitigation is required.

- (f) Impact 17-6: Emergency Access.** Existing access to the Plan Area for emergency vehicles is via connections to Great America Parkway from Old Glory Lane and Patrick Henry Drive. These connections would remain. In addition, the Specific Plan proposes an improved internal roadway network, which would increase the number of connection points that could facilitate emergency access. With the Mission College Boulevard connector road (between Patrick Henry Drive and Mission College Boulevard), emergency access would be improved through creation of an additional route off-site. Without the Mission College Boulevard connector road, emergency access would not be substantially reduced; however, as noted in the Hexagon analysis, elimination of this proposed connector road would generally result in worse traffic at many intersections, though those traffic effects would not constitute impacts under CEQA, as explained in the Hexagon analysis, and improvements recommended by Hexagon for most intersections would be the same with or without the connector road. Designs of the streets would be subject to City review, as detailed site plans are not yet available, to ensure the adequacy of circulation patterns and compliance with City emergency vehicle access standards, such as requiring that alleys have a minimum width of 25 feet to allow for emergency vehicles and connecting “dead end” street sections (i.e., cul-de-sacs) with multi-modal paths that would allow emergency vehicles. City review of future driveway and drive aisle design would ensure compliance with City emergency vehicle access requirements. Therefore, this impact would be *less-than-significant*.

Mitigation 17-6. No significant impact has been identified; no mitigation is required.

- 2. Project impacts determined to be less than significant with mitigation incorporated**
- None.**
- 4. Cumulative impacts**
- None.**
- P. Utilities and Service Systems**
- 1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment**

Impact 18-2: Project and Cumulative Need for Water, Wastewater, and Storm Drainage System Infrastructure.⁹ The water, wastewater, and storm drainage infrastructure systems would require improvements, including the upgrading of existing deficiencies, in order to accommodate new development facilitated by the Patrick Henry Specific Plan. The information below is summarized mainly from Specific Plan Chapter 6 (Infrastructure) and identifies the water, sewer, and storm drainage infrastructure improvements that are incorporated into the Plan.

(a) Projected Water Demand and Infrastructure Needs. As indicated in Specific Plan Chapter 6 (Infrastructure), distribution mains would be required for new public streets proposed to serve Plan Area fire and domestic water needs. Additionally, existing asbestos-cement (AC) water mains within the Plan Area would need to be upgraded and replaced with the City's standard ductile iron pipe (DIP).

As new development proposals are brought forward, sizing of particular water mains would need to be considered to ensure meeting prescribed fire flows and domestic water needs, and line sizes may or may not need to be increased. Final sizing of any particular pipeline would need to be determined based on project-specific modeling of the system and would rely on water use parameters of the specific development proposal.

New distribution mains in backbone streets would be anticipated to require 8-inch or 12-inch diameter pipes, and distribution mains in local streets would be anticipated to require 8-inch or 12-inch diameter pipes. Any upgrading in pipe sizes would need to be determined using hydraulic modeling based on final land plans, building types, water demands, fire flow requirements, and phasing to establish final actual line sizes in each street.

Also, given the age and material of the water infrastructure in the Plan Area (AC pipes installed between 1966-1981), water mains that would otherwise remain due to their location within a proposed street will need to be upgraded to DIP to comply with current City of Santa Clara Water & Sewer Utilities Department standards. Developers would need to perform individual hydraulic modeling to determine whether existing pipes would require upsizing replacing the AC pipe with DIP.

Although existing recycled water infrastructure in the Plan Area is not expected to require upgrades due to age or materials based on current City of Santa Clara Water & Sewer Utilities Department standards, individual project applicants in the Plan Area would need to perform a hydraulic modeling analysis to evaluate the adequacy of the existing pipe sizes to determine if upgrades in pipe sizes are necessary to meet any projected recycled water capacity needs.

⁹Although discussion of cumulative impacts is provided in chapter 20, CEQA-Mandated Sections, of this EIR, the analysis of utilities and service systems impacts, due to their inherently cumulative nature and related City-wide capital improvement planning implications, includes the cumulative analysis in the following section.

(b) Projected Wastewater Generation and Infrastructure Needs. The 2016 Sewer Master Plan determined that existing wastewater flows for the City in 2015 totaled 14.9 million gallons per day (mgd) under average dry weather flow (ADWF) conditions and 21.6 mgd under peak dry weather flow (PDWF) conditions, with an increase to 22.4 mgd on “game days” at Levi’s Stadium (to account for additional flow). Existing peak wet weather flow (PWWF) conditions totaled 39.6 mgd. Santa Clara sewer connections accounted for the majority of these totals, with the Cupertino Sanitary District contributing between approximately 24 percent to 32 percent.

Using hydraulic modeling to estimate future flows, the 2016 Sewer Master Plan determined that future wastewater flows for the City in 2035 would total 34.4 mgd under ADWF conditions and 46.8 mgd under PDWF conditions (increasing to 47.7 mgd for “game days”). PWWF conditions were estimated to total 59.4 mgd. Similar to the existing flow conditions, Santa Clara sewer connections would be expected to account for the majority of these estimated future flow totals, with the Cupertino Sanitary District estimated to contribute between approximately 20 percent to 26 percent.

The hydraulic model evaluated potential capacity deficiencies and backups in the existing sewer system and identified areas currently experiencing surcharge due to “throttle” conditions (where peak flow exceeds pipe capacity), surcharge due to backwater from a downstream throttle condition, and related violations of City capacity criteria including system components likely to experience these conditions with future (2035) flows. The 2016 Sewer Master Plan recommended solutions to address these conditions, including several pipe upgrades and lift station pump adjustments.

Currently, wastewater flows from the Specific Plan Area are conveyed northeast to the Northside and Rabello pump stations, and from there pumped to the San Jose/Santa Clara Regional Wastewater Facility for treatment and disposal. Table 18-6 shows existing flows and future flow estimates for the Northside and Rabello pump stations, as analyzed in the 2016 Sewer Master Plan.

(c) Projected Storm Drainage Infrastructure Requirements. Water quality and potential flooding are discussed in chapter 11, Hydrology and Water Quality, of this EIR. This section evaluates storm drainage infrastructure improvement needs (e.g., new pipelines) for the proposed Patrick Henry Drive Specific Plan.

The 2015 Storm Drain Master Plan identified a number of storm drainage improvement projects in the San Tomas Aquino Creek Drainage Area, but no storm drain projects were identified in or near the Specific Plan Area. Specific Plan Chapter 6 (Infrastructure Program) indicates that stormwater flows generated by future development under the Patrick Henry Drive Specific Plan would be adequately received by existing off-site storm drain systems. In addition, because

the Plan Area is currently developed, no pipeline extensions are anticipated to serve the Plan Area.

Therefore, because no storm drainage improvements have been determined necessary as a result of future Specific Plan buildout, no impact has been identified. However, the City would continuously monitor new development approvals to ensure that stormwater flows are handled sufficiently. Although full development capacity might never be reached, if development in the Plan Area reaches 80 percent of capacity prior to 2040 (the Plan horizon year), the City would reevaluate both the Patrick Hendry Drive Specific Plan and the EIR, and amend them as necessary to address and mitigate growth exceeding the capacity numbers.

Mitigation 18-2. No significant impact has been identified; no mitigation is required.

Impact 18-3: Wastewater Treatment Capacity Impacts. Wastewater from the City of Santa Clara, with some flow from the Cupertino Sanitary District (CuSD), is conveyed to the San Jose-Santa Clara Regional Wastewater Facility (RWF) for treatment before the treated water is discharged into the South San Francisco Bay or recycled for other uses. The RWF has a Water Board/NPDES treatment capacity limit of 167 million gallons per day (mgd). Approximately 35 mgd of RWF treatment capacity is allocated to other wastewater agencies by agreement. The cities of San Jose and Santa Clara share the remaining treatment capacity. In 2020, the treatment capacity allotment for Santa Clara was approximately 25.147 mgd, and the City had approximately 9.606 mgd of unused treatment capacity remaining.¹⁰

According to the Woodard & Curran technical memo prepared for the Specific Plan, wastewater generation from Specific Plan development is projected to total approximately 2.15 mgd under Scenario A and 1.97 mgd under Scenario B. As noted in the technical memo, which based its future capacity analysis on updated General Plan Phase 3 loads, additional wastewater generation from other General Plan-approved development combined with wastewater generated from Patrick Henry Drive Specific Plan development would total approximately 4.3 mgd, which would not exceed the City's remaining capacity allocation of 9.606 mgd. Therefore, Specific Plan development would have a *less-than-significant impact* on wastewater treatment facility capacity.

Mitigation 18-3. No significant impact has been identified; no mitigation is required.

¹⁰“City of San Jose Environmental Services Department, San Jose - Santa Clara Regional Wastewater Facility Tributary Agencies' Estimated Available Plant Capacity – 2020, December 2020” (<https://www.sanjoseca.gov/Home/ShowDocument?id=68283>, accessed 2/24/21).

Impact 18-4: Project Impacts on Solid Waste Disposal and Recycling Service.

Solid waste in the Plan Area is under an exclusive agreement with Mission Trail Waste Systems and is currently taken to the Mission Trail Transfer Station in Santa Clara for processing. From there it goes to the Newby Island Sanitary Landfill in Milpitas. Construction and demolition debris is currently taken to the Zanker Road Resource Recovery Operation. Recology South Bay provides recyclables hauling services to City areas zoned commercial, industrial, and residential. As of January 1, 2021, all exclusive solid waste and recycling in the Plan Area will be collected by GreenWaste Recovery and taken to the GreenWaste Recovery Facility in San Jose for processing, and from there would be taken to the Newby Island Sanitary Landfill (see “Setting,” above). The City has an agreement with GreenWaste Recovery that would provide the City with disposal capacity through June 30, 2036.

Based on City solid waste generation rates, development under the Specific Plan would be anticipated to generate between 119,600 and 128,180 cubic yards of solid waste per year,¹¹ with most of the waste generated by residential use. This would represent approximately 0.6 percent of annual solid waste disposed of at the Newby Island Landfill.¹²

Because Patrick Henry Drive Specific Plan implementation would not be expected to generate an inordinate amount of solid waste for its size (i.e., a rate inconsistent with adopted plans, policies, and regulations) either during demolition/construction activities or operation, and would be served by solid waste disposal and recycling facilities with sufficient capacities to accommodate the Specific Plan’s demolition/construction debris and solid waste disposal needs, the Specific Plan’s effect on solid waste and recycling services would represent a ***less-than-significant impact***.

Mitigation 18-4. No significant impact has been identified; no mitigation is required.

¹¹Scenario A (12,000 DUs and 310,000 SF Other Non-Residential Uses): 12,000 DU @ 1 CY/week per 6 DU; 12,000 DU ÷ 6 DU = 2,000 x 1 CY = 2,000 CY/week (for residential); plus 310,000 SF other non-residential @ 3 CY/week per 2,000 SF (highest generation rate, aka “worst case”); 310,000 SF ÷ 2,000 SF = 155 x 3 CY = 465 CY/week (for other non-residential) = 2,465 CY/week, or 128,180 CY annual solid waste.

Scenario B (10,300 DUs, 785,000 SF Office, and 310,000 SF Other Non-Residential Uses): 10,300 DU @ 1 CY/week per 6 DU; 10,300 DU ÷ 6 DU = 1,717 x 1 CY = 1,717 CY/week (for residential); plus 785,000 SF office @ 3 CY/week per 20,000 SF; 785,000 SF ÷ 20,000 SF = 39.25 x 3 CY = 117.75 CY/week, rounded up = 118 CY/week (for office); plus 310,000 SF other non-residential @ 3 CY/week per 2,000 SF (highest generation rate, aka “worst case”); 310,000 SF ÷ 2,000 SF = 155 x 3 CY = 465 CY/week (for other non-residential) = 2,300 CY/week, or 119,600 CY annual solid waste.

¹²119,600 CY ÷ 21,200,000 CY (landfill) = 0.56 percent, rounded up = 0.6 percent; 128,180 CY ÷ 21,200,000 CY (landfill) = 0.6 percent.

Impact 18-5: Electricity, Natural Gas, and Telecommunications Infrastructure. Specific Plan needs for electricity, natural gas, and telecommunications infrastructure improvements are discussed below:

(a) Electrical System Infrastructure Needs. As discussed in Specific Plan Chapter 6 (Infrastructure), Silicon Valley Power (SVP) owns and operates the electric service within the City of Santa Clara. SVP has identified several electrical system improvements necessary to provide adequate service to Specific Plan development.¹³

For the Plan Area, SVP has identified the need for a new distribution duct bank to be built to provide a connection with the SVP Mission substation; in addition, other related electrical equipment improvements would be necessary along property frontages. Underground easements would be necessary for installation of substructures along frontages (either on the west end of parcel 6 or on the east end of parcel 3), as required of developers by City Code section 17.15.210. SVP anticipates that these frontage improvements for equipment would also be able to serve other projects in the Plan Area and not solely projects on whose property they are located.

According to SVP, funding for duct bank crossings required in the Plan Area would be the responsibility of the “first-come” developer; funding for relocating existing SVP equipment would be the responsibility of future project applicants.

In addition, though the Esperanca electrical substation (an SVP project currently in the planning stage) is intended to provide for the electrical needs of the Related Santa Clara project, SVP has determined that it would have sufficient capacity to handle the electrical system distribution needs of the Specific Plan. Transmission line upgrades for the Plan Area may be required, though construction of these would be the responsibility of SVP.

Future Specific Plan project applicants would be responsible for funding the offsite distribution duct bank (at the Mission substation). Other distribution and transmission system improvements that are not limited to serving the Plan Area would require future Specific Plan project applicants to pay a pro rata share of the cost, based on plans and cost estimates as they are developed (also, Specific Plan Chapter 7, Implementation Plan, outlines the approaches for one-time and on-going costs associated with public infrastructure improvement).

Other potential electrical system improvements that are being considered include a transmission and distribution interconnection study to evaluate the feasibility and impact of SVP improvements, and a Bulk Electric System/interconnection study, both currently in progress. Pro rata cost sharing of total transmission system improvements would be determined based on dollars per kVA (according to SVP)

¹³“Patrick Henry Drive Specific Plan, Stakeholders’ Meeting,” Silicon Valley Power, 9/18/20.

and applicable to individual project demand; however, cost and cost sharing mechanisms have not been finalized.

Electrical system improvements in the Plan Area would be expected to occur within either existing public rights-of-way or on City property, a project development site, or private property subject to a municipal easement. Construction impacts would be temporary. Construction period effects associated with these improvements (such as air emissions/dust, noise, and traffic interruption) would be reduced through mandatory, uniformly applied City of Santa Clara construction standards and regulations, and by mitigations already identified elsewhere in this EIR--for instance, see EIR chapters 5 (Air Quality) for construction period dust control and air emissions reduction measures; 6 (Biological Resources) for ground-disturbance impacts on special status species and potential tree removal; 7 (Cultural and Historical Resources) for impacts on potentially historic structures and/or cultural resources; 8 (Geology and Soils) for erosion control measures and building code design standards; 9 (Greenhouse Gas Emissions/Energy) for GHG- and energy-reducing measures applicable to construction equipment; 10 (Hazards and Hazardous Materials) for potential construction-period hazardous materials use and transport and for potential hazardous waste sites; 11 (Hydrology and Water Quality) for construction-period storm water runoff provisions; and 13 (Noise) for construction-period noise control. No additional significant environmental impacts would be anticipated with this construction activity beyond those impacts already identified in this EIR.

Construction period impacts associated with electrical system improvements outside of the Plan Area would also be expected to occur within either existing public rights-of-way or on City property, or private property subject to a municipal easement. Construction impacts would be temporary. Construction period effects associated with these improvements (such as air emissions/dust, noise, and traffic interruption) would be reduced through mandatory, uniformly applied City of Santa Clara construction standards and regulations. These off-site projects would be subject to their own individual CEQA review, which would be expected to involve an evaluation of environmental impact topics similar to that provided in this EIR; however, because no plans have been finalized nor sites identified for these potential additional electrical system improvements, any further analysis would be speculative. (In addition, it should be noted that further evaluation requirements may be required by the California Public Utilities Commission.¹⁴)

Because Plan Area electrical system improvements would be required to comply with mitigation measures already identified in this EIR, impacts from Specific Plan electrical system improvements would be less than significant.

¹⁴Depending on its size (usually greater than 100kV), a bulk electric system could involve additional evaluation and permitting from other State and federal agencies.

(b) Natural Gas Infrastructure Needs. As discussed in Specific Plan Chapter 6 (Infrastructure), Pacific Gas and Electric Company (PG&E) owns and operates the gas service within the City of Santa Clara, including the Specific Plan Area. A gas main runs east-west roughly midway through the eastern parcel between Great America Parkway and Old Ironsides Drive, then continues south along Old Ironsides Drive to Patrick Henry Drive, and from there heads west before crossing between the two southwestern parcels and past Calabazas Creek to the City of Sunnyvale. PG&E has stated that there are no known capacity limitations within the gas system in the Specific Plan Area. Gas mains would be subject to possible upgrading to comply with current PG&E standards. Any pipeline upgrade or connection to new buildings would be expected to occur within either existing public rights-of-way or on City property, a project development site, or private property subject to a municipal easement.

Construction impacts would be temporary. Construction period effects associated with potential pipeline upgrades and connections to buildings (such as air emissions/dust, noise, and traffic interruption) would be reduced through mandatory, uniformly applied City of Santa Clara construction standards and regulations, and by mitigations already identified elsewhere in this EIR--for instance, see EIR chapters 5 (Air Quality) for construction period dust control and air emissions reduction measures; 6 (Biological Resources) for ground-disturbance impacts on special status species and potential tree removal; 7 (Cultural and Historical Resources) for impacts on potentially historic structures and/or cultural resources; 8 (Geology and Soils) for erosion control measures and building code design standards; 9 (Greenhouse Gas Emissions/Energy) for GHG- and energy-reducing measures applicable to construction equipment; 10 (Hazards and Hazardous Materials) for potential construction-period hazardous materials use and transport and for potential hazardous waste sites; 11 (Hydrology and Water Quality) for construction-period storm water runoff provisions; and 13 (Noise) for construction-period noise control. No additional significant environmental impacts would be anticipated with this construction activity beyond those impacts and identified in this EIR. Therefore, impacts from Specific Plan natural gas infrastructure needs would be less than significant.

(c) Telecommunications Infrastructure Needs. AT&T and Xfinity (Comcast) currently provide communications and cable/internet infrastructure to the Plan Area, with cell phone service available from several of the larger providers (e.g., AT&T, Verizon, T-Mobile). In addition, a “small cell antenna” initiative is being proposed by telecommunication carriers in coordination with Silicon Valley Power to provide more capacity in congested areas and improve service in areas where more traditional cell phone towers can’t reach. (These smaller antennas can be attached discreetly to street light poles.) Individual project applicants would be responsible for coordinating communications and cable/internet connections with AT&T and Xfinity (Comcast), which would be expected to occur within either existing public rights-of-way or on City property, a project development site, or

private property subject to a municipal easement anticipated to be provided for by existing lines.

Construction impacts would be temporary. Construction period effects associated with potential telecommunication line upgrades and/or connections to buildings (such as air emissions/dust, noise, and traffic interruption) would be reduced through mandatory, uniformly applied City of Santa Clara construction standards and regulations, and by mitigations already identified elsewhere in the EIR. No additional significant environmental impacts would be anticipated with this construction activity beyond those impacts already identified in this EIR. Therefore, impacts from Specific Plan telecommunications infrastructure needs would be less than significant.

Because construction of electrical system, natural gas, and telecommunications improvements in the Specific Plan Area would be required to comply with uniformly applied City of Santa Clara construction standards and regulations and the mitigations already identified elsewhere in the EIR, the construction period impacts associated with these improvements would represent a ***less-than-significant impact***.

Mitigation 18-5. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

Impact 18-1: Specific Plan Inconsistency with General Plan and UWMP Growth Projections. The WSA prepared for the proposed Specific Plan includes development in the Plan Area that has not been identified in the General Plan (i.e., exceeds the General Plan land use projections for 2035, the General Plan horizon year), and therefore, because the 2015 Urban Water Management Plan (UWMP) was based on General Plan buildout projections, this WSA is inconsistent with General Plan and UWMP buildout projections. (In addition, the recently adopted 2020 UWMP was based on 2018 ABAG growth projections that also did not include the Specific Plan growth projections.) Until the Specific Plan development exceeding General Plan growth projections is included in the General Plan and UWMP, (the Specific Plan is inconsistent with the General Plan/Urban Water Management Plan, and this inconsistency would represent a ***potentially significant project and cumulative impact***.

Facts in support of Finding: Approval of the Patrick Henry Drive Specific Plan would include adoption of a General Plan amendment to incorporate the Specific Plan into the General Plan's growth projections. In addition, the recently adopted 2020 UWMP, which was based on 2018 ABAG growth projections, also did not include Specific Plan growth. Until the General Plan is amended to include Specific

Plan development, its growth would continue to exceed the current General Plan growth projections for the Plan Area and would not be consistent with the City's prerequisite policy, prior to implementation of General Plan Phase III, of "undertak[ing] a comprehensive assessment of water...demand and facilities in order to ensure adequate capacity and funding to implement the necessary improvements to support development in the next phase" (General Plan Goal 5.1.1-P3). Therefore, to ensure consistency with General Plan and UWMP policies related to ensuring adequate water supplies for future, projected development, future project applications under the Specific Plan would need confirmation that the City-identified water supplies, as discussed previously, would be adequate to serve each project, in compliance with State law.

In addition, SB 221, adopted by the State in 2001, prohibits a city or county from approving a tentative subdivision map or parcel map, or a development agreement including land subdivision, of more than 500 units unless there is written verification that a sufficient and reliable water supply will be available prior to completion of the project. However, the Specific Plan would not entitle any specific development application, nor have any development applications been submitted under the Specific Plan, so while an adequate water supply must still be verified for individual, future project applications, the City in the Patrick Henry Drive Specific Plan WSA has identified water supplies and estimated water demand in compliance with State law.

A project-specific, confirmation of water supply (e.g., written verification from the City that sufficient water supply is available for the project) would need to be completed in connection with the City's approval of any tentative map or development agreement for the Patrick Henry Drive Specific Plan (regardless of the 500-unit or equivalent threshold under SB 221 and SB 610), when the individual project details have been more definitively established. This subsequent confirmation/verification would include any pertinent updates to the citywide water supply situation and would also include progress on City plans for expanding its recycled water program plus City requirements for implementing additional "best management practices" (BMPs) related to recycled water use and/or water conservation.

Mitigation Measure: Mitigation 18-1. Consistent with SB 221 and SB 610, no tentative map, Architectural/Design Review, or development agreement for a proposed, individual project shall be approved until the City of Santa Clara Water & Sewer Utilities Department confirms that water supplies are adequate for each individual project. Such confirmation shall include an updated description of the citywide water supply situation (including any plans for pumping additional groundwater) at that future time, reflecting any progress on City plans for expanding its recycled water program and any City requirements for implementing additional "best management practices" (BMPs) related to recycled water use and/or water conservation. These City actions would ensure a continual monitoring of citywide water supply throughout implementation of the Specific Plan.

Additionally, incorporation of measures to reduce water demand and, if necessary, identification of alternative water sources to offset project supply shortages would reduce this impact to a ***less-than-significant level***.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

None.

V. FINDINGS REGARDING ALTERNATIVES

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. The concept of “feasibility” encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417 (*City of Del Mar*); *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1506-1509 [court upholds CEQA findings rejecting alternatives in reliance on applicant’s project objectives]; see also *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 (*CNPS*) [“an alternative ‘may be found infeasible on the ground it is inconsistent with the project objectives as long as the finding is supported by substantial evidence in the record’”] (quoting *Kostka & Zischke, Practice Under the Cal. Environmental Quality Act* [Cont.Ed.Bar 2d ed. 2009] (*Kostka*), § 17.39, p. 825); *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165, 1166 (*Bay-Delta*) [“[i]n the CALFED program, feasibility is strongly linked to achievement of each of the primary project objectives”; “a lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal”].) Moreover, “‘feasibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.” (*City of Del Mar, supra*, 133 Cal.App.3d at p. 417; see also *CNPS, supra*, 177 Cal.App.4th at p. 1001 [“an alternative that ‘is impractical or undesirable from a policy standpoint’ may be rejected as infeasible”] [quoting *Kostka, supra*, § 17.29, p. 824]; *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 17.)

To provide a basis for further understanding of the environmental effects of a proposed project and possible approaches to reducing its identified significant impacts, the CEQA Guidelines require an EIR to also “...describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”

Identified Alternatives

Pursuant to these CEQA sections, chapter 21 identifies and evaluates the following five alternatives to the project:

- **Alternative 1: No Project - Existing City of Santa Clara 2010-2035 General Plan.** Under Alternative 1 (No Project), there would be no change in the current land use and zoning controls in the Plan Area. The Patrick Henry Drive Specific Plan would not be adopted, and development would proceed under the current 2010-2035 General Plan. New infrastructure would be maintained or constructed as required to accommodate new development on a project-by-project basis, and not as a planned, integrated set of improvements specifically for the Plan Area. The No Project alternative would continue to allow development under the existing Light Industrial (ML) General Plan designation, which would accommodate manufacturing, distribution, warehousing, and other allowable uses with a maximum Floor Area Ratio (FAR) of 0.60. Because no residential uses would be developed, no new public parks or open spaces would be required. The No Project alternative would result in an increase in uses allowed under the Light Industrial General Plan designation. Uses currently in the Plan Area include general office (500,499 square feet), research and development (207,667 square feet), light industrial (120,900 square feet), data center (214,522 square feet), and a church (29,400 square feet) (from Table 5-5 in chapter 5, Air Quality, of this EIR), for a current total of 1,072,988 square feet. Generally, using the 0.6 FAR for the 73.59-acre (3,205,580 square-foot) Plan Area, development over existing conditions in the Plan Area would increase by up to 2,132,592 square feet, for a total in the Plan Area of 3,205,580 square feet of land uses allowable under the Light Industrial General Plan designation.

The frameworks and design standards and guidelines of the proposed Patrick Henry Drive Specific Plan would not be implemented, and no residential units would be developed.

- **Alternative 2: All Commercial Office Development.** Under Alternative 2, a Patrick Henry Drive Specific Plan would be adopted, but all development would be commercial office, which would allow up to be 6,411,161 square feet of commercial office space. No residential, retail, flex, or community development would be included in the Specific Plan. Alternative 2 would result in a net reduction of: 10,300 to 12,000 residential units, 150,000 square feet of retail space, 90,000 square feet of flex space, and 70,000 square feet of community space, with a net gain of approximately 5,551,286 to 6,411,161 square feet of commercial office space.¹⁵ Because no residential uses would be developed, no new public parks or open spaces would be required.

¹⁵The office space calculations are based on the gross acreage of the Plan Area (73.59 acres) multiplied by the 2.0 Floor Area Ratio (FAR) allowed in the Specific Plan High-Density Flex land use classification. Specific Plan Scenario B already proposes 785,000 square feet of office use on about ten acres; therefore, the alternative shows a range of net new office space.

This alternative does not restrict development to fewer potential development sites or at a lower intensity on individual sites compared to the proposed Patrick Henry Drive Specific Plan. Specific Plan frameworks and design standards and guidelines would be revised/reformulated to apply to only commercial office development. Plan components and uniformly applicable development regulations and performance standards would be implemented on individual development sites.

Overall impacts throughout the Plan Area would be expected to be higher, generally due to the single-use (commercial office) aspect of the alternative.

- **Alternative 3: All Residential Development.** Under Alternative 3, a Patrick Henry Drive Specific Plan would be adopted, but all development would be multi-family residential. No retail, flex, office, or community development would be included in the Specific Plan. Alternative 3 would result in a net reduction of: 150,000 square feet of retail space, 90,000 square feet of flex space, 0 to 785,000 square feet of office space, and 70,000 square feet of community space, with a net gain of approximately 4,727 multi-family dwelling units, for a total of 16,727 dwelling units in the Plan Area.

This alternative does not restrict development to fewer potential development sites or at a lower density on individual sites compared to the proposed Patrick Henry Drive Specific Plan. Specific Plan frameworks and design standards and guidelines would be revised/reformulated to apply only to residential development – and Specific Plan public parks and open space provisions would remain intact and could be expanded based on the increase in residents. Plan components and uniformly applicable development regulations and performance standards would be implemented on individual development sites.

Overall impacts throughout the Plan Area would be expected to be higher, generally due to the single-use (residential) aspect of the alternative.

- **Alternative 4: Reduced Overall Development.** Under Alternative 4, a Patrick Henry Drive Specific Plan would be adopted, but overall development would be reduced by 20 percent. Alternative 4 would result in between 8,240 and 9,600 residential units (a net reduction of 2,060 to 2,400 units); 248,000 square feet of non-residential/non-office development (a net reduction of 62,000 square feet); 628,000 square feet of commercial office (Scenario B only; a net reduction of 157,000 square feet); and between 5.6 acres and 6.5 acres of new public parkland and, similarly, 5.6 and 6.5 acres of new open space (a net reduction of 1.41 to 1.6 acres).

This alternative would not restrict development in the Plan Area, and all other Plan frameworks and design standards and guidelines would remain the same. Plan components and uniformly applicable development regulations and performance standards would be implemented on individual development sites. Overall impacts throughout the Plan Area would be expected to be lower.

- **Alternative 5: Alternative Project Location (Considered But Rejected).** Section 15126.6(a) of the CEQA Guidelines states, “An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic project objectives but would avoid or substantially lessen any of the significant effects of the project[.]” Further, section 15126.6(c) explains, “Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental effects.” To help clarify the meaning of “feasibility,” CEQA Guidelines section 15126.6(f)(1) (Rule of Reason/Feasibility) states, “Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries...and whether the proponent can reasonably acquire, control, or otherwise have access to the alternative site....No one of these factors establishes a fixed limit on the scope of reasonable alternatives.”

Santa Clara is an incorporated city bordered by the cities of Sunnyvale and Cupertino to the west, San Jose to the south and east, and Milpitas to the northeast. The approximately 73.59-acre Plan Area is almost completely surrounded by existing development (the proposed Kylli mixed-use development is proposed for the parking area adjacent to the northern Plan Area border and is currently under review). The Plan Area has been identified in the adopted Santa Clara 2010-2035 General Plan and designated a Priority Development Area by ABAG as an area of growth due primarily to its location, the presence of nearby employment opportunities, and the availability of infrastructure (e.g., utility systems, transportation network - including light rail, shuttles to heavy rail and freeways). This situation provides an opportunity to accommodate projected growth while allowing the City to preserve its existing single family and other low-density neighborhoods. An alternative location for the Patrick Henry Drive Specific Plan is not feasible primarily because other areas that could accommodate similar high-density residential development are either currently under development review or are the focus of future study. In addition, the CEQA Guidelines note that the alternatives evaluated in an EIR should be selected based on their ability to avoid or substantially lessen the significant impacts of the proposed project. Even if an alternative location for the project could implement the basic project objectives, only those locations that would avoid or substantially lessen any of the significant impacts of the project need to be considered in the EIR.

In the case of identified significant impacts under the proposed Patrick Henry Drive Specific Plan, (1) feasible mitigation measures are available to reduce most impacts to less-than-significant levels (with the exception of air quality, cultural resources, and traffic noise impacts), and (2) transferring these potentially significant impacts to an alternative location still could substantially affect the environment, possibly worse than in the Plan Area, where coordinated infrastructure, services, regulations, plans, and proximity to transit resources already are in place to avoid or reduce significant

environmental impacts. The Patrick Henry Drive Specific Plan objectives consist of a range of coordinated frameworks and urban design standards and guidelines intended to improve the area for residents, employees, and visitors – in both the short term and long term. The purpose of the Specific Plan is to create new housing balanced with non-residential development appropriate for the location. An alternative to the Specific Plan that focused on a different location in Santa Clara would not necessarily be able to implement the City’s basic objectives for the project.

Because an alternative project location would be infeasible, would not necessarily avoid or lessen the significant impacts of the proposed project and might result in new significant impacts, and would not necessarily be able to achieve the basic project objectives, a project alternative in a different location was eliminated from further detailed consideration. No further evaluation of alternative project locations is required under CEQA.¹⁶

Environmentally Superior Alternative

Alternative 4: Reduced Overall Development would result in the least adverse overall environmental impacts and would therefore be the “environmentally superior alternative.” This conclusion is based on the overall reduction in the severity of impacts compared to the proposed project (the Specific Plan). In addition, Alternative 4 would meet all of the eight basic project objectives, at least to some degree, though it would be less effective in meeting parkland and open space standards, providing community amenities and public facilities, and developing affordable housing (but would still support the City percentage goals – i.e., 15 percent – for affordable housing) due to the reduced size of development proposed.

Finding: Based on the sheer size of the Specific Plan Area (73.59 acres) and the development already allowed under the existing Santa Clara General Plan (No Project), none of the significant unavoidable project or cumulative impacts are expected to be reduced to a level of less than significant under any of the alternatives with the exception that Alternative 4 would be likely to reduce Impact 13-4 (Increases in Traffic Noise from Specific Plan Development) to a less-than-significant level.

¹⁶CEQA Guidelines section 15126.6(c) explains that alternatives may be eliminated from detailed consideration in the EIR if they fail to meet most of the basic project objectives, are infeasible, or do not avoid significant environmental effects. CEQA Guidelines section 15126.6(f) indicates that the Lead Agency should consider site suitability, economic viability, availability of infrastructure, general plan consistency, other regulatory limitation, jurisdictional boundaries, and the proponent's control over alternative sites in determining the range of alternatives to be evaluated in an EIR. With respect to alternative locations, CEQA Guidelines section 15126.6(f) indicates that alternative locations need not be evaluated in every case. The key question in determining whether to evaluate alternative locations is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen significant effects need be evaluated in the EIR. CEQA Guidelines section 15126(f)(2) indicates that alternatives that are remote or speculative, or the effects of which cannot be reasonably predicted, need not be considered.

However, as discussed above, the Reduced Development Alternative would not avoid all of the Project's significant and unavoidable environmental effects. Moreover, as compared to the Project, this Alternative would assist the City substantially less in meeting its RHNA goals and its objectives of providing housing close to commercial development and current and planned jobs and reducing the jobs to housing ratio in the City. Since the Reduced Overall Development Alternative would not avoid all of the Project's significant and unavoidable impacts and would not meet the Project's primary objective of developing a high-density infill development near transit to address the City's RHNA goals as much as is possible, the City rejects as infeasible the Reduced Overall Development Alternative 4 on the basis of such considerations.

VI. FINDINGS REGARDING GROWTH-INDUCING IMPACTS OF THE PROJECT

CEQA Guidelines section 15126.2(d) provides the following guidance on growth-inducing impacts: a project is identified as growth inducing if it "could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.

The Project is an "infill" project, meaning that the Plan Area is within the City's existing boundaries, already served by existing infrastructure, and planned for urban uses. Redevelopment of the Patrick Henry Drive Focus Area was envisioned as part of the Santa Clara 2010-2035 General Plan. The proposed Specific Plan has increased the allowed density in the Plan Area from what was assumed in the General Plan. The resulting dwelling unit assumptions for the Plan Area have increased from 2,550 residential units as described in the Santa Clara 2010-2035 General Plan to 12,000 dwelling units assumed in the Specific Plan. The proposed commercial square footage and school facilities are consistent with the mixed-use neighborhood envisioned for the Plan Area. The impacts to infrastructure and services resulting from the proposed Specific Plan are described and analyzed throughout this EIR. Because the proposed Specific Plan is a previously envisioned growth area in the General Plan and is not anticipated to result in increased growth outside the City where urban development is not already planned, the proposed Specific Plan would not result in growth-inducing impacts beyond what is envisioned in the City's General Plan.

VII. FINDINGS REGARDING RECIRCULATION OF THE DRAFT EIR

The City Council adopts the following findings with respect to whether to recirculate the Draft EIR. Under section 15088.5 of the CEQA Guidelines, recirculation of an EIR is required when "significant new information" is added to the EIR after public notice is given of the availability of the Draft EIR for public review but prior to certification of the Final EIR. The term "information" can include changes in the project or environmental setting, as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative)

that the project's proponents have declined to implement. "Significant new information" requiring recirculation includes, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (CEQA Guidelines, § 15088.5.)

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. The above standard is "not intend[ed] to promote endless rounds of revision and recirculation of EIRs." (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1132.) "Recirculation was intended to be an exception, rather than the general rule." (*Ibid.*)

The City Council recognizes that the Final EIR contains additions, clarifications, modifications, and other changes to the Draft EIR. Some comments on the Draft EIR either expressly or impliedly sought changes to proposed mitigation measures identified in the Draft EIR as well as additional mitigation measures. As explained in the Final EIR (Text Revisions), some of the suggestions were found to be appropriate and feasible and were adopted in the Final EIR. Where changes have been made to mitigation measures, these changes do not change the significance of any conclusions presented in the Draft EIR.

CEQA case law emphasizes that "[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737; see also *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168, fn. 11.) "CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process. In short, a project must be open for public discussion and subject to agency modification during the CEQA process." (*Concerned Citizens of Costa Mesa, Inc. v. 33rd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936 (internal citations omitted).) Here, the changes made to the Draft EIR in the Final EIR are exactly the kind of revisions that the case law recognizes as legitimate and proper.

The City Council finds that none of the revisions to the Draft EIR made by, or discussion included in, the Final EIR involves “significant new information” triggering recirculation because the changes do not result in any new significant environmental effects, substantial increase in the severity of previously identified significant effects, or feasible project alternatives that would clearly lessen the environmental effects of the project. Similarly, no documentation produced by, or submitted to, the City and relied on by the City after publication of the Final EIR, including but not limited to public comments, identifies any new significant effect, substantial increase in the severity of any environmental effect, or feasible project alternatives that would clearly lessen the environmental effects of the project. All project modifications were either environmentally benign or environmentally neutral and all additional documentation relied on by the City merely clarifies or amplifies conclusions in the EIR, and thus represent the kinds of common changes that occur and supplemental information that is received during the environmental review process as it works towards its conclusion. Under such circumstances, the City Council hereby finds that recirculation of the EIR is not required.

VII. SECTION 21082.1(c)(3) FINDINGS

Pursuant to Public Resources Code Section 21082.1(c)(3), the City Council hereby finds that the Final EIR reflects that independent judgment of the lead agency.

IX. STATEMENT OF OVERRIDING CONSIDERATIONS

Where a proposed project may result in significant impacts on the environment, and it is infeasible to reduce impacts to less than significant levels through project alternatives or mitigation measures, CEQA allows a public agency to approve the project only if the benefits of the project outweigh the unavoidable adverse environmental effects.

Section 15093 of the CEQA Guidelines provides the following:

CEQA requires the decision making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

As discussed in more detail in the EIR and as summarized in Section IV above, the Project will result in significant unavoidable impacts related to air quality, historic resources and noise. Specifically, the Project will have significant and unavoidable impacts on the following:

- Toxic Air Contaminant (TAC) emissions
- Potential destruction or degradation of Historic Resources
- Noise, specifically increases in traffic noise levels from Specific Plan development

The project would also result in the following significant unavoidable cumulative impacts:

- Air Quality emissions (criteria pollutant emissions)

The City identified a potentially feasible alternative (the Reduced Overall Development Alternative) that would result in the reduction of the Project's significant and unavoidable impact due to Increases in Traffic Noise from the Specific Plan Development, but it has not identified any potentially feasible alternatives that would avoid any of the other significant and unavoidable impacts. Moreover, as compared to the Project, this Alternative would be of substantially less assistance to the City in meeting its RHNA goals and its objectives of providing housing close to commercial development and current and planned jobs and reducing the jobs to housing ratio in the City.

Furthermore, although the Reduced Overall Development Alternative was initially determined to be *potentially* feasible (subject to further review as the CEQA process proceeded), the City has now determined that the Reduced Intensity is not feasible, for the specific economic, social, environmental, technological, legal or other considerations set forth in section V above. Under CEQA, "the decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 18.

The City certifies that it has considered the information on alternatives provided in the EIR and in the record, and finds that, as described in the EIR and for the reasons identified in Section V above, there are no feasible alternatives that would avoid all of the above-listed significant and unavoidable impacts.

Overriding Considerations

The City finds that notwithstanding the disclosure of the above significant unavoidable impacts, there are specific overriding economic, social, technological, and other reasons for approving the proposed Project. Those reasons are as follows:

- The City finds that each of the specific economic, legal, social, technological, environmental, and other considerations and the benefits of the Project separately and independently outweigh the significant, adverse impacts and is an overriding consideration independently warranting approval. The remaining significant adverse impacts identified above are acceptable in light of each of the benefits of the Project.
- The Project will revitalize a currently underutilized area near Levi's Stadium, the Convention Center, and the future City Place project by providing housing in an amenity-rich, urban environment that is close to transit and employment opportunities.

- The Project will allow the development of an ambitious Park Space and Greenways plan to provide 14.5 acres of open space area including a 5.25 acre park acting as a focal point for the neighborhood.
- The Project will include the establishment of bicycle paths that will provide connections for the residents within the Specific Plan area to nearby employment and entertainment destinations, such as those planned in the City Place project.
- The Project will produce a significant number of new construction jobs during the years of construction.
- The Project plans for the construction of up to 7,200 dwelling units by 2035 that could accommodate up to 11,300 employed City residents, which would substantially improve the City's jobs-housing balance and would be a key component of meeting the City's RHNA obligation for the sixth Housing Element cycle.
- The Project will promote environmental sustainability, transportation efficiency, greenhouse gas reduction, and stormwater management using green technology.
- The Project will provide new development in an already urbanized area where public services are available, including utilities, a well-developed network of roadways and where public transit is immediately adjacent to the site. New practices and standards of sustainability, relying on both current and future technologies, are applied to the project and will enable the most efficient use of resources.

On balance, the City finds that there are specific considerations associated with the Project that serve to override and outweigh the Project's significant unavoidable environmental impacts. Therefore, the significant unavoidable environmental impacts associated with the Project are considered acceptable. As the CEQA Lead Agency for the proposed action, the City has reviewed the Project description and the EIR and fully understands the Project. Based on the entire record before the City, and having considered the unavoidable adverse impacts of the Project, the City hereby determines that all feasible mitigation has been adopted to reduce the potentially significant impacts identified in the EIR, and that no additional feasible mitigation is available to further reduce significant impacts. The City finds that economic, social, technological, and other considerations of the Project outweigh the unavoidable adverse impacts described above. Further, the City finds that each of the separate benefits of the Project is hereby determined to be, in itself and independent of the other Project benefits, a basis for overriding all unavoidable environmental impacts identified in the EIR and in these Findings. In making this finding, the City has balanced the benefits of the Project against its unavoidable environmental impacts and has indicated its willingness to accept those risks.

RESOLUTION NO. _____

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF SANTA CLARA, CALIFORNIA RECOMMENDING
ADOPTION OF THE PATRICK HENRY DRIVE SPECIFIC PLAN,
A SPECIFIC PLAN PURSUANT TO GOVERNMENT CODE
SECTION 65450, et seq.**

SCH # 2019120515

PLN2019-14257 (EIR, Specific Plan, General Plan Amendment, and Zoning Amendment)

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

WHEREAS, the City of Santa Clara (the “City”) is contemplating the adoption of the Patrick Henry Drive Specific Plan (the “Project”), a specific plan for a transit-oriented pedestrian-friendly neighborhood of up to 12,000 residential units with supportive retail uses, located on approximately 62 net acres of land located within one-half mile of the Tasman Drive light rail line that are currently developed with industrial uses;

WHEREAS, the proposed Specific Plan also includes an alternative development scenario that allows for up to 10,300 residential units, with up to 785,000 square feet of office space and up to 310,000 square feet of other non-residential uses; and

WHEREAS, under the proposed Specific Plan, the Patrick Henry Drive area is intended to be a walkable urban neighborhood, with parking reflective of a variety of available transit modes, including bicycle parking;

WHEREAS, a specific plan is a tool for providing regulatory direction for specific parts of a city, and can include policy guidance, regulatory requirements, and design guidelines;

WHEREAS, as a part of implementation of the Specific Plan, the City intends to adopt a General Plan Amendment (“GPA”) to amend the General Plan land use diagram by changing the existing land use designation of the Project Site from Light Industrial to four residential designations including Very High Density (51-100 du/ac); Village Residential (60-149 du/ac); Urban Village Residential (100-149 du/ac); and Urban Center Residential (120-250 du/ac); and

one flexible residential/commercial designation entitled High Density Flex (60-149 du/ac or up to a 2.0 floor area ratio of commercial development);

WHEREAS, the GPA includes an amendment to Appendix 8.13 (the Climate Action Plan) setting forth vehicle trip reduction targets for the new land use designations of Village Residential (60-149 du/ac); Urban Village Residential (100-149 du/ac); and Urban Center Residential (120-250 du/ac); and High Density Flex (60-149 du/ac or up to a 2.0 floor area ratio of commercial development);

WHEREAS, as a part of implementation the Specific Plan, the City is also proposing to amend Title 18 (“Zoning”), of the City Code to create new zoning districts that implement the proposed General Plan designations, and to apply those zoning designations across the Project Site;

WHEREAS, the proposed Patrick Henry Drive Specific Plan is consistent with the Goals and Policies of the Future Focus Area section in the General Plan;

WHEREAS, Santa Clara City Charter Section 1007 and Government Code sections 65353 and 65453 require that the Planning Commission provide input to the City Council on proposed specific plans;

WHEREAS, notice of the public hearing on the proposed Specific Plan was published in the Santa Clara Weekly, a newspaper of general circulation for the City, on January 12, 2022;

WHEREAS, notices of the public hearing on the proposed Specific Plan were mailed to all property owners within 500 feet of the Project Site, according to the most recent assessor’s roll, and to all local agencies expected to provide essential facilities or services to the project, on January 13, 2022;

WHEREAS, before considering recommending adoption of the Specific Plan, the Planning Commission reviewed and considered the potential environmental impacts of the Project, including the implementing General Plan Amendment, Zoning Code Amendment, and identified mitigation measures, and recommended that the City Council adopt and certify the Environmental Impact Report (“EIR”) for the Project (SCH #2019120515), as well as a set of

CEQA Findings and a Statement of Overriding Considerations, in accordance with the requirements of CEQA; and

WHEREAS, on January 26, 2022, the Planning Commission reviewed the Specific Plan and conducted a public hearing, at which time all interested persons were given an opportunity to give testimony and provide evidence in support of and in opposition to the proposed Specific Plan.

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

1. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. Specific Plan Findings. That the Planning Commission finds and determines that the Specific Plan is in the interest of the public good for the following reasons:

A. The proposed Specific Plan is deemed to be in the public interest, in that:

The Specific Plan is located in an urbanized area served by existing municipal services and implements smart growth principles by redeveloping underutilized properties with high intensity mixed-use, pedestrian- and transit-oriented development that will contribute to the City both socially and economically.

B. The proposed Specific Plan is consistent and compatible with the General Plan and any implementation programs that may be affected, in that:

The Specific Plan furthers and is consistent with the goals, policies and major strategies of the General Plan that enhance the City's quality of life, preserve and cultivate neighborhoods, promote sustainability, enhance City identity, support General Plan Focus Areas and community vitality, maintain the City's fiscal health and quality of services, and maximize health and safety benefits with the creation of a new land use designation that allows for the development of a high-density mixed-use transit-oriented environment.

C. The proposed Plan has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA), in that:

A Draft Environmental Impact Report ("DEIR") was prepared in accordance with CEQA and the City circulated copies of the DEIR and Notice of Availability to the public agencies which have jurisdiction by law with respect to the Project, as well as to other interested persons, organizations and agencies, and the City sought the comments of such persons, organizations and agencies. The City prepared and circulated written responses to the comments received during the Comment Period and included those responses in a Final Environmental Impact Report ("FEIR"), in accordance with CEQA.

D. The potential impacts of the proposed amendment have been assessed and have been determined not to be detrimental to the public health, safety, or welfare, in that:

A Mitigation Monitoring and Reporting Program (MMRP) has been prepared for implementation with development under the Specific Plan in order to reduce potentially significant impacts identified in the DEIR and FEIR, that combined constitute the EIR for the Project, to less than significant and a set of CEQA Findings and a Statement of Overriding Considerations for the significant unavoidable impacts that cannot be mitigated to less than significant has been prepared in accordance with CEQA; and the Planning Commission recommended that the City Council adopt all of these documents.

3. That based on the findings set forth in this Resolution, the Approvals, and the evidence in the City Staff Report and such other evidence as received at the public hearing on this matter, the Planning Commission recommends that the City Council adopt the Specific Plan.

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 26th DAY OF JANUARY, 2022, 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:
Patrick Henry Drive Specific Plan

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RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL APPROVE GENERAL PLAN AMENDMENT #97 TO (1) ADD THE LAND USE DESIGNATIONS OF VILLAGE RESIDENTIAL, URBAN VILLAGE, URBAN CENTER AND HIGH DENSITY FLEX DESIGNATIONS TO CHAPTER 5 OF THE GENERAL PLAN; (2) CHANGE THE LAND USE DESIGNATION FROM LIGHT INDUSTRIAL TO VERY HIGH DENSITY RESIDENTIAL, VILLAGE RESIDENTIAL, URBAN VILLAGE, URBAN CENTER AND HIGH DENSITY FLEX DESIGNATIONS FOR THE AREA BOUNDED BY THE MISSION COLLEGE CAMPUS TO THE SOUTH, CALABASAS CREEK TO THE EAST, THE HETCH-HETCHY RIGHT-OF-WAY TO THE NORTH, AND GREAT AMERICA PARKWAY TO THE WEST; AND (3) UPDATE APPENDIX 8.13 (CLIMATE ACTION PLAN) WITH TRIP REDUCTION TARGETS FOR THE VILLAGE RESIDENTIAL, URBAN VILLAGE, URBAN CENTER AND HIGH DENSITY FLEX DESIGNATIONS

SCH # 2019120515

PLN2019-14257 (EIR, Specific Plan, General Plan Amendment, and Zoning Amendment)

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

WHEREAS, the City of Santa Clara (the “City”) is contemplating the adoption of the Patrick Henry Drive Specific Plan (the “Project”), a specific plan for a transit-oriented pedestrian-friendly neighborhood of up to 12,000 residential units with supportive retail uses, located on approximately 62 net acres of land located within one-half mile of the Tasman Drive light rail line that are currently developed with industrial uses;

WHEREAS, the proposed Specific Plan also includes an alternative development scenario that allows for up to 10,300 residential units, with up to 785,000 square feet of office space and up to 310,000 square feet of other non-residential uses;

WHEREAS, under the proposed Specific Plan, the Patrick Henry Drive area is intended to be a walkable urban neighborhood, with parking reflective of a variety of available transit modes, including bicycle parking;

WHEREAS, the proposed Patrick Henry Drive Specific Plan is consistent with the Future Focus Area Goals And Policies in the General Plan;

WHEREAS, as a part of implementation of the Specific Plan, the City intends to adopt a General Plan Amendment (“GPA”) to amend the General Plan land use diagram by changing the existing land use designation of the Project Site from Light Industrial to four residential designations including Very High Density (51-100 du/ac); Village Residential (60-149 du/ac); Urban Village Residential (100-149 du/ac); and Urban Center Residential (120-250 du/ac); and one flexible residential/commercial designation entitled High Density Flex (60-150 du/ac or up to a 2.0 floor area ratio of commercial development);

WHEREAS, the GPA includes an amendment to Appendix 8.13 (the Climate Action Plan) setting forth vehicle trip reduction targets for the new land use designations of Village Residential (60-149 du/ac); Urban Village Residential (100-149 du/ac); and Urban Center Residential (120-250 du/ac); and High Density Flex (60-149 du/ac or up to a 2.0 floor area ratio of commercial development);

WHEREAS, as a part of implementation the Specific Plan, the City is also proposing to amend Title 18 (“Zoning”), of the City Code to create new zoning districts that implement the proposed General Plan designations, and to apply those zoning designations across the Project Site;

WHEREAS, Santa Clara City Charter Section 1007 and Government Code Section 65353 require that the Planning Commission provide input to the City Council on any proposed General Plan Amendment;

WHEREAS, notice of the public hearing on the proposed General Plan Amendment was published in the Santa Clara Weekly, a newspaper of general circulation for the City, on January 12, 2022;

WHEREAS, notices of the public hearing on the General Plan Amendment were mailed to all property owners within 500 feet of the Project Site, according to the most recent assessor’s roll,

and to all local agencies expect to provide essential facilities or services to the project, on January 13, 2022;

WHEREAS, before considering making a recommendation for the General Plan Amendment for the Project Site, the Planning Commission reviewed and considered the potential environmental impacts of the Project, identified mitigation measures, and recommended that the Council adopt and certify the Environmental Impact Report (“EIR”) for the Project (SCH # 2019120515), as well as a set of CEQA Findings and a Statement of Overriding Considerations, in accordance with the requirements of CEQA;

WHEREAS, the Planning Commission has reviewed the General Plan Amendment; and

WHEREAS, on January 26, 2022, the Planning Commission conducted a duly noticed public hearing to consider the GPA, at which time all interested persons were given an opportunity to give testimony and provide evidence in support of and in opposition to the proposed General Plan Amendment.

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

1. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. General Plan Amendment Findings. That the Planning Commission finds and determines that the General Plan Amendment is in the interest of the public good for the following reasons:

A. The proposed General Plan Amendment is deemed to be in the public interest, in that:

The proposed General Plan Amendment is a prerequisite to the adoption of the Project, which is located in an urbanized area served by existing municipal services and implements smart growth principles by redeveloping underutilized properties with high intensity mixed-use,

pedestrian- and transit-oriented development that will contribute to the City both socially and economically.

B. The proposed General Plan Amendment is consistent and compatible with the rest of the General Plan and any implementation programs that may be affected, in that:

The Project furthers and is consistent with the goals, policies and major strategies of the General Plan that enhance the City's quality of life, preserve and cultivate neighborhoods, promote sustainability, enhance City identity, support Focus Areas and community vitality, maintain the City's fiscal health and quality of services, and maximize health and safety benefits with the creation of new land use designations that allow for the development of a mixed-use transit-oriented environment with densities ranging from 60 to 250 dwelling units per acre, and including the possibility of High Intensity Office Uses along Great America Parkway.

C. The proposed General Plan Amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA), in that:

A Draft Environmental Impact Report ("DEIR") was prepared in accordance with CEQA and the City circulated copies of the DEIR and Notice of Availability to the public agencies which have jurisdiction by law with respect to the Project, as well as to other interested persons, organizations and agencies, and the City sought the comments of such persons, organizations and agencies. The City prepared and circulated written responses to the comments received during the Comment Period and included those responses in a Final Environmental Impact Report ("FEIR"), in accordance with CEQA.

D. The potential impacts of the proposed General Plan Amendment have been assessed and have been determined not to be detrimental to the public health, safety, or welfare, in that:

A Mitigation Monitoring and Reporting Program (MMRP) has been prepared for implementation with Project development to reduce potentially significant impacts identified in

the EIR to less than significant and a set of CEQA Findings and a Statement of Overriding Considerations have been prepared for the significant unavoidable impacts that cannot be mitigated to less than significant; and the Planning Commission has recommended that the City Council adopt these documents.

3. That the Planning Commission hereby recommends that the City Council amend the General Plan by adding the following text to Subsection 5.2.2 (“Land Use Classifications and Diagram”) of Section 5.2 (“Land Use Diagram”) of Chapter 5 (“Goals and Policies”), to be inserted in the residential land use designations section, after the existing definition of “Very High Density Residential” :

“Village Residential

The purpose of the Village Residential designation is to accommodate multi-family residential development at very-high densities between 5-12 stories within the Patrick Henry Drive Specific Plan area. The residential density range for this zone is 60-149 dwelling units per acre.”

“Urban Village

The purpose of the Urban Village designation is to accommodate transit-oriented, multi-family residential development at very-high densities between 5-12 stories within the Patrick Henry Drive Specific Plan area. These urban-scale developments feature pedestrian-oriented facades and frontages. Urban Village developments include structured or below-grade parking and shared outdoor spaces proximate to transit. The residential density range for this zone is 100-149 dwelling units per acre.”

“Urban Center

The purpose of the Urban Center designation is to accommodate transit-oriented, multi-family residential development at very-high densities with no height limits except those imposed by the FAA due to flight paths for

the San Jose International Airport, within the Patrick Henry Drive Specific Plan area. These urban-scale developments feature pedestrian-oriented facades and frontages. Urban Center developments include structured or below-grade parking and shared outdoor spaces proximate to transit. The residential density range for this zone is 120-250 dwelling units per acre.”

“High Density Flex

The purpose of the High Density Flex designation is to accommodate transit-oriented, multifamily residential development interspersed with office. Allowable height ranges between 5-12 stories. The residential density range for this zone is 60-149 dwelling units per acre. Office development is allowed at up to 2.0 FAR.”

4. That the Planning Commission, pursuant to Government Code § 65354, hereby recommends that the City Council amend the General Plan by changing the General Plan Land Use Designation for the Project Site by modifying Figures 5.2-2 and 5.2-3 of the General Plan to the land use designations described in the land use plan, Figure 4.3A, of the Patrick Henry Drive Specific Plan, which is attached for reference.

5. That the Planning Commission hereby recommends that the City Council amend Appendix 8.13 of the General Plan by modifying the Climate Action Plan to include new trip reduction standards for the Village Residential, Urban Village, Urban Center and High Density Flex designations by re-titling the “High Density Residential” column of Table 9 of the Climate Action Plan to “High Density Residential Designations”, and adding an additional footnote to Table 9 stating that, “High Density Residential Designations include High Density Residential (37-50 DU/AC), Very High Density Residential (51-100 DU/AC), Village Residential (60-149 DU/AC), Urban Village (100-149 DU/AC), Urban Center (120-250 DU/AC), and High Density Flex (60-149 DU/AC or up to 2.0 FAR).

6. That based on the findings set forth in this Resolution, the EIR Resolution and the evidence in the City Staff Report and such other evidence as received at the public hearing on this matter, the Planning Commission hereby recommends that the City Council approve the General Plan Amendment.

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 26th DAY OF JANUARY, 2022, BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

ATTEST: _____
ANDREW CRABTREE
DIRECTOR OF COMMUNITY DEVELOPMENT
CITY OF SANTA CLARA

Attachments Incorporated by Reference:

1. Figure 4.3A of the Patrick Henry Drive Specific Plan

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RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL AMEND TITLE 18 OF “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA” TO ADD CHAPTER 18.27, REGULATIONS FOR THE PATRICK HENRY DRIVE ZONING DISTRICTS, TO MODIFY BICYCLE PARKING RATIOS IN CHAPTER 18.74, PARKING REGULATIONS, AND TO APPLY THE PATRICK HENRY DRIVE ZONING DISTRICT TO THE PATRICK HENRY DRIVE PLAN AREA

SCH # 2019120515

PLN2019-14257 (EIR, Specific Plan, General Plan Amendment, and Zoning Amendment)

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

WHEREAS, the City of Santa Clara (the “City”) is contemplating the adoption of the Patrick Henry Drive Specific Plan (the “Project”), a specific plan for a transit-oriented pedestrian-friendly neighborhood of up to 12,000 residential units with supportive retail uses, located on approximately 62 net acres of land located within one-half mile of the Tasman Drive light rail line that are currently developed with industrial uses;

WHEREAS, the proposed Specific Plan also includes an alternative development scenario that allows for up to 10,300 residential units, with up to 785,000 square feet of office space and up to 310,000 square feet of other nonresidential uses; and

WHEREAS, under the proposed Specific Plan, the Patrick Henry Drive area is intended to be a walkable urban neighborhood, with parking reflective of a variety of available transit modes, including bicycle parking;

WHEREAS, the General Plan contemplates that Future Focus Areas will include a variety of forms of high-density urban housing, including podium buildings, residential towers, and residential mixed-use buildings;

WHEREAS, as a part of implementation of the Specific Plan, the City intends to adopt a General Plan Amendment (“GPA”) to amend the General Plan land use diagram by changing

the existing land use designation of the Project Site from Light Industrial to four residential designations including Very High Density (51-100 du/ac); Village Residential (60-149 du/ac); Urban Village Residential (100-149 du/ac); and Urban Center Residential (120-250 du/ac); and one flexible residential/commercial designation entitled High Density Flex (60-149 du/ac or up to a 2.0 floor area ratio of commercial development);

WHEREAS, the Patrick Henry Drive Area is currently zoned Light Industrial (ML), which allows for uses such as manufacturing, processing, repairing and storing products;

WHEREAS, the Santa Clara City Code (“SCCC”) currently does not include the required zoning districts that implement the General Plan designations proposed in the Patrick Henry Drive plan area;

WHEREAS, in order to effectuate the Project and the higher-density residential uses envisioned by the General Plan, it therefore is necessary to (a) create a new residential zoning districts that are consistent with and that implement the General Plan designations in the Patrick Henry Drive plan area, (b) rezone the Patrick Henry Drive Plan Area using those zoning designations, and (c) modify standards for bike parking;

WHEREAS, SCCC Section 18.112.040 provides for the review and recommendation by the Planning Commission of all proposed zoning amendments before any action is taken by the City Council;

WHEREAS, before considering the creation of the Chapter 18.27, the rezoning of the Patrick Henry Drive plan area, the Planning Commission reviewed and considered the potential environmental impacts of the Project and identified mitigation measures in the Environmental Impact Report for the Project (SCH#2019120515) (the “EIR”), in accordance with the requirements of CEQA;

WHEREAS, the Planning Commission has recommended that the City Council certify the EIR;

WHEREAS, the Project approvals will include a resolution certifying the EIR; a resolution approving the GPA; a resolution approving the Patrick Henry Drive Specific Plan; and an

ordinance (a) amending the Santa Clara City Code to include a new Chapter containing the zoning districts relevant to the Patrick Henry Drive plan and new standards bicycle parking and (b) applying the new zoning designations across the Patrick Henry Drive Plan Area (collectively, the “Approvals”); and

WHEREAS, on January 26, 2022, the Planning Commission held a duly noticed public hearing to consider the rezoning application, at which time interested persons were given an opportunity to give testimony and provide evidence in support of and in opposition to the proposed rezoning.

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

1. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the Planning Commission hereby recommends that the City Council amend SCCC Title 18 (“Zoning”), by adding a new Chapter 18.27 entitled, “Regulations for the Patrick Henry Drive Zoning Districts”, as more specifically set forth in the draft Ordinance, attached hereto and incorporated herein by this reference.
3. That the Planning Commission recommends that the City Council amend the City of Santa Clara Zoning Map to apply the zoning designations contained in Chapter 18.27 to the Patrick Henry Drive Plan Area, bounded by the Mission College campus to the South, Calabasas Creek to the East, the Hetch-Hetchy right-of-way to the North, and Great America Parkway to the West, and as shown on the attached Patrick Henry Drive zoning designations map.

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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 PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 26TH DAY OF JANUARY, 2022, BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

ATTEST: _____
ANDREW CRABTREE
DIRECTOR OF COMMUNITY DEVELOPMENT
CITY OF SANTA CLARA

Attachments Incorporated by Reference:

1. Draft City Council Ordinance
2. Patrick Henry Drive zoning designations map

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING TITLE 18 OF “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA” TO ADD CHAPTER 18.27, REGULATIONS FOR THE PATRICK HENRY DRIVE AREA ZONING DISTRICTS, TO CHANGE THE ZONING DESIGNATIONS IN THE PATRICK HENRY DRIVE AREA FROM LIGHT INDUSTRIAL (ML) TO ZONING DESIGNATIONS WITHIN CHAPTER 18.27 FOR THE AREA BOUNDED BY MISSION COLLEGE TO THE SOUTH, GREAT AMERICA PARKWAY TO THE EAST, THE HETCH-HETCHY RIGHT-OF-WAY TO THE NORTH, AND CALABASAS CREEK TO THE WEST; AND ADDING A NEW SECTION 17.40.116 TO CHAPTER 17.40, CITYWIDE AFFORDABLE HOUSING REQUIREMENTS, TO SPECIFY AFFORDABILITY LEVELS APPLICABLE TO THE PATRICK HENRY DRIVE ZONING DISTRICTS

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

WHEREAS, the City of Santa Clara (the “City”) intends to allow for the development of a high-density residential neighborhood in the Patrick Henry Drive Specific Plan area;

WHEREAS, on March 8, 2022, the City Council approved a Specific Plan for the Patrick Henry Drive Plan Area, which contemplates a transit-oriented pedestrian-friendly neighborhood of up to 12,000 residential units with supportive retail uses;

WHEREAS, the Patrick Henry Drive Area is one of the “Future Focus Areas” identified in the City’s General Plan, each of which is intended to be a walkable urban neighborhood, with parking reflective of a variety of available transit modes, including bicycle parking;

WHEREAS, the General Plan contemplates that Future Focus Areas will include a variety of forms of high-density urban housing, including podium buildings, residential towers, and residential mixed-use buildings; and,

WHEREAS, on March 8, 2022 the City Council approved a resolution adopting General Plan designations for the Patrick Henry Drive plan area, with residential densities ranging

from 60 to 250 dwelling units per acre; and

WHEREAS, the Patrick Henry Drive Area is currently zoned Light Industrial (ML), which allows for uses such as manufacturing, processing, repairing and storing products; and

WHEREAS, the Santa Clara City Code (“SCCC”) currently does not include any zoning district that would implement the General Plan designations adopted in the March 8, 2022 General Plan Amendment resolution; and

WHEREAS, in order to effectuate the Project and the higher-density residential uses envisioned by the General Plan Amendment, it therefore is necessary to (a) create a new high-density residential zoning district that includes districts applicable to the Patrick Henry Drive plan area, (b) rezone the Patrick Henry Drive Plan Area to those new zoning districts, and (c) to modify bicycle parking standards.

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

SECTION 1: That a new Chapter 18.27, “Regulations for the Patrick Henry Drive Area (PHD) Districts”, is hereby added to Title 18 (entitled “Zoning”), of “The Code of the City of Santa Clara, California” (“SCCC”) as follows:

“Chapter 18.27

Regulations for the Patrick Henry Drive Area (PHD) Zoning Districts

18.27.010 Application.

The regulations set forth in this chapter apply to the Patrick Henry Drive Area (PHD) zoning districts.

18.27.020 Intent.

This Chapter is designed to implement the General Plan designations contained in the

Patrick Henry Drive Specific Plan, creating a high-density, transit-oriented residential district with supportive retail services. Residential uses are authorized in all zoning districts listed below in varying densities, and ground-floor office and retail uses are also allowed in all zoning districts listed below in selected locations. The Patrick Henry Drive Plan area is expected to be implemented over time, and this Chapter contains provisions for the continuation of existing industrial buildings and uses. This Chapter includes the following districts:

Patrick Henry Very-High-Density Residential Zone (PH-R5). The purpose of the PH-R5 Patrick Henry Very-High-Density Residential Zone is to provide land areas for the construction, use, and occupancy of high density and intensity multi-family developments (i.e., low-rise, mid-rise, and high-rise apartments and condominiums). It is the intent of this zone to encourage development to use innovative site planning, provide on-site recreational amenities and be located near major community facilities, business centers, transportation corridors, and/or major thoroughfares. The residential density range for this zone is 51-99 dwelling units per acre. This zone implements the Very High-Density land use designation in the General Plan.

Urban Village (UV). The purpose of the UV Urban Village Zone is to accommodate transit-oriented, multi-family residential development at very-high densities between 5-12 stories within the Patrick Henry Drive Specific Plan. These urban-scale developments feature pedestrian-oriented facades and frontages. Urban Village developments include structured or below-grade parking and shared outdoor spaces proximate to transit. The residential density range for this zone is 100-149 dwelling units per acre. This zone implements the Urban Village land use designation in the General Plan.

Village Residential (VR). The purpose of the VR Village Residential Zone is to accommodate multi-family residential development at very-high densities between 5-12 stories within the Patrick Henry Drive Specific Plan. The residential density range for this zone is 60-149 dwelling units per acre. This zone implements the Village Residential land use designation in the General Plan.

Urban Center (UC). The purpose of the UC Urban Center Zone is to accommodate transit-oriented, multi-family residential development at very-high densities with no height limits except those imposed by the FAA due to flight paths for the San Jose International Airport, within the Patrick Henry Drive Specific Plan area. These urban-scale developments feature pedestrian-oriented facades and frontages. Urban Center developments include structured or below-grade parking and shared outdoor spaces proximate to transit. The residential density range for this zone is 120-250 dwelling units per acre. Densities over 250 du/acre may be allowed for the provision of community benefits agreed upon with the City and formalized in a development agreement. This zone implements the Urban Center land use designation in the General Plan.

High Density Flex (HD Flex). The purpose of the HD Flex High Density Flex Zone is to accommodate transit-oriented, multi-family residential development interspersed with office on four parcels along the eastern edge of the Patrick Henry Drive Specific Plan Area. Allowable height ranges between 5-12 stories. The residential density range for this zone is 60-149 dwelling units per acre. Office development is allowed up to 2.0 FAR, per the choice of property owners. This zone implements the High-Density Flex land use designation in the General Plan.

18.27.030 Permitted Uses and Permit Requirements - Residential.

Residential Buildings (Permit Requirements)	
	P Allowed by Right MUP Minor Use Permit (Chapter 18.124) CUP Conditional Use Permit (Chapter 18.124) TUP Temporary Use Permit (Chapter 18.122) -- Not allowed
Land Use (see Article 8 for land use definitions).	PHD Residential Zones
Dwelling, Accessory Units	P
Dwelling, Multifamily	P
Dwelling, Second Unit	-
Dwelling, Single-Family	-
Dwelling, Two-Family	-
Employee Housing	P
Home Occupations	P
Live-Work Facilities	MUP
Mobile Home Park	-
Organizational Houses	-
Rooming and/or Boarding Houses	-
Supportive Housing	P
Transitional Housing	P
Assisted Living Facilities	CUP
Day Care Homes, Up to 14 Children	P
Community Care Facilities, Small	P
Community Care Facilities, Large	CUP
Emergency Shelters	-
Community Gardens	P
Parks and Public Plazas	P
Retail and Office Uses (ground floor only, in mixed-use buildings only)	
Retail	P
Off-sale of alcohol	P
Restaurants, including on-sale of alcohol	P
Bars	CUP
Office Uses	P

18.27.040 Permitted Uses and Permit Requirements – Office and Industrial.

Office and Industrial Uses, HD Flex Zone (Permit Requirements)	
	P Allowed by Right MUP Minor Use Permit (Chapter 18.124) CUP Conditional Use Permit (Chapter 18.124) TUP Temporary Use Permit (Chapter 18.122) -- Not allowed
Land Use (see Article 8 for land use definitions).	HD Flex
Residential Uses	
Caretaker Housing	CUP
Transitional Housing Facilities	-
Human Services Uses	
Community Care Facilities, Small	-
Community Care Facilities, Large	-
Emergency Shelters	-
Recreation, Education, and Public Assembly Uses	
Cemeteries and Mausoleums	-
Crematories	-
Fitness Facilities	P
Parks and Public Plazas	P
Public Schools	CUP
Private Schools	CUP
Public/Private Colleges and Universities	-
Equipment/Machine/Vehicle Training Facilities	CUP
Vocational/Trade Schools	-
Utility, Transportation, and Communication Uses	
Broadcasting and Recording Studios	-
Fuel Storage and Distribution Centers	-
Park and Ride Facilities	P
Parking Facilities	CUP
Wireless Telecommunications Facilities and Towers, Co-location/Small Cell	P
Wireless Telecommunication Facilities and Towers, Minor (less than 70 feet)	MUP
Wireless Telecommunication Facilities and Towers, Major (70 feet or higher)	CUP
Transit Stations and Terminals	P

18.27.050 Existing Buildings and Uses

(a) Notwithstanding any other provision in this Chapter, the lawful use of buildings existing prior to the adoption of this Chapter may continue, and shall continue to be governed by the standards of the prior zoning (including any re-tenanting, maintenance, repair, replacement, modification, expansions and restoration in the event of casualty), until such time as (i) the existing building in its entirety is demolished voluntarily (unless for the purposes of implementing maintenance, repair, replacement, expansion or restoration in the event of casualty), and/or (ii) the existing use (including any expansions) has been discontinued in its entirety or is replaced with a use not permitted in the prior zoning regulations but permitted or conditionally permitted by this Chapter, at which time the prior zoning shall become inapplicable and the other sections of this Chapter shall apply from that point forward.

(b) Allowed Uses. For parcels with legal uses of buildings existing prior to the adoption of this Chapter, permitted uses of the prior zoning district are allowed, and none of the other sections of this Chapter 18.27 shall apply to such building and use, until such time as the existing use (including any re-tenanting, maintenance, repair, replacement, modification, expansions and restoration in the event of casualty) has been discontinued in its entirety as set forth in subsection (a).

(c) Conditional Uses. For parcels with legal uses of buildings existing prior to the adoption of this Chapter, conditional uses of the prior zoning district are conditionally permitted, and none of the other sections of this Chapter 18.27 shall apply, until such time as the existing use (including any re-tenanting, maintenance, repair, replacement, modification,

expansions and restoration in the event of casualty) has been discontinued in its entirety as set forth in subsection (a).

(d) Development Standards. For parcels with legal uses of buildings existing prior to the adoption of this Chapter, development standards of the prior zoning district shall apply, and none of the other sections of this Chapter 18.27 shall apply, until such time as the existing use (including any re-tenanting, maintenance, repair, replacement, modification, expansions and restoration in the event of casualty) has been discontinued in its entirety as set forth in subsection (a).

18.27.060 Development Standards.

Development Feature (minimum unless otherwise indicated)	PH-R5	UV	VR	UC	HD Flex
Parcel Area (minimum) area required for each NEWLY CREATED parcel.					
Parcel Area	10,000	10,000	10,000	8,500	8,500
Street Frontage (feet)	70	70	70	60	70
Structure Coverage (maximum percentage)					
Parcel Area (less than 10,000 sq. ft.)	None	None	None	None	None
Parcel Area (less than 10,000 sq. ft.)	None	None	None	None	None
Setbacks (minimum) - Setback lines are measured from the back of walk.					
Residential (front, side corner and interior)	10	10	10	10	10
Mixed-Use (front, side corner and interior)	0	0	0	0	0
Office (front, side corner and interior)	0	0	0	0	0
Setback Encroachments (i.e., awning, balconies, stoops)	Setback encroachments are allowed per the quantitative standards of the PHD plan.				
Height (maximum) measured in feet					
Height (within 20 feet of the R1-6L, R1-8L, and R2 zones)	32	32	32	32	32
Height (all other zones)	135	160	160	FAA	160
Number of Stories (maximum)					
Number of Stories (all other zones)	10	12	12	FAA	12
Gross Residential Density (minimum to maximum) shown in number of dwelling units per acre					
Allowable Density	51-99	100-149	60-149	120-250	60-149
Recreation Space for Multi-Family Dwellings (minimum) measured in square feet per dwelling unit					
Private Recreation Space (required for a minimum of 50 percent of units)	Per the PDO and PHD plan				
Common Recreation Space (per unit)	Per the PDO and PHD plan				

18.27.070 Parking Requirements.

(a) Minimum Parking Requirements.

Use	For Residents / Employees	For Visitors / Customers
Residential	Minimum 1 space per unit for units greater than 550 SF Minimum 0.5 spaces per unit for units less than 550 SF	Minimum 0.05 spaces per unit
Retail / Flex	None required	Minimum 1 space per 1,000 SF
Office	Minimum one space for each 500 SF of gross floor area	Minimum 1 space per 3,000 SF
Community/Civic	None required	None required

(b) Shared Parking. Parking shared among uses is encouraged, and up to 20% of parking spaces provided may be shared between two uses. For the purposes of this title, those parking spaces shared between two uses count towards the parking requirement of both.

(c) Surface Parking. Surface parking is only allowed as a temporary or interim use.

(d) Mechanical parking stackers/lifts and tandem parking may be used to satisfy minimum requirements.

(e) Unbundled Parking. A maximum of one parking space shall be rented or sold with each unit. Additional parking spaces shall be rented or sold separately.

(i) As an alternative to renting or selling parking spaces separately from residential unit, property managers may implement a parking preference program, with prospective renters without cars put on a separate waiting list from renters with cars, and renters being chosen alternately from the two lists.

18.27.080 Minimum Bicycle Parking Requirements.

(i) For each multi-family unit, one Class 1 bicycle parking space per unit and one Class 2 bike rack, accommodating two bikes, per 15 units is required.

(ii) Mixed-use developments: One Class 1 bicycle parking space per 30 employees and one Class 2 bike rack for every 1,000 square feet of retail, flex or community use.

(iii) Office developments: One bicycle parking space per 6,000 square feet with 75 percent as Class One spaces and 25 percent as Class Two racks.”

SECTION 2: That all parcels in the Patrick Henry Drive Plan Area are hereby rezoned from Light Industrial (ML) to the districts in this Chapter, as indicated on the attached zoning map.

SECTION 3: That a new section 17.40.116 is hereby added to Chapter 17.40, Citywide Affordable Housing Requirements, of Title 17 (entitled “Development”), of “The Code of the City of Santa Clara, California” (“SCCC”) to read as follows:

“17.40.116 Affordability Levels – Patrick Henry Drive Specific Plan.

For either ownership or rental housing developed under the Patrick Henry Drive Area Zoning Districts in the Patrick Henry Drive Specific Plan Area, the following affordable housing requirements apply:

(a) Notwithstanding Subsection 17.40.080(a), residential ownership projects of ten or more units must provide at least fifteen percent (15%) of the units at affordable housing costs for extremely low, very low, low and moderate income households, or some combination of those income categories. A developer shall select income categories for each of the affordable units such that the average income of purchasers will not exceed eighty percent (80%) of AMI. Residential ownership projects of fewer than ten units may either provide one dwelling at an affordable housing cost for a household earning up to eighty percent (80%) of AMI, or pay an in-lieu fee identified for residential ownership projects in the affordable housing master fee schedule.

(b) Notwithstanding Subsection 17.40.090(a), residential rental projects of ten or more units must provide at least fifteen percent (15%) of the units at affordable housing costs made available at affordable rental prices to extremely low, very low, low, and moderate income households as long as the distribution of affordable units averages to a maximum of eighty percent (80%) of AMI. Residential rental projects of fewer than ten units may either provide an affordable unit at an affordable housing cost for a household

earning up to eighty percent (80%) of AMI, or pay an in-lieu fee identified for residential rental projects in the affordable housing master fee schedule.

(c) In-Lieu Fee for Rental Units. In order for residential development projects under the Patrick Henry Drive Zoning Districts in the Patrick Henry Drive Plan Area to satisfy the affordable housing requirement through payment of an In Lieu Fee, the City Council shall establish a fee per square foot for the Specific Plan Area to reflect the reduced average AMI of 80 percent.”

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 XX day of XXXXXX, 2022, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

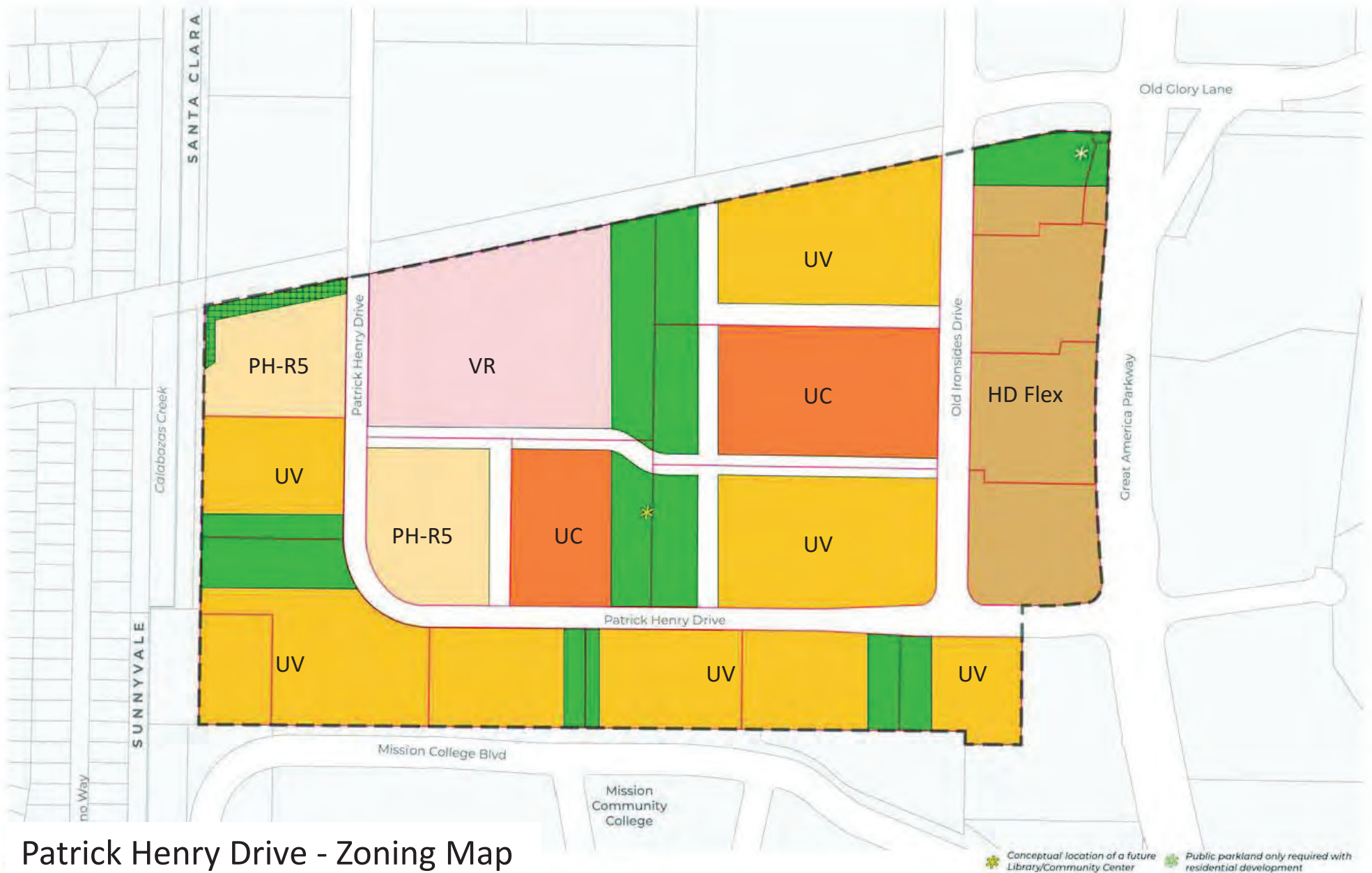
ABSTAINED: COUNCILORS:

ATTEST:

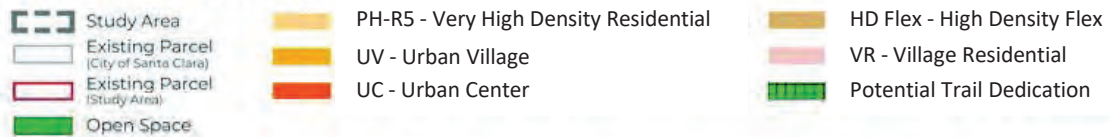
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments:

1. Patrick Henry Drive Zoning Map



Patrick Henry Drive - Zoning Map



Conceptual location of a future Library/Community Center

Public parkland only required with residential development



5.4.7 Future Focus Areas Goals and Policies

Future Focus Areas are identified for Phase III of the General Plan. Each of these areas requires additional planning as prerequisites for development. Future Focus Areas are located north of the Caltrain corridor, adjacent to existing transit hubs or along major transportation corridors. The Future Focus Areas represent a change from existing underutilized office and industrial uses to higher-density residential and mixed-use neighborhoods with a full complement of supportive services. Careful planning of each area is essential to ensure the provision of adequate infrastructure and services, an appropriate interface with surrounding development and access to transit, open space and recreation. The Future Focus Areas are delineated by a red outline in Figure 5.4-1 and include:

- Central Expressway
- De La Cruz
- Great America Parkway

The Land Use Diagram designates future land uses and their location for each Future Focus Area. Confirmation and/or changes to these land use designations will occur in the context of the comprehensive planning process required as a prerequisite for residential development in any of these areas. General Plan Goals and Policies for the Future Focus Areas provide a guide for these planning efforts.

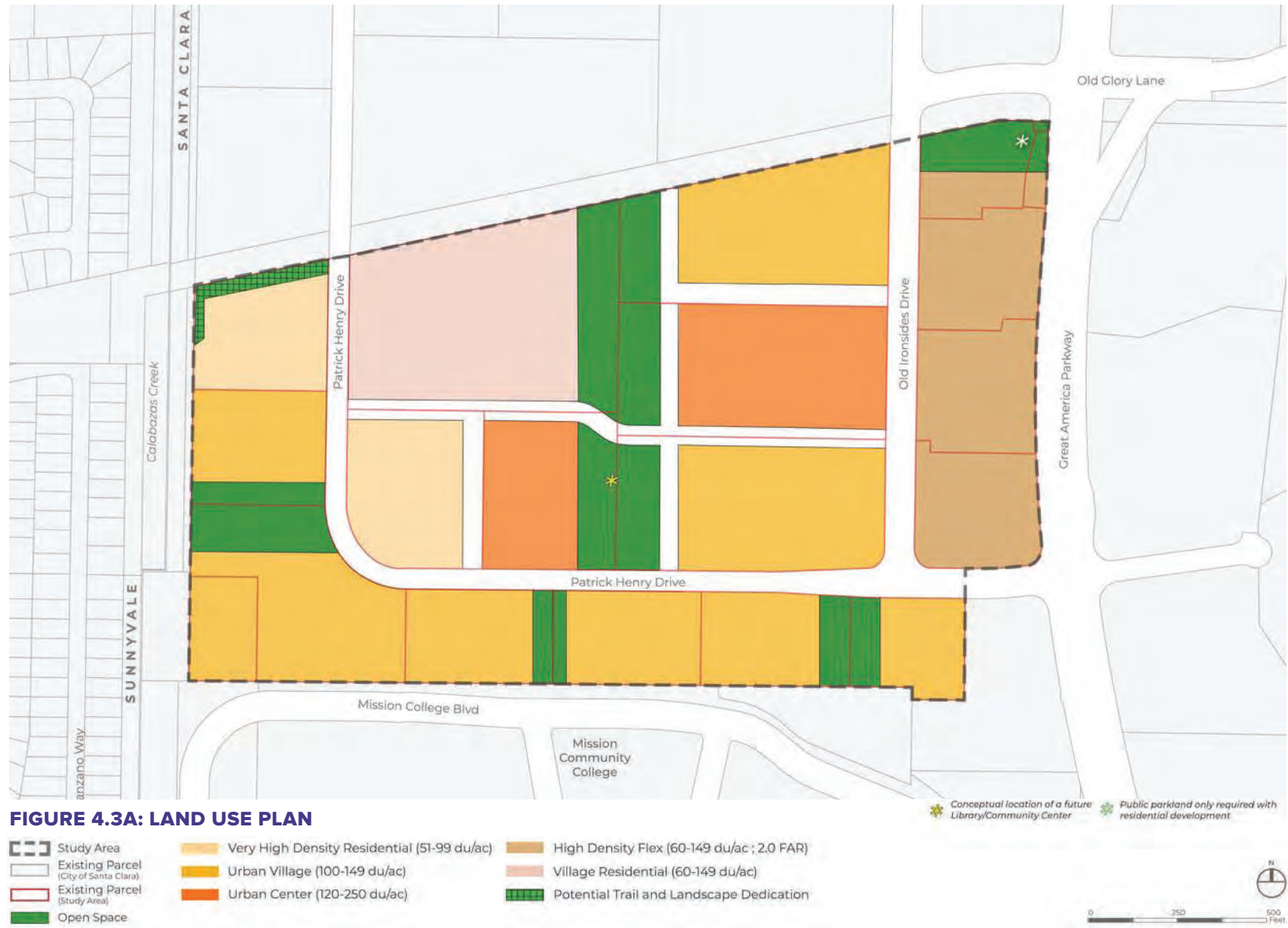
Future Focus Area Goals

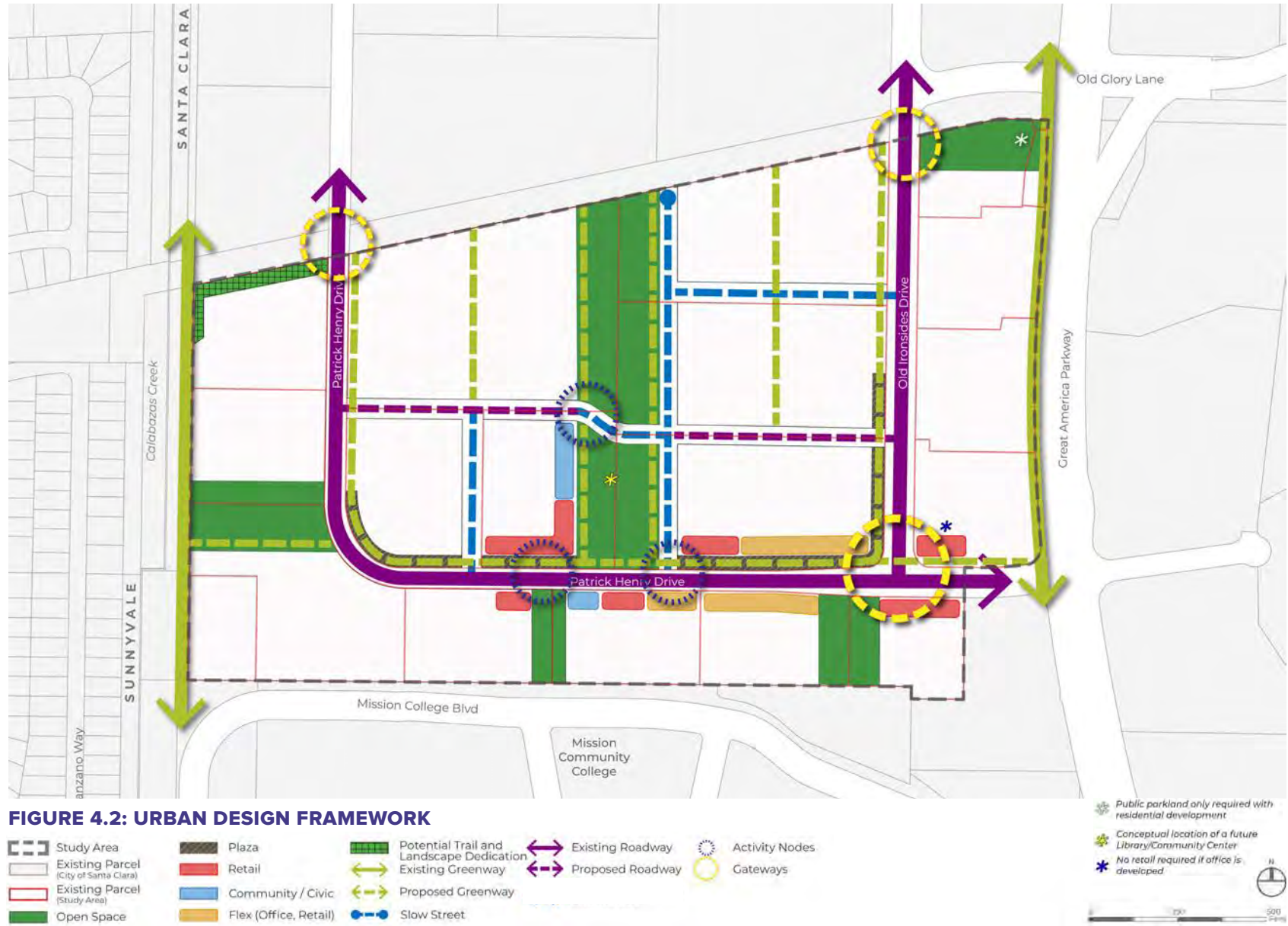
- | | |
|----------|--|
| 5.4.7-G1 | All applicable prerequisites are met, and a comprehensive plan is adopted, prior to implementation of any Future Focus Area. |
| 5.4.7-G2 | Adequate infrastructure, services and funding are planned to support new development in Future Focus Areas. |
| 5.4.7-G3 | New residential development that includes provisions for compatibility with surrounding non-residential uses. |

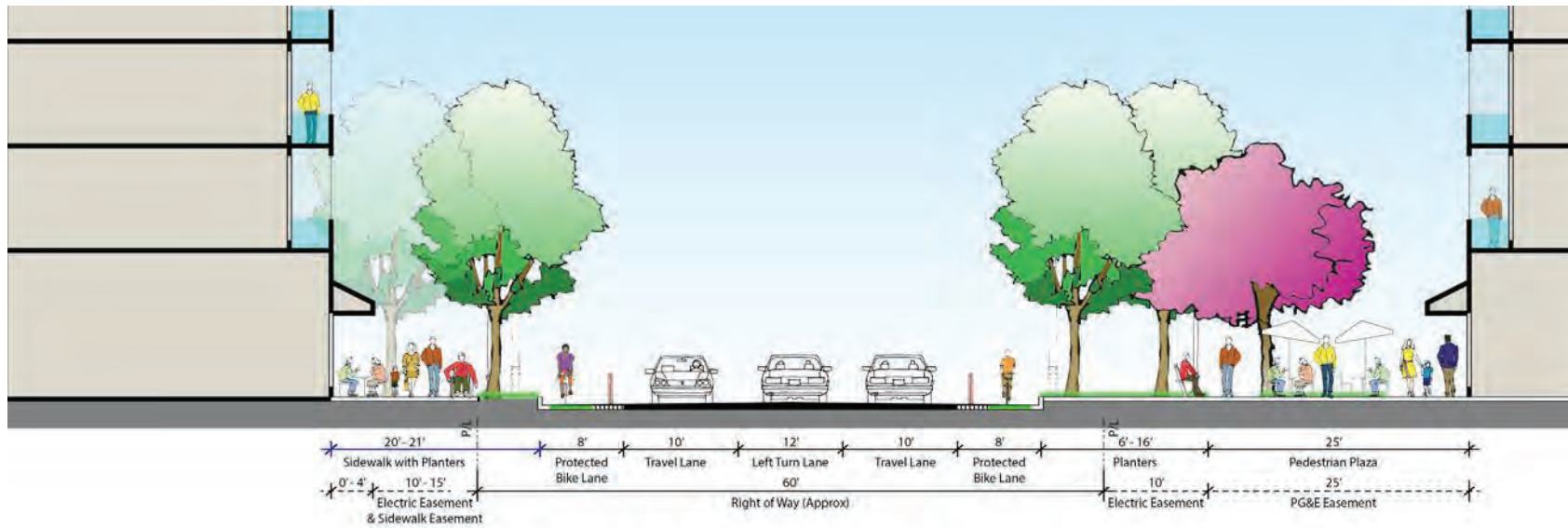
Future Focus Area Policies

- | | |
|----------|--|
| 5.4.7-P1 | Require the adoption of the comprehensive plan prior to any rezoning within that designated Future Focus Area. |
| 5.4.7-P2 | Implement development in Future Focus Areas in conformance with applicable General Plan policies for Neighborhood Compatibility, Mobility and Transportation, Public Services, and Environmental Quality. |
| 5.4.7-P3 | Allow Future Focus Area plans to be initiated by one or more private parties who provide funding to the City for planning the entire Focus Area; the City may include a reimbursement program for the private parties as part of the Future Focus Area Plan. |

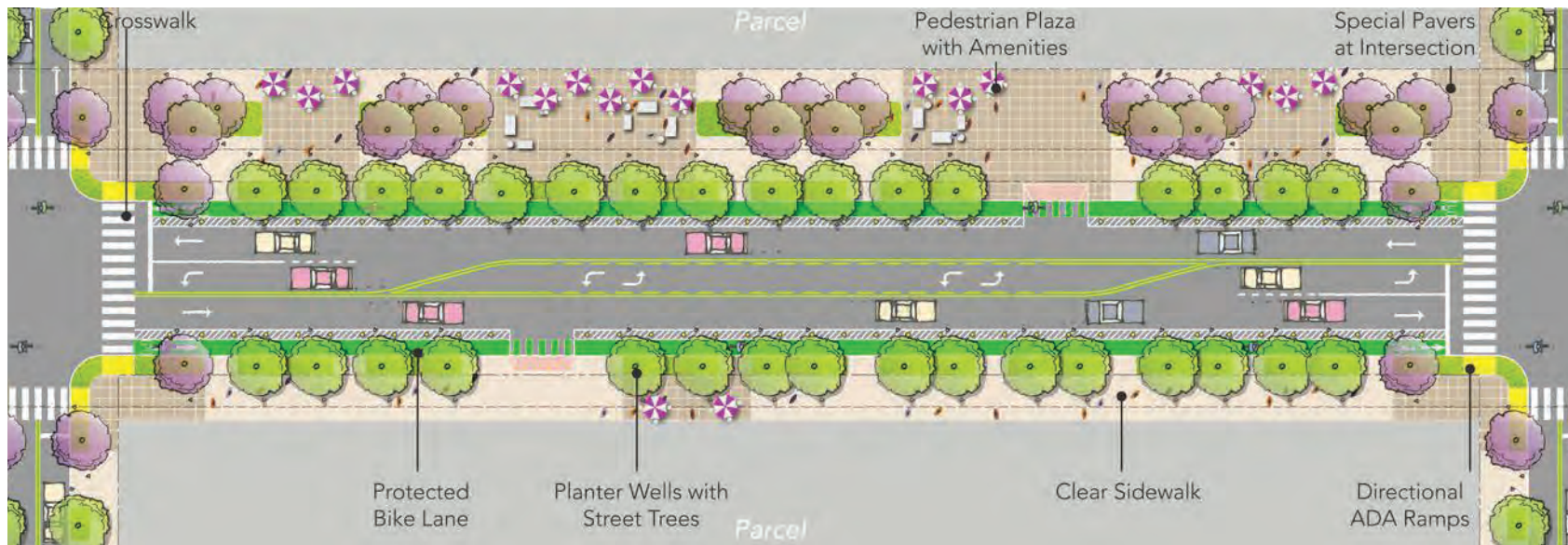
- 5.4.7-P4 Until such time as a comprehensive plan is adopted for a Future Focus Area, allow development in accordance with the land use designations on the Phase II General Plan Land Use Diagram.
- 5.4.7-P5 Discourage any new development that would preclude the implementation of the residential neighborhoods identified in the Future Focus Areas, Phases II and III, of the General Plan Land Use Diagrams.
- 5.4.7-P6 Encourage new comprehensive plans for Future Focus Areas to provide a full complement of uses, including neighborhood-oriented retail and commercial activities, open space, and public facilities.
- 5.4.7-P7 Implement appropriate measures for new residential development to reduce any land use conflicts with surrounding non-residential uses.
- 5.4.7-P8 Require development of public amenities, including parks and open space, in the first phase of development for all Future Focus Areas.
- 5.4.7-P9 Emphasize walkability and access to transit and existing roadways in Future Focus Area comprehensive plans.
- 5.4.7-P10 Provide access across expressways or major arterial streets so that new residential development in Future Focus Areas has adequate access to neighborhood retail, services and public facilities.







5.3.1D - Patrick Henry Drive Location 1 - Proposed Prototypical Option



5.3.1E - Patrick Henry Drive Location 1 - Proposed Prototypical Plan View Option

Draft Patrick Henry Drive Specific Plan

<https://www.santaclaraca.gov/our-city/departments-a-f/community-development/planning-division/specific-plans/patrick-henry-drive>

Kiran Singh

From: Kiran Singh
Sent: Monday, January 24, 2022 10:32 AM
To: Kiran Singh
Subject: FW: Jan. 26, 2022 Planning Commission Meeting FW: Patrick Henry Drive Specific Plan
Attachments: Patrick Henry signed.pdf

From: Elizabeth Elliott
Sent: Monday, January 24, 2022 9:38 AM
To: [REDACTED] John Davidson <JDavidson@SantaClaraCA.gov>
Cc: Andrew Crabtree <ACrabtree@SantaClaraCA.gov>; Reena Brilliot <RBrilliot@SantaClaraCA.gov>; Mayor and Council <MAYORANDCOUNCIL@SantaClaraCA.gov>
Subject: Jan. 26, 2022 Planning Commission Meeting FW: Patrick Henry Drive Specific Plan

Good Morning Mr. Boldt,
Your email and letter has been received in the Community Development Department/Planning Division. By way of this email I am including the appropriate staff for review and response.
Please note, your correspondence will part of the public record on this item.

Thank you for taking the time to contact us on this matter.

Regards,
~Elizabeth

Elizabeth Elliott
Community Development Department | Planning Division
1500 Warburton Avenue | Santa Clara, CA 95050
O: 408.615.2450 | D: 408.615.2474

www.SantaClaraCA.gov



From: Mayor and Council <MAYORANDCOUNCIL@SantaClaraCA.gov>
Sent: Monday, January 24, 2022 9:26 AM
To: Elizabeth Elliott <EElliot@santaclaraca.gov>; Planning <Planning@santaclaraca.gov>; Andrew Crabtree <ACrabtree@SantaClaraCA.gov>
Subject: FW: Patrick Henry Drive Specific Plan

Please see attached-

Thank you,
Melissa Lee

From: Dylan Boldt [REDACTED]
Sent: Friday, January 21, 2022 4:18 PM


To: John Davidson <JDavidson@SantaClaraCA.gov>; Priya Cherukuru <PCherukuru@SantaClaraCA.gov>; Mayor and Council <MAYORANDCOUNCIL@SantaClaraCA.gov>; Lance Saleme <LSaleme@SantaClaraCA.gov>; Yashraj Bhatnagar <YBhatnagar@Santaclaraca.gov>; Qian Huang <QHuang@Santaclaraca.gov>; Yuki Ikezi <YIkezi@SantaClaraCA.gov>; Ricci Herro <RHerro@Santaclaraca.gov>; Nancy Biagini <NBiagini@SantaClaraCA.gov>

Subject: Patrick Henry Drive Specific Plan

Dear Councilmembers,

Please see the attached, for your consideration. We request this to be submitted for the planning commission meeting on Jan 26th

In Solidarity,

Dylan Boldt
President
Silicon Valley MEPS




Silicon Valley MEPS

President

Dylan Boldt
UA Local 483

Treasurer

Dominic Torreano
SMW Local 104

Trustees

Dan Rodriguez
IBEW Local 332

Eric Mussynski
UA Local 393

Rick Werner
SMW Local 104

Board of Directors

Will Smith
IBEW Local 332

Scott Reese
UA Local 393

Erica Valentine
UA Local 393

To: Mayor and City Council
From: Dylan Boldt

Re: The Promise of the Patrick Henry Drive Specific Plan

On behalf of the MEPS of Silicon Valley Group we write in representation of several thousand working families of the IBEW Local 332, SMART Local 104, UA Plumbers Union Local 393, and Sprinkler Fitters Local 483. Our members are residents who live in and near the City of Santa Clara.

We applaud and support the City of Santa Clara for the forward-looking vision the Planning Commission and City Council is taking in planning the future urban development needs of Santa Clara in the new Patrick Henry Specific Plan. The focus on both housing and employment generating land uses holds the promise of a vibrant future. However, we have concern that the plan as written fails to ensure that the **full benefits** related to the community in the construction of these projects are at risk. Given the billions of dollars of investment capital this project will attract the **full benefits** must address and consider local workforce at the forefront of planning to avoid extensive Green House Gas emissions and Housing/Job imbalance when considering the planning and permitting and building of the Patrick Henry Specific Plan. Therefore, we urge the planning commission to consider the construction workforce in parallel with community benefits to develop a responsible economic and local workforce vibrancy plan by considering the following:

- Will this project ensure alignment with the state goals to support pre-apprenticeship and apprenticeship of skilled and trained workers?
- Will the construction workers that are employed to build the project be paid a livable wage?
- Will the workers be treated with equity by ensuring employers provide medical benefits versus shifting the burden of healthcare to existing taxpayers subsidized government health care?
- Will this project put safety as a priority by utilizing skilled, trained, and experienced workers?
- "Will the local workforce development needs be considered, in light of the opportunity to create hundreds of jobs and training opportunities for Santa Clara youth, minorities and at-risk workers? "Will the buildings be built responsibly with highly trained, skilled, and experienced workers that will reduce errors and

omissions that ultimately conflict with state and federal sustainability, air quality, and goals of the state and nation?

- Will the City gain the benefit of the millions in sales tax revenue a local workforce will spend during and after the construction of these projects?

In lieu of public policy intervention it is likely few apprentices enrolled in State of California approved programs will be employed in the build out of the Plan.

To help ensure our community gains the benefits in needs with the passage of the Plan, we are proposing the following modification to the Specific Plan Planning Principles:

3.2.2 Planning Principles of Santa Clara (Page 40)

The existing plan has six principles; we ask that you consider adding the following seventh planning principles to draw on community and stakeholder engagement that also support Santa Clara General Plan vision and policies. The principles respond to unique PHD Specific Plan Area assets and opportunities and ensure the resulting community will reflect the priorities, values, and vision of the Santa Clara community.

New: 7. Building a Vibrant Middle Class

Encourage the use of a local construction workforce and local business sourcing in the build out within the Plan area. The employment of a local construction workforce that pays family supporting wages will generate sales tax revenue for the City as those wages are recirculated within the City's business community. The availability of a trained construction workforce is essential for the success in implementing the Plan therefore the employment of apprentices in State of California approved training programs will also be encouraged.

We look forward to discussing with you these proposed changes in the Plan.

Communities throughout the Bay Area have placed similar language in their planning documents to promote and sustain a vibrant local economy.

Sincerely,



Dylan Boldt
President



Buchalter

January 24, 2022

VIA E-MAIL (JDAVIDSON@SANTACLARACA.GOV)

John Davidson
Senior Planner
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Patrick Henry Drive Specific Plan and Final EIR (SCH # 2019120515)

Dear Mr. Davidson:

As you know, O2Micro owns the parcel located at 3118 Patrick Henry Drive, Santa Clara, California ("O2Micro Property") in the southern portion of the Patrick Henry Drive Specific Plan (the "PHD Specific Plan") area. The City of Santa Clara ("City") included various stakeholders in its planning process and identified O2Micro as Stakeholder #6 for the Specific Plan review process. Buchalter, a Professional Corporation, represents O2Micro as land use counsel for the development of the O2Micro Property.

Thank you for forwarding the City's Final Environmental Impact Report ("Final EIR") addressing some of our comments on the Draft Environmental Impact Report ("Draft EIR") for the PHD Specific Plan. We understand that the City also recently released the Final Specific Plan in January, 2022¹. As we have advised you previously, O2Micro remains concerned with the Specific Plan's proposed roadway connection across the O2Micro Property to Mission College Boulevard on the Mission College Campus (the "Road Connector"). This concern has not changed.

¹ It appears that the City released a version of the Final Specific Plan as a "full draft" Specific Plan. For purposes of our comments, we have referred to the Specific Plan as the "final."

buchalter.com

Los Angeles
Napa Valley
Orange County
Portland
Sacramento
Salt Lake City
San Diego
San Francisco
Scottsdale
Seattle

John Davidson
January 24, 2022
Page 2

The Final PHD Specific Plan and Final EIR should be revised to eliminate the Road Connector Option Because Mission College Rejected It.

The City released for public review the Final PHD EIR on January 12, 2022. Unfortunately, however, the Final EIR and the Final PHD Specific Plan fail to accurately and consistently depict the circulation network in light of the recent action of the West Valley-Mission Community College District Board of Trustees (the “Board of Trustees”). As you know, the Board of Trustees governs development on the Mission College Campus. At the December 21, 2021 meeting of the Board of Trustees, the Board unanimously rejected the PHD Specific Plan Road Connector option described in the Specific Plan and Draft EIR. Although the Final EIR acknowledged that the Road Connector cannot be constructed if rejected by “Mission College” (i.e. the Board of Trustees), the Final EIR failed to report that the Board of Trustees *already rejected* the Road Connector option. (See PHD Specific Plan Final EIR, pp. 3-10, 3-25, 3-46.) Since the Road Connector cannot be constructed without Mission College’s consent, the Road Connector option is infeasible. Thus, the City’s only option is to remove the Road Connector option from the Final PHD EIR and Specific Plan and eliminate the Road Connector from O2Micro’s Property.

To continue depicting the Road Connector across the O2Micro Property in the EIR and Specific Plan is confusing, misleading and meaningless given the rejection by the Board of Trustees. It is confusing because the Final PHD Specific Plan and the Final EIR flipped the preferred option so it is now the alternative option but they both still show an option with the Road Connector even though the Board of Trustees rejected the Road Connector. Any Road Connector from the southern portion of the Specific Plan area through Mission College as shown in the Final EIR and Specific Plan (be it the preferred land plan or the option) would result in a proverbial “road to nowhere.” It is misleading and meaningless because the agency responsible for approving it has rejected this option. Therefore, it is not a feasible option and the Road Connector and any references to “potential future vehicle connection” should be eliminated from the Specific Plan and EIR as an alternative for the land plan circulation system.

The Final PHD Specific Plan and Final PHD EIR No Road Connector Option should be revised so that the open space on the O2Micro Property equals the open space on the adjacent Summerhill Property.

We appreciate the City’s replacement of the Road Connector option with the No Road Connector option as the preferred land plan in light of the Board of Trustee’s denial of the Road Connector through the Mission College campus. We request that the City size the proposed open space depicted along the eastern boundary of the O2Micro Property so that it is equivalent to the open space on the Summerhill property next door. This would be a fair and equitable

John Davidson
January 24, 2022
Page 3

distribution of open space and public amenities consistent with the development contemplated on both properties.

The Final EIR and Final Specific Plan Exhibits should be revised to remove the Road Connector.

At this point, and given the Board of Trustee's rejection of the Road Connector, the City's sole option is to eliminate the roadway across the O2Micro Property from the Specific Plan and the EIR, rather than continuing to show it in the Specific Plan and the EIR. By retaining this "road to nowhere" (as it is still shown on the preferred Land Use Plan in Figure 3.6 of the EIR) creates confusion.

Given the Board of Trustee's rejection of the Road Connector, the PHD Specific Plan can only remain consistent with the Final EIR if the City removes the Road Connector from the O2Micro Property. Given the concerns O2Micro has raised in writing on numerous occasions², which are incorporated herein by reference, we respectfully request that the City revise the PHD Specific Plan and the Final EIR to make the documents consistent and remove this "road to nowhere" on the O2 Micro Property. Specifically, this includes, but is not limited to, removal of references to the Road Connector or "potential future vehicle connection" from the following exhibits in the Final PHD Specific Plan and Final EIR:

- Final PHD Specific Plan:
 - Figure 4.2-ALT (Urban Design Framework);
 - Figure 4.3A-ALT (Land Use Plan);
 - Figure 4.3B-ALT (Ground Floor Activation);
 - Figure 4.3C-ALT (Building Height);
 - Figure 4.5-ALT (Parks and Greenways);
 - Figure 4.6.2-ALT (Circulation);
 - Figure 4.6.2.1A-ALT (Street Types and Existing Easements);
 - Figure 4.6.2.1B-ALT (Vehicular Network);
 - Figure 4.6.2.2-ALT (Pedestrian and Bicycle Network);
 - Key map on page 125; and
 - Key map on page 130;
- PHD Specific Plan Final EIR:
 - Figure 3.6 (Land Use Plan);
 - Figure 3.7 (Urban Design Framework); and
 - Figure 3.8 (Building Height)

² Letters from O2Micro or Buchalter on O2Micro's behalf dated 3/1/2021, 3/31/2021, 9/13/2021, 12/21/2021 and 12/22/2021.

John Davidson
January 24, 2022
Page 4

It may be easier and result in less confusion to simply delete all exhibits illustrating the Road Connector Option including Figures 3.6, 3.7 and 3.8 on pages 134, 136 and 138 of the Final EIR. This change could be explained in the Text Revisions chapter in the Final EIR.

Similarly, the following figures showing the No Road Connector option also should be revised to illustrate equal size of the open space on the O2Micro and Summerhill Properties:

- Figure 4.2 (Urban Design Framework);
- Figure 4.3A (Land Use Plan);
- Figure 4.3B (Ground Floor Activation)
- Figure 4.3C (Building Height);
- Figure 4.5 (Parks and Greenways);
- Figure 4.6.2 (Circulation);
- Figure 4.6.2.1B (Vehicular Network);
- Figure 4.6.2.2 (Pedestrian and Bicycle Network);

The Final EIR and Final Specific Plan should be revised to change the 8,000 square feet of retail use to flex space.

O2Micro requests that the City revise the Specific Plan and Final EIR to change the retail use to flex use per our prior comments on the Draft EIR. The following figures should be revised, accordingly:

- Final PHD Specific Plan and Final PHD EIR, Figure 4.2 (Urban Design Framework);
- Final PHD Specific Plan and Final PHD EIR, Figure 4.2-Alt (Urban Design Framework);
- Final PHD Specific Plan and Final PHD EIR, Figure 4.3B (Ground Floor Activation);
- Final EIR, Figure 4.3B-Alt (Ground Floor Activation);
- Final EIR, Figure 3.7 (Urban Design Framework); and
- Final EIR, Figure 3.7-A (Urban Design Framework – No Connection to Mission College Blvd).

John Davidson
January 24, 2022
Page 5

We hope to work with the City on a mutually acceptable plan that meets the community's interests without imposing greater impacts to O2Micro. We look forward to the City's certification of the Final EIR and approval of the Final PHD Specific Plan.

Sincerely,

BUCHALTER
A Professional Corporation

By 

Alicia Guerra

AG:nj

cc: Xander Abbe
Reena Brilliot
Lynn Lin
Yimin Zimmerer
Jane Zhang

7.3 TRANSPORTATION DEMAND MANAGEMENT

Transportation Demand Management (TDM) consists of a combination of programs, policies, and infrastructure projects designed to reduce overall vehicle trips and associated parking demand. TDM seeks to provide incentives and options for PHD residents and employees to choose alternative modes such as walking, bicycling, transit, or ridesharing.

The City of Santa Clara's 2010-2035 General Plan Update includes goals and policies related to transportation demand management (TDM) for Specific Plans. These include land use and site design strategies to reduce reliance on automobile trips and reduce VMT. Implementing TDM measures in the PHD Specific Plan Area must be consistent with these General Plan policies and the requirements of the City's Climate Action Plan (CAP). This Specific Plan requires a vehicle miles traveled (VMT) reduction of twenty percent over the baseline established in the project traffic analysis, including ten percent through TDM measures.

The PHD Specific Plan includes land use, mobility and site design measures that support walking, biking, transit, and other alternative transportation choices. In addition to the location and mix of uses in the PHD Specific Plan Area, TDM measures ~~must be~~ [for each specific development proposal pursued under the PHD Specific Plan must be incorporated into a TDM Plan \(see Section 7.3.3 below\) to be](#) used to minimize single-occupancy vehicle trips and to reduce VMT by at least 10%.

The PHD TDM program outlined below includes measures that are applicable to the entire PHD Specific Plan Area; parcel-specific requirements; and a menu of optional measures that can be employed to help property owners [and developers pursuing specific development proposals under the PHD Specific Plan to help](#) achieve TDM goals.

7.3.1 Transportation Management Agency Association

Establish a privately funded and administered Transportation Management Association (TMA) for the PHD Specific Plan Area or join in a TMA for the North Santa Clara area (comprising neighborhoods north of Highway 101) led by property owners [that are pursuing specific development proposals within the PHD Specific Plan area](#), employers or other entities. ~~TMA's can~~ [The main purpose of the TMA is to fund and operate the local shuttle service or micro-transit solution \(see 7.3.2 below\), and may help to](#) implement, coordinate and manage VMT-reduction programs, [as determined appropriate by the TMA members](#), between multiple properties and lead information and marketing campaigns to support behavior change.

Property owners [pursuing specific development proposals under the PHD Specific Plan](#) must prepare formation documents for a new TMA. [The formation documents necessary to establish the TMA under applicable laws and regulations must be completed and approved by the City Manager](#) prior to the first Building Permit issuance for new construction implementing the PHD Specific Plan.

~~If this is not feasible to form a TMA or prepare formation documents on this timeline~~
Property owners pursuing specific development proposals under the PHD Specific Plan shall be required to join the TMA.

~~Prior to the commencement of operation of the TMA, the~~ property owners pursuing specific development proposals under the PHD Specific Plan must propose and fulfill other temporary substantial TDM programs or incentives, such as a three-year VTA Smart Pass for all residents, to serve as a stopgap until the TMA ~~is established~~
commences operation pursuant to 7.3.1. This temporary proposal must be prepared to the satisfaction of the City Manager prior to issuance of the first Building Permit issuance for new construction implementing the PHD Specific Plan.

In connection with the completion of the formation documents for the TMA, the property owners pursuing specific development proposals under the PHD Specific Plan shall obtain an analysis prepared by a qualified professional and submit the analysis to the City ~~prior to activation of the~~ Manager for approval (TMA Analysis). The purpose of this analysis ~~must examine~~ is to confirm the potential ~~performance of~~ market within the PHD Specific Plan area for a local shuttle program or micro-transit solution (as described in section 7.3.2) and provide recommendations for efficient, cost effective service delivery. The City Manager shall determine whether the local shuttle or micro-transit solution will be implemented by the TMA.

Notwithstanding any other provision of this section, the TMA must be ~~activated~~ formed prior to the issuance of a Building Permit for the 3,300th unit in the PHD Specific Plan Area or prior to the issuance of a Building Permit for the 1,500th unit in the PHD Specific Plan Area when a minimum of 5,000 units (inclusive of units in the PHD Specific Plan issued Building Permits) contributing to the

TMA funding and/or administration have been issued Building Permits.

The individual property owner(s) that actually fund the preparation and completion of the formation documents pursuant to this Section 7.3.1 shall receive a credit/reimbursement for all costs associated therewith via the PHD Specific Plan Impact Fee.

7.3.2 Local Shuttle

The TMA shall ~~establish~~ fund and operate a local shuttle program or micro-transit solution, consistent with the approved TMA Analysis, that connects residents with commercial, transit, and employment centers. This service shall be funded ~~and administered by all~~ by the project's ~~in~~ owners pursuing specific development proposals under the PHD Specific Plan ~~Area~~, with said costs being proportionately shared. The operation can be incrementally expanded with other developments in North Santa Clara through expanded participation by property owners and developers outside of the PHD Specific Plan, including voluntary participation of other key North Santa Clara destinations and employers.

The TMA must commence operations and shuttle or micro-transit solution service ~~will be triggered~~ prior to the issuance of a Certificate of Occupancy for the 3,300th unit of the PHD Specific Plan Area or prior to the issuance of the Certificate of Occupancy for the 1,500th unit in PHD Specific Plan Area when a minimum of 5,000 units (inclusive of units in PHD Specific Plan issued Certificates of Occupancy)

contributing to the TMA funding and/or administration that have been issued Certificates of Occupancy. Prior to the completion of the first four years of shuttle or micro transit operation, the TMA will be evaluated by the City and alternative methods of single vehicle trip reduction could be considered with the objective of continuing to ensure the shuttle or micro-transit solution provides efficient, cost effective service delivery.

7.3.3 Required Parcel-Specific TDM Elements

~~At a minimum, Each parcel must provide the following TDM~~property owner or developer must adhere to this Section 7.3.3 in connection with its specific development proposal being pursued under the PHD Specific Plan. These programs and measures. ~~Property owners and/or developers~~ can be adopted and implemented ~~these~~ on an individual basis, or through collaboration and coordination at the Specific Plan Area level.

TDM PLANS

~~Developers and/or~~Each property owner pursuing a specific development proposal under the PHD Specific Plan must submit a TDM Plan that includes, for example, mode-share goals, planned TDM programs, tools and processes for monitoring and reporting on travel behavior as described further below, which, when implemented, will satisfy the 10% reduction requirement noted above. The TDM Plan must be approved by the Community Development Director prior to the issuance of building permits.

INFORMATION AND MARKETING

Each ~~property~~ [TDM Plan](#) must provide information and marketing to residents and/or employees to build awareness of TDM programs, amenities (e.g., bike lockers and showers) and incentives. Information on transportation options and/or links to appropriate websites, apps and other resources (e.g., 511) must be:

- Provided to all prospective residents and employees
- Included in resident and employee welcome or orientation materials
- Posted in prominent locations within buildings (e.g., elevators, shared common spaces) and online (e.g., on tenant portals)

BICYCLE PARKING

~~Developments~~ [Each TDM Plan](#) must provide both short- and long-term bicycle parking in all buildings as described in Section 5.2.4.6 of this plan. Bicycle parking locations must be located in convenient, secure and prominent locations in

TRANSPORTATION COORDINATOR

[Each TDM Plan must](#) Identify an individual or job classification that will serve as the property's transportation coordinator and if this will be a full or part-time position. ~~All applicants~~ [The TDM Plan](#) must describe the duties and responsibilities of the transportation coordinator. Typical roles of transportation coordinators include:

- Providing information about transit options and passes

- Marketing TDM programs, including distribution of orientation materials for new residents/employees
- Distributing transportation news and commuter alerts
- Assisting with rideshare matching
- Managing travel surveys to track trends and develop new commute programs
- Coordinating services with vendors, partners and transit providers



Ride Sharing Option

Summary report: Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 2/14/2022 11:11:54 AM	
Style name: MSR Default	
Intelligent Table Comparison: Active	
Original DMS: iw://AWS-DMS01/iManage/2572378/1	
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Changes:	
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Delete	29
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	82

Patrick Henry Drive Environmental Impact Report:

[Patrick Henry Drive Specific Plan | Environmental Review/CEQA | City of Santa Clara
\(santaclaraca.gov\)](#)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA APPROVING AND CERTIFYING A FINAL
ENVIRONMENTAL IMPACT REPORT, MAKING FINDINGS
WITH RESPECT THERETO, AND ADOPTING A STATEMENT
OF OVERRIDING CONSIDERATIONS AND A MITIGATION
MONITORING AND REPORTING PROGRAM FOR THE
PATRICK HENRY DRIVE SPECIFIC PLAN**

SCH #2019120515

PLN2019-14257 (CEQA Resolution, Specific Plan, General Plan Amendment, and Zoning
Amendment)

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

WHEREAS, the City of Santa Clara (the “City”) is contemplating the adoption of the Patrick Henry Drive Specific Plan (the “Project”), a specific plan for a transit-oriented pedestrian-friendly neighborhood of up to 12,000 residential units with supportive retail uses, located on approximately 62 net acres of land located within one-half mile of the Tasman Drive light rail line that are currently developed with industrial uses;

WHEREAS, the proposed Specific Plan also includes an alternative development scenario that allows for up to 10,300 residential units, with up to 785,000 square feet of office space, and 310,000 square feet of other non-residential uses; and

WHEREAS, under the proposed Specific Plan, the Patrick Henry Drive area is intended to be a walkable urban neighborhood, with parking reflective of a variety of available transit modes, including bicycle parking; and

WHEREAS, the Patrick Henry Drive area will include a variety of forms of urban housing, including podium buildings, residential towers, and residential mixed-use buildings;

WHEREAS, the proposed Patrick Henry Drive Specific Plan is consistent with the Goals and Policies of the Future Focus Areas section in the General Plan;

WHEREAS, as a part of implementing the Specific Plan, the City is contemplating the adoption of a General Plan Amendment (“GPA”) to amend the General Plan land use diagram by changing the existing land use designations of the Project Site from Light Industrial to a variety

of residential designations that would allow dwelling unit densities of 51 to 250 Dwelling Units per acre, with supportive retail uses, along with a High Density flex designation that would allow either residential densities of between 60 to 149 DU/AC, or a non-residential Floor Area Ratio (FAR) of up to 2.0;

WHEREAS, the GPA includes an amendment to General Plan Appendix 8.13 (the Climate Action Plan) setting forth vehicle trip reduction targets for the new land use designations applicable to the Patrick Henry Drive area; and

WHEREAS, the City is contemplating the amendment of SCCC Title 18, the Zoning Code to create new Patrick Henry Drive zoning districts that implement and are consistent with the proposed General Plan designations, and to apply those zoning designations across the Project Site;

WHEREAS, Santa Clara City Charter Section 1007 and Government Code Section 65353 require that the Planning Commission provide input to the City Council on any proposed General Plan Amendment;

WHEREAS, the Project approvals will include a resolution certifying the EIR; a resolution approving the General Plan Amendment; a resolution approving the Patrick Henry Drive Specific Plan; and an ordinance amending the Zoning Code to correspond to the Specific Plan (collectively, the “Approvals”);

WHEREAS, implementation of the Project will also require separate applications for individual development approvals and Tentative and/or Vesting Tentative Subdivision Maps for City review and approval that are not part of this application;

WHEREAS, on December 19, 2019, the City distributed a Notice of Preparation of a Draft Environmental Impact Report (“DEIR”) for the Patrick Henry Drive Specific Plan that contemplated either up to 12,000 net new residential units and 310,000 net new square feet of non-residential uses, including retail and education facilities, or a second scenario which would substitute office for high-density residential along the east edge of the Plan Area, amounting to

an approximate total of 10,300 net new residential units, 785,000 net new square feet of office, and 310,000 net new square feet of other nonresidential uses; and

WHEREAS, on December 19, 2019, the City posted the Notice of Preparation at the Santa Clara County Clerk's office, soliciting guidance on the scope and content of the environmental information to be included in the DEIR;

WHEREAS, on January 8, 2020, the City hosted a public scoping meeting to obtain community input on the scope and content of the DEIR;

WHEREAS, the DEIR was prepared in accordance with CEQA and the City circulated copies of the DEIR and Notice of Availability to the public agencies which have jurisdiction by law with respect to the Project, as well as to other interested persons, organizations and agencies, and the City sought the comments of such persons, organizations and agencies on July 30, 2021 for a 45-day review period, ending on September 13, 2021 (the "Comment Period");

WHEREAS, the City prepared written responses to the comments received during the Comment Period and included those responses in a Final Environmental Impact Report ("FEIR"). The FEIR consists of a list of agencies and organizations to whom the DEIR was sent, a list of the comment letters received on the DEIR, revisions to the text of the DEIR, responses to comments received on the DEIR, and copies of comment letters. The FEIR was distributed to commenting parties and to the public on January 12, 2022;

WHEREAS, the DEIR and FEIR constitute the EIR for the Project;

WHEREAS, the EIR identified certain significant and potentially significant adverse effects on the environment that would be caused by the Project as proposed;

WHEREAS, the EIR outlined various mitigation measures that would substantially lessen or avoid the Project's significant effects on the environment, as well as alternatives to the Project as proposed that would provide some environmental advantages;

WHEREAS, the City is required, pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 et seq.), to adopt all feasible mitigation measures or feasible

project alternatives that can substantially lessen or avoid any significant environmental effects of the Project;

WHEREAS, the EIR analyzed a “No Project” alternative for the Patrick Henry Drive area that considers full build-out under the existing land use designation (No Project/Light Industrial Development), along with an All Commercial Office Development alternative, an All Residential Development Alternative and a Reduced Overall Development Alternative;

WHEREAS, significant and unavoidable air quality, historic resources, and traffic noise impacts would remain with the proposed project;

WHEREAS, Public Resources Code § 21081, subdivision (a) requires a lead agency, before approving a project for which an EIR has been prepared and certified, to adopt findings specifying whether mitigation measures and, in some instances, alternatives discussed in the EIR, have been adopted or rejected as infeasible;

WHEREAS, the “CEQA Findings” attached to this Resolution is a set of Findings of Fact and a Statement of Overriding Considerations prepared in order to satisfy the requirements of Public Resources Code § 21081, subdivision (a);

WHEREAS, on January 26, 2022, the Planning Commission conducted a duly noticed public hearing, at the conclusion of which, the Commission recommended that the City Council adopt the EIR, Specific Plan, associated General Plan Amendments, and Zoning Ordinance Amendment (the “Project”);

WHEREAS, the City Council has determined that none of the alternatives addressed in the EIR, would be both feasible and environmentally superior to the Project as proposed. Neither the No Project alternative, nor the Reduced Development alternative, nor the All Residential nor the All Commercial alternatives would sufficiently satisfy the Project Objectives. The details supporting these determinations are set forth in the CEQA Findings;

WHEREAS, in taking this course, the City Council has acted consistent with the CEQA mandate to look to project mitigations and/or alternatives as a means of substantially lessening or avoiding the environmental effects of projects as proposed;

WHEREAS, many of the significant and potentially significant environmental effects associated with the Project can either be substantially lessened or avoided through the inclusion of mitigation measures proposed in the EIR;

WHEREAS, the City Council intends to adopt all mitigation measures set forth in the EIR;

WHEREAS, the significant effects that cannot be avoided or substantially lessened by the adoption of feasible mitigation measures will necessarily remain significant and unavoidable;

WHEREAS, as detailed in the CEQA Findings, the City Council has determined that, despite the occurrence of significant unavoidable environmental effects associated with the Project, as mitigated and adopted, there exist certain overriding economic, social and other considerations for approving the Project which justify the occurrence of those impacts and render them acceptable;

WHEREAS, notice of the public hearing on the proposed project was published in the Santa Clara Weekly, a newspaper of general circulation for the City, on January 12, 2022;

WHEREAS, notices of the public hearing on the proposed project were mailed to all property owners within 500 feet of the Project Site, according to the most recent assessor's roll, on January 13, 2022; and

WHEREAS, the City Council reviewed the EIR and Mitigation Monitoring and Reporting Program, attached as the "MMRP", as well as a set of CEQA Findings and a Statement of Overriding Considerations, in accordance with the requirements of CEQA, along with the City Staff report pertaining to the EIR for the Project (SCH #2019120515), and all evidence received at a duly noticed public hearing on March 22, 2022. All of these documents and evidence are incorporated herein by reference into this Resolution.

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

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the City Council hereby finds that the EIR has been completed in compliance with CEQA.
3. That the City Council hereby finds the EIR has been presented to the City Council, which reviewed and considered the information and analysis contained therein before making its determination, and that the EIR reflects the Council's independent judgment and analysis.
4. That the City Council hereby finds, pursuant to Public Resources Code Section 21081 and California Code of Regulations, Title 14, Section 15091, that many of the proposed mitigation measures described in the EIR are feasible, and therefore will become binding upon the City and affected landowners and their assigns or successors in interest as conditions of approval when the Project is approved.
5. That the City Council hereby finds that none of the Project Alternatives set forth in the EIR can feasibly substantially lessen or avoid those significant adverse environmental effects not otherwise lessened or avoided by the adoption of all feasible mitigation measures.
6. That, in order to comply with Public Resources Code Section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program as set forth in the attached "MMRP". The MMRP is designed to ensure that, during project implementation, the City, affected landowners, their assigns and successors in interest and any other responsible parties comply with the feasible mitigation measures identified. The MMRP identifies, for each mitigation measure, the action to be taken and the party responsible for implementation.
7. That the City Council hereby finds that the EIR set forth program and cumulative environmental impacts that are significant and unavoidable that cannot be mitigated or avoided through the adoption of feasible mitigation measures or feasible alternatives. As to these

impacts, the City Council finds that there exist certain overriding economic, social and other considerations for approving the Project that justify the occurrence of those impacts, as detailed in the “CEQA Findings” exhibit attached hereto.

8. Based on the findings set forth in this Resolution, the evidence in the City Staff Report, and the attached CEQA Findings, the City Council approves and certifies the EIR, makes findings concerning mitigation measures, adopts the MMRP, makes findings concerning alternatives and makes findings that there exist certain overriding economic, social and other considerations for approving the Project that justify the occurrence of those associated impacts and adopt the CEQA Findings and Statement of Overriding Considerations, all in accordance with CEQA for the Project.

9. The City Council hereby designates the Planning Division of the Community Development Department as the location for the documents and other material that constitute the record of proceedings upon which this decision is based, and designates the Director of Community Development as the custodian of records.

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10. 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 COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 22ND DAY OF MARCH, 2022, 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. Mitigation Monitoring and Reporting Program (MMRP)
2. CEQA findings and Statement of Overriding Considerations

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**FINDINGS OF FACT REGARDING THE ENVIRONMENTAL IMPACT REPORT
FOR THE PATRICK HENRY DRIVE SPECIFIC PLAN PROJECT**

City of Santa Clara Project No. PLN2019-14257

(EIR, Specific Plan, General Plan Amendment, and Zoning Amendment)

SCH # 2019120515

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

**FINDINGS OF FACT REGARDING THE ENVIRONMENTAL IMPACT REPORT
(STATE CLEARINGHOUSE NUMBER 2019120515) FOR THE PATRICK HENRY
DRIVE SPECIFIC PLAN PROJECT (CITY PROJECT NUMBER PLN2019-14257)**

I. INTRODUCTION

The California Environmental Quality Act of 1970 (“CEQA”), Public Resources Code section 21081 *et seq*, and the Guidelines for Implementation for the California Environmental Quality Act, Title 14 California Code of Regulations, section 15091 *et seq* (“CEQA Guidelines”) require that a public agency consider the environmental impacts of a project before a project is approved and make specific findings. Public Resources Code section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]” The same statute provides that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.” Section 21002 goes on to provide that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

The mandate and principles announced in Public Resources Code section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required. For each significant environmental effect identified in an EIR for a project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The CEQA Guidelines section 15091 specifically provides as follows:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
 - 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the EIR.
 - 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can or should be adopted by such other agency.
 - 3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers,

make infeasible the mitigation measures or project alternatives identified in the final EIR.

- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.
- (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.
- (e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- (f) A statement made pursuant to section 15093 does not substitute for the findings required by this section.

CEQA Guidelines section 15093 further provides as follows:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."
- (b) Where the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/ or other information in the record. This statement of overriding considerations shall be supported by substantial evidence in the record.
- (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to section 15091.

Public Resources Code section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors.” CEQA Guidelines section 15364 adds another factor: “legal” considerations. See also *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 565 (*Goleta II*). The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417; *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1506-1509 (court upholds CEQA findings rejecting alternatives in reliance on applicant’s project objectives); see also *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 (CNPS) (“an alternative ‘may be found infeasible on the ground it is inconsistent with the project objectives as long as the finding is supported by substantial evidence in the record’”) (quoting Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* [Cont.Ed.Bar 2d ed. 2009] (Kostka), § 17.39, p. 825); *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165, 1166 (*Bay-Delta*) (“[i]n the CALFED program, feasibility is strongly linked to achievement of each of the primary project objectives”; “a lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal”). Moreover, “‘feasibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.” *City of Del Mar, supra*, 133 Cal.App.3d at p. 417; see also *CNPS, supra*, 177 Cal.App.4th at p. 1001 (“an alternative that ‘is impractical or undesirable from a policy standpoint’ may be rejected as infeasible”) (quoting *Kostka, supra*, § 17.29, p. 824); *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 17.

For purposes of these findings, the term “avoid” refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less than significant level. Although CEQA Guidelines section 15091 requires only that approving agencies specify that a particular significant effect is “avoid[ed] or substantially lessen[ed],” these findings, for purposes of clarity, in each case will specify whether the effect in question has been “avoided” (i.e., reduced to a less than significant level).

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where such changes are infeasible or where the responsibility for modifying the project lies with some other agency. CEQA Guidelines § 15091(a), (b).

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project’s “benefits” rendered “acceptable” its “unavoidable adverse environmental effects.” CEQA Guidelines §§ 15093, 15043(b); see also Pub. Resources Code § 21081(b). The California Supreme Court has stated, “[t]he wisdom of approving . . . any development project, a delicate task which requires a

balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced.” *Goleta II, supra*, 52 Cal.3d at p. 576. The EIR (as defined below) for the Project (as defined below) concluded the Project would create significant and unavoidable impacts; thus, a Statement of Overriding Considerations is required.

These Findings of Fact (sometimes referred to herein as “Findings”) constitute the City of Santa Clara’s (City’s) evidentiary and policy bases for its decision to approve the Project in a manner consistent with the requirements of CEQA. To the extent that these Findings conclude that various mitigation measures outlined in the Final EIR are feasible and have not been modified, superseded or withdrawn, the City hereby binds itself to ensuring that these measures are implemented by the appropriate party(ies). These Findings, in other words, are not merely informational, but rather constitute a binding set of obligations that will come into effect when the City adopts a resolution approving the Project.

In addition, a Mitigation Monitoring and Reporting Program (“MMRP”) has been prepared for the Project, and is being approved by the City Council by the same Resolution that has adopted these Findings. The City will use the MMRP to track compliance with Project mitigation measures. The Mitigation Monitoring and Reporting Program will remain available for public review during the compliance period. The Final Mitigation Monitoring and Reporting Program is attached to and incorporated into the environmental document approval resolution and is approved in conjunction with certification of the EIR and adoption of these Findings of Fact.

Having received, reviewed, and considered the Draft Environmental Impact Report (“Draft EIR”) and the Final Environmental Impact Report (“Final EIR” and, together with the Draft EIR, the “EIR”) for the Patrick Henry Drive Specific Plan (the “Project”), State Clearinghouse (“SCH”) No. 2019120515, as well as other information in the record of proceedings on this matter, the City of Santa Clara City Council, in its capacity as the decision-making body of the CEQA Lead Agency hereby finds, determines, and declares the following Findings and Facts, in accordance with Section 21081 of the Public Resources Code.

These Findings set forth the environmental basis for the discretionary actions to be undertaken by the County for the development of the Project. These actions include the approval of the following for the Patrick Henry Drive Specific Plan Project:

- Environmental Impact report (SCH No. 2019120515)
- Patrick Henry Drive Specific Plan
- General Plan Amendment
- Zoning Amendment

A. Document Format

These Findings have been organized into the following sections:

- (1) Section I provides an introduction to these Findings.
- (2) Section II provides a summary of the Project, overview of the discretionary actions required for approval of the Project, and a statement of the Project's objectives.
- (3) Section III provides a summary of environmental review related to the Project and a summary of public participation in the environmental review for the Project
- (4) Section IV sets forth findings regarding the potential impact areas identified in the EIR. This section details findings for those impacts for which the County has determined that there is no impact or the impact is less than significant and thus no mitigation is required; findings regarding potentially significant environmental impacts identified in the EIR that the County has determined can be feasibly mitigated to a less than significant level through the imposition of mitigation measures; and findings regarding those significant or potentially significant environmental impacts identified in the EIR that will or may result from the Project and which the County has determined will remain significant and unavoidable, despite the identification and incorporation of all feasible mitigation measures.

In order to ensure compliance and implementation, all of the mitigation measures will be included in MMRP for the Project and adopted as conditions of the Project by the Lead Agency. Where potentially significant impacts can be reduced to a less than significant level through mitigation, these findings specify how those impacts would be reduced to an acceptable level.

- (5) Section V sets forth findings regarding alternatives to the Project
- (6) Section VI sets forth findings regarding the growth-inducing impacts of the Project.
- (7) Section VII sets forth findings regarding recirculation of the Draft EIR.
- (8) Section VIII sets forth findings regarding rejection of recommended mitigation measures.
- (9) Section IX contains the findings pursuant to Public Resources Code section 21082.1(c)(3).
- (10) Section X contains the Statement of Overriding Considerations for the Project pursuant to CEQA Guidelines section 15093.

B. Custodian and Location of Records

The Patrick Henry Drive Specific Plan Environmental Impact Report consists of:

1. Draft Environmental Impact Report (Draft EIR) and Appendices 25.1 through 25.6, dated July, 2021; and
2. Final Environmental Impact Report (Final EIR) dated December, 2021.

The following Findings of Fact are based in part on the information contained in EIR for the Project, as well as additional facts found in the complete record of proceedings. The EIR is hereby incorporated by reference and is available for review at Santa Clara City Hall, 1500 Warburton Avenue, Santa Clara, California, 95050 during normal business hours.

For the purposes of CEQA, and the findings herein set forth, the administrative record for the Project consists of those items listed in Public Resources Code Section 21167.6, subdivision (e). The record of proceedings for the City's decision on the Project consists of the following documents, at a minimum, which are incorporated by reference and made part of the record supporting these Findings:

- The NOP and all other public notices issued by the City in conjunction with the Project;
- The Draft EIR for the Project and all documents relied upon or incorporated by reference;
- All comments submitted by agencies or members of the public during the 45-day comment period on the Draft EIR;
- All comments and correspondence submitted to the City during the public comment period on the Draft EIR, in addition to all other timely comments on the Draft EIR;
- The Final EIR for the Project, including the Planning Commission staff report, minutes of the Planning Commission public hearing; City Council staff report; minutes of the City Council public hearing; comments received on the Draft EIR; the City's responses to those comments; technical appendices; and all documents relied upon or incorporated by reference;
- The MMRP for the Project;
- All findings and resolutions adopted by the City in connection with the Project, and all documents cited or referred to therein;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the Project prepared by the City, consultants to the City, or responsible or trustee agencies with respect to the City's compliance with the requirements of CEQA and with respect to the City's action on the Project;
- All documents submitted to the City by other public agencies or members of the public in connection with the Project, up through the close of the public hearing;
- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the City in connection with the Project;

- Any documentary or other evidence submitted to the City at such information sessions, public meetings and public hearings;
- All resolutions adopted by the City regarding the Project, and all staff reports, analyses, and summaries related to the adoption of those resolutions;
- The City's General Plan and applicable Specific Plans and all updates and related environmental analyses;
- Matters of common knowledge to the City, including, but not limited to Federal, State, and local laws and regulations;
- The City Code;
- Any documents expressly cited in these Findings, in addition to those cited above; and
- Any other materials required for the record of proceedings by Public Resources Code section 21167.6, subdivision (e).

The documents and other materials that constitute the administrative record for the City's actions related to the Project are at Santa Clara City Hall, 1500 Warburton Avenue, Santa Clara, California, 95050. The City is the custodian of the Administrative Record for the Project.

The City has relied on all of the documents listed above in reaching its decisions on the proposed Project, even if not every document was formally presented to the City Council or City Staff as part of the City files generated in connection with the Project. Without exception, any documents set forth above not found in the Project files fall into one of two categories. Many of them reflect prior planning or legislative decisions of which the City Council was aware in approving the Project. See *City of Santa Cruz v. Local Agency Formation Commission* (1978) 76 Cal.App.3d 381, 391-391; *Dominey v. Department of Personnel Administration* (1988) 205 Cal.App.3d 729, 738, fn. 6. Other documents influenced the expert advice provided to City Staff or consultants, who then provided advice to the Planning Commission and the City Council as final decision makers. For that reason, such documents form part of the underlying factual basis for the City's decisions relating to approval of the Project. See Pub. Resources Code § 21167.6(e)(10); *Browning-Ferris Industries v. City Council of City of San Jose* (1986) 181 Cal.App.3d 852, 866; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 153, 155.

II. PROJECT SUMMARY

A. Project Location

The Patrick Henry Drive Specific Plan covers approximately 73.59 acres and currently contains predominantly commercial uses such as research and development (R&D) and light industrial (electronics and computer software development). Other commercial uses include offices (professional services, architects, legal, and personnel/employment support) and a restaurant. In addition, there is a church in the southern part of the Plan Area.

The Patrick Henry Drive Specific Plan Area, much like the surrounding neighborhood, is characterized by several “superblocks” with ample surface parking, significant setbacks, and significant separation between buildings. The Plan Area is relatively flat and developed with buildings ranging in height from one and two stories, in the south and west, to four- and five-story buildings, in the east. The building stock was developed primarily in the 1970s and 1980s. The Plan Area is generally underutilized, and some buildings are vacant. There are no residential land uses, public parks, or historic structures located on-site. Private automobiles predominate the suburban streetscape environment that is defined by limited pedestrian and bicycle accessibility. Visible infrastructure on-site includes local streets and utilities, such as streetlights, as well as the Hetch Hetchy right-of-way that runs along the Plan Area’s northern border. Due to the large-lot industrial development pattern and limited number of roadways within the Plan Area, linkages and connectivity across the Plan Area are limited.

The proposed Patrick Henry Drive Specific Plan, which has been under development since 2018, enables the redevelopment of an approximately 76 acre industrial area (62 acres net) bounded by Mission College to the south, Great America Parkway to the East, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west. With its close proximity to the Tasman light rail line, the proposed Patrick Henry Drive Specific Plan includes a land use framework to develop the area into a transit-oriented neighborhood with up to 12,000 residential units and up to 310,000 square feet of non-residential uses. A second scenario would be the same as the first but would substitute office for high-density residential along the east edge of the Plan Area, amounting to an approximate total of 10,300 net new residential units, 785,000 net new square feet of office, and 310,000 net new square feet of other nonresidential uses.

The Patrick Henry Drive Area is identified as a Future Focus Area in Phase III of the City’s General Plan (2023-2030), and the PDHSP provides an opportunity for the City to reach housing goals identified in the City’s share of the state-required Regional Housing Needs Allocation (“RHNA”) and for meeting demand for housing that has resulted from job and retail growth in the City and region. The Specific Plan is a prerequisite to development of the Patrick Henry Drive Focus Area with residential uses. The Plan Area is currently classified Light Industrial in the Santa Clara General Plan and is designated in Phase III (2023-2030) of the General Plan for High Density Residential land use, which allows 37-50 du/ac. Parcels in the Plan Area are currently zoned Light Industrial (ML). On April 9, 2019, the City Council of the City of Santa Clara directed City staff to proceed with the preparation of a Specific Plan in advance of the Phase III time horizon due to significant developer interest in the area.

B. Project Description

With its close proximity to the Tasman light rail line, the proposed Patrick Henry Drive Specific Plan includes a land use framework to develop the area into a transit-oriented neighborhood with up to 12,000 residential units and up to 310,000 square feet of non-residential uses. A second scenario would be the same as the first but would substitute

office for high-density residential along the east edge of the Plan Area, amounting to an approximate total of 10,300 net new residential units, 785,000 net new square feet of office, and 310,000 net new square feet of other nonresidential uses.

The Plan area consists of an approximately 76-acre industrial area (62 acres net) bounded by Mission College to the south, Great America Parkway to the East, the Hetch-Hetchy right-of-way to the north, and Calabasas Creek to the west.

As the Plan area is located in the northern part of Santa Clara, it is generally proximate to a large number of employment uses, as well as the Santa Clara Youth Soccer Park, Levi's® Stadium, the City's convention center, the Great America theme park, and other potential major development projects along in northern Santa Clara, including Kylli immediately to the North, the Freedom Circle Focus Area/Greystar project across Great America Parkway, and the Related Santa Clara project and the Tasman East Specific Plan Area to the East on Tasman Drive.

C. Discretionary Actions

Implementation of the Project within the City will require several actions by the City, including:

- **Environmental Assessment:** To certify an FEIR that analyzes the environmental effects of the proposed Project.
- **General Plan Amendment:** To amend the Santa Clara General Plan, adopted by the City Council on November 16, 2010, to create the following land use designations:
 - Very High Density (51-100 du/ac)
 - Village Residential (60-150 du/ac)
 - Urban Village Residential (100-150 du/ac)
 - Urban Center Residential (120-250 du/ac); and
 - High Density Flex designation (60-150 du/ac or up to a 2.0 floor area ratio of commercial development).

The General Plan Amendment includes the amendment of the Land Use Diagram and text amendment (as well as amendments to the City's Climate Action Plan).

- **Specific Plan:** To adopt the Patrick Henry Drive Specific Plan, in order to regulate development through its development standards and regulations in conjunction with Title 18 of the Santa Clara City Code.
- **Zoning Amendment:** To amend the Santa Clara City Code of Chapter 18.27 of the Zoning Code, Regulations for PHD, the Patrick Henry Drive Zoning Districts, including development standards, allowed uses and parking requirements for the following zoning districts: R5 – Very High Density Residential, VR – Village Residential, UV – Urban Village, UC – Urban Center, and HD Flex – High Density Flex; Approval of these zoning amendments, together with adoption of the Specific Plan, would establish the land use regulations and development standards applicable to the Plan Area.

Prior to Project implementation, additional permits and/or approvals may be required from various governmental entities, including the following:

- Santa Clara Valley Transportation Authority (VTA)
- Santa Clara Water & Sewer Utilities Department
- Silicon Valley Power (SVP)
- County of Santa Clara Department of Environmental Health
- Santa Clara County Airport Land Use Commission (ALUC)
- San Francisco Bay Regional Water Quality Control Board (RWQCB)
- Bay Area Air Quality Management District (BAAQMD)
- Department of Toxic Substances Control (DTSC)
- California Department of Transportation (Caltrans)
- California Department of Fish and Wildlife (CDFW)
- United States Fish and Wildlife Service (USFWS)

D. Statement of Project Objectives

The statement of objectives sought by the Project and set forth in the Final EIR is provided as follows:

- Ensure an economically vibrant, safe, healthy, and sustainable neighborhood that supports a range of users, including residents, business owners, and visitors.
- Bring clarity and consistency to the regulation of individual development proposals within the [Patrick Henry Drive] PHD Specific Plan Area boundaries.
- Foster strong connectivity, access, and circulation for a mix of travel modes, including walking, cycling, driving, and transit.
- Plan parkland and open space standards consistent with City Code 17.35 to support a high quality of life within an urban environment.
- Provide community amenities and public facilities to support a “complete” neighborhood.
- Adopt infrastructure and funding plans to ensure infrastructure will adequately support planned densities and intensities.

- Support the City’s affordable housing goals by requiring 15 percent of all developed residential units to be affordable to households at or below 80 percent of the Average Median Income (AMI).
- Engage the entire community in a robust, creative, and ongoing participation process.

III. ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION

The Final EIR, dated January 2022, includes the Draft EIR dated July 2021, written comments on the Draft EIR that were received during the public review period, written responses to these comments, clarifications/changes to the Draft EIR, and the MMRP. In conformance with CEQA, the City conducted an extensive environmental review of the Project, as described below:

- The City issued a Notice of Preparation of a Draft Environmental Impact Report (“NOP”) on December 19, 2019, to federal, state, regional, and local government agencies and interested parties to solicit comments and to inform agencies and the public of the Project during a 30-day public review period that extended from December 19, 2019 to January 21, 2020.
- The Project, as it was envisioned in 2019, was described in the NOP; potential environmental effects associated with Project approval and implementation were identified; and agencies and the public were invited to review and comment on the Initial Study, NOP, and NOP mailing list.
- Based on the Notice of Preparation and responses, a determination was made that the EIR would contain a comprehensive analysis of the following environmental issues, identified in Appendix G of the CEQA Guidelines: aesthetics, air quality, biological resources, cultural and Historical resources (including Tribal Cultural Resources, geology and soils, greenhouse gas emissions and energy, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, population and housing, public services, recreation, transportation/traffic, and utilities and service systems.
- An Environmental Impact Report (EIR) was prepared for this project in accordance with the CEQA Guidelines. As required by CEQA, the EIR includes appropriate review, analysis, and mitigation measures for the environmental impacts of the proposed project. The Final EIR could be utilized by other permitting agencies in their capacity as Responsible and Trustee agencies under CEQA.
- A Draft EIR was prepared and circulated for a 45-day public review period, beginning on July 30, 2021, and ending on September 13, 2021. The Draft EIR was distributed to responsible and trustee agencies, other affected agencies, surrounding jurisdictions, interested parties, and other parties who requested a copy of the EIR in accordance with California Public Resources Code Section 20192.

- The Draft EIR was available for public review on the City's webpage and, during normal business hours, at City Hall located at 1500 Warburton Avenue, Santa Clara, CA, 95050. During this review period, the document was reviewed by various state, regional, and local agencies, as well as by interested organizations and individuals. Comment letters on the Draft EIR were received from 4 agencies and 1 law firm representing a property owner within the plan area. Comment letters and responses to comments are included in the FEIR, which was issued in January 2022.

IV. FINDINGS REGARDING PROJECT ENVIRONMENTAL EFFECTS

The following potentially significant impacts were analyzed in the EIR, and the effects of the Project were considered. For some impacts, the City has determined that the Project impacts have no impact on the environment or have a less than significant impact on the environment and thus no mitigation is required.

Other potentially significant impacts have been determined by the City to be reduced to a level of less than significant because of the environmental analysis of the Project and identification of project design features, compliance with existing laws, codes, and statutes, and the identification and incorporation of feasible mitigation measures. The City has thus found for these impacts – in accordance with CEQA section 21081(a)(1) and CEQA Guidelines section 15091(a)(1) – that “Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment. Where the City has determined – pursuant to CEQA section 21081(a)(2) and CEQA Guidelines section 15091(a)(2) – that “Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency,” it has also designated the impact as less than significant with mitigation.

Where, as a result of the environmental analysis of the Project, the City has determined that either (1) even with the identification of project design features, compliance with existing laws, codes and statutes, and/or the identification of feasible mitigation measures, potentially significant impacts cannot be reduced to a level of less than significant, or (2) no feasible mitigation measures or alternatives are available to mitigate the potentially significant impact, the City has found in accordance with CEQA section 21081(a)(3) and CEQA Guidelines section 15091(a)(3) that "Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report." These impacts have been designated significant and unavoidable.

A. Aesthetics

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

The Project would not substantially degrade the existing visual character or quality of the site and its surroundings. Existing, limited vistas within the Plan Area include views of distant hills, but due to the generally flat, urbanized nature of Santa Clara, these vistas are often blocked by buildings, trees, power poles, and walls. Public views of these features occasionally emerge along view corridors created by long, straight roads along the perimeter of the Plan Area (e.g., Great America Parkway) or selectively between buildings and other structures.

The Specific Plan would not result in significant impacts on the existing visual character and quality of the Plan Area and its surroundings, and the Specific Plan would not conflict with applicable zoning or other regulations governing scenic quality. The Specific Plan proposes new zoning and regulations governing scenic quality and, if approved, the development anticipated by the Specific Plan would be consistent with these new provisions. The Patrick Henry Drive Specific Plan would serve to achieve a coordinated, connected environment within the Plan Area while increasing land use intensity through frameworks and unified, context-sensitive design standards and guidelines, which would result in the efficient use of existing resources and infrastructure. Plan components are purposely designed to achieve and maintain a cohesive, compatible visual identity and sense of place in the Plan Area, as well as provide smooth transitions with adjacent neighborhoods and areas.

The Specific Plan would not significantly increase daytime or nighttime light or glare in a way that would adversely affect daytime or nighttime views in the area. Specific Plan lighting characteristics are not expected to represent a source of substantial new light or glare which would adversely affect views and vision. The area is already developed with urban uses that are sources of daytime and nighttime light and glare and does not contain uses sensitive to light or glare.

2. Project impacts determined to be less than significant with mitigation incorporated

None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

Buildout of the Plan Area would not substantially block views of scenic vistas or resources beyond existing conditions. Due to the distance between cumulative projects, and the intervening development, vegetation, and flat topography of the area, there is not

anticipated to be a cumulative impact to visual character. Projects in the City and adjoining jurisdictions are subject to architectural review, design guidelines and development standards, and municipal codes, including standards to prevent light and glare impacts. Thus, the Project would *not* cumulatively contribute to a significant visual impact.

B. Air Quality

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

Consistency with the 2017 Clean Air Plan. The Project would not conflict with or obstruct implementation of the applicable air quality plan. Implementation of the proposed Patrick Henry Drive Specific Plan would be consistent with and not hinder the implementation of any applicable 2017 Clean Air Plan Control Measures. In addition, the proposed Specific Plan's growth in service population would be greater than the increase in trip generation within the Planning Area, and the Specific Plan would not promote disparities in health risks. Based on the preceding analysis, the proposed Patrick Henry Drive Specific Plan would be consistent with the 2017 Clean Air Plan.

Criteria Pollutants. As described under Impact 5-2, the proposed Specific Plan would generate cumulatively considerable operational criteria air pollutant emissions for which the region is designated nonattainment; however, these operational criteria air pollutant emissions would not expose receptors to substantial operational pollutant concentrations. Aside from mobile source emissions, which are anticipated to become cleaner over time due to actions taken at the state and federal level, the next largest sources of criteria air pollutant emissions are anticipated to come from the use of consumer products and landscaping equipment. Neither of these sources would be used at the frequency nor magnitude required to result in criteria air pollutant emissions that would be harmful to one's health. Therefore, implementation of the proposed Specific Plan would not exacerbate or contribute to significant health risks at or in proximity of the Plan Area, nor would it increase the number of state or national ambient air quality standard exceedances (as shown in Table 5-3).

Odors. According to the BAAQMD's CEQA Air Quality Guidelines land uses associated with odor complaints include agricultural operations, wastewater treatment plants, landfills, and certain industrial operations (such as manufacturing uses that produce chemicals, paper, etc.). Implementation of the proposed Patrick Henry Drive Specific Plan would result in new residential, retail, commercial, office, and other community serving land uses. It would not permit the land uses identified in the BAAQMD's CEQA Air Quality Guidelines identified as generating odor. No impact would occur.

2. Project impacts determined to be less than significant with mitigation incorporated

(a) Potential Impact:

Impact 5-2: Result in a Cumulatively Considerable Net Increase in Criteria Pollutants for which the Region is Non-Attainment. Implementation of the Patrick Henry Drive Specific Plan could result in growth in the Plan Area that exceeds the level of growth accounted for in the City's General Plan and, therefore, could generate a cumulatively considerable net increase in criteria air pollutants for which the region is in non-attainment. This represents a potentially significant impact.

Construction activities related to the Project could result in an exceedance of applicable thresholds for criteria pollutants for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors) due to dust generation and emissions of the criteria pollutants such as Reactive Organic Gases (ROG), nitrogen oxides (NO_x), and particulate matter (PM).

Finding: Mitigation measures would reduce impacts due to cumulatively considerable net increases of criteria pollutants for which the region is non-attainment to less than significant levels. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

The Bay Area is non-attainment for ground level ozone and particulate matter of 2.5 microns or less (PM_{2.5}) under both the federal Clean Air Act and the California Clean Air Act. The area is also non-attainment for particulate matter of 10 microns or less (PM₁₀) under the California Clean Air Act. ROG and NO_x are precursor pollutants to ozone. Implementation of the Project would result in temporary emissions from construction activities associated with development, including demolition, site grading, asphalt paving, building construction, construction equipment, and architectural coating. These activities would create emissions of NO_x, ROG, and PM. Architectural coatings and application of asphalt pavement would release ROG. The combination of temporary dust from activities and diesel exhaust from construction equipment and related traffic may lead to an exceedance of BAAQMD's project-level thresholds for PM_{2.5} and/or PM₁₀. In addition, NO_x and ROG emissions may exceed the BAAQMD NO_x thresholds. Mitigation Measure 5-2A would reduce this impact to less than significant by requiring BMPs for during construction to reduce dust, emissions from idling, and construction emissions, and by requiring criteria pollutant quantification for individual development projects once details of those projects are available to ensure criteria pollutant emissions do not exceed BAAQMD's thresholds. This impact would thus be less than significant with implementation of **MM 5-2A, MM 5-2B, and MM5-2C**.

Mitigation Measures

The following mitigation measures shall be implemented on a project-by-project basis to control dust and reduce construction TAC and criteria pollutant emissions during construction:

Mitigation Measure 5-2A: Implement BAAQMD Basic Construction Mitigation Measures. The City shall require new development projects occurring under implementation of the Patrick Henry Drive Specific Plan to implement the BAAQMD's Basic Control Mitigation Measures to address fugitive dust emissions that would occur during earthmoving activities associated with project construction. These measures include:

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
4. All vehicle speeds on unpaved roads shall be limited to 15 mph.
5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
8. Post a publicly visible sign with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

Mitigation Measure 5-2B: Require a Project-level Construction Assessment for New Development Proposed Under Implementation of the Patrick Henry Drive Specific Plan. The City shall require applicants to submit a quantitative project-level construction criteria air pollutant and toxic air contaminant emissions analysis for future development proposed under implementation of the Patrick Henry Drive Specific Plan. The estimated construction criteria air pollutant and toxic air contaminant emissions shall be compared against the thresholds of significance maintained by the Bay Area Air Quality Management District (BAAQMD) and, if emissions are shown to be above BAAQMD thresholds, the City shall require the implementation of mitigation to reduce emissions below BAAQMD thresholds or to the maximum extent feasible. Mitigation measures to reduce emissions could include, but are not limited to:

- Selection of specific construction equipment (e.g., specialized pieces of

equipment with smaller engines or equipment that will be more efficient and reduce engine runtime);

- Requiring equipment to use alternative fuel sources (e.g., electric-powered and liquefied or compressed natural gas), meet cleaner emission standards (e.g., U.S. EPA Tier IV Final emissions standards for equipment greater than 50-horsepower), and/or utilizing added exhaust devices (e.g., Level 3 Diesel Particular Filter);
- Minimizing the idling time of diesel-powered construction equipment to two minutes;
- Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM;
- Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy-duty diesel engines; and
- Application of Low-VOC paints to interior and/or exterior surfaces (e.g., paints that meet SCAQMD Rule 1113 "Low-VOC" or "Super-Compliant" requirements).

Mitigation Measure 5-2C: Use Low- and Super Compliant VOC Architectural Coatings. The City shall require the use of Low- and Super-Compliant VOC Architectural Coatings in maintaining buildings in the Patrick Henry Drive Specific Plan Area through Covenants Conditions and Restrictions (CC&Rs) and Ground Lease. Developed parcels shall require within their CC&Rs and/or ground leases requirements for all future interior spaces to be repainted with architectural coatings that meet the "Low-VOC" or "Super-Compliant" requirements. "Low-VOC" refers to paints that meet the more stringent regulatory limits of South Coast Air Quality Management District AQMD Rule 1113. "Super-Compliant" refers to paints that have been reformulated to levels well below the "Low-VOC" limits.

3. Project impacts determined to be significant and unavoidable

- (a) Impact 5-3: Generate Toxic Air Contaminant Emissions that Expose Sensitive Receptors to Substantial Pollutant Concentrations During Construction.** Implementation of the Patrick Henry Drive Specific Plan would result in construction activities over the next approximately 20 years that generate toxic air contaminant emissions and could expose sensitive receptors to substantial pollutant concentrations. These activities represent a *potentially significant impact*.

Finding: There are no feasible and reasonable mitigation measures which would reduce this impact to a less than significant level. The City hereby determines that this impact would be *significant and unavoidable*.

Facts in Support of Finding

Mitigation Measure 5-2B would require the preparation of a project-specific air quality assessment to evaluate potential TAC construction emissions associated with the development project. Although future development projects would be required to implement Mitigation Measure 5-2B, it cannot be definitively known or stated at this time that all development projects occurring under implementation of the Specific Plan would be able to reduce potential TAC emissions to levels that are below BAAQMD thresholds. For example, should a development project involving new residential receptors be undertaken on the eastern side of Plan Area early on in the Specific Plan's implementation, future development projects upwind of that site (i.e., to the west / northwest; see Figure 5-1) would generate emissions that could adversely affect the new receptors and exceed applicable BAAQMD thresholds of significance. Therefore, despite the implementation of Mitigation Measure 5-2B, TAC construction emissions associated with the proposed Patrick Henry Drive Specific Plan could result in significant adverse health risks at receptor locations. This impact would be significant and unavoidable.

Mitigation Measures

Refer to **MM 5-2B** above.

C. Biological Resources

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

(a) Impact 6-1: Impacts on Riparian Habitat, Sensitive Natural Communities, Wetlands, Fish and Wildlife Corridors, and Fish and Wildlife Nursery Sites.

The Patrick Henry Drive Specific Plan Area is outside the nearest known HCP, approximately one mile west of the of the Santa Clara Valley Habitat Plan permit area. Two Natural Communities of Special Concern, as identified by CDFW, occur within the vicinity of the Plan Area: northern coastal salt marsh and sycamore alluvial woodland. However, these sensitive natural communities do not occur in or adjacent to the Plan Area.

The California Natural Diversity Database (CNDDDB) and U.S. Fish and Wildlife Service Information for Planning and Conservation (IPaC) databases did not identify any habitat types that could occur in the Plan Area that would be able to support special-status species.

Implementation of the Patrick Henry Drive Specific Plan would have a less-than-significant impact on riparian habitat, sensitive natural communities, wetlands, fish and wildlife corridors, and fish and wildlife nursery sites with mitigation incorporated.

- (b) **Impact 6-5: Impacts on Protected Trees, Plants, and Shrubs.** There are no City-designated heritage trees in the Patrick Henry Drive Specific Plan Area (General Plan Table 8.10). However, Section 12.35 (Trees and Shrubs) of the City of Santa Clara Municipal Code is an ordinance pertaining to all trees, plants, and shrubs along streets or public places within the city. Any of these trees, plants, or shrubs planned for removal must first obtain written permission from the superintendent of streets. Finally, Section 12.35 states “No person without such authorization shall trench around or alongside of any such tree, plant or shrub with the intent of cutting the roots thereof or otherwise damaging the same.” The ordinance was adopted by the City and is implemented as applicable. Under CEQA, the ordinance is considered a uniformly applicable development regulation implemented to avoid or reduce impacts on trees, plants, and shrubs along city streets and within public spaces. Permission to alter or remove vegetation is generally based on the vegetation’s potential hazard (e.g., may fall and damage property or injure people); or, in the case of development proposals, on vegetation replacement and landscaping plans. On obtaining a written permit from the superintendent of streets before altering or removing any trees, plants, or shrubs along streets or public portions of the Patrick Henry Drive Specific Plan Area, a project would be in compliance with all local policies and ordinances for preserving trees. Therefore, Patrick Henry Drive Specific Plan implementation would have a ***less-than-significant impact*** on trees, plants, and shrubs.

Mitigation 6-5. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

- (a) **Potential Impact: Impact 6-2:** Potential Impacts on Threatened and Endangered Habitat. Development facilitated by the Patrick Henry Specific Plan could degrade the habitat of rare, threatened, or endangered species (also referred to as “special-status”) potentially present on a project site, and conflict with Policy 5.10.1-P1 of the Santa Clara General Plan, to require environmental review prior to approval of any development with the potential to degrade the habitat of any threatened or endangered species.

Finding: Mitigation measures would require environmental review prior to approval of any development with the potential to degrade the habitat of any threatened or endangered species. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

The absence of City evaluation of the need for further biological resource surveys would be in violation of City policy and is therefore considered a potentially significant impact.

Mitigation Measures

Mitigation 6-2. In order to keep current the biological resource evaluation prepared for the Patrick Henry Drive Specific Plan EIR, upon receiving applications for site-specific projects within the Specific Plan Area, the City shall evaluate the need for a specific biological resource survey of the project site and adjacent area that may be indirectly impacted by project work. If no biological resources are determined to be at risk as determined by a qualified biologist, no further survey shall be required. However, if the City determines that biological resources within the project area require further analysis, the project proponent shall be required to conduct a biological resource survey of the habitat and special-status species that may be impacted by project activities, either directly or indirectly. A report shall be provided to the City detailing survey methods, results, and avoidance and minimization measures required to protect any special-status species with potential to be impacted, in accordance with the regulatory protocols of the responsible jurisdictional agencies for the resource in question, including, but not limited to: USFWS, CDFW, and USACE. If no further surveys/investigation is requested by a permitting or other regulatory agency upon receipt of biological survey report, work may proceed as planned. Implementation of this measure would reduce the impact to a less-than-significant level.

- (b) Potential Impact:** Impact 6-3: Potential Impacts on Special-Status Plants. There is a low potential for Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*; California Rare Plant Rank 1B.2) and arcuate bush mallow (*Malacothamnus arcuatus*; California Rare Plant Rank 1B.2) to occur within the Specific Plan Area, especially if the area is left undisturbed for a long period of time (i.e., a year or longer). Without a proactive mitigation procedure in place, Plan implementation could inadvertently result in the removal of special-status plants. This is considered a potentially significant impact.

Finding: Mitigation measures would reduce impacts to Congdon's tarplant to less than significant levels. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

Mitigation measures would require that a qualified botanist shall conduct site-specific, focused surveys according to CDFW guidelines before any project work within the Specific Plan Area begins, to determine presence or absence of special-status plant species on the individual project site and any adjacent potential area of disturbance

Mitigation Measures

Mitigation 6-3. Before any project work within the Specific Plan Area, a qualified botanist shall conduct site-specific, focused surveys according to CDFW guidelines

to determine presence or absence of special-status plant species on the individual project site and any adjacent potential area of disturbance. A comprehensive, site-wide survey should be conducted within May to September before project work begins, to encompass the Congdon's tarplant and arcuate bush mallow's blooming periods. Following the completion of the surveys, a survey results report shall be prepared and provided to the City. This report should include, but should not be limited to, the following: (1) a description of the survey methodology; (2) a discussion of the survey results; and (3) a map showing the survey area and the location of any special-status plants encountered. If no rare plants are found, then no further mitigation would be required.

If rare plants are found during the survey, the number of individuals present shall be documented and the limits of population shall be marked with flagging. The flagged border of the population shall be avoided by construction personnel for the duration of the project. If the species cannot be avoided or may be indirectly impacted, the applicant shall notify CDFW to discuss avoidance, minimization, and mitigation measures as appropriate for each species population, including measures to be taken and protocols to be followed if special-status plants are inadvertently disturbed during construction activities.

CDFW may require the preparation and implementation of a mitigation plan that details avoidance, preservation, and/or compensation for the loss of individual special-status plant species. Mitigation may include the purchase of mitigation bank credits, preserving and enhancing existing on-site populations, creation of off-site populations through seed collection and/or transplantation and monitoring these populations to ensure their successful establishment, and/or preserving occupied habitat off-site in perpetuity. Specific amounts and methods of mitigation and/or credits shall be determined in formal consultation with CDFW and USFWS.

Implementation of this measure would reduce the impact to a **less-than-significant level**.

- (c) **Potential Impact:** Impact 6-4: Potential Impacts on Nesting Birds or Roosting Bats. The Federal Migratory Bird Treaty Act and California Fish and Game Code sections 3503, 3503.5, 3513, 3800, and 4150 protect migratory and nesting birds, as well as roosting bats. Although the Patrick Henry Drive Specific Plan does not specify which trees or buildings might be removed under individual projects facilitated by the Plan, trees (potential nesting and roosting habitat) or buildings could be disturbed or removed by Plan implementation. The possibility of removing trees and/or buildings that contain nests or roosting bats is identified here as a potentially significant impact. Any direct removal of trees or indirect disturbance by construction or operational activities during the nesting season that causes nest abandonment and/or loss of reproductive effort (killing or abandonment of eggs or young) is considered a "take."

There is a low potential for burrowing owl (*Athene cunicularia*; California species of special concern), white-tailed kite (*Elanus leucurus*; California Fully-Protected Species), pallid bat (*Antrozous pallidus*), and Townsend's big-eared bat (*Corynorhinus townsendii*; California species of special concern) to utilize the landscaped habitat within the Specific Plan Area for roosting and/or nesting, especially if the area is left undisturbed for a long period of time. In addition, many common bird species without a special status, though protected by the MBTA, MBPA, and California Fish and Game Code (CFGF), may utilize buildings, gravel substrates, and the landscaped vegetation within the Plan Area for nesting, foraging, and roosting. Common bat species protected by the CFGC may also rarely utilize vegetation within the Specific Plan Area for individual roosting. Without a proactive mitigation procedure in place, Plan implementation could inadvertently result in the removal of existing trees containing nests or eggs of migratory birds, raptors, or bird species during the nesting season, or roosting bats, which would be considered unlawful take under the MBTA and the CFGC (see Regulatory Setting above). This is considered a potentially significant impact.

The mitigation measure below would reduce this potentially significant impact to on Nesting Birds or Roosting Bats to a less-than-significant level.

Finding: Mitigation measures would reduce impacts on Nesting Birds or Roosting Bats to less than significant levels. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

Although the Patrick Henry Drive Specific Plan does not specify which trees or buildings might be removed under individual projects facilitated by the Plan, trees (potential nesting and roosting habitat) or buildings could be disturbed or removed by Plan implementation. The possibility of removing trees and/or buildings that contain nests or roosting bats is identified here as a potentially significant impact. Any direct removal of trees or indirect disturbance by construction or operational activities during the nesting season that causes nest abandonment and/or loss of reproductive effort (killing or abandonment of eggs or young) is considered a "take."

There is a low potential for burrowing owl (*Athene cunicularia*; California species of special concern), white-tailed kite (*Elanus leucurus*; California Fully-Protected Species), pallid bat (*Antrozous pallidus*), and Townsend's big-eared bat (*Corynorhinus townsendii*; California species of special concern) to utilize the landscaped habitat within the Specific Plan Area for roosting and/or nesting, especially if the area is left undisturbed for a long period of time. In addition, many common bird species without a special status, though protected by the MBTA, MBPA, and California Fish and Game Code (CFGF), may utilize buildings, gravel substrates, and the landscaped vegetation within the Plan Area for nesting, foraging, and roosting. Common bat species protected by the CFGC may also rarely utilize vegetation within the Specific Plan Area for individual roosting. Without a proactive

mitigation procedure in place, Plan implementation could inadvertently result in the removal of existing trees containing nests or eggs of migratory birds, raptors, or bird species during the nesting season, or roosting bats, which would be considered unlawful take under the MBTA and the CFGC (see Regulatory Setting above).

Mitigation Measures

Mitigation 6-4. The demolition of any buildings, disturbance of gravel substrate, and/or removal of trees, shrubs, or weedy vegetation shall be avoided during the February 1 through August 31 bird nesting period to the extent possible. If no demolition, gravel disturbance, vegetation, or tree removal is proposed during the nesting period, no further action is required. If it is not feasible to avoid the nesting period, the project applicant shall retain a qualified wildlife biologist to conduct a survey for nesting birds at most 14 days prior to the start of removal of trees, shrubs, grassland vegetation, or buildings, including prior to grading or other construction activity. If demolition of buildings, disturbance of gravel substrate, or vegetation removal efforts do not begin within the 14 days following the nesting bird survey, another survey shall be required. The area surveyed shall include all construction sites, access roads, and staging areas, as well as reasonably accessible areas within 150 feet outside the boundaries of the areas to be cleared or as otherwise determined by the biologist and dependent on species' life history requirements.

If an active nest is discovered in the areas to be directly physically disturbed, or in other habitats within the vicinity of construction boundaries and may be disturbed by construction activities (as determined by the qualified biologist), clearing and construction shall be postponed until the qualified biologist has determined that the young have fledged (left the nest), the nest fails, or the nest is otherwise determined to be inactive by the biologist (i.e. predation).

To avoid impacts to roosting bats that may rarely utilize the Specific Plan Area vegetation and/or vacant buildings for day roosting, the project applicant shall retain a qualified wildlife biologist to conduct a survey for roosting bats at most 14 days prior to the start of demolition of any vacant buildings left with entry and egress points accessible to bats or removal of suitable bat roosting vegetation. If roosting bats are detected, the biologist shall enact a minimum of a 150-foot no-work buffer and confer with CDFW to determine potential roost protection or roost eviction practices. After conferring with CDFW, the protective buffer may be adjusted based on specific roost needs. Once bats have been suitably protected by a buffer and/or safely evicted from roosting sites (as approved by CDFW), construction may resume outside the buffered area.

A nesting bird and roosting bat survey report prepared with the methods and results of the pre-project survey will be submitted to the City for review and approval prior to commencement of construction activities. Any additional construction monitoring, as determined through any necessary

coordination/discretionary approvals with the resource agencies, will be documented per requirements set forth in an approved mitigation monitoring and reporting program.

Implementation of this measure would reduce the impact to a ***less-than-significant level***.

3. Project impacts determined to be significant and unavoidable

(a) None.

4. Cumulative impacts

(a) None.

D. Cultural Resources

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

None.

2. Project impacts determined to be less than significant with mitigation incorporated

(a) Potential Impact: Impact 7-2: Potential for Disturbance of Buried Archaeological Resources, Including Human Remains, and Tribal Cultural Resources. Development facilitated by the Patrick Henry Drive Specific Plan could disturb unrecorded sensitive archaeological resources or tribal cultural resources in the Plan Area. This possibility represents a ***potentially significant impact***.

Finding: Mitigation measures would reduce impacts due to a substantial adverse change in the significance of an archaeological resource to less than significant levels. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

The City of Santa Clara notified the Native American tribes traditionally and culturally affiliated with the Patrick Henry Drive Specific Plan Area, including providing a copy of the EIR Notice of Preparation (NOP). The Native American tribes notified include the Amah Mutsun Tribal Band, Amah Mutsun Tribal Band of Mission San Juan Bautista, Muwekma Ohlone Indian Tribe of the San Francisco Bay Area, Ohlone Indian Tribe, North Valley Yokuts Tribe, and Indian Canyon Mutsun Band of Costanoan. No comments were received by the City during the NOP 30-day review period (December 2019 to January 2020), nor have any subsequent comments been received.

Though almost all of the Specific Plan Area is developed, with some areas of manicured vegetation, there is a possibility that as-yet unrecorded prehistoric cultural resources or tribal cultural resources could exist beneath the surface of the Plan Area. Contact with such resources during construction activities could result in a significant impact. The mitigation below would reduce the impact to a less-than-significant level.

Mitigation Measures

Mitigation 7-2. During the City's standard project-specific review process for all future, discretionary, public improvement and private development projects in the Patrick Henry Drive Specific Plan Area, the City shall determine the possible presence of, and the potential for new or substantially more severe impacts of the action on, archaeological resources and tribal cultural resources. The City shall require individual project applicants or environmental consultants to contact the California Historical Resources Information System (CHRIS) to determine whether the particular project is located in a sensitive area. Future discretionary development projects that CHRIS determines may be located in a sensitive area - i.e., on or adjoining an identified archaeological site - shall proceed only after the project applicant contracts with an archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards, to conduct a determination in regard to cultural values remaining on the site and warranted mitigation measures, as described directly below.

In general, to make an adequate determination in these instances, the archaeologist shall conduct a preliminary field inspection to (1) assess the amount and location of visible ground surface, (2) determine the nature and extent of previous impacts, and (3) assess the nature and extent of potential impacts. Such field inspection may demonstrate the need for some form of additional subsurface testing (e.g., excavation by auger, shovel, or backhoe unit) or, alternatively, the need for on-site monitoring of subsurface activities (i.e., during grading or trenching).

In addition, the City shall continue to notify the Native American tribes traditionally and culturally affiliated with the Specific Plan Area of the discretionary, public improvement and private development projects if those proposed improvements or projects are subject to a CEQA Negative Declaration (including Mitigated Negative Declaration) or Environmental Impact Report (EIR), in accordance with California Assembly Bill 52, and if a Native American tribe requests consultation, conduct a good faith consultation.

Following field inspection and completion of all necessary phases of study as determined by the archaeologist and the City, damage to any identified archaeological resources shall be avoided or mitigated to the maximum extent possible. Preservation in place to maintain the relationship between the artifact(s) and the archaeological context is the preferred manner of mitigating impacts on an archaeological site. Preservation may be accomplished by:

- Planning construction to avoid the archaeological or tribal cultural site;
- Incorporating the site within a park, green space, or other open space element;
- Covering the site with a layer of chemically stable soil; or
- Deeding the site into a permanent conservation easement.

When in-place mitigation is determined by the City to be infeasible, a *data recovery plan*, which makes provisions for adequate recovery of culturally or historically consequential information about the site (including artifacts discovered on the site), subject to review and approval by the City, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be submitted to the CHRIS Northwest Information Center. If Native American artifacts are indicated, the studies shall also be submitted to the Native American Heritage Commission (NAHC). CHRIS and NAHC are recognized as experts in their respective disciplines.

Identified cultural resources shall be recorded on form DPR 422 (archaeological sites). Mitigation measures recommended by these two groups (CHRIS and NAHC), as reviewed and approved by the City, shall be undertaken prior to and during construction activities. Although the precise details of the mitigation measures would be specific to the particular project site, the measures shall be consistent with the avoidance and mitigation strategies described above in this programmatic mitigation measure.

A *data recovery plan* and data recovery for a historic resource shall not be required if the City determines that testing or studies already completed have adequately recovered the necessary data, provided that the data have already been documented in an EIR or are available for review at the CHRIS Northwest Information Center (CEQA Guidelines section 15126.4[b]).

Resource identification training procedures shall be implemented for construction personnel, conducted by an archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards. In the event that subsurface cultural resources are otherwise encountered during approved ground-disturbing activities for a Plan Area construction activity, work within 50 feet shall be stopped and a qualified archaeologist retained to evaluate the finds following the procedures described above. Project personnel shall not collect cultural resources. Although work may continue beyond 50 feet, the archaeologist shall be empowered to temporarily halt or redirect construction activities to ensure avoidance of adverse impacts to archaeological resources.

If human remains are found, the rules set forth in State Health and Safety Code section 7050.5 and CEQA Guidelines section 15126.4(b) apply and shall be followed.

Implementation of this measure would reduce the impact to a ***less-than-significant level***.

3. Project impacts determined to be significant and unavoidable

- (b) **Impact 7-1: Destruction/Degradation of Historic Resources.** There may be one or more properties or features within the Specific Plan Area, now or in the future, that meets the CEQA definition of a historic resource, including properties or features eligible for listing in a local, State, or Federal register of historic resources. Future development projects that are otherwise consistent with the proposed Patrick Henry Drive Specific Plan may cause substantial adverse changes in the significance of one or more such historic resources. Substantial adverse changes that may occur include physical demolition, destruction, relocation, or alteration of one or more historic resources or its immediate surroundings such that the resource is "materially impaired." The significance of a historic resource would be considered potentially "materially impaired" when and if an individual future development project proposes to demolish or materially alter the physical characteristics that justify the determination of its significance (CEQA Guidelines section 15064.5[b]). Such adverse changes in the significance of a CEQA-defined historic resource would be a **significant impact**.

Finding: Without knowing the characteristics of the potentially affected historic resource or of the future individual development proposal, the City cannot determine with certainty that complying with the Secretary of Interior's *Standards for the Treatment of Historic Properties* or relocation of the resource would be considered feasible. Consequently, this impact is currently considered **significant and unavoidable**.

Facts in Support of Finding

The identification of historic resources must account for change over time. Today's newer buildings may be recognized as historic within the lifetime of the Specific Plan. Today's older buildings may attain historic significance as more is uncovered about their past. Currently non-historic buildings may be recognized as historic in the future if the people or events associated with those buildings become historically or culturally distinguished. All these possibilities are accounted for in CEQA Guidelines section 15064.5 (Determining the Significance of Impacts to Archaeological and Historical Resources).

Consistent with the perspective described above, the California Office of Historic Preservation notes, "There is a common misconception that resources 50 years or older need to be evaluated, but anything younger cannot be considered significant....[T]he California Register criteria (CCR section 4852) state that in order for a resource to achieve significance within the past 50 years, sufficient time must have passed to obtain a scholarly perspective on the events or individuals associated with the resource....Specifically, the California Register statute allows CEQA Lead Agencies [in the case of this EIR, the City of Santa Clara] a fair amount of

flexibility in justifying that a resource is significant, even if that resource is less than 50 years old.”¹

At of time of writing (July 2021), there are currently no buildings older than 45 years within the Specific Plan Area.²

Due to the possibilities described above, the potential for a substantial adverse change to a historic resource due to individual discretionary development projects proposed under the Specific Plan would be evaluated by a qualified professional on a case-by-case basis in accordance with CEQA Guidelines section 15064.5 to determine whether projects would have new or substantially more severe impacts to historic resources.

Under CEQA, conformance with the Secretary of the Interior’s Standards will normally mitigate impacts on a historic resource to a less-than-significant level. Under the *Standards for Rehabilitation*, new additions, alterations, or adjacent new construction must not destroy character-defining features, spaces, and spatial relationships. New work must be differentiated from the old and must be compatible with the historic materials, features, size, scale, proportion, and massing. New additions, alterations, and construction must be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

In some cases, it can be challenging to accommodate the needs of new uses while fully adhering to the *Standards for Rehabilitation* and, in many situations, it can be infeasible. In addition, changes to the eligibility, identification, and condition of historic resources and their surroundings between now and the time that individual development proposals are received for specific properties could affect potential impacts on historic resources. As a result, it cannot be determined at this time, without consideration of a current, specific development proposal, whether it would be feasible to mitigate to a less-than-significant level the impacts of any given subsequent development project under the Patrick Henry Drive Specific Plan involving properties that may contain historic resources. (As noted above under the Setting section, 7.1, no building or structure in the Plan Area is on a local or State historic resource inventory.) Although the following mitigation measures are intended to mitigate impacts on historic resources from implementation of the Specific Plan to the extent feasible, the impacts on historic resources may still remain significant and unavoidable. This conservative approach is consistent with CEQA.

¹California Office of Historic Preservation, CEQA Case Studies, September 2015 (Volume VI).

²Historic Aerials, 2020.

Mitigation Measures

Mitigation 7-1. For any individual project within the Patrick Henry Drive Specific Plan Area that the City determines may involve a property that contains a potentially significant historic resource, the resource shall be assessed by a professional who meets the Secretary of the Interior's Professional Qualifications Standards to determine whether the property is a significant historic resource and whether or not the project may have a potentially significant adverse effect on the historic resource. If, based on the recommendation of the qualified professional, the City determines that the project may have a potentially significant effect, the City shall require the applicant to implement the following mitigation measures:

(a) Adhere to at least one of the following Secretary of the Interior's Standards:

- Secretary of Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings*; or
- Secretary of Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*.

The qualified professional shall make a recommendation to the City as to whether the project fully adheres to the Secretary of the Interior's Standards, and any specific modifications necessary to do so. The final determination as to a project's adherence to the Standards shall be made by the City body with final decision-making authority over the project. Such a determination of individual project adherence to the Secretary of the Interior's Standards will constitute mitigation of the project historic resource impacts to a ***less-than-significant level*** (CEQA Guidelines section 15064.5).

(b) If measure (a) is not feasible, the historic resource shall be moved to a new location compatible with the original character and use of the historic resource, and its historic features and compatibility in orientation, setting, and general environment shall be retained, such that a substantial adverse change in the significance of the historic resource is avoided.³ Implementation of measure (b) would reduce the impact to a ***less-than-significant level***.

³One example of a substantial adverse change would be the loss of eligibility for listing on the California Register. The State Historical Resources Code encourages the retention of historic resources on-site and discourages the non-historic grouping of historic buildings into parks or districts. However, it is recognized that moving a historic building, structure, or object is sometimes necessary to prevent its destruction. Therefore, a moved building, structure, or object that is otherwise eligible may be listed in the California Register if it was moved to prevent its demolition at its former location and if the new location is compatible with the original character and use of the historic resource. A historic resource should retain its historic features and compatibility in orientation, setting, and general environment.

(California Office of Historic Preservation, *California Register and National Register: A Comparison*, Technical Assistance Series 6; Sacramento, CA: California Department of Parks and Recreation, 2001)

If neither measure (a) nor measure (b) is feasible, then the City shall, as applicable and to the extent feasible, implement the following measures in the following order:

(c) Document the historic resource before any changes that would cause a loss of integrity and loss of continued eligibility. The documentation shall adhere to the Secretary of the Interior's *Standards for Architectural and Engineering Documentation*. The level of documentation shall be proportionate with the level of significance of the resource. The documentation shall be made available for inclusion in the Historic American Building Survey (HABS) or the Historic American Engineering Record (HAER) Collections in the Library of Congress, the California Historical Resources Information System (CHRIS), and the Bancroft Library, as well as local libraries and historical societies.

(d) Retain and reuse the historic resource to the maximum feasible extent and continue to apply the Secretary of the Interior's Standards to the maximum feasible extent in all alterations, additions, and new construction.

(e) Through careful methods of planned deconstruction to avoid damage and loss, salvage character-defining features and materials for educational and interpretive use on-site, or for reuse in new construction on the site in a way that commemorates their original use and significance.

(f) Interpret the historical significance of the resource through a permanent exhibit or program in a publicly accessible location on the site or elsewhere within the Specific Plan Area.

Implementation of measures (b), (c), (d), (e), and/or (f) would reduce a significant impact on historic resources, but not to a less-than-significant level. Without knowing the characteristics of the potentially affected historic resource or of the future individual development proposal, the City cannot determine with certainty that measure (a) or (b) above would be considered feasible. Consequently, this impact is currently considered ***significant and unavoidable***.

4. Cumulative impacts

None.

E. Geology and Soils

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

- (a) Impact 8-1: Effects of Strong Seismic Ground Shaking.** The Specific Plan Area could experience strong seismic ground shaking and related effects in the event of an earthquake on the regional fault system. The Specific Plan would not exacerbate the existing risk of strong seismic ground shaking. Mandated project compliance

with the stringent seismic design provisions of the latest California Building Standards Code (CBSC), as adopted by the City, would reduce the risk of property loss or hazards to occupants and adjacent property to a ***less-than-significant level***.

Mitigation 8-1. No significant impact has been identified; no mitigation is required.

- (b) **Impact 8-2: Potential Soil Erosion and Loss of Topsoil.** Grading and construction activities may result in minor erosion or the minor loss of some topsoil. City-required standard grading- and construction-period erosion control techniques (e.g., for reducing surface water runoff over exposed soil, which could include a combination of techniques such as minimizing active construction areas during the rainy season, preservation of existing vegetation, soil stabilization methods—soil binders, straw mulch, etc.—as well as project landscaping after construction), consistent with Best Management Practices (BMPs) in the California Stormwater Quality Association (CASQA) Stormwater Best Management Practice Handbook, would mitigate this potential impact to a ***less-than-significant level***.

Mitigation 8-2. No significant impact has been identified; no additional mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

- (a) **Impact 8-3: Potential Ground Instability Impacts.** The potential for ground instability can depend on specific, highly localized underlying soil conditions. Determination of differential settlement, liquefaction, lateral spreading, and subsidence potential in the Specific Plan Area would require site-specific geotechnical studies for future individual development proposals. Possible ground instability conditions, if not properly engineered for, could result in associated significant damage to project buildings, other improvements, and adjacent property, with direct or indirect risks to life or property, representing a ***potentially significant impact***.

Facts in support of the finding:

Although an earthquake would affect an area larger than the Plan Area, any potential for earthquake-induced differential settlement, liquefaction, lateral spreading, and subsidence, and associated damage to proposed buildings or other improvements would be localized (i.e., generally restricted to the area where the building foundation or other improvement has been constructed) and can be mitigated to a less-than-significant level through implementation of City-required geotechnical investigations and associated engineering design standards, specifications, and measures. Geotechnical mitigation requirements identified here include completion of detailed studies to address specific concerns as future site-specific project designs are refined. There is substantial, reasonable, historical information to support the conclusion that the specific subsequent

geotechnical/geologic investigations, inspections, and specific formulations required to meet City-adopted standards would adequately mitigate related impacts to less-than-significant levels. Information pertaining to soil testing, soil treatments, building foundations, structural strengthening, subsurface design, construction methods, etc., has been developed and refined by the California Building Standards Commission (through the California Building Code) and the California Geological Survey (especially Special Publication 117A, “Guidelines for Evaluating and Mitigating Seismic Hazards in California 2008”), and research continues at universities and colleges, as well as professional organizations such as the Association of Environmental & Engineering Geologists. The City of Santa Clara requires such geotechnical/geologic investigations and specifications as part of its development review under its building code. Individual measures are typically, and most efficiently, specified at a later, more detailed level of design when foundation locations and building architecture is known.

Under the City's grading permit and building permit provisions, requirements, and regulations, an individual development project cannot be given final approval without project compliance with geotechnical/geologic requirements. These requirements and related City inspection and verification procedures prior to project operation provide reasonable, professional assurances that projects would incorporate the design and engineering refinements necessary to reduce the degree of impacts to less-than-significant levels by either avoiding identified soil and geologic impact areas altogether (i.e., basic project design changes), or by rectifying the impact through conventional engineering and construction procedures (e.g., suitable foundation design and construction) prior to issuance of permits.

Mitigation Measures applicable:

Mitigation 8-3. Subject to City review and approval, complete and implement the geotechnical mitigation recommendations identified in the required individual project- and site-specific geotechnical investigations and engineering studies for site-specific proposals, in coordination with City grading permit and building permit performance standards. Such recommendations shall address design- and construction-level details regarding engineering issues and solutions such as the type of building foundation, the extent of subsurface excavation, the details of retaining structures, and any need for subsurface water extraction. Incorporation of this mitigation requirement would reduce this impact to a ***less-than-significant level***.

- (b) Impact 8-4: Potential for Disturbance of Paleontological Resources.** Development facilitated by the Patrick Henry Drive Specific Plan could disturb unrecorded paleontological resources in the Plan Area. This possibility represents a ***potentially significant impact***.

Facts in Support of Finding

Santa Clara's surficial geologic units include alluvial and Bay mud deposits, and Pleistocene alluvial deposits, with the underlying Santa Clara Formation that may potentially contain paleontological resources; in addition, Pleistocene alluvial deposits and the Santa Clara Formation have high paleontological sensitivity. Although an on-line archival search indicated no records of recorded fossil sites within the Plan Area, it is possible that paleontological resources could be discovered during ground-disturbing activities. Contact with such fossil resources during ground-disturbing activities could result in significant impacts. The mitigation below would reduce the impact to a less-than-significant level.

Mitigation Measures Applicable

Mitigation 8-4. For all public improvement and private development projects in the Patrick Henry Drive Specific Plan Area, the following measures shall be implemented:

(1) *Education Program.* Project applicants shall implement a program that includes the following elements:

- Resource identification training procedures for construction personnel, conducted by a paleontologist who meets the Secretary of the Interior's Professional Qualifications Standards;
- Spot-checks and monitoring by a qualified paleontologist of all excavations deeper than seven feet below ground surface; and
- Procedures for reporting discoveries and their geologic context.

(2) *Procedures for Resources Encountered.* If subsurface paleontological resources are encountered, excavation shall halt within a buffer area of at least 50 feet around the find, where construction activities will not be allowed to continue until the project paleontologist evaluates the resource and its stratigraphic context. Work shall be allowed to continue outside the buffer area; however, the paleontologist shall be empowered to temporarily halt or redirect construction activities to ensure avoidance of adverse impacts to paleontological resources. During monitoring, if potentially significant paleontological resources are found, "standard" samples shall be collected and processed by a qualified paleontologist to recover micro vertebrate fossils. If significant fossils are found and collected, they shall be prepared to a reasonable point of identification. Excess sediment or matrix shall be removed from the specimens to reduce the bulk and cost of storage.

Itemized catalogs of material collected and identified shall be provided to a local museum repository with the specimens. Significant fossils collected during this work, along with the itemized inventory of these specimens, shall be deposited in a local museum repository for permanent curatorship and storage. A report

documenting the results of the monitoring and salvage activities, and the significance of the fossils, if any, shall be prepared. The report and inventory, when submitted to the City, shall signify the completion of the program to mitigate impacts on paleontological resources.

Implementation of this measure would reduce the impact to a ***less-than-significant level***.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

None

F. Greenhouse Gas Emissions and Energy

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

(a) Impact 9-1: GHG Emissions and Plan Consistency.

Implementation of the proposed Specific Plan would result in emissions that are below an interpolated Service Population GHG efficiency metric, both from a net emissions perspective (when compared to potential GHG emissions associated with existing land uses in Year 2040) as well as on a standalone basis, and would not conflict, obstruct, or otherwise interfere with the implementation of a plan, policy, or regulation for the purposes of reducing GHG emissions. Thus, the proposed Specific Plan would result in a ***less-than-significant impact*** with regard to GHG emissions and no mitigation is required.

(b) Impact 9-2. Wasteful, Inefficient, or Unnecessary Consumption of Energy Resources.

Implementation of the proposed Specific Plan would increase the demand for electricity and natural gas within the Plan Area and gasoline consumption in the region during construction and operation of new land use developments.

Although growth would occur within the Plan Area over the next approximately 20 years, new development would be required to comply with statewide mandatory energy requirements outlined in Title 24, Part 6, of the California Code of Regulations (the CalGreen Code), which would decrease estimated natural gas consumption in new and/or retrofitted structures. Energy is a necessary component of building operation, and any natural gas consumption by proposed land uses in the Specific Plan would not be used in an unnecessary, inefficient, or wasteful manner and would be more efficient than under existing conditions.

Fuel use by construction equipment would be the primary energy resource consumed during development activities, and VMT associated with the transportation of construction materials (e.g., deliveries) and worker trips would also result in petroleum consumption. Whereas on-site, heavy-duty construction equipment and delivery trucks would predominantly use diesel fuel, construction workers would generally rely on gasoline-powered vehicles to travel to and from construction sites. State regulations such as the LCFS would reduce the carbon intensity of transportation-related fuels, and all construction projects would be required to comply with CARB's Airborne Toxic Control Measures, which restrict heavy-duty diesel vehicle idling to five minutes. Since petroleum use during construction would be temporary at each location and required to conduct development activities, it would not be unnecessary, wasteful, or inefficient, and no mitigation is required.

- (c) **Impact 9-3. Conflict with or Obstruct a State or Local Plan for Renewable Energy or Energy Efficiency.** The Project would not conflict with nor obstruct a state or local plan adopted for the purposes of increasing renewable energy or energy efficiency.

The Title 24 Building Code contains energy efficiency standards for residential and non-residential buildings. These standards address electricity and natural gas efficiency in lighting, water, heating, and air conditioning, as well as the effects of the building envelope (e.g., windows, doors, walls and roofs, etc.) on energy consumption. The latest update to these standards, codified in the 2019 Title 24 Building Code, requires the installation of solar panels on new residential development under three stories. The City would enforce the applicable Title 24 Building Code (currently 2019) during design review and project approval processes. In addition, as discussed above under "GHG Emissions and Plan Consistency" the proposed Specific Plan contains numerous standards and guidelines that address sustainability for future projects in the Plan Area. The Specific Plan would also support the City's post-2020 Climate Action Plan measures, which support energy efficiency in the City.

As discussed above, the Specific Plan would support the State's goals of decreasing energy consumption for each of its residents, increasing energy efficiency, and would not conflict with a state or local plan for renewable energy. This impact would be *less than significant*.

Mitigation 9-3. No significant impact has been identified; no mitigation is required.

2. **Project impacts determined to be less than significant with mitigation incorporated**

None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

Past, present, and future development projects worldwide contribute to global climate change. No single project is sufficient in size to, by itself, change the global average temperature. Therefore, due to the nature of GHG impacts, a significant project impact is a significant cumulative impact. As discussed above, development under the Specific Plan would not generate significant levels of GHG emissions at a project level and thus the Project would *not* have a cumulative impact on GHG emissions.

G. Hazards and Hazardous Materials

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

- (a) Impact 10-1: Project-Related Potential Impacts Due to Hazardous Materials Transport, Use, Storage, and Disposal.** The proposed land uses permitted under the Specific Plan are not expected to involve the routine transport, use, storage, or disposal of hazardous materials to the extent that a significant public or environmental hazard would occur. Operations in the Plan Area may involve the occasional transport, use, storage, or disposal of common hazardous substances such as fuel, paint, and solvents. These normal activities would be subject to applicable local, State, and federal regulations. Construction of future project proposals under the Specific Plan would likely involve the intermittent transport, use, and disposal of potentially hazardous materials, including fuels and lubricants, paints, solvents, and other materials commonly used in construction and maintenance. During construction activities, any on-site hazardous materials that may be used, stored, or transported would also be subject to applicable local, State, and federal regulations that require standard protocols (as determined by the U.S. EPA, California Department of Health and Safety, Santa Clara County, and the City) for maintaining health and safety.

With implementation of adopted, standard procedures and regulations, the potential for associated hazardous materials impacts would be ***less-than-significant***.

Mitigation 10-1. No significant impact has been identified; no mitigation is required.

- (b) Impact 10-2: Potential Exposure to Existing Hazardous Materials Contamination.** There is always a possibility that new construction could encounter contamination and expose construction workers to existing spilled,

leaked, or otherwise discharged hazardous materials or wastes. Each project applicant in the Plan Area would be required to comply with all applicable, existing City-, County-, regional-, and State-mandated site assessment, remediation, removal, and disposal requirements for soil, surface water, and/or groundwater contamination. Compliance with these established requirements would prevent exacerbation of existing contamination or accidental release, and ensure that this possible health and safety impact would be *less-than-significant*.

Typically, implementation of these standard procedures would involve the following steps. As explained above, these steps are consistent with standard procedures required as part of City-, County-, regional-, and State-mandated requirements. The steps are not considered additional mitigations required by this EIR because the steps are existing development standards applied uniformly to all applicable projects.

(a) *Soil Contamination.* In order to avoid or substantially reduce potential health hazards related to construction personnel or future occupant exposure to soil contamination, as well as to prevent accidental release to surrounding areas, project applicants would complete the following steps for each site proposed for disturbance as part of construction activity in the Plan Area:

Step 1. Investigate the site to determine whether it has a record of hazardous material discharge into soils, and if so, characterize the site according to the nature and extent of soil contamination that is present before development activities proceed at that site.

Step 2. Based on the proposed activities associated with the proposed project, determine the need for further investigation and/or remediation of the soil conditions on the contaminated site. For example, if the site is slated for commercial land use, such as retail, the majority of the site will be paved and there will be little or no contact with contaminated soil. Industrial cleanup levels would likely be applicable. If the slated development activity could involve human contact with soils, such as may be the case with residential use, then Step 3 should be completed. If no human contact is anticipated, then no further mitigation is necessary.

Step 3. If it is determined that extensive soil contact would accompany the intended use of the site, undertake a Phase II Environmental Assessment investigation, involving soil sampling at a minimum, at the expense of the project applicant, property owner, or responsible party. Should further investigation reveal high levels of hazardous materials in the site soils, mitigate health and safety risks according to City of Santa Clara and regulatory agency requirements. This would include site-specific health and safety plans prepared prior to undertaking any building or utility construction. Also, if buildings are situated over soils that are significantly contaminated, undertake measures to either remove the chemicals or prevent contaminants from entering and collecting within the building. If

remediation of contaminated soil is infeasible, a deed restriction would be necessary to limit site use and eliminate unacceptable risks to health or the environment.

(b) Surface or Groundwater Contamination. In order to reduce potential health hazards due to construction personnel or future occupant exposure to surface water or groundwater contamination, or accidental transmission to other properties, project applicants would complete the following steps for each site proposed for disturbance as part of construction activity in the Plan Area:

Step 1. Investigate the site to determine whether it has a record of hazardous material discharge into surface or groundwater, and if so, characterize the site according to the nature and extent of contamination that is present before development activities proceed at that site.

Step 2. Install drainage improvements in order to prevent transport and spreading of hazardous materials that may spill or accumulate on-site.

Step 3. If investigations indicate evidence of chemical/environmental hazards in site surface water and/or groundwater, then measures acceptable to the City and the other applicable regulatory agencies would be required to ensure the site is properly remediated prior to development activity.

Step 4. Inform construction personnel of the proximity to recognized contaminated sites and advise them of health and safety procedures to prevent exposure to hazardous chemicals in surface water/groundwater.

Implementation of these required, standard procedures would result in a ***less-than-significant impact*** associated with potential soil and surface/groundwater contamination.

Mitigation 10-2. No significant impact has been identified; no mitigation is required.

- (c) Impact 10-3: Project-Related Potential Asbestos and PCB Exposure.** Removal or disturbance of asbestos-containing material (ACM) and/or transformers during alteration, renovation, or demolition of existing structures within the Plan Area could expose construction workers and the general public to friable asbestos and/or polychlorinated biphenyls (PCBs). Therefore, in compliance with General Plan Policy 5.10.5-P26 ("Survey pre-1980 buildings and abate any lead-based paint and asbestos prior to structural renovation and demolition, in compliance with all applicable regulations") and as a condition of alteration, renovation, or demolition permit approval for buildings within the Plan Area, the City requires the project applicant to coordinate with the Bay Area Air Quality Management District (BAAQMD) as appropriate to determine if ACM and/or PCBs are present, in conformance with BAAQMD established protocols and consistent with the explanation below.

Ensuring proper identification and removal of ACM and PCBs requires each project applicant to complete the following steps. As explained above (“Project-Related Potential Exposure to Existing Hazardous Materials Contamination”), these steps are standard procedures required as part of City-, County-, regional-, and State-mandated requirements; the steps are not mitigation required by this EIR.

Step 1. Thoroughly survey the project site and existing structures for the presence of ACM and PCBs. The survey shall be performed by a person who is properly certified by the Occupational Safety and Health Administration (OSHA) and has taken and passed an Environmental Protection Agency (EPA) approved building inspector course.

Step 2. If building elements containing any amount of ACM or PCBs are present, prepare a written ACM/PCB Abatement Plan describing activities and procedures for removal, handling, and disposal of these building elements using the most appropriate procedures, work practices, and engineering controls.

Step 3. Provide the ACM and PCB survey findings, the written ACM/PCB Abatement Plan (if necessary), and notification of intent to demolish to the City and BAAQMD at least ten days prior to commencement of demolition.

Step 4. Remove any on-site transformers prior to demolition of buildings.

Implementation of these required, standard procedures would result in a *less-than-significant impact* associated with potential ACM and PCB exposure.

Mitigation 10-3. No significant impact has been identified; no mitigation is required.

(d) Impact 10-4: Project-Related Potential Lead-Based Paint Exposure. If lead-based paint is present and has delaminated (split into thin layers) or chipped from surfaces, airborne lead particles could be released during alteration, renovation, or demolition of existing structures within the Plan Area. California OSHA (CalOSHA) regulations would be applied, and each site-specific project would implement the following standard, mandatory procedures in accordance with those CalOSHA regulations:

- Notify the City's Building and Fire Safety Division prior to starting work, describing the nature, location, and schedule of the work;
- Post a sign at all work locations where lead containment is required, stating that lead-based paint abatement is in progress and public access is prohibited;
- Notify the tenant(s) where the lead-based paint abatement work will be performed on a residential property occupied by one or more tenants; and

- Notify the property owner when work on a residential project will disturb lead-based paint.

Lead abatement performance standards are included in the *Guidelines for Evaluation and Control of Lead-Based Paint Hazards* (U.S. Department of Housing and Urban Development). Accordingly, HEPA vacuums may be required for abrasive blasting, water blasting, scraping, or sanding. Burning, torching, and similar activities are prohibited. Following completion of lead-based paint abatement, all visible lead-based paint particles must be removed from the site.

The City may inspect lead-based paint abatement activities at any time during construction. These personnel are also responsible for addressing citizen complaints related to lead-based paint abatement activities and may issue a Notice of Violation, a Stop Work order, or a fine.

Implementation of these required, standard procedures would result in a ***less-than-significant impact*** associated with potential lead-based paint exposure.

Mitigation 10-4. No significant impact has been identified; no mitigation is required.

- (e) **Impact 10-5: Potential for Hazardous Materials Near Schools.** See the impact discussions above. Existing schools are located within one-quarter mile of the Plan Area; however, the land uses permitted under the Specific Plan are not expected to involve the routine transport, use, storage, or disposal of hazardous materials to that extent that a significant public or environmental hazard would occur. In addition, as discussed in Impact 10-1 above, although future construction under the Specific Plan would likely involve the intermittent transport, use, storage, and disposal of potentially hazardous materials, including fuels and lubricants, paints, solvents, and other materials commonly used in construction and maintenance, these projects would be required to comply with applicable local, State, and federal regulations. Also, the regulatory requirements described above (section 10.2) would be implemented as applicable. Specific to schools, State regulations on the siting of hazardous materials facilities limit their location in proximity to schools; conversely, CEQA (section 21151.8, School Site Acquisition or Construction) and other State regulations impose restrictions on where new schools can be constructed. The impact of hazardous materials on schools would be ***less-than-significant***.

Mitigation 10-5. No significant impact has been identified; no mitigation is required.

- (f) **Impact 10-6: Protocols for Government Code Section 65962.5 Sites.** A review of the Cortese List data resources conducted on March 5, 2020 indicated no sites in

the Plan Area in any of the Cortese List data resources (see section 10.1.1, Hazardous Materials, above). The California Department of Toxic Substances Control (DTSC) maintains the EnviroStor database, which lists and includes data on hazardous materials sites compiled pursuant to Government Code section 65962.5 (Cortese List); such sites are regulated by DTSC because hazardous materials investigations and/or cleanup actions are planned, active, or have been completed at these sites (see Table 10-1 under “Setting,” above). The site-specific mitigation protocols administered by DTSC and other jurisdictional agencies (including the Santa Clara Fire Department) – in conformance with federal, State, regional, and local regulations (see “Regulatory Setting,” above) – are intended to ensure that the cleanup of such sites would result in *less-than-significant impacts*.

Mitigation 10-6. No significant impact has been identified; no mitigation is required.

Impact 10-7: Consistency with the San Jose Airport Comprehensive Land Use Plan. Approximately 12 acres of the eastern third of the Plan Area (northeast of Old Ironsides Drive and Patrick Henry Drive) are in the San Jose International Airport Influence Area (AIA). The rest of the Plan Area, south of Patrick Henry Drive and west of Old Ironsides Drive, is not located within the AIA.

The Airport Comprehensive Land Use Plan (CLUP) establishes development standards related to noise, structure height, and safety that are applicable to development in areas surrounding the airport. While the Plan Area is not located in a mapped safety or noise area, parts of the Plan Area are within the CLUP Height Restriction Area, which uses the Federal Aviation Administration’s (FAA) Federal Aviation Regulations (FAR) Part 77 imaginary surfaces to delineate the area within which structures above a maximum structure height may constitute a safety hazard.

Federal Aviation Regulations, Part 77, “Objects Affecting Navigable Airspace” (commonly referred to as FAR Part 77) sets forth standards and review requirements for protecting the airspace for safe aircraft operation, particularly by restricting the height of proposed structures and minimizing other potential hazards to aircraft such as reflective surfaces, flashing lights, and electronic interference. These regulations require that the FAA be notified of certain proposed construction projects located within an extended zone defined by an imaginary slope radiating outward for several miles from an airport’s runways, or which would otherwise stand at least 200 feet in height above ground.

CLUP Policy H-1 states that any structure, existing or proposed, that penetrates (i.e., is above the maximum structure height) the FAR Part 77 imaginary surfaces would be considered an incompatible use, barring a determination from the FAA that the proposed structure or object does not present a hazard to air navigation. Based on preliminary review of the Plan Area by the City of San Jose Airport Department, the FAR Part 77 airspace surface notification requirement would apply to structures whose proposed height would exceed from 150 feet to 170 feet above ground

(assuming a ground elevation of roughly 20 feet), and therefore would require review of project plans by the FAA (which would consider other factors besides height, such as flight direction and trajectory). Notification to the FAA would therefore be required for individual proposed structures that would exceed this airspace surface, such as for buildings in the Urban Center designation where allowable heights of 12-plus stories have the potential to reach 150-170 feet. FAA review and issuance of determinations that a proposed structure would not be a hazard to air navigation, and project compliance with any conditions set forth in such FAA determinations, would ensure that the structure would not be an air safety hazard.

Additional CLUP policies related to land use compatibility include Policy G-6, which prohibits uses within an AIA that may cause hazards to aircraft due to electrical interference, high intensity lighting, attraction of birds, and activities that produce smoke, dust, or glare, among others. Projects proposed in the Plan Area that are within the San Jose International Airport AIA would need to be referred to the ALUC for a consistency review with the San Jose International Airport CLUP.

Based on the discussion above and the adopted, standard protocols under the CLUP, this land use compatibility and safety impact is considered ***less-than-significant***.

Mitigation 10-7. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

Cumulative projects located in the vicinity of the Plan Area do not include manufacturing facilities or operations that would use significant quantities of hazardous materials. The cumulative projects, therefore, would not create a significant hazard to the environment through the routine use, transport, or reasonably foreseeable accidents related to hazardous materials use. Hazardous materials contamination impacts are specific to the individual sites within the Specific Plan area as impacts vary by site characteristics, site history, and proposed land use, and are subject to local, County, State and Federal regulations.

Redevelopment in the Plan Area therefore would *not* make a considerable contribution to a significant cumulative hazardous materials impact.

H. Hydrology and Water Quality

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

- (a) Impact 11-1: Construction Period Water Quality Impacts.** The Regional Water Quality Control Board (RWQCB) and City of Santa Clara water quality protection requirements and conditions applicable to Specific Plan implementation are intended to reduce any potential construction period water quality impacts to a *less-than-significant level*, consistent with federal and State water quality regulations and plans.

Development facilitated by the Patrick Henry Drive Specific Plan would implement site-specific, mandated measures (uniformly applied development standards) to protect water quality, including but not limited to those measures required under the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP).

Any project grading activities involving disturbance of more than one acre would require a Notice of Intent (NOI) and a National Pollution Discharge Elimination System (NPDES) permit from the San Francisco Bay Regional Water Quality Control Board (RWQCB, Region 2 for Santa Clara). The RWQCB administers the NPDES stormwater permitting program in the Bay Area, including the Municipal Regional Stormwater NPDES Permit and C.3 (stormwater compliance) Permit. Project owners submit a Notice of Intent (NOI) to the RWQCB to be covered by the General Construction Permit prior to the beginning of construction. The General Construction Permit requires the preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For a project entailing disturbance of more than one acre, the SWPPP must be prepared before construction begins, usually during the planning and design phases of a project, and must include specifications for Best Management Practices (BMPs) that would be implemented during project construction to control contamination of surface flows and the potential discharge of pollutants from commencement of construction through project completion. The SWPPP document itself remains on-site during construction. After completion of the project, the owners are required to submit a Notice of Termination to the RWQCB to indicate that construction is completed.

Also, depending on individual development proposals, grading permits would be required. For all grading permits, the City mandates site-specific measures (uniformly applied development standards) to be implemented during grading to minimize construction period erosion, including a site-specific erosion and sediment control plan subject to City review and approval. Erosion and sediment control plans typically show what BMPs are proposed to be used and where, and are customarily superimposed on a project grading plan. Because project sites and site

conditions vary, the measures could include a combination of techniques such as erosion control blankets, fiber rolls, silt fences, storm drain inlet protection, and stabilized construction exit(s), and would generally address how to minimize impacts from active construction areas during the rainy season (i.e., stockpiling and protecting site soils), preservation of existing vegetation and revegetation of disturbed areas afterward, use of soil stabilization methods (soil binders, straw mulch, etc.), as well as sediment control measures (such as silt fences or straw wattles) to prevent residual silt runoff to storm drains or waterways and measures to clean equipment and prevent off-site tracking of construction-related soil and other debris.

The temporary use of hazardous materials (e.g., diesel fuel) and heavy equipment, which represent a secondary component of construction, could introduce materials that might be spilled in the Specific Plan Area and subsequently washed into water bodies, such as Calabazas Creek, San Tomas Aquino Creek, and, ultimately, San Francisco Bay. These substances could have a direct, adverse effect on water quality in water bodies. Implementation of the standard, required NPDES, SCVURPPP, and City construction period measures to reduce the risk of construction period pollutants would reduce this risk to a *less-than-significant level*.

As noted above, individual development projects would be required to treat and detain stormwater runoff on a site-specific basis. Road resurfacing and sidewalk repair and/or replacement are exempt from the NPDES C.3 Permit requirements if the work is within the existing impervious area footprint. Where Specific Plan-facilitated improvements include new roadway impervious surfaces outside existing impervious areas, the NPDES C.3 Permit requirements must be implemented.

Based on the above discussion, construction period water quality impacts resulting from Specific Plan implementation would be ***less-than-significant***

Mitigation 11-1. No significant impact has been identified; no mitigation is required.

- (b) Impact 11-2: Long-Term Water Quality Impacts from Project Operation.** Specific Plan long-term implementation could result in contamination of Plan Area stormwater runoff with petroleum and other contaminants from motor vehicles. Development facilitated by the Specific Plan would be required to comply with RWQCB- and City-mandated post-construction, non-point source pollution control measures (uniformly applied development standards; also known as facilities and maintenance practices) that would ensure that such impacts would be reduced to a *less-than-significant level*.

Plan implementation could result in the deposition by motor vehicles of oil and other contaminants along Plan Area streets and in parking areas. Rainfall has the potential to wash these contaminants into the municipal storm drainage system, potentially contaminating downstream waterways, in particular San Tomas Aquino

Creek where stormwater runoff from the Plan Area is conveyed, although during major storm events with high levels of rainfall, storm drain networks can interact through overflow connections and surface flows. Such non-point pollution is typically controlled through a combination of source controls (generally through the use of infiltration devices, such as infiltration trenches or basins, which are designed to transmit runoff directly to subsurface soils and thereby prevent pollutants from entering the waterways).

Under the terms of the countywide Municipal Regional Stormwater NPDES Permit (MRP) that the City of Santa Clara is subject to, each development project must also implement post-construction measures to prevent or control pollutants in runoff (recommended measures are included in the Stormwater C.3 Guidebook), and identify a plan to inspect and maintain these measures. Project designs, subject to review and approval by the City, would be required to include the on-site collection of runoff from all parking facilities and, if feasible, its on-site treatment (oil/grease traps, filters, oil/water separators, or similar in-line filtration systems), and an associated periodic clean out/maintenance program that ensures acceptable trap efficiencies, specifies appropriate disposal procedures, and adequately reduces the risk that the traps become sinks for pollutants. A regular schedule of parking facility sweeping would also be required. In addition, source control features such as roofed trash enclosures would be required to keep pollutants from contacting stormwater. These mandated, uniformly applied stormwater treatment measures would also need to meet engineered sizing criteria approved by the City Engineer.

Permanent post-construction Best Management Practices (BMPs) are required for all new projects that create or replace between 2,500 and 10,000 square feet ("small projects") or more ("large projects") of roofs or pavement, including new development, redevelopment, and commercial and industrial sites. Permanent treatment BMPs can include, for example:

- rainwater harvesting and re-use,
- biofiltration swales,
- detention basins,
- bioretention areas, and
- flow-through planter boxes.

Low Impact Development (LID) features can be integrated with BMPs, control measures, and permit requirements. LID features reduce impervious surfaces and can include pervious pavements, landscape features, and green roofs. Parking stalls and plaza areas in the Plan Area would utilize pervious asphalt, pervious concrete, or permeable pavers. Medians would be landscaped to increase permeability. Landscaped open space also would contribute to reductions in impervious surfaces.

The Specific Plan components identified in section 11.3.2 above are consistent with these water quality measures. All of the above BMPs and LID features, which are discussed in more detail below, are also compatible with the other Patrick Henry Drive Specific Plan frameworks, standards, and guidelines.

Given the existing level of urbanization and the potential development under the Specific Plan, BMPs can complement the Plan's development standards and guidelines, and address existing constraints. For example, bioretention planter areas may be used to treat roadway runoff, and flow-through planter boxes may be used to treat roof runoff. Or, depending on site-specific conditions and proposed plans, BMPs and LID features could include those listed above (BMP: rainwater harvesting and re-use, etc.; LID: pervious pavement, landscape features, etc.) or a combination of these or other feasible and effective techniques. As part of the standard City development process, future project applicants would be required to submit, for City review and approval, a Santa Clara "C.3" data form, which would be used to determine whether C.3 requirements apply (i.e., projects meeting or exceeding the size threshold for impervious surfaces) and to identify which site design measures, pollutant source controls, and/or stormwater treatment measures are proposed to prevent runoff pollution.

During design, the Stormwater C.3 Guidebook shall be referenced for acceptable BMPs, design considerations, design criteria, and operation and maintenance information. In addition to the C.3 Guidebook, individual development proposals shall determine if drainage would discharge to a water body impacted by specific pollutants, as identified on the C.3 data form (see above), and would be required to demonstrate compliance with RWQCB requirements to reduce stormwater runoff water quality impacts to a less-than-significant level. The 303(d) List of Impacted Water Bodies, prepared and issued by the RWQCB, includes Calabazas and San Tomas Aquino creeks. The Municipal Regional Permit (MRP) provides more detailed information. Based on the discussion above, the effects of contaminated site runoff on water quality in the local (municipal) storm drainage system would represent a *less-than-significant impact*.

Mitigation 11-2. No significant impact has been identified; no mitigation is required.

- (c) **Impact 11-3: Effects on Groundwater Recharge and Groundwater Management.** Currently, the Specific Plan Area is covered almost entirely with structures, surface parking (asphalt paving), and introduced landscaping. Based on Plan stormwater treatment components in coordination with C.3 requirements and BMPs, Plan implementation would be expected to decrease the proportion of the Plan Area that is covered with impervious surface through application of LID techniques that would increase permeable area as well as the introduction of new landscaped, open space, and park areas.

The Specific Plan Area would not conflict with or obstruct implementation of the 2016 Santa Clara Valley Water District Groundwater Management Plan because the Plan Area is not an area designated by Valley Water for groundwater recharge.

Also, the increased use of groundwater is one of several options available to the City to meet short-term water supply deficiencies. The City currently monitors groundwater levels at all City production wells and meters groundwater pumping. If the City determines the need to pump additional groundwater, this groundwater monitoring, in addition to the existing groundwater recharge program, would reduce the potential to substantially decrease groundwater supplies and ensure that the groundwater basin would not approach overdraft conditions.

Therefore, the impact on groundwater recharge and groundwater management would be *less-than-significant*.

Mitigation 11-3. No significant impact has been identified; no mitigation is required.

- (d) **Impact 11-4: Drainage Patterns and Risk of Flooding.** Because the Specific Plan Area is already covered with structures, paved surface parking, and introduced landscaping, development under the Plan would not significantly alter the total volume or rate of stormwater runoff into the existing municipal storm drain system or substantially alter drainage patterns, particularly because implementation of stormwater control measures would slow down the rate and reduce the volume of stormwater runoff, especially when compared to the existing hardscape areas. In addition, the Specific Plan proposes additional landscaped, open space, and park areas with pervious surfaces.

The currently mapped FEMA Flood Zones indicate that most of the Plan Area is located in Zone X (“Area with Reduced Flood Risk Due to Levee”) – i.e., not in the 1% annual flood hazard zone.

The Specific Plan Infrastructure Program indicates that stormwater flows generated by future development under the Patrick Henry Drive Specific Plan would be adequately received by existing off-site storm drain systems. In addition, because the Plan Area is currently developed, no pipeline extensions are anticipated to serve the Plan Area.

The City applies uniformly applicable stormwater management regulations to avoid or reduce the potential for flood flow or drainage impacts of development, including erosion and siltation impacts, which provide for incorporating in projects one or a combination of BMPs such as rainwater harvesting and re-use, biofiltration swales, detention basins, bioretention areas, and flow-through planter boxes, and/or LID features such as use of pervious pavement, landscape features, and green roofs. The City’s Flood Damage Prevention Code (City Code chapter 15.45) requires

development in Special Flood Hazard Areas to meet City standards related to anchoring of structures, construction methods and materials, elevation of structures, and floodproofing (as applicable to reduce or eliminate flood damage). Compliance with these City Code standards would also reduce risks from hazards resulting from inundation by regulating uses (including new construction and other development activities) that may increase flood heights or velocities or otherwise obstruct or redirect flood water in a manner that could lead to potential release of pollutants. City erosion and sediment control plan requirements would reduce the potential for erosion and/or sedimentation resulting from any changes in drainage patterns.

Also, for individual developments, the City requires a utility plan addressing, among other infrastructure components, the storm drain system. Practices include controlling the amount and timing of runoff from development sites (e.g., see the BMPs and LID features described above, which control runoff quantities as well as improve water quality) and raising the elevation of buildings or other flood protective measures as described above. Implementation of these development standards would be required as a condition of individual development project approval, prior to issuance of grading or building permits. Also, because development under the Specific Plan would be required to prevent increases in runoff flows from new development and redevelopment projects (e.g., comply with NPDES C.3 requirements), Specific Plan effects on existing drainage patterns would be less-than-significant.

Based on the above discussion, the impacts of drainage patterns and potential flooding are considered ***less-than-significant***.

Mitigation 11-4. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

(a) None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

The Project would not have a cumulatively considerable impact on hydrology or water quality. All development projects (including future development under the Specific Plan) are required to undertake steps to avoid, minimize, and/or mitigate flooding and water quality impacts. Projects north of the Plan Area, including City Place, shall be designed to have no impacts to upstream water surface elevations

and therefore will cause no negative flooding impacts to the project site. In addition, the Project will have no impact on hydrology or water quality with implementation of the mitigation measures discussed above. Future upstream projects would not impact the Plan Area as they would not significantly alter the existing hydrologic (i.e. flow path) conditions of those areas and are subject to NPDES regulations for treatment and retention of stormwater runoff. Therefore, cumulative hydrological impacts would be considered *less than significant*.

J. Land Use and Planning

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

(a) Impact 12-1: Project Effects on the Physical Arrangement of the Community.

The analyses and findings in this EIR indicate that future development activity under the Patrick Henry Drive Specific Plan would not disrupt or divide the physical arrangement of the community. The Plan Area is generally an internally focused collection of large, self-contained parcels. Specific Plan-facilitated development identified in the Project Description would occur within the Plan Area. Implementation of the Specific Plan would establish integrated physical and functional connections between Specific Plan Area parcels and with the adjacent community.

The Patrick Henry Drive Specific Plan, in concert with the Santa Clara General Plan, is intended to provide for the expansion of housing choices by encouraging compact, transit-accessible, pedestrian-oriented housing and mixed-use (housing/retail/office) development in the Plan Area at densities and heights greater than currently developed. The Plan is designed to ensure that this housing and mixed-use development is conveniently located near public transportation, shopping, employment, and other community facilities.

The Specific Plan land use provisions and development standards and guidelines would be expected to encourage substantial beneficial land use effects in (1) revitalizing the Specific Plan Area; (2) facilitating development where services and infrastructure can be most efficiently provided by promoting higher residential densities within or near existing employment and public transportation areas; (3) and promoting compact, transit-accessible, pedestrian-oriented, mixed-use development patterns and land use. These Patrick Henry Drive Specific Plan land use characteristics epitomize the principles and policies of the Association of Bay Area Governments (ABAG) Plan Bay Area, and would represent a ***beneficial land use effect***.

Mitigation 12-1. The Patrick Henry Drive Specific Plan would result in beneficial land use and planning effects. No mitigation pertaining to environmental impacts on the physical arrangement of the community is required.

- (b) **Impact 12-2: Project Consistency with Land Use Plans, Policies, and Regulations Adopted for the Purpose of Avoiding or Mitigating Environmental Effects.** CEQA requires environmental impacts to be analyzed compared to *existing conditions on the ground*. Both the Santa Clara General Plan and the Patrick Henry Drive Specific Plan identify the Plan Area as the location of future higher-density, higher-intensity, mixed-use development, which may result in building heights and massing greater than existing conditions. The General Plan policies listed in each environmental topic chapter (e.g., Hazards and Hazardous Materials, Land Use, Noise, Public Services, Utilities) of the EIR apply to the proposed Specific Plan.

The Specific Plan includes components that would avoid or reduce potential land use and planning impacts. The Plan is intended to implement the basic project objectives identify improvements, and adopt frameworks, standards, guidelines, and implementation actions which can be consistently applied throughout the Plan Area. The Plan is designed to ensure that housing and mixed-use development is conveniently located near public transportation, retail and services, employment, and open space and community facilities, both in the Plan Area and the surrounding community.

New development throughout the Plan Area would include a combination of residential, retail, flex, office, community, and open space uses. Residential uses would be located throughout the Plan Area. New uses could include combinations of, for example, residential, retail, restaurant, and office uses in single or mixed-use buildings.

The parks, recreation and open space framework for the Patrick Henry Drive Specific Plan “includes policies and requirements to create a diverse network of public parks, green infrastructure, and private recreational spaces that support the physical, social and environmental health of the neighborhood while integrating with the community-wide City public parks and recreation system”.

As discussed in the EIR topic chapters, the Specific Plan is substantially consistent with adopted land use plans, policies, and regulations. However, there could be some potential conflicts related to air quality and cultural and historic resources:

- Air Quality – potential conflicts. As discussed in chapter 5, Air Quality, implementation of the Specific Plan would result in construction emissions that could be substantial and result in significant health impacts, which would represent a potential conflict with BAAQMD regulatory thresholds.
- Cultural and Historic Resources – potential conflicts. As discussed in chapter 7, Cultural and Historic Resources, although EIR-identified mitigation measures would generally ensure compliance with applicable, adopted local, regional, State, and federal plans and regulations, there is the possibility that a future individual project could result in a substantial adverse change in the significance of the historic resource that cannot be avoided (for instance, an as-yet unidentified

historic resource that cannot be moved or otherwise preserved or rehabilitated), which would represent a potential conflict.

The remaining topics, Biological Resources (chapter 6), Geology and Soils (chapter 8), Greenhouse Gas Emissions and Energy (chapter 9), Hazards and Hazardous Materials (chapter 10), Hydrology and Water Quality (chapter 11), Land Use (chapter 12), Noise (chapter 13), Population and Housing (chapter 14), Public Services (chapter 15), Recreation (chapter 16), Transportation (chapter 17), and Utilities and Service Systems (chapter 18) do not identify potential conflicts with land use plans, policies, and regulations adopted for the purpose of avoiding or mitigating environmental effects.

For a discussion of Specific Plan consistency with other adopted plans and policies, see chapter 19, Project Consistency with Local and Regional Plans, of this EIR.

The Patrick Henry Drive Specific Plan would serve to achieve a coordinated, connected environment within the Plan Area while increasing land use intensity through frameworks and unified, context-sensitive design standards and guidelines, which would result in the efficient use of existing resources and infrastructure. Plan components are purposely designed to achieve and maintain a cohesive, compatible land use pattern and sense of place in the Plan Area, as well as provide smooth transitions with adjacent neighborhoods and areas. The impact of the Specific Plan on land use and planning is considered a *beneficial land use effect*.

Mitigation 12-2. The Patrick Henry Drive Specific Plan would result in beneficial land use and planning effects. No additional mitigation pertaining to project consistency with land use plans, policies, and regulations adopted for the purpose of avoiding or mitigating environmental effects is required beyond those mitigation measures already identified in the environmental topic chapters of the EIR (see Mitigation Measure 5-3, which addresses potential construction-period air quality impacts, and Mitigation Measure 7-1, which addresses potential impacts to historic resources).

2. Project impacts determined to be less than significant with mitigation incorporated

None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

The Project would not result in any impact to mineral resources, agriculture, and forestry resources, therefore, the Specific Plan would not result in cumulative

impacts to these resources. The Project would not contribute to cumulative projects that would divide an established community given the uses surrounding the cumulative projects and the nature of the proposed developments. Although several of the cumulative projects would be inconsistent with the General Plan because they propose growth that is unaccounted for in their respective City's General Plans, the PHDSP would not make a cumulatively considerable contribution to such an impact. The PHDSP, although proposing additional growth beyond that considered in the General Plan, would assist the City in meeting its regional housing needs and addressing the jobs/housing imbalance in Santa Clara. Several projects in the cumulative analysis, including City Place Santa Clara and Phases II and III of the General Plan which includes residential development near the Lawrence Expressway Caltrain Station and PHDSP, identified land use impacts related to the regional jobs-housing imbalance. Over the past few decades, regional job growth has greatly exceeded housing capacity, leading to traffic congestion and air pollution from vehicles as workers commute long distances from outlying areas with more affordable housing. Both City Place Santa Clara and Phases II and III of the General Plan contain substantial employment-based land uses, which would exacerbate indirect impacts related to traffic and air pollution. Though some job-creating land uses are proposed under PHDSP, development under PHDSP would improve the regional jobs/housing imbalance by creating 12,000 dwelling units. Therefore, this cumulative impact would be *less than significant*.

K. Noise and Vibration

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

- (a) Impact 13-5: Operational Vibrations.** The Plan Area does not currently include any substantial vibration generating equipment. The Specific Plan would add a mix of residential, mixed-use, flex, and/or office land uses to the Plan Area over time, reaching full development by 2040. These new land uses could involve machinery and equipment such as pumps, compressors, generators, and other fixed equipment that produce vibrations; however, this equipment would not generate vibration levels that could exceed the City's vibration perception threshold. Potential pumps, generators, and other typical equipment would be securely mounted and not large enough to generate substantial vibrations beyond the immediate vicinity of the equipment. The Specific Plan does not propose or support any large vibration-inducing equipment or land use activities and would not result in excessive ground-borne vibration levels. This represents a *less-than-significant impact*.

Mitigation 13-5. No significant impact has been identified; no mitigation is required.

- (b) Impact 13-6: Exposure to Airport-Related Noise.** The San Jose International Airport CLUP establishes the 65 CNEL contour as the noise restriction area for residential land uses, and the City's General Plan (Policy 5.10.6-P8) encourages safe

and compatible land uses within the airport's noise restriction area. As described in Section 13.1.7, the part of the Plan Area north of Patrick Henry Drive and east of Old Ironsides Drive lies within the Norman Y. Mineta San Jose International Airport influence area; however, the Plan Area is not located within the 65 CNEL contour associated with San Jose International Airport (SCC ALUC 2016; Figure 5). Accordingly, future development within the Plan Area would not be subjected to excessive airport-related noise levels.

Consistent with the CLUP (Policy N-5), future owners in the Plan Area that own property in the airport influence area and who rent or lease property for residential use will be required to include a disclosure in the rental/lease agreement with the tenant that the property is within a high noise area associated with airport operations and may be exposed to airport-related noise levels greater than 65 CNEL.

The Plan Area is not located within two miles of a private airstrip or related facility.

The Specific Plan would not expose people living or working in the Plan Area to excessive airport-related noise levels. This impact is considered a ***less-than-significant impact***.

Mitigation 13-6. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

- (a) Impact 13-1: Plan-Related Temporary Construction Noise Levels.** The implementation of the Patrick Henry Drive Specific Plan could result in construction and development activities in the Plan Area that generate noise levels above City standards and/or otherwise result in a substantial, temporary increase in ambient noise levels in the vicinity of the Plan Area. This represents a ***potentially significant impact***.

Finding: Mitigation measures would reduce impacts due to construction-related vibration impacts to less than significant levels. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

With regard to construction noise, demolition, site preparation, and grading phases typically result in the highest temporary noise levels due to the use of heavy-duty equipment such as dozers, excavators, graders, loaders, scrapers, and trucks. The use of specialized equipment such as impact or vibratory pile drivers can also generate high noise levels during initial foundation work stages. The worst-case L_{eq} and L_{max} noise levels associated with the operation of a dozer, excavator, scraper, etc., are predicted to be approximately 82 and 85 dBA, respectively, at a distance of

50 feet from the equipment operating area. At an active construction site, it is not uncommon for two or more pieces of construction equipment to operate at the same time and in close proximity. The concurrent operation of two or more pieces of construction equipment would result in noise levels of approximately 85 to 88 dBA at a distance of 50 feet from equipment operating areas. The magnitude of each individual future project's temporary and periodic increase in ambient noise levels would be dependent upon a number of project-specific factors that are not known at this time, including: the amount and type of equipment being used; the distance between the area where equipment is being operated and the location of the specific land use, receptor, etc., where noise levels are being evaluated; the time of day construction activities are occurring; the presence or absence of any walls, buildings, or other barriers that may absorb or reflect sound waves, the total duration of the construction activities, and the existing ambient noise levels near construction areas.

Typically, sustained construction noise levels of 80 to 85 dBA or higher would require the implementation of construction noise control practices such as staging area restrictions (e.g., siting staging areas away from sensitive receptors), equipment controls (e.g., covered engines and use of electrical hook-ups instead of generators), and/or the installation of temporary noise barriers of sufficient height, size (length or width), and density to achieve targeted noise reductions. In general, typical construction equipment activities could exceed the City's significance thresholds at residential and commercial land uses within 400 feet and 200 feet of work areas, respectively, assuming the construction activity would last for more than one year (which may or may not be the case depending on the project. The use of pile driving equipment, if necessary, could exceed residential and commercial thresholds at distances of 500 and 400 feet, respectively. While all projects in the Planning Area would be subject to the permissible construction hours established by the Municipal Code, construction activities could result in temporary increases in noise levels above ambient conditions of 10 to 30 dBs or more during permissible time frames, which would be perceived by noise-sensitive land uses as doubling or quadrupling of loudness, respectively. This is considered a potentially significant impact.

Mitigation Measures

Mitigation 13-1: Reduce Construction Noise Levels. To reduce potential noise levels from Specific Plan related construction activities, the City shall ensure future development projects within the Plan Area:

- 1) Notify Residential and Commercial Land Uses of Planned Construction Activities. This notice shall be provided at least one week prior to the start of any construction activities, describe the noise control measures to be implemented by the Project, and include the name and phone number of the designated contact for the Applicant/project representative and the City of Santa Clara responsible for handling construction-related noise complaints (per Section 8). This notice shall be

provided to: A) The owner/occupants of residential dwelling units within 500 feet of construction work areas; B) The owner/occupants of commercial buildings (including Mission College) within 200 feet of construction work areas or within 400 feet of construction work areas if pile driving equipment will be used; and C) Mission College when construction work areas are within 500 feet of College athletic fields.

2) Notify Calabazas Creek Trail Users of Construction Activities. Prior to the start of construction activities within 500 feet of Calabazas Creek Trail, signs shall be posted along the trail warning of potential temporary elevated noise levels during construction. Signs shall be posted within 250 feet of impacted trail segments (i.e., portions of the trail within 500 feet of a work area) and shall remain posted throughout the duration of all substantial noise generating construction activities (typically demolition, grading, and initial foundation installation activities).

3) Restrict Work Hours. All construction-related work activities, including material deliveries, shall be subject to the requirements of City Municipal Code Section 9.10.230. Construction activities, including deliveries, shall occur only during the hours of 7:00 AM to 6:00 PM, Monday through Friday, and 9 AM to 6 PM on Saturday, unless otherwise authorized by City permit. The applicant/project representative and/or its contractor shall post a sign at all entrances to the construction site informing contractors, subcontractors, construction workers, etc. of this requirement.

4) Control Construction Traffic and Site Access. Construction traffic, including soil and debris hauling, shall follow City-designated truck routes and shall avoid routes (including local roads in the Plan Area) that contain residential dwelling units to the maximum extent feasible given specific project location and access needs.

5) Construction Equipment Selection, Use, and Noise Control Measures. The following measures shall apply to construction equipment used in the Plan Area: A) To the extent feasible, contractors shall use the smallest size equipment capable of safely completing work activities; B) Construction staging shall occur as far away from residential and commercial land uses as possible; C) All stationary noise-generating equipment such as pumps, compressors, and welding machines shall be shielded and located as far from sensitive receptor locations as practical. Shielding may consist of existing vacant structures or a three- or four-sided enclosure provide the structure/barrier breaks the line of sight between the equipment and the receptor and provides for proper ventilation and equipment operations; D) Heavy equipment engines shall be equipped with standard noise suppression devices such as mufflers, engine covers, and engine/mechanical isolators, mounts, etc. These devices shall be maintained in accordance with manufacturer's recommendations during active construction activities; E) Pneumatic tools shall include a noise suppression device on the compressed air exhaust; F) The applicant/project

representative and/or their contractor shall connect to existing electrical service at the site to avoid the use of stationary power generators; G) No radios or other amplified sound devices shall be audible beyond the property line of the construction site.

6) Implement Construction Activity Noise Control Measures: The following measures shall apply to construction activities in the Plan Area: A) Demolition: Activities shall be sequenced to take advantage of existing shielding/noise reduction provided by existing buildings or parts of buildings and methods that minimize noise and vibration, such as sawing concrete blocks, prohibiting on-site hydraulic breakers, crushing, or other pulverization activities, shall be employed to the maximum extent feasible; B) Demolition Site Preparation, Grading, and Foundation Work: During all demolition, site preparation, grading, and structure foundation work activities within 500 feet of a residential dwelling unit or 250 feet of a commercial building (including Mission College), a physical noise barrier capable of achieving a minimum 10 dB reduction in construction noise levels shall be installed and maintained around the site perimeter to the maximum extent feasible given site constraints and access requirements. Potential barrier options capable of achieving a 10 dB reduction in construction noise levels could include, but are not limited to: i) A six-foot-high concrete, wood, or other barrier installed at-grade (or mounted to structures located at-grade, such as a K-Rail), and consisting of a solid material (i.e., free of openings or gaps other than weep holes) that has a minimum rated transmission loss value of 20 dB; ii) Commercially available acoustic panels or other products such as acoustic barrier blankets that have a minimum sound transmission class (STC) or transmission loss value of 20 dB; iii) any combination of noise barriers and commercial products capable of achieving a 10 dBA reduction in construction noise levels during demolition, site preparation, grading, and structure foundation work activities; iv) The noise barrier may be removed following the completion of building foundation work (i.e., it is not necessary once framing and typical vertical building construction begins provided no other grading, foundation, etc. work is still occurring on-site); and C) Pile Driving: If pile driving activities are required within 500 feet of a residential dwelling unit or 400 feet of a commercial building (including Mission College), the piles shall be pre-drilled with an auger to minimize pile driving equipment run times.

7) Prepare Project-Specific Construction Noise Evaluation. Prior to the start of any specific construction project lasting 12 months or more, the City shall review and approve a project-specific construction noise evaluation prepared by a qualified acoustical consultant that: A) Identifies the planned project construction sequence and equipment usage; B) Identifies typical hourly average construction noise levels for project construction equipment; C) Compares hourly average construction noise levels to ambient noise levels at residential and commercial land uses near work areas (ambient noise levels may be newly measured or presumed to be consistent with those levels shown in Table 13-2 and 13-3 of the Patrick Henry Drive Specific Plan Draft Environmental Impact Report (EIR); and D) Identifies construction noise control measures incorporated into the project that ensure: i) activities do not

generate noise levels that are above 60 dBA Leq at a residential dwelling unit and exceed the ambient noise environment by at least 5 dBA Leq for more than one year; and ii) activities do not generate noise levels that are above 70 dBA Leq at a commercial building (including Mission College) and exceed the ambient noise environment by at least 5 dBA Leq for more than one year. Such measures may include, but are limited to: a) The requirements of Sections 4, 5, 6, and 8; B) Additional project and/or equipment-specific enclosures, barriers, shrouds, or other noise suppression methods. The use of noise control blankets on building facades shall be considered only if noise complaints are not resolvable with other means or methods.

8) Prepare a Construction Noise Complaint Plan. The Construction Noise Complaint Plan shall: A) Identify the name and/or title and contact information (including phone number and email) for a designated project and City representative responsible for addressing construction-related noise issues; B) Includes procedures describing how the designated project representative will receive, respond, and resolve construction noise complaints; C) At a minimum, upon receipt of a noise complaint, the project representative shall notify the City contact, identify the noise source generating the complaint, determine the cause of the complaint, and take steps to resolve the complaint; D) The elements of the Construction Noise Complaint Plan may be included in the project-specific noise evaluation prepared to satisfy Section 7 or as a separate document.

9) Owner/Occupant Disclosure: The City shall require future occupants/tenants in the Plan Area receive disclosure that properties in the Plan Area may be subject to elevated construction noise levels from development in the Plan Area. This disclosure shall be provided as part of the mortgage, lease, sub-lease, and/or other contractual real-estate transaction associated with the subject property.

With implementation of these measures, this impact would be *less than significant*.

- (b) Potential Impact: Impact 13-2: Plan-Related Temporary Construction Vibration Levels.** The implementation of the Patrick Henry Drive Specific Plan could result in construction and development activities in the Plan Area that generate vibration levels above City standards and/or otherwise result excessive ground-borne vibration levels. This represents a *potentially significant impact*.

Finding: Mitigation measures would reduce impacts due to construction-related vibration impacts to less than significant levels. The City hereby determines this impact to be *less than significant*.

Facts in Support of Finding

Construction activities have the potential to result in varying degrees of ground vibration, depending on the specific construction equipment used and activities involved. Vibration generated by construction equipment spreads through the

ground and diminishes with increases in distance. The effects of ground vibration may be imperceptible at low levels, result in low rumbling sounds and detectable vibrations at moderate levels, and can disturb human activities such as sleep and vibration sensitive equipment at high levels. Ground vibration can also potentially damage the foundations and exteriors of existing structures even if it does not result in a negative human response. Pile drivers and other pieces of high impact construction equipment are generally the primary cause of construction-related vibration impacts. The use of such equipment is generally limited to sites where there are extensive layers of very hard materials (e.g., compacted soils, bedrock) that must be loosened and/or penetrated to achieve grading and foundation design requirements. The need for such methods is usually determined through site-specific geotechnical investigations that identify the subsurface materials within the grading envelope, along with foundation design recommendations and the construction methods needed to safely permit development of a site.

As indicated under Impact 13-1, since project specific information is not available at this time, potential short-term construction-related vibration impacts can only be evaluated based on the typical construction activities associated with residential, commercial, and retail development. Potential construction equipment and activity vibration levels were developed based on methodologies, reference noise levels, and equipment usage and other operating factors documented and contained in the FTA's Transit Noise and Vibration Impact Assessment document and Caltrans' Transportation and Construction Vibration Guidance Manual (FTA 2018 and Caltrans 2020).

Construction vibration impacts generally occur when construction activities occur in close proximity to buildings and vibration-sensitive areas, during evening or nighttime hours, or when construction activities last extended periods of time. Construction activities associated with the proposed project would occur in multiple phases and may last several years in total, with full development of the Plan Area anticipated to occur by 2040. In general, construction activities in the Plan Area would not be located near residential or commercial buildings or structures because the Plan Area is bordered by a parking lot on the north, Great America Parkway to the east, Mission College parking areas and athletic fields to the south, and the Calabazas Creek Trail to the east. The exception to this is the southeast corner of the Plan Area, where construction activities could occur within 50 feet of an existing, adjacent commercial building. The closest residential building facades are approximately 195 feet to the west of the Plan Area, across the Calabazas Creek; however, the Kylli Mixed Use Development Project borders the Plan Area to the north and could result in future buildings adjacent to the Plan Area. In addition, future land uses envisioned by the Specific Plan (e.g., residential dwelling units, library use, commercial buildings) could be located near construction work areas within the Plan Area and affected by construction vibration.

Mitigation Measures

In addition to adhering to the City Code for construction hours, the future development projects would be required to implement the following standard construction noise control measures to reduce construction noise levels at nearby land uses:

Mitigation 13-2: Reduce Construction Vibration Levels. To reduce potential vibration-related structural damage and other excessive vibration levels from Specific Plan related construction activities, the City shall ensure future development projects within the Plan Area:

- 1) Notify Residential and Commercial Land Uses of Planned Construction Activities. See Patrick Henry Drive Specific Plan Draft Environmental Impact Report (EIR) Mitigation Measure 13-1, Section 1.
- 2) Restrict Work Hours. See Patrick Henry Drive Specific Plan Draft EIR Mitigation Measure 13-1, Section 2.
- 3) Prohibit Vibratory Equipment if Feasible. The use of large vibratory rollers, vibratory/impact hammers, and other potential large vibration-generating equipment (e.g., hydraulic breakers/hoe rams) shall be prohibited within 100 feet of any residential building façade and 50 feet of any commercial building façade during construction activities. Plate compactors and compactor rollers are acceptable, and deep foundation piers or caissons shall be auger drilled.
- 4) Prepare Project-Specific Construction Vibration Evaluation Plan. If it is not feasible to prohibit vibratory equipment per Section 3) due to site- or project-specific conditions or design considerations, the City shall review and approve a project-specific construction vibration evaluation that: A) Identifies the project's planned vibration-generating construction activities (e.g., demolition, pile driving, vibratory compaction); B) the potential project-specific vibration levels (given project-specific equipment and soil conditions, if known) at specific building locations that may be impacted by the vibration-generating work activities (generally buildings within 50 feet of the work area); C) Identifies the vibration control measures incorporated into the project that ensure equipment and work activities would not damage buildings or result in vibrations that exceed Caltrans' strongly perceptible vibration detection threshold for peak particle velocity (PPV) of 0.1 inches/second (in/sec). Such measures may include, but are not limited to: i) the requirements of Sections 1, 2, and 3; ii) the use of vibration monitoring to measure actual vibration levels; iii) the use of photo monitoring or other records to document building conditions prior to, during, and after construction activities; and iv) the use of other measures such as trenches or wave barriers; D) Identifies the name (or title) and contact information (including phone number and email) of the

Contractor and City-representatives responsible for addressing construction vibration-related issues; and E) Includes procedures describing how the construction contractor will receive, respond, and resolve to construction vibration complaints. At a minimum, upon receipt of a vibration complaint, the Contractor and/or City representative described in the first sub-bullet above shall identify the vibration source generating the complaint, determine the cause of the complaint, and take steps to resolve the complaint by reducing ground-borne vibration levels to peak particle velocity levels that do not exceed accepted guidance or thresholds for structural damage that are best applicable to potentially impacted buildings, including Caltrans' strongly perceptible vibration detection threshold.

With implementation of these measures, this impact would be *less than significant*.

- (c) **Impact 13-3: On-site Noise Levels from Specific Plan Development.** The implementation of the Patrick Henry Drive Specific Plan could result in new roadway and infrastructure improvements and new residential, office, and other land uses that generate noise from on-site equipment, activities, or other operations in excess of applicable City standards. This represents a *potentially significant impact*.

Facts in Support of Finding

Although the proposed Specific Plan could increase the amount of noise sources and noise-generating activities compared to existing conditions, the project would have a limited potential to generate significant on-site noise levels for the following reasons:

- In general, residential land uses (including the proposed high-density residential land uses) are not a substantial noise-generating land use type because:
 - They do not involve substantial noise-generating activities during the nighttime;
 - Mechanical equipment associated with elevators, residential amenities such as pools, and other building systems are typically enclosed within the closets, sheds, or equipment rooms; and
 - HVAC equipment is typically screened from public view by landscaping, fences, or walls and, therefore, shielded from adjacent property lines.
- The Plan Area would support residential and recreational land uses along shared property lines with Mission College, the Calabazas Creek Trail, and lands to the north of the Plan Area (which are currently commercial but may transition to residential in the future).
- The proposed high density flex land uses, which may consist of office/commercial developments with commercial-grade HVAC equipment, back-up generators, or other mechanical equipment, would be located along the eastern edge of the Plan Area, between Old Ironsides Drive and Great America Parkway, and would have little to no potential to impact on- or off-site receptors due to the distance

between flex use boundaries and other nearby properties (estimated to be a minimum of 100 feet).

- The proposed mixed-use overlay, which would permit residential development with ground-floor retail, flex, or community uses, would support an active street environment, and primarily provide local-serving retail and neighborhood services and amenities to meet the day-to-day needs of residents. These retail, flex, and community uses would be located on the interior of the Plan Area (along local roads) and would be unlikely to require substantial loading or unloading facilities or large, stationary sources of equipment.
- The Specific Plan includes design standard and guidelines for building orientation (Standard 5.5.2.5), building frontages and setbacks (Standard 5.5.3.3 and Standard 5.5.3.5), and alleys/service access (Guideline 5.5.4.11 and Standard 5.5.4.12) that screen residential uses from noise generating activities such as garage entrances and loading areas (see Section 13.3.2).
- The City's General Plan establishes procedures and standards to protect noise sensitive land uses from noise intrusion (see Section 13.2.4.1) and the City's Municipal Code establishes specific numeric standards for residential and commercial lands that are not be exceed by stationary equipment (see Section 13.2.4.2).

As explained above, the proposed Specific Plan is considered to have a limited potential to include on-site sources or activities that could generate noise levels that exceed City standards or otherwise substantially increase existing ambient noise levels; however since project-specific information is not available at this time, the potential exists for future development projects to include noise-generating equipment or involve noise generating activities that could exceed the City's standards or otherwise substantially exceed the ambient noise environment if not adequately mitigated. The implementation of Mitigation Measure 13-3 would require development projects in the Plan Area to include site design, noise attenuation, and/or other noise control measures to ensure project-specific fixed noise source levels do not exceed City standards. This impact would be less than significant with mitigation.

Mitigation 13-3: Control Fixed and Other On-site Noise-Generating Sources and Activities. To ensure on-site, operations-related equipment and activities associated with the Specific Plan do not generate noise levels that exceed City standards or otherwise result in a substantial permanent increase in ambient noise levels, future development projects shall submit a project-specific operational noise analysis to the City for review and approval prior to the issuance of the first building permit for the project, or as otherwise determined by the City. The noise analysis shall be prepared by a qualified acoustical consultant and shall identify all major fixed machinery and equipment, non-residential truck docks/dedicated loading zones, waste collection areas, and above ground parking garages included in the final project design/site plan. The noise analysis shall also document how project noise sources and activities will comply with the exterior sound limits established in Municipal Code Section 9.10.040, Schedule A and the noise compatibility guidelines in General Plan Table 8.14-1. Fixed machinery and equipment may include, but is not limited to, pumps, fans (including air intake or exhaust fans in parking garages), compressors, air conditioners, generators, and refrigeration equipment. The control of noise from such equipment may be accomplished by selecting quiet equipment types, siting machinery and equipment inside buildings, within an enclosure (e.g., equipment cabinet or mechanical closets, or behind a parapet wall or other barrier/shielding. Truck docks/dedicated loading zones consist of a loading dock or other dedicated area for the regular loading and unloading of retail, commercial, or other non-residential goods from delivery trucks. The control of noise from such truck docks/loading areas, waste collection areas, and parking garages may be accomplished by placing such areas away from sensitive land uses, restricting activities or operating hours for certain areas, or other design means.

With implementation of these measures, this impact would be *less than significant*.

3. Project impacts determined to be significant and unavoidable

- (a) **Impact 13-4: Increases in Traffic Noise Levels from Specific Plan Development.** The implementation of the Patrick Henry Drive Specific Plan could generate vehicle trips that substantially increase existing and future No Project traffic noise levels and/or exceed City noise and land use compatibility standards. This represents a *potentially significant impact*.

Facts in Support of Finding

The Specific Plan would have the potential to change the existing amounts and types of land uses within the Plan Area. These potential land use changes would increase residents and employees within the City and lead to an increase in vehicle trips and traffic-related noise levels that could pose land use compatibility issues and/or otherwise represent a substantial permanent increase in traffic noise levels on roadways used to access the Plan Area.

Mitigation Measures

No feasible mitigation is possible.

L. Population and Housing

(a) Impact 14-1: Effects on Population Growth. Based on the forecasted development capacity under the proposed Specific Plan (see chapter 3, Project Description, of this EIR), the Plan is anticipated to result in up to the following new development in the Plan Area:

- 10,300 (Scenario B) to 12,000 (Scenario A) residential units,
- 150,000 square feet (sq. ft.) of new retail space,
- 90,000 sq. ft. of new flex space (residential, retail, and/or office),
- 70,000 sq. ft. of new community/civic space, and
- 785,000 sq. ft. of new office space (Scenario B only).

Both the Patrick Henry Drive Specific Plan and this EIR assume these numbers represent the maximum capacity for future anticipated development. As such, the City would monitor new development approvals to ensure that there is remaining capacity as new projects are approved. Should the Plan Area approach capacity, the City would reevaluate both the Plan and the EIR and amend them as necessary to address and mitigate growth above and beyond these capacity numbers.

The Specific Plan assumes an average of 2.23 persons per new household (pph) in the Plan Area, based on demographic and economic research prepared for the Plan.⁴ Using this factor, Plan implementation could accommodate up to approximately 22,970 (Scenario B) to 26,760 (Scenario A) new residents in the Plan Area by the year 2040 (the estimated Plan buildout horizon). The General Plan identified the Plan Area as a “future focus area” designated for “change from existing underutilized office and industrial uses to higher-density residential and mixed-use neighborhoods,” with objectives outlined to establish the necessary infrastructure, amenities, and services to support potential growth, and the Plan Area has been included in the “General Plan Land Use Assumptions.”⁵ Due to the predominately residential nature of growth anticipated under the Specific Plan, the projected

⁴“Persons Per Household By Unit Type, City of Santa Clara, CA,” provided by the City based on California Department of Finance Estimates for City of Santa Clara (as of 1/1/2018) and Persons Per Household by Unit Type for Santa Clara County from U.S. Census Bureau, American Community Survey, 2012-2016 Public Use Microdata Sample [PUMS] data set for Santa Clara County.

⁵As noted in the General Plan, potential development for areas north of U.S. 101 is anticipated to include greater intensification than under existing land use designations, with some areas expected to propose expansion from their allowed uses. The three General Plan phases (Phase I, Phase II, Phase III) were designed to provide opportunities to refine strategies and objectives as the City assesses new needs and conditions through an iterative planning process, such as the comprehensive planning process required prior to development approval in a future focus area, as is the case with this Specific Plan.

increase in residential units would help to address the balance between housing and jobs in the city (i.e., the shortage of affordable housing discussed in section 14.1.2).

As described throughout this EIR (e.g., chapter 3 - Project Description; chapter 17 - Transportation; chapter 18 - Utilities and Service Systems), Plan implementation would not extend roads or infrastructure through undeveloped or low-density areas and, therefore, would not induce substantial population growth beyond the Plan Area boundaries. Rather, Specific Plan implementation would facilitate the projected residential, commercial, and community growth within a mixed-use Plan Area identified for such growth in the Santa Clara General Plan. Therefore, this impact is considered *less-than-significant*.

Mitigation 14-1. No significant impact has been identified; no mitigation is required.

- (b) Impact 14-2: Population and Housing Displacement Effects.** As of October 2020, there is no housing in the Plan Area, and the Specific Plan would not displace any residents or housing. The Patrick Henry Drive Specific Plan is an integrated long-term plan of frameworks and design standards and guidelines. Development potential under the Plan would be initiated voluntarily by property owners. Infrastructure, roadway, open space, and other public improvements proposed under the Plan would not require the displacement of any housing. The mixed-use focus of the Specific Plan would provide for the addition of up to 10,300 to 12,000 residential units in the Plan Area. The Plan is intended to lower transportation costs for future residents currently dependent on private automobiles by providing a mixture of housing types near existing public transportation infrastructure, while also improving access and connectivity to these support services for existing residents through bicycle and pedestrian infrastructure improvements.

The Specific Plan framework noted above (subsection 14.3.2, “Relevant Patrick Henry Drive Specific Plan Components”) would proactively facilitate affordable housing.

Based on the discussion above, impacts on population and housing displacement are considered *less-than-significant*.

Mitigation 14-2. No significant impact has been identified; no mitigation is required.

- (c) Impact 14-3: Temporary Employment Impacts.** Temporary construction jobs would be created over the timeframe of Plan implementation. It is anticipated that an adequate construction work force will continue to exist within commute distance of the Plan Area, thereby making highly unlikely a substantial increase in population due to project construction. The actual number of construction jobs facilitated by the Plan would depend on the construction dollars spent and the construction schedules; these variables cannot be accurately quantified at this time.

Nevertheless, these project-generated employment opportunities would represent a beneficial temporary economic effect of the Patrick Henry Drive Specific Plan. In itself, any population growth associated with construction activity under the Plan would represent a ***less-than-significant environmental impact***.

Mitigation 14-3. No significant environmental impact has been identified; no mitigation is required.

M. Public Services

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

(a) Impact 15-1: Increase in Fire Protection/Emergency Medical Service Demands

The increase in demand for SCFD services resulting from Specific Plan buildout would be expected to generate additional calls for fire protection and suppression/EMS assistance that would require additional staff in order to maintain acceptable service ratios or response times. The SCFD has determined that 25 additional firefighters (FTE) would be sufficient to meet the fire protection and suppression/EMS assistance needs of the Specific Plan; in addition, the SCFD has also determined that three vehicles would also be required: one Fire Department EMS response vehicle or ambulance for Phase 1; a second Fire Department EMS response vehicle or ambulance for Phase 2; and one tiller aerial ladder truck for Phase 3.

Demand for additional fire protection/EMS equipment resulting from Patrick Henry Specific Plan implementation (e.g., for higher buildings than allowed under current zoning) would be funded by the plan's infrastructure fee. In addition, as discussed in Specific Plan Chapter 7 (Implementation Plan), the City has several options to ensure adequate funds will be available for facilities required by Specific Plan development, including approaches and policies for both one-time and on-going costs of public infrastructure, improvements, and services. New development projects under the Specific Plan would be required to pay their share of the costs associated with provision of these facilities through the required infrastructure fee on a per unit basis.

Based on the above uniformly applied fire protection/EMS standards and regulations, the proximity of existing fire stations, the planned expansion and relocation of Fire Station 10, and the City's commitment to providing adequate fire/EMS service, Specific Plan impacts on fire protection/EMS demands are considered ***less-than-significant***.

Mitigation 15-1. No significant impact has been identified; no mitigation is required.

(b) Impact 15-2: Impacts to Police Services

The Patrick Henry Specific Plan does not propose new or expanded police facilities, the construction of which would cause significant environmental impacts; any decision whether to build a new facility or expand an existing facility would be the responsibility of the City Council. The SCPD has noted that more vehicle traffic from anticipated development in the city is expected to occur (along with an associated increase in service calls due to traffic-related enforcement and accident investigations and potentially increased service call response times), which would contribute to the need for additional staff.

Demand for additional police personnel or equipment resulting from Patrick Henry Drive Specific Plan implementation (e.g., to account for an increased residential population) would be funded by established annual City General Fund budget review and allocation. Any potential future need for a separate development impact fee for police services is a policy issue under the purview of the City Council. Under CEQA, the Specific Plan impacts on police service demands are considered ***less-than-significant***.

Mitigation 15-2. No significant impact has been identified; no mitigation is required.

(c) Impacts 15-3: Impacts to School Facilities

New or physically altered school facilities determined necessary by the SCUSD to accommodate students generated by future development under the Specific Plan could cause significant environmental impacts; however, any School District proposal for a new school would be subject to its own evaluation under the California Environmental Quality Act (CEQA), which would be expected to involve an evaluation of environmental impact topics similar to that provided in this EIR.

The SCUSD is responsible for levying impact fees on new development. The residential and commercial development in the Plan Area would be required to pay the State-authorized school impact fees approved by the SCUSD. Pursuant to section 65995(3)(h) of the California Government Code (Senate Bill 50, chaptered August 27, 1998), the payment of statutory school impact fees "*...is deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization....*" Therefore, subsequent to payment of statutory fees, school impacts would be considered ***less-than-significant***.

Mitigation 15-3. No significant impact has been identified; no mitigation is required.

(d) Impact 15-4: Impacts on Parks and Recreational Facilities.

The City ensures a project meets its dedication requirements through the development review process. Parkland, as required, must be included as part of a project's "land use plan" with the location identified on the project property. A

project that does not comply with the parkland dedication requirement would not be approved. In addition, the City requires that parkland be improved (i.e., “turn-key”) and dedicated to the City prior to issuance of a Certificate of Occupancy. Therefore, mandatory, future development of parkland and open space in the Specific Plan Area plus individual project payment of City adopted in-lieu park fees and/or dedication of parkland would ensure that impacts on parks and recreational facilities would be *less-than-significant*.

Mitigation 15-4. No significant impact has been identified; no mitigation is required. See “Construction Period Impacts” below.

- (e) **Impact 15-5: Impacts on Other Public Facilities.** The Specific Plan-facilitated increase in residential, commercial, and public activity in the Plan Area, and associated job creation and increase in business activity, would result in a corresponding incremental increase in demand for other public, municipal services (e.g., Santa Clara Public Libraries). However, the City is requiring the Plan to include approximately 45,000 square feet of additional City library facilities to accommodate anticipated incremental library service demand. The Specific Plan has identified areas where community facilities (including a library) would be located; however, particular library development plans would be subject to discussions between the City and a future project applicant. Funding options could include those provided in Specific Plan Chapter 7 (Implementation), which discusses options for ensuring adequate funds for facilities required by Specific Plan development, including approaches and policies for both one-time and on-going costs of public infrastructure and related improvements. As an option, the City could consider working out a separate arrangement with a property owner for providing a “community benefit,” though the precise terms of such a future arrangement are beyond the scope of this analysis. A future library facility proposal would be subject to its own evaluation under the California Environmental Quality Act (CEQA); however, because the site would be in the Plan Area, then library construction would be required to follow the mitigation measures already identified elsewhere in this EIR (chapters 5 [Air Quality], 6 [Biological Resources], 7 [Cultural and Historical Resources], etc.), and review would be limited to ensuring consistency with the provisions of this EIR (see below for construction period impacts). Therefore, this impact would be *less-than-significant*.

Mitigation 15-5. No significant impact has been identified; no mitigation is required.

- (f) **Impact 15-6: Construction Period Impacts.** The construction of Plan-related open space, parkland, and recreational and other public facilities would be temporary and would occur within either existing public rights-of-way or on City property, a project development site, or private property subject to a municipal easement. Construction period air emissions (dust), noise, and traffic interruption typically associated with parks and recreational facilities construction would be reduced through mandatory, uniformly applied City of Santa Clara construction

standards and regulations, as well as mitigations already identified elsewhere in this EIR, which analyzes both operational and construction impacts.

Mitigation 15-6. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

The Project would not have a considerable contribution to a significant cumulative public services impact. The General Plan EIR discussed the cumulative impact on public services from the buildout of the General Plan (which includes a portion of the development and growth proposed by the PHSP) and concluded that future development, consistent with existing regulations, would not result in significant impacts to public facilities. The proximate City Place project would provide for public services on its site or pay in-lieu fees. The in-lieu fees paid by projects developed under the Specific Plan would reduce cumulative impacts to school and park facilities and there would be no impacts to fire, police, or library services. For these reasons, implementation of the Project would *not* have a considerable contribution to a significant cumulative public services impact.

N. Recreation

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

(a) Impact 16-1: Impacts on Parks and Recreational Facilities

The City ensures that a project meets its dedication requirements through the development review process. Parkland, as required, must be included as part of a project's "land use plan" with the location identified on the project property. A project that does not comply with the parkland dedication requirement would not be approved. In addition, the City requires that parkland be improved (i.e., "turn-key") and dedicated to the City. Therefore, mandatory, future development of public parks in the Specific Plan Area plus individual project payment of City adopted park in-lieu fees and/or dedication of parkland to the City in fee title and free of encumbrances would ensure that impacts on parks and recreational facilities would *less-than-significant*.

Mitigation 16-1. No significant impact has been identified; no mitigation is required. See “Construction Period Impacts” below.

- (b) **Impact 16-2: Construction Period Impacts.** No specific project development application has been advanced, and any future specific park or recreational facility proposal would be speculative at this time. However, construction of Plan-facilitated open space, parkland, and recreational facilities would be considered temporary and would occur within either existing public rights-of-way, City property, a project development site, or private property subject to a municipal easement. Construction period air emissions (dust), noise, and traffic interruption typically associated with parks and recreational facilities construction would be reduced through mandatory, uniformly applied City of Santa Clara construction standards and regulations, as well as mitigations already identified elsewhere in this EIR, which analyzes both operational and construction impacts.

Mitigation 16-2. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

None.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

The Project would not have significant impacts on recreation facilities. The General Plan EIR discussed the cumulative impact on recreation facilities from the buildout of the General Plan (including the Plan Area) and concluded that future development, consistent with existing regulations, would not result in significant impacts to recreational facilities. The previously approved City Place project includes an approximately 31-acre park to provide for recreational facilities north of US 101 and the Project will provide on-site park and recreational space and payment of parkland dedication fees such that there is no project-level impact on recreational facilities. Therefore, the Project would *not* result in significant cumulative recreation impacts.

0. Transportation/Traffic

1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment

(a) Impact 17-1: Impacts Related to Vehicle Miles Traveled; Conflict With Adopted Policies, Plans, or Programs Regarding Roadways.

The Patrick Henry Drive Specific Plan qualifies as a transit supportive project and is presumed to have a less- than-significant impact on VMT due because it meets the criteria established by the City related to proximity to transit, density, multimodal transportation networks, transit-oriented design elements, parking, and affordable housing, as discussed below.

Proximity to Transit. Transit supportive projects must be located within ½ mile of an existing Major Transit Stop⁶ or an existing transit stop along a High-Quality Transit Corridor,⁷ as those terms are defined by Public Resources Code sections 21064.3 and 21155. Several parcels in the Plan Area are within ½ mile of the Old Ironsides LRT station, which meets the definition of a Major Transit Stop. In addition, VTA provides frequent bus service via Route 57, which runs along Great America Parkway, and meets the definition of a High-Quality Transit Corridor. All parcels in the Plan Area are within ½ mile of the nearest Route 57 bus stops on Great America Parkway at either Patrick Henry Drive or Old Glory Lane.

Density. For office/R&D projects, transit supportive projects must have a minimum floor area ratio (FAR) of 0.75. Similarly, residential projects must have a minimum density of 35 dwelling units per acre (DU/ac). Residential densities within the Plan Area are proposed to range from a minimum of 65 DU/ac to a maximum of 250 DU/ac. Under Scenario A, flex space would be permitted in addition to proposed residential and community-oriented development. Under Scenario B, 785,000 square feet of office space would be allowed on a 9.86-acre parcel, in place of the residential use designated on that parcel under Scenario A. The office development on this parcel would have an FAR of approximately 1.83. Thus, development densities permitted within the Plan Area would meet the minimum requirements to be considered a transit supportive project.

Multimodal Transportation Networks. City Policy requires that transit supportive projects promote multimodal transportation networks. The Specific Plan would provide balanced, multimodal internal circulation as well as convenient access to nearby destinations and transit stations. The Specific Plan would include the following policies to support safe, active, and sustainable travel options for residents and visitors:

⁶“Major transit stop” means a site containing any of the following: (a) an existing rail or bus rapid transit station; (b) the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods; or (c) a major transit stop that is included in Plan Bay Area 2040. Pub. Res. Code §§ 21064.3, 21155(b).

⁷“High-Quality Transit Corridor” means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. Pub. Res. Code § 21155(b).

- Prioritize the comfort and safety for pedestrians and cyclists;
- Retrofit the right-of-way to accommodate all travel modes including walking, cycling, driving, micro-mobility, and transit;
- Support access to transit stops on Tasman Drive and Great America Parkway;
- Improve infrastructure for pedestrians, cyclists, and micro-mobility (e.g., scooters) to mitigate the impact of urban-scale development on traffic congestion;
- Improve connections to the Calabazas Creek Trail and other trails and greenways;
- Design flexible street environments that allow for innovative transit and ride-share options (e.g., jitneys) as well as emerging technology (e.g., autonomous vehicles);
- Use Transportation Demand Management (TDM) strategies in partnership with area employers and property owners to minimize vehicle miles traveled;
- Limit vehicle parking spaces for residences and businesses; and
- Reduce carbon emissions from transportation.

Transit-Oriented Design Elements. Transit supportive projects would be required to include transit-oriented design elements. The Specific Plan proposes design guidelines and standards to ensure a pedestrian-oriented, mixed-use residential neighborhood that is walkable, with convenient connections to transit. The following urban design principles would ensure the Specific Plan is a transit-oriented development:

- Create a human-scaled public realm with a distinctly urban feel;
- Enliven the street environment and create multi-use activity nodes;
- Prioritize the safety and comfort of pedestrians of all ages and abilities;
- Create a fine-grained network of pedestrian paths;
- Use landscaping to create a comfortable pedestrian realm and contribute color and depth; and
- Use signage appropriate in scale and orientation to the primary audience (i.e., pedestrians versus motorists).

Parking. Transit supportive projects may not include more parking for use by residents, customers, or employees than required by the City Code. Because no specific development applications have been submitted for consideration under the Specific Plan, the proposed on-site parking supply is not known. However, the Specific Plan would not require parking at a higher rate than code requirements in effect in other areas, and therefore, it is assumed that future development in the Plan Area would not include excess parking and would qualify as transit supportive under this metric. Future development proposals would undergo City review, and any applications proposing excess parking would not qualify as transit supportive and would then be subject to separate evaluation of their potential impacts on VMT.

Because the Specific Plan qualifies as a transit supportive project and is substantially consistent with City General Plan policies regarding transportation, this impact would be *less-than-significant*.

Mitigation 17-1. No impact has been identified; no mitigation is required.

- (b) Impact 17-2: Impacts on Transit.** Existing transit service for the Plan Area includes an ACE shuttle and three VTA routes along Great America Parkway (though service is currently limited due to COVID-19). The Plan Area is about a 10-minute walk (approximately one-half mile) from the Old Ironsides light rail station on Tasman Drive. Bus stops are currently located within the Plan Area on Patrick Henry Drive and Old Ironsides Drive, with additional bus stops on Great America Parkway and Mission College Boulevard. The Specific Plan would not interfere or conflict with these transit facilities and would be consistent with VTA Transit Service Guidelines, which guide VTA service planning, including route determination, service levels, and capacity (ridership coverage).

The Specific Plan proposes to contribute to grade separation projects at intersections with light rail in the median, HOV-type signal improvements that could support future bus rapid transit facilities, and transit signal priority at signalized intersections. While the VTA's "New Transit Service Plan" (2019) does not call for transit service within the Plan Area, the Specific Plan proposes to include "shuttle stops" along Patrick Henry Drive and Old Ironsides Drive that would allow for shuttle or other micro transit services provided by VTA, a Transportation Management Agency (TMA), or a private provider. Thus, the project is expected to have a positive effect on transit services.

Therefore, this impact would be *less-than-significant*.

Mitigation 17-2. No significant impact has been identified; no mitigation is required.

- (c) Impact 17-3: Impacts on Bicycle Facilities.** The Specific Plan proposes to add a grid system of new streets, which would include the addition of Class IV protected bike lanes on Patrick Henry Drive and Old Ironsides Drive within the Plan Area. Internal Plan Area streets would also be designated as Class III bike routes. Some of the new streets would be designed only for pedestrians and bicycles.

Because the Specific Plan would improve bicycle facilities in the Plan Area and provide safer conditions for bicyclists relative to existing conditions, consistent with the City's General Plan and the Bicycle Master Plan Update 2018, this would be a *beneficial effect*.

Mitigation 17-3. No significant impact has been identified; no mitigation is required.

(d) Impact 17-4: Impacts on Pedestrian Facilities.

As described earlier in the setting (section 17.1), the Specific Plan proposes to add a grid system of new streets, which would be designed with new continuous sidewalk facilities and high visibility crosswalks at intersections. Some of the new streets would be designed only for pedestrians and bicycles. Where currently present, sidewalks would be improved. All of these intersections would be upgraded to ensure they comply with current ADA standards.

The Specific Plan also proposes a new greenway west of Patrick Henry Drive that would connect the Plan Area to the Calabazas Creek Trail. There is a bridge across Calabazas Creek which allows the Sunnyvale residents on the other side of the creek to walk to Mission College and Mercado Shopping Center. Additional greenways would be added along the entire length of Patrick Henry Drive and Old Ironsides Drive, and for the proposed Specific Plan parks.⁸

Because the Specific Plan would improve pedestrian facilities in the Plan Area and provide safer conditions for pedestrians relative to existing conditions, consistent with the City's General Plan and the City of Santa Clara Pedestrian Master Plan 2019, this would be a *beneficial effect*.

Mitigation 17-4. No significant impact has been identified; no mitigation is required.

(e) Impact 17-5: Hazards Due to Design Features or Incompatible Uses. Conflicts between modes would be reduced through better accommodations, including Specific Plan elements such as new and/or improved sidewalks, bike lanes, and more accessible and comfortable bus stops. The Specific Plan proposes an improved internal roadway network designed to accommodate vehicular traffic that is balanced with other modes (including walking, cycling, micro-mobility, and transit).

In particular, the Specific Plan includes roadway standards to ensure safe, comfortable mobility options through a coordinated network of streets, roadways, greenways, and bicycle paths.

Designs would be subject to City review as detailed site plans are not yet available; however, compliance with Specific Plan and City standards would be required, which would ensure adequacy of circulation patterns and safety standards; reduce potential conflicts between vehicles, pedestrians, bicyclists, and buses; and remove potential hazards due to design features (i.e., insufficient sightlines or distances) or incompatible uses. Therefore, this impact would be *less-than-significant*.

⁸As noted in chapter 3, Project Description, Specific Plan section 4.5.1 (Parks, Recreation and Open Space Policies) includes the following policy: "Connect parks and plazas with publicly accessible private greenways to provide safe, comfortable access while supporting connectivity throughout the PHD Specific Plan Area."

Mitigation 17-5. No significant impact has been identified; no mitigation is required.

- (f) Impact 17-6: Emergency Access.** Existing access to the Plan Area for emergency vehicles is via connections to Great America Parkway from Old Glory Lane and Patrick Henry Drive. These connections would remain. In addition, the Specific Plan proposes an improved internal roadway network, which would increase the number of connection points that could facilitate emergency access. With the Mission College Boulevard connector road (between Patrick Henry Drive and Mission College Boulevard), emergency access would be improved through creation of an additional route off-site. Without the Mission College Boulevard connector road, emergency access would not be substantially reduced; however, as noted in the Hexagon analysis, elimination of this proposed connector road would generally result in worse traffic at many intersections, though those traffic effects would not constitute impacts under CEQA, as explained in the Hexagon analysis, and improvements recommended by Hexagon for most intersections would be the same with or without the connector road. Designs of the streets would be subject to City review, as detailed site plans are not yet available, to ensure the adequacy of circulation patterns and compliance with City emergency vehicle access standards, such as requiring that alleys have a minimum width of 25 feet to allow for emergency vehicles and connecting “dead end” street sections (i.e., cul-de-sacs) with multi-modal paths that would allow emergency vehicles. City review of future driveway and drive aisle design would ensure compliance with City emergency vehicle access requirements. Therefore, this impact would be *less-than-significant*.

Mitigation 17-6. No significant impact has been identified; no mitigation is required.

- 2. Project impacts determined to be less than significant with mitigation incorporated**
- None.**
- 4. Cumulative impacts**
- None.**
- P. Utilities and Service Systems**
- 1. Project impacts determined to have no impact on the environment, or have a less than significant impact on the environment**

Impact 18-2: Project and Cumulative Need for Water, Wastewater, and Storm Drainage System Infrastructure.⁹ The water, wastewater, and storm drainage infrastructure systems would require improvements, including the upgrading of existing deficiencies, in order to accommodate new development facilitated by the Patrick Henry Specific Plan. The information below is summarized mainly from Specific Plan Chapter 6 (Infrastructure) and identifies the water, sewer, and storm drainage infrastructure improvements that are incorporated into the Plan.

(a) Projected Water Demand and Infrastructure Needs. As indicated in Specific Plan Chapter 6 (Infrastructure), distribution mains would be required for new public streets proposed to serve Plan Area fire and domestic water needs. Additionally, existing asbestos-cement (AC) water mains within the Plan Area would need to be upgraded and replaced with the City's standard ductile iron pipe (DIP).

As new development proposals are brought forward, sizing of particular water mains would need to be considered to ensure meeting prescribed fire flows and domestic water needs, and line sizes may or may not need to be increased. Final sizing of any particular pipeline would need to be determined based on project-specific modeling of the system and would rely on water use parameters of the specific development proposal.

New distribution mains in backbone streets would be anticipated to require 8-inch or 12-inch diameter pipes, and distribution mains in local streets would be anticipated to require 8-inch or 12-inch diameter pipes. Any upgrading in pipe sizes would need to be determined using hydraulic modeling based on final land plans, building types, water demands, fire flow requirements, and phasing to establish final actual line sizes in each street.

Also, given the age and material of the water infrastructure in the Plan Area (AC pipes installed between 1966-1981), water mains that would otherwise remain due to their location within a proposed street will need to be upgraded to DIP to comply with current City of Santa Clara Water & Sewer Utilities Department standards. Developers would need to perform individual hydraulic modeling to determine whether existing pipes would require upsizing replacing the AC pipe with DIP.

Although existing recycled water infrastructure in the Plan Area is not expected to require upgrades due to age or materials based on current City of Santa Clara Water & Sewer Utilities Department standards, individual project applicants in the Plan Area would need to perform a hydraulic modeling analysis to evaluate the adequacy of the existing pipe sizes to determine if upgrades in pipe sizes are necessary to meet any projected recycled water capacity needs.

⁹Although discussion of cumulative impacts is provided in chapter 20, CEQA-Mandated Sections, of this EIR, the analysis of utilities and service systems impacts, due to their inherently cumulative nature and related City-wide capital improvement planning implications, includes the cumulative analysis in the following section.

(b) Projected Wastewater Generation and Infrastructure Needs. The 2016 Sewer Master Plan determined that existing wastewater flows for the City in 2015 totaled 14.9 million gallons per day (mgd) under average dry weather flow (ADWF) conditions and 21.6 mgd under peak dry weather flow (PDWF) conditions, with an increase to 22.4 mgd on “game days” at Levi’s Stadium (to account for additional flow). Existing peak wet weather flow (PWWF) conditions totaled 39.6 mgd. Santa Clara sewer connections accounted for the majority of these totals, with the Cupertino Sanitary District contributing between approximately 24 percent to 32 percent.

Using hydraulic modeling to estimate future flows, the 2016 Sewer Master Plan determined that future wastewater flows for the City in 2035 would total 34.4 mgd under ADWF conditions and 46.8 mgd under PDWF conditions (increasing to 47.7 mgd for “game days”). PWWF conditions were estimated to total 59.4 mgd. Similar to the existing flow conditions, Santa Clara sewer connections would be expected to account for the majority of these estimated future flow totals, with the Cupertino Sanitary District estimated to contribute between approximately 20 percent to 26 percent.

The hydraulic model evaluated potential capacity deficiencies and backups in the existing sewer system and identified areas currently experiencing surcharge due to “throttle” conditions (where peak flow exceeds pipe capacity), surcharge due to backwater from a downstream throttle condition, and related violations of City capacity criteria including system components likely to experience these conditions with future (2035) flows. The 2016 Sewer Master Plan recommended solutions to address these conditions, including several pipe upgrades and lift station pump adjustments.

Currently, wastewater flows from the Specific Plan Area are conveyed northeast to the Northside and Rabello pump stations, and from there pumped to the San Jose/Santa Clara Regional Wastewater Facility for treatment and disposal. Table 18-6 shows existing flows and future flow estimates for the Northside and Rabello pump stations, as analyzed in the 2016 Sewer Master Plan.

(c) Projected Storm Drainage Infrastructure Requirements. Water quality and potential flooding are discussed in chapter 11, Hydrology and Water Quality, of this EIR. This section evaluates storm drainage infrastructure improvement needs (e.g., new pipelines) for the proposed Patrick Henry Drive Specific Plan.

The 2015 Storm Drain Master Plan identified a number of storm drainage improvement projects in the San Tomas Aquino Creek Drainage Area, but no storm drain projects were identified in or near the Specific Plan Area. Specific Plan Chapter 6 (Infrastructure Program) indicates that stormwater flows generated by future development under the Patrick Henry Drive Specific Plan would be adequately received by existing off-site storm drain systems. In addition, because

the Plan Area is currently developed, no pipeline extensions are anticipated to serve the Plan Area.

Therefore, because no storm drainage improvements have been determined necessary as a result of future Specific Plan buildout, no impact has been identified. However, the City would continuously monitor new development approvals to ensure that stormwater flows are handled sufficiently. Although full development capacity might never be reached, if development in the Plan Area reaches 80 percent of capacity prior to 2040 (the Plan horizon year), the City would reevaluate both the Patrick Hendry Drive Specific Plan and the EIR, and amend them as necessary to address and mitigate growth exceeding the capacity numbers.

Mitigation 18-2. No significant impact has been identified; no mitigation is required.

Impact 18-3: Wastewater Treatment Capacity Impacts. Wastewater from the City of Santa Clara, with some flow from the Cupertino Sanitary District (CuSD), is conveyed to the San Jose-Santa Clara Regional Wastewater Facility (RWF) for treatment before the treated water is discharged into the South San Francisco Bay or recycled for other uses. The RWF has a Water Board/NPDES treatment capacity limit of 167 million gallons per day (mgd). Approximately 35 mgd of RWF treatment capacity is allocated to other wastewater agencies by agreement. The cities of San Jose and Santa Clara share the remaining treatment capacity. In 2020, the treatment capacity allotment for Santa Clara was approximately 25.147 mgd, and the City had approximately 9.606 mgd of unused treatment capacity remaining.¹⁰

According to the Woodard & Curran technical memo prepared for the Specific Plan, wastewater generation from Specific Plan development is projected to total approximately 2.15 mgd under Scenario A and 1.97 mgd under Scenario B. As noted in the technical memo, which based its future capacity analysis on updated General Plan Phase 3 loads, additional wastewater generation from other General Plan-approved development combined with wastewater generated from Patrick Henry Drive Specific Plan development would total approximately 4.3 mgd, which would not exceed the City's remaining capacity allocation of 9.606 mgd. Therefore, Specific Plan development would have a *less-than-significant impact* on wastewater treatment facility capacity.

Mitigation 18-3. No significant impact has been identified; no mitigation is required.

¹⁰“City of San Jose Environmental Services Department, San Jose - Santa Clara Regional Wastewater Facility Tributary Agencies' Estimated Available Plant Capacity – 2020, December 2020” (<https://www.sanjoseca.gov/Home/ShowDocument?id=68283>, accessed 2/24/21).

Impact 18-4: Project Impacts on Solid Waste Disposal and Recycling Service.

Solid waste in the Plan Area is under an exclusive agreement with Mission Trail Waste Systems and is currently taken to the Mission Trail Transfer Station in Santa Clara for processing. From there it goes to the Newby Island Sanitary Landfill in Milpitas. Construction and demolition debris is currently taken to the Zanker Road Resource Recovery Operation. Recology South Bay provides recyclables hauling services to City areas zoned commercial, industrial, and residential. As of January 1, 2021, all exclusive solid waste and recycling in the Plan Area will be collected by GreenWaste Recovery and taken to the GreenWaste Recovery Facility in San Jose for processing, and from there would be taken to the Newby Island Sanitary Landfill (see “Setting,” above). The City has an agreement with GreenWaste Recovery that would provide the City with disposal capacity through June 30, 2036.

Based on City solid waste generation rates, development under the Specific Plan would be anticipated to generate between 119,600 and 128,180 cubic yards of solid waste per year,¹¹ with most of the waste generated by residential use. This would represent approximately 0.6 percent of annual solid waste disposed of at the Newby Island Landfill.¹²

Because Patrick Henry Drive Specific Plan implementation would not be expected to generate an inordinate amount of solid waste for its size (i.e., a rate inconsistent with adopted plans, policies, and regulations) either during demolition/construction activities or operation, and would be served by solid waste disposal and recycling facilities with sufficient capacities to accommodate the Specific Plan’s demolition/construction debris and solid waste disposal needs, the Specific Plan’s effect on solid waste and recycling services would represent a ***less-than-significant impact***.

Mitigation 18-4. No significant impact has been identified; no mitigation is required.

¹¹Scenario A (12,000 DUs and 310,000 SF Other Non-Residential Uses): 12,000 DU @ 1 CY/week per 6 DU; 12,000 DU ÷ 6 DU = 2,000 x 1 CY = 2,000 CY/week (for residential); plus 310,000 SF other non-residential @ 3 CY/week per 2,000 SF (highest generation rate, aka “worst case”); 310,000 SF ÷ 2,000 SF = 155 x 3 CY = 465 CY/week (for other non-residential) = 2,465 CY/week, or 128,180 CY annual solid waste.

Scenario B (10,300 DUs, 785,000 SF Office, and 310,000 SF Other Non-Residential Uses): 10,300 DU @ 1 CY/week per 6 DU; 10,300 DU ÷ 6 DU = 1,717 x 1 CY = 1,717 CY/week (for residential); plus 785,000 SF office @ 3 CY/week per 20,000 SF; 785,000 SF ÷ 20,000 SF = 39.25 x 3 CY = 117.75 CY/week, rounded up = 118 CY/week (for office); plus 310,000 SF other non-residential @ 3 CY/week per 2,000 SF (highest generation rate, aka “worst case”); 310,000 SF ÷ 2,000 SF = 155 x 3 CY = 465 CY/week (for other non-residential) = 2,300 CY/week, or 119,600 CY annual solid waste.

¹²119,600 CY ÷ 21,200,000 CY (landfill) = 0.56 percent, rounded up = 0.6 percent; 128,180 CY ÷ 21,200,000 CY (landfill) = 0.6 percent.

Impact 18-5: Electricity, Natural Gas, and Telecommunications Infrastructure. Specific Plan needs for electricity, natural gas, and telecommunications infrastructure improvements are discussed below:

(a) Electrical System Infrastructure Needs. As discussed in Specific Plan Chapter 6 (Infrastructure), Silicon Valley Power (SVP) owns and operates the electric service within the City of Santa Clara. SVP has identified several electrical system improvements necessary to provide adequate service to Specific Plan development.¹³

For the Plan Area, SVP has identified the need for a new distribution duct bank to be built to provide a connection with the SVP Mission substation; in addition, other related electrical equipment improvements would be necessary along property frontages. Underground easements would be necessary for installation of substructures along frontages (either on the west end of parcel 6 or on the east end of parcel 3), as required of developers by City Code section 17.15.210. SVP anticipates that these frontage improvements for equipment would also be able to serve other projects in the Plan Area and not solely projects on whose property they are located.

According to SVP, funding for duct bank crossings required in the Plan Area would be the responsibility of the “first-come” developer; funding for relocating existing SVP equipment would be the responsibility of future project applicants.

In addition, though the Esperanca electrical substation (an SVP project currently in the planning stage) is intended to provide for the electrical needs of the Related Santa Clara project, SVP has determined that it would have sufficient capacity to handle the electrical system distribution needs of the Specific Plan. Transmission line upgrades for the Plan Area may be required, though construction of these would be the responsibility of SVP.

Future Specific Plan project applicants would be responsible for funding the offsite distribution duct bank (at the Mission substation). Other distribution and transmission system improvements that are not limited to serving the Plan Area would require future Specific Plan project applicants to pay a pro rata share of the cost, based on plans and cost estimates as they are developed (also, Specific Plan Chapter 7, Implementation Plan, outlines the approaches for one-time and on-going costs associated with public infrastructure improvement).

Other potential electrical system improvements that are being considered include a transmission and distribution interconnection study to evaluate the feasibility and impact of SVP improvements, and a Bulk Electric System/interconnection study, both currently in progress. Pro rata cost sharing of total transmission system improvements would be determined based on dollars per kVA (according to SVP)

¹³“Patrick Henry Drive Specific Plan, Stakeholders’ Meeting,” Silicon Valley Power, 9/18/20.

and applicable to individual project demand; however, cost and cost sharing mechanisms have not been finalized.

Electrical system improvements in the Plan Area would be expected to occur within either existing public rights-of-way or on City property, a project development site, or private property subject to a municipal easement. Construction impacts would be temporary. Construction period effects associated with these improvements (such as air emissions/dust, noise, and traffic interruption) would be reduced through mandatory, uniformly applied City of Santa Clara construction standards and regulations, and by mitigations already identified elsewhere in this EIR--for instance, see EIR chapters 5 (Air Quality) for construction period dust control and air emissions reduction measures; 6 (Biological Resources) for ground-disturbance impacts on special status species and potential tree removal; 7 (Cultural and Historical Resources) for impacts on potentially historic structures and/or cultural resources; 8 (Geology and Soils) for erosion control measures and building code design standards; 9 (Greenhouse Gas Emissions/Energy) for GHG- and energy-reducing measures applicable to construction equipment; 10 (Hazards and Hazardous Materials) for potential construction-period hazardous materials use and transport and for potential hazardous waste sites; 11 (Hydrology and Water Quality) for construction-period storm water runoff provisions; and 13 (Noise) for construction-period noise control. No additional significant environmental impacts would be anticipated with this construction activity beyond those impacts already identified in this EIR.

Construction period impacts associated with electrical system improvements outside of the Plan Area would also be expected to occur within either existing public rights-of-way or on City property, or private property subject to a municipal easement. Construction impacts would be temporary. Construction period effects associated with these improvements (such as air emissions/dust, noise, and traffic interruption) would be reduced through mandatory, uniformly applied City of Santa Clara construction standards and regulations. These off-site projects would be subject to their own individual CEQA review, which would be expected to involve an evaluation of environmental impact topics similar to that provided in this EIR; however, because no plans have been finalized nor sites identified for these potential additional electrical system improvements, any further analysis would be speculative. (In addition, it should be noted that further evaluation requirements may be required by the California Public Utilities Commission.¹⁴)

Because Plan Area electrical system improvements would be required to comply with mitigation measures already identified in this EIR, impacts from Specific Plan electrical system improvements would be less than significant.

¹⁴Depending on its size (usually greater than 100kV), a bulk electric system could involve additional evaluation and permitting from other State and federal agencies.

(b) Natural Gas Infrastructure Needs. As discussed in Specific Plan Chapter 6 (Infrastructure), Pacific Gas and Electric Company (PG&E) owns and operates the gas service within the City of Santa Clara, including the Specific Plan Area. A gas main runs east-west roughly midway through the eastern parcel between Great America Parkway and Old Ironsides Drive, then continues south along Old Ironsides Drive to Patrick Henry Drive, and from there heads west before crossing between the two southwestern parcels and past Calabazas Creek to the City of Sunnyvale. PG&E has stated that there are no known capacity limitations within the gas system in the Specific Plan Area. Gas mains would be subject to possible upgrading to comply with current PG&E standards. Any pipeline upgrade or connection to new buildings would be expected to occur within either existing public rights-of-way or on City property, a project development site, or private property subject to a municipal easement.

Construction impacts would be temporary. Construction period effects associated with potential pipeline upgrades and connections to buildings (such as air emissions/dust, noise, and traffic interruption) would be reduced through mandatory, uniformly applied City of Santa Clara construction standards and regulations, and by mitigations already identified elsewhere in this EIR--for instance, see EIR chapters 5 (Air Quality) for construction period dust control and air emissions reduction measures; 6 (Biological Resources) for ground-disturbance impacts on special status species and potential tree removal; 7 (Cultural and Historical Resources) for impacts on potentially historic structures and/or cultural resources; 8 (Geology and Soils) for erosion control measures and building code design standards; 9 (Greenhouse Gas Emissions/Energy) for GHG- and energy-reducing measures applicable to construction equipment; 10 (Hazards and Hazardous Materials) for potential construction-period hazardous materials use and transport and for potential hazardous waste sites; 11 (Hydrology and Water Quality) for construction-period storm water runoff provisions; and 13 (Noise) for construction-period noise control. No additional significant environmental impacts would be anticipated with this construction activity beyond those impacts and identified in this EIR. Therefore, impacts from Specific Plan natural gas infrastructure needs would be less than significant.

(c) Telecommunications Infrastructure Needs. AT&T and Xfinity (Comcast) currently provide communications and cable/internet infrastructure to the Plan Area, with cell phone service available from several of the larger providers (e.g., AT&T, Verizon, T-Mobile). In addition, a “small cell antenna” initiative is being proposed by telecommunication carriers in coordination with Silicon Valley Power to provide more capacity in congested areas and improve service in areas where more traditional cell phone towers can’t reach. (These smaller antennas can be attached discreetly to street light poles.) Individual project applicants would be responsible for coordinating communications and cable/internet connections with AT&T and Xfinity (Comcast), which would be expected to occur within either existing public rights-of-way or on City property, a project development site, or

private property subject to a municipal easement anticipated to be provided for by existing lines.

Construction impacts would be temporary. Construction period effects associated with potential telecommunication line upgrades and/or connections to buildings (such as air emissions/dust, noise, and traffic interruption) would be reduced through mandatory, uniformly applied City of Santa Clara construction standards and regulations, and by mitigations already identified elsewhere in the EIR. No additional significant environmental impacts would be anticipated with this construction activity beyond those impacts already identified in this EIR. Therefore, impacts from Specific Plan telecommunications infrastructure needs would be less than significant.

Because construction of electrical system, natural gas, and telecommunications improvements in the Specific Plan Area would be required to comply with uniformly applied City of Santa Clara construction standards and regulations and the mitigations already identified elsewhere in the EIR, the construction period impacts associated with these improvements would represent a ***less-than-significant impact***.

Mitigation 18-5. No significant impact has been identified; no mitigation is required.

2. Project impacts determined to be less than significant with mitigation incorporated

Impact 18-1: Specific Plan Inconsistency with General Plan and UWMP Growth Projections. The WSA prepared for the proposed Specific Plan includes development in the Plan Area that has not been identified in the General Plan (i.e., exceeds the General Plan land use projections for 2035, the General Plan horizon year), and therefore, because the 2015 Urban Water Management Plan (UWMP) was based on General Plan buildout projections, this WSA is inconsistent with General Plan and UWMP buildout projections. (In addition, the recently adopted 2020 UWMP was based on 2018 ABAG growth projections that also did not include the Specific Plan growth projections.) Until the Specific Plan development exceeding General Plan growth projections is included in the General Plan and UWMP, (the Specific Plan is inconsistent with the General Plan/Urban Water Management Plan, and this inconsistency would represent a ***potentially significant project and cumulative impact***.

Facts in support of Finding: Approval of the Patrick Henry Drive Specific Plan would include adoption of a General Plan amendment to incorporate the Specific Plan into the General Plan's growth projections. In addition, the recently adopted 2020 UWMP, which was based on 2018 ABAG growth projections, also did not include Specific Plan growth. Until the General Plan is amended to include Specific

Plan development, its growth would continue to exceed the current General Plan growth projections for the Plan Area and would not be consistent with the City's prerequisite policy, prior to implementation of General Plan Phase III, of "undertak[ing] a comprehensive assessment of water...demand and facilities in order to ensure adequate capacity and funding to implement the necessary improvements to support development in the next phase" (General Plan Goal 5.1.1-P3). Therefore, to ensure consistency with General Plan and UWMP policies related to ensuring adequate water supplies for future, projected development, future project applications under the Specific Plan would need confirmation that the City-identified water supplies, as discussed previously, would be adequate to serve each project, in compliance with State law.

In addition, SB 221, adopted by the State in 2001, prohibits a city or county from approving a tentative subdivision map or parcel map, or a development agreement including land subdivision, of more than 500 units unless there is written verification that a sufficient and reliable water supply will be available prior to completion of the project. However, the Specific Plan would not entitle any specific development application, nor have any development applications been submitted under the Specific Plan, so while an adequate water supply must still be verified for individual, future project applications, the City in the Patrick Henry Drive Specific Plan WSA has identified water supplies and estimated water demand in compliance with State law.

A project-specific, confirmation of water supply (e.g., written verification from the City that sufficient water supply is available for the project) would need to be completed in connection with the City's approval of any tentative map or development agreement for the Patrick Henry Drive Specific Plan (regardless of the 500-unit or equivalent threshold under SB 221 and SB 610), when the individual project details have been more definitively established. This subsequent confirmation/verification would include any pertinent updates to the citywide water supply situation and would also include progress on City plans for expanding its recycled water program plus City requirements for implementing additional "best management practices" (BMPs) related to recycled water use and/or water conservation.

Mitigation Measure: Mitigation 18-1. Consistent with SB 221 and SB 610, no tentative map, Architectural/Design Review, or development agreement for a proposed, individual project shall be approved until the City of Santa Clara Water & Sewer Utilities Department confirms that water supplies are adequate for each individual project. Such confirmation shall include an updated description of the citywide water supply situation (including any plans for pumping additional groundwater) at that future time, reflecting any progress on City plans for expanding its recycled water program and any City requirements for implementing additional "best management practices" (BMPs) related to recycled water use and/or water conservation. These City actions would ensure a continual monitoring of citywide water supply throughout implementation of the Specific Plan.

Additionally, incorporation of measures to reduce water demand and, if necessary, identification of alternative water sources to offset project supply shortages would reduce this impact to a ***less-than-significant level***.

3. Project impacts determined to be significant and unavoidable

None.

4. Cumulative impacts

None.

V. FINDINGS REGARDING ALTERNATIVES

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. The concept of “feasibility” encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417 (*City of Del Mar*); *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1506-1509 [court upholds CEQA findings rejecting alternatives in reliance on applicant’s project objectives]; see also *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 (*CNPS*) [“an alternative ‘may be found infeasible on the ground it is inconsistent with the project objectives as long as the finding is supported by substantial evidence in the record’”] (quoting *Kostka & Zischke, Practice Under the Cal. Environmental Quality Act* [Cont.Ed.Bar 2d ed. 2009] (*Kostka*), § 17.39, p. 825); *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165, 1166 (*Bay-Delta*) [“[i]n the CALFED program, feasibility is strongly linked to achievement of each of the primary project objectives”; “a lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal”].) Moreover, “‘feasibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.” (*City of Del Mar, supra*, 133 Cal.App.3d at p. 417; see also *CNPS, supra*, 177 Cal.App.4th at p. 1001 [“an alternative that ‘is impractical or undesirable from a policy standpoint’ may be rejected as infeasible”] [quoting *Kostka, supra*, § 17.29, p. 824]; *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 17.)

To provide a basis for further understanding of the environmental effects of a proposed project and possible approaches to reducing its identified significant impacts, the CEQA Guidelines require an EIR to also “...describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”

Identified Alternatives

Pursuant to these CEQA sections, chapter 21 identifies and evaluates the following five alternatives to the project:

- **Alternative 1: No Project - Existing City of Santa Clara 2010-2035 General Plan.** Under Alternative 1 (No Project), there would be no change in the current land use and zoning controls in the Plan Area. The Patrick Henry Drive Specific Plan would not be adopted, and development would proceed under the current 2010-2035 General Plan. New infrastructure would be maintained or constructed as required to accommodate new development on a project-by-project basis, and not as a planned, integrated set of improvements specifically for the Plan Area. The No Project alternative would continue to allow development under the existing Light Industrial (ML) General Plan designation, which would accommodate manufacturing, distribution, warehousing, and other allowable uses with a maximum Floor Area Ratio (FAR) of 0.60. Because no residential uses would be developed, no new public parks or open spaces would be required. The No Project alternative would result in an increase in uses allowed under the Light Industrial General Plan designation. Uses currently in the Plan Area include general office (500,499 square feet), research and development (207,667 square feet), light industrial (120,900 square feet), data center (214,522 square feet), and a church (29,400 square feet) (from Table 5-5 in chapter 5, Air Quality, of this EIR), for a current total of 1,072,988 square feet. Generally, using the 0.6 FAR for the 73.59-acre (3,205,580 square-foot) Plan Area, development over existing conditions in the Plan Area would increase by up to 2,132,592 square feet, for a total in the Plan Area of 3,205,580 square feet of land uses allowable under the Light Industrial General Plan designation.

The frameworks and design standards and guidelines of the proposed Patrick Henry Drive Specific Plan would not be implemented, and no residential units would be developed.

- **Alternative 2: All Commercial Office Development.** Under Alternative 2, a Patrick Henry Drive Specific Plan would be adopted, but all development would be commercial office, which would allow up to be 6,411,161 square feet of commercial office space. No residential, retail, flex, or community development would be included in the Specific Plan. Alternative 2 would result in a net reduction of: 10,300 to 12,000 residential units, 150,000 square feet of retail space, 90,000 square feet of flex space, and 70,000 square feet of community space, with a net gain of approximately 5,551,286 to 6,411,161 square feet of commercial office space.¹⁵ Because no residential uses would be developed, no new public parks or open spaces would be required.

¹⁵The office space calculations are based on the gross acreage of the Plan Area (73.59 acres) multiplied by the 2.0 Floor Area Ratio (FAR) allowed in the Specific Plan High-Density Flex land use classification. Specific Plan Scenario B already proposes 785,000 square feet of office use on about ten acres; therefore, the alternative shows a range of net new office space.

This alternative does not restrict development to fewer potential development sites or at a lower intensity on individual sites compared to the proposed Patrick Henry Drive Specific Plan. Specific Plan frameworks and design standards and guidelines would be revised/reformulated to apply to only commercial office development. Plan components and uniformly applicable development regulations and performance standards would be implemented on individual development sites.

Overall impacts throughout the Plan Area would be expected to be higher, generally due to the single-use (commercial office) aspect of the alternative.

- **Alternative 3: All Residential Development.** Under Alternative 3, a Patrick Henry Drive Specific Plan would be adopted, but all development would be multi-family residential. No retail, flex, office, or community development would be included in the Specific Plan. Alternative 3 would result in a net reduction of: 150,000 square feet of retail space, 90,000 square feet of flex space, 0 to 785,000 square feet of office space, and 70,000 square feet of community space, with a net gain of approximately 4,727 multi-family dwelling units, for a total of 16,727 dwelling units in the Plan Area.

This alternative does not restrict development to fewer potential development sites or at a lower density on individual sites compared to the proposed Patrick Henry Drive Specific Plan. Specific Plan frameworks and design standards and guidelines would be revised/reformulated to apply only to residential development – and Specific Plan public parks and open space provisions would remain intact and could be expanded based on the increase in residents. Plan components and uniformly applicable development regulations and performance standards would be implemented on individual development sites.

Overall impacts throughout the Plan Area would be expected to be higher, generally due to the single-use (residential) aspect of the alternative.

- **Alternative 4: Reduced Overall Development.** Under Alternative 4, a Patrick Henry Drive Specific Plan would be adopted, but overall development would be reduced by 20 percent. Alternative 4 would result in between 8,240 and 9,600 residential units (a net reduction of 2,060 to 2,400 units); 248,000 square feet of non-residential/non-office development (a net reduction of 62,000 square feet); 628,000 square feet of commercial office (Scenario B only; a net reduction of 157,000 square feet); and between 5.6 acres and 6.5 acres of new public parkland and, similarly, 5.6 and 6.5 acres of new open space (a net reduction of 1.41 to 1.6 acres).

This alternative would not restrict development in the Plan Area, and all other Plan frameworks and design standards and guidelines would remain the same. Plan components and uniformly applicable development regulations and performance standards would be implemented on individual development sites. Overall impacts throughout the Plan Area would be expected to be lower.

- **Alternative 5: Alternative Project Location (Considered But Rejected).** Section 15126.6(a) of the CEQA Guidelines states, “An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic project objectives but would avoid or substantially lessen any of the significant effects of the project[.]” Further, section 15126.6(c) explains, “Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental effects.” To help clarify the meaning of “feasibility,” CEQA Guidelines section 15126.6(f)(1) (Rule of Reason/Feasibility) states, “Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries...and whether the proponent can reasonably acquire, control, or otherwise have access to the alternative site....No one of these factors establishes a fixed limit on the scope of reasonable alternatives.”

Santa Clara is an incorporated city bordered by the cities of Sunnyvale and Cupertino to the west, San Jose to the south and east, and Milpitas to the northeast. The approximately 73.59-acre Plan Area is almost completely surrounded by existing development (the proposed Kylli mixed-use development is proposed for the parking area adjacent to the northern Plan Area border and is currently under review). The Plan Area has been identified in the adopted Santa Clara 2010-2035 General Plan and designated a Priority Development Area by ABAG as an area of growth due primarily to its location, the presence of nearby employment opportunities, and the availability of infrastructure (e.g., utility systems, transportation network - including light rail, shuttles to heavy rail and freeways). This situation provides an opportunity to accommodate projected growth while allowing the City to preserve its existing single family and other low-density neighborhoods. An alternative location for the Patrick Henry Drive Specific Plan is not feasible primarily because other areas that could accommodate similar high-density residential development are either currently under development review or are the focus of future study. In addition, the CEQA Guidelines note that the alternatives evaluated in an EIR should be selected based on their ability to avoid or substantially lessen the significant impacts of the proposed project. Even if an alternative location for the project could implement the basic project objectives, only those locations that would avoid or substantially lessen any of the significant impacts of the project need to be considered in the EIR.

In the case of identified significant impacts under the proposed Patrick Henry Drive Specific Plan, (1) feasible mitigation measures are available to reduce most impacts to less-than-significant levels (with the exception of air quality, cultural resources, and traffic noise impacts), and (2) transferring these potentially significant impacts to an alternative location still could substantially affect the environment, possibly worse than in the Plan Area, where coordinated infrastructure, services, regulations, plans, and proximity to transit resources already are in place to avoid or reduce significant

environmental impacts. The Patrick Henry Drive Specific Plan objectives consist of a range of coordinated frameworks and urban design standards and guidelines intended to improve the area for residents, employees, and visitors – in both the short term and long term. The purpose of the Specific Plan is to create new housing balanced with non-residential development appropriate for the location. An alternative to the Specific Plan that focused on a different location in Santa Clara would not necessarily be able to implement the City’s basic objectives for the project.

Because an alternative project location would be infeasible, would not necessarily avoid or lessen the significant impacts of the proposed project and might result in new significant impacts, and would not necessarily be able to achieve the basic project objectives, a project alternative in a different location was eliminated from further detailed consideration. No further evaluation of alternative project locations is required under CEQA.¹⁶

Environmentally Superior Alternative

Alternative 4: Reduced Overall Development would result in the least adverse overall environmental impacts and would therefore be the “environmentally superior alternative.” This conclusion is based on the overall reduction in the severity of impacts compared to the proposed project (the Specific Plan). In addition, Alternative 4 would meet all of the eight basic project objectives, at least to some degree, though it would be less effective in meeting parkland and open space standards, providing community amenities and public facilities, and developing affordable housing (but would still support the City percentage goals – i.e., 15 percent – for affordable housing) due to the reduced size of development proposed.

Finding: Based on the sheer size of the Specific Plan Area (73.59 acres) and the development already allowed under the existing Santa Clara General Plan (No Project), none of the significant unavoidable project or cumulative impacts are expected to be reduced to a level of less than significant under any of the alternatives with the exception that Alternative 4 would be likely to reduce Impact 13-4 (Increases in Traffic Noise from Specific Plan Development) to a less-than-significant level.

¹⁶CEQA Guidelines section 15126.6(c) explains that alternatives may be eliminated from detailed consideration in the EIR if they fail to meet most of the basic project objectives, are infeasible, or do not avoid significant environmental effects. CEQA Guidelines section 15126.6(f) indicates that the Lead Agency should consider site suitability, economic viability, availability of infrastructure, general plan consistency, other regulatory limitation, jurisdictional boundaries, and the proponent's control over alternative sites in determining the range of alternatives to be evaluated in an EIR. With respect to alternative locations, CEQA Guidelines section 15126.6(f) indicates that alternative locations need not be evaluated in every case. The key question in determining whether to evaluate alternative locations is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen significant effects need be evaluated in the EIR. CEQA Guidelines section 15126(f)(2) indicates that alternatives that are remote or speculative, or the effects of which cannot be reasonably predicted, need not be considered.

However, as discussed above, the Reduced Development Alternative would not avoid all of the Project's significant and unavoidable environmental effects. Moreover, as compared to the Project, this Alternative would assist the City substantially less in meeting its RHNA goals and its objectives of providing housing close to commercial development and current and planned jobs and reducing the jobs to housing ratio in the City. Since the Reduced Overall Development Alternative would not avoid all of the Project's significant and unavoidable impacts and would not meet the Project's primary objective of developing a high-density infill development near transit to address the City's RHNA goals as much as is possible, the City rejects as infeasible the Reduced Overall Development Alternative 4 on the basis of such considerations.

VI. FINDINGS REGARDING GROWTH-INDUCING IMPACTS OF THE PROJECT

CEQA Guidelines section 15126.2(d) provides the following guidance on growth-inducing impacts: a project is identified as growth inducing if it "could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.

The Project is an "infill" project, meaning that the Plan Area is within the City's existing boundaries, already served by existing infrastructure, and planned for urban uses. Redevelopment of the Patrick Henry Drive Focus Area was envisioned as part of the Santa Clara 2010-2035 General Plan. The proposed Specific Plan has increased the allowed density in the Plan Area from what was assumed in the General Plan. The resulting dwelling unit assumptions for the Plan Area have increased from 2,550 residential units as described in the Santa Clara 2010-2035 General Plan to 12,000 dwelling units assumed in the Specific Plan. The proposed commercial square footage and school facilities are consistent with the mixed-use neighborhood envisioned for the Plan Area. The impacts to infrastructure and services resulting from the proposed Specific Plan are described and analyzed throughout this EIR. Because the proposed Specific Plan is a previously envisioned growth area in the General Plan and is not anticipated to result in increased growth outside the City where urban development is not already planned, the proposed Specific Plan would not result in growth-inducing impacts beyond what is envisioned in the City's General Plan.

VII. FINDINGS REGARDING RECIRCULATION OF THE DRAFT EIR

The City Council adopts the following findings with respect to whether to recirculate the Draft EIR. Under section 15088.5 of the CEQA Guidelines, recirculation of an EIR is required when "significant new information" is added to the EIR after public notice is given of the availability of the Draft EIR for public review but prior to certification of the Final EIR. The term "information" can include changes in the project or environmental setting, as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative)

that the project's proponents have declined to implement. "Significant new information" requiring recirculation includes, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (CEQA Guidelines, § 15088.5.)

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. The above standard is "not intend[ed] to promote endless rounds of revision and recirculation of EIRs." (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1132.) "Recirculation was intended to be an exception, rather than the general rule." (*Ibid.*)

The City Council recognizes that the Final EIR contains additions, clarifications, modifications, and other changes to the Draft EIR. Some comments on the Draft EIR either expressly or impliedly sought changes to proposed mitigation measures identified in the Draft EIR as well as additional mitigation measures. As explained in the Final EIR (Text Revisions), some of the suggestions were found to be appropriate and feasible and were adopted in the Final EIR. Where changes have been made to mitigation measures, these changes do not change the significance of any conclusions presented in the Draft EIR.

CEQA case law emphasizes that "[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737; see also *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168, fn. 11.) "CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process. In short, a project must be open for public discussion and subject to agency modification during the CEQA process." (*Concerned Citizens of Costa Mesa, Inc. v. 33rd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936 (internal citations omitted).) Here, the changes made to the Draft EIR in the Final EIR are exactly the kind of revisions that the case law recognizes as legitimate and proper.

The City Council finds that none of the revisions to the Draft EIR made by, or discussion included in, the Final EIR involves “significant new information” triggering recirculation because the changes do not result in any new significant environmental effects, substantial increase in the severity of previously identified significant effects, or feasible project alternatives that would clearly lessen the environmental effects of the project. Similarly, no documentation produced by, or submitted to, the City and relied on by the City after publication of the Final EIR, including but not limited to public comments, identifies any new significant effect, substantial increase in the severity of any environmental effect, or feasible project alternatives that would clearly lessen the environmental effects of the project. All project modifications were either environmentally benign or environmentally neutral and all additional documentation relied on by the City merely clarifies or amplifies conclusions in the EIR, and thus represent the kinds of common changes that occur and supplemental information that is received during the environmental review process as it works towards its conclusion. Under such circumstances, the City Council hereby finds that recirculation of the EIR is not required.

VII. SECTION 21082.1(c)(3) FINDINGS

Pursuant to Public Resources Code Section 21082.1(c)(3), the City Council hereby finds that the Final EIR reflects that independent judgment of the lead agency.

IX. STATEMENT OF OVERRIDING CONSIDERATIONS

Where a proposed project may result in significant impacts on the environment, and it is infeasible to reduce impacts to less than significant levels through project alternatives or mitigation measures, CEQA allows a public agency to approve the project only if the benefits of the project outweigh the unavoidable adverse environmental effects.

Section 15093 of the CEQA Guidelines provides the following:

CEQA requires the decision making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

As discussed in more detail in the EIR and as summarized in Section IV above, the Project will result in significant unavoidable impacts related to air quality, historic resources and noise. Specifically, the Project will have significant and unavoidable impacts on the following:

- Toxic Air Contaminant (TAC) emissions
- Potential destruction or degradation of Historic Resources
- Noise, specifically increases in traffic noise levels from Specific Plan development

The project would also result in the following significant unavoidable cumulative impacts:

- Air Quality emissions (criteria pollutant emissions)

The City identified a potentially feasible alternative (the Reduced Overall Development Alternative) that would result in the reduction of the Project's significant and unavoidable impact due to Increases in Traffic Noise from the Specific Plan Development, but it has not identified any potentially feasible alternatives that would avoid any of the other significant and unavoidable impacts. Moreover, as compared to the Project, this Alternative would be of substantially less assistance to the City in meeting its RHNA goals and its objectives of providing housing close to commercial development and current and planned jobs and reducing the jobs to housing ratio in the City.

Furthermore, although the Reduced Overall Development Alternative was initially determined to be *potentially* feasible (subject to further review as the CEQA process proceeded), the City has now determined that the Reduced Intensity is not feasible, for the specific economic, social, environmental, technological, legal or other considerations set forth in section V above. Under CEQA, "the decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 18.

The City certifies that it has considered the information on alternatives provided in the EIR and in the record, and finds that, as described in the EIR and for the reasons identified in Section V above, there are no feasible alternatives that would avoid all of the above-listed significant and unavoidable impacts.

Overriding Considerations

The City finds that notwithstanding the disclosure of the above significant unavoidable impacts, there are specific overriding economic, social, technological, and other reasons for approving the proposed Project. Those reasons are as follows:

- The City finds that each of the specific economic, legal, social, technological, environmental, and other considerations and the benefits of the Project separately and independently outweigh the significant, adverse impacts and is an overriding consideration independently warranting approval. The remaining significant adverse impacts identified above are acceptable in light of each of the benefits of the Project.
- The Project will revitalize a currently underutilized area near Levi's Stadium, the Convention Center, and the future City Place project by providing housing in an amenity-rich, urban environment that is close to transit and employment opportunities.

- The Project will allow the development of an ambitious Park Space and Greenways plan to provide 14.5 acres of open space area including a 5.25 acre park acting as a focal point for the neighborhood.
- The Project will include the establishment of bicycle paths that will provide connections for the residents within the Specific Plan area to nearby employment and entertainment destinations, such as those planned in the City Place project.
- The Project will produce a significant number of new construction jobs during the years of construction.
- The Project plans for the construction of up to 7,200 dwelling units by 2035 that could accommodate up to 11,300 employed City residents, which would substantially improve the City's jobs-housing balance and would be a key component of meeting the City's RHNA obligation for the sixth Housing Element cycle.
- The Project will promote environmental sustainability, transportation efficiency, greenhouse gas reduction, and stormwater management using green technology.
- The Project will provide new development in an already urbanized area where public services are available, including utilities, a well-developed network of roadways and where public transit is immediately adjacent to the site. New practices and standards of sustainability, relying on both current and future technologies, are applied to the project and will enable the most efficient use of resources.

On balance, the City finds that there are specific considerations associated with the Project that serve to override and outweigh the Project's significant unavoidable environmental impacts. Therefore, the significant unavoidable environmental impacts associated with the Project are considered acceptable. As the CEQA Lead Agency for the proposed action, the City has reviewed the Project description and the EIR and fully understands the Project. Based on the entire record before the City, and having considered the unavoidable adverse impacts of the Project, the City hereby determines that all feasible mitigation has been adopted to reduce the potentially significant impacts identified in the EIR, and that no additional feasible mitigation is available to further reduce significant impacts. The City finds that economic, social, technological, and other considerations of the Project outweigh the unavoidable adverse impacts described above. Further, the City finds that each of the separate benefits of the Project is hereby determined to be, in itself and independent of the other Project benefits, a basis for overriding all unavoidable environmental impacts identified in the EIR and in these Findings. In making this finding, the City has balanced the benefits of the Project against its unavoidable environmental impacts and has indicated its willingness to accept those risks.

Table 2.1
SUMMARY OF POTENTIALLY SIGNIFICANT IMPACTS AND RECOMMENDED MITIGATION MEASURES

Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
<i>AESTHETICS</i>				
Impact 4-1: Project Effects on Scenic Vistas	LS	N/A	N/A	N/A
Impact 4-2: Project Impacts on Existing Visual Character and Quality	LS	N/A	N/A	N/A
Impact 4-3: Project Light and Glare Effects	LS	N/A	N/A	N/A
<i>AIR QUALITY</i>				
Impact 5-1: Conflict with 2017 Clean Air Plan	LS	N/A	N/A	N/A
Impact 5-2: Result in a Cumulatively Considerable Net Increase in Criteria Pollutants for which the Region is Non-Attainment. Implementation of the Patrick Henry Drive Specific Plan could result in growth in the Plan Area that exceeds the level of growth accounted for in the City's General Plan and, therefore, could generate a cumulatively considerable net increase in criteria air pollutants for which the region is in non-attainment. This represents a <i>potentially significant impact</i> .	S	<p>Mitigation Measure 5-2A: Implement BAAQMD Basic Construction Mitigation Measures. The City shall require new development projects occurring under implementation of the Patrick Henry Drive Specific Plan to implement the BAAQMD's Basic Control Mitigation Measures to address fugitive dust emissions that would occur during earthmoving activities associated with project construction. These measures include:</p> <ol style="list-style-type: none"> 1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. 	City; Individual project applicants	SU

S = Significant
LS = Less than significant
SU = Significant unavoidable impact
NA = Not applicable

See Table 1.1 for definitions.

Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<ol style="list-style-type: none"> 2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered. 3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. 4. All vehicle speeds on unpaved roads shall be limited to 15 mph. 5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. 6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. 7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and 		

S = Significant
 LS = Less than significant
 SU = Significant unavoidable impact
 NA = Not applicable

See Table 1.1 for definitions.

Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>determined to be running in proper condition prior to operation.</p> <p>8. Post a publicly visible sign with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.</p> <p>Mitigation Measure 5-2B: Require a Project-level Construction Assessment for New Development Proposed Under Implementation of the Patrick Henry Drive Specific Plan. The City shall require applicants to submit a quantitative project-level construction criteria air pollutant and toxic air contaminant emissions analysis for future development proposed under implementation of the Patrick Henry Drive Specific Plan. The estimated construction criteria air pollutant and toxic air contaminant emissions shall be compared against the thresholds of significance maintained by the Bay Area Air Quality Management District (BAAQMD) and, if emissions are shown to be above BAAQMD thresholds, the City shall require the implementation of mitigation to reduce emissions below BAAQMD thresholds or to the maximum extent feasible. Mitigation measures</p>		

S = Significant
 LS = Less than significant
 SU = Significant unavoidable impact
 NA = Not applicable

See Table 1.1 for definitions.

Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>to reduce emissions could include, but are not limited to:</p> <ul style="list-style-type: none"> ▪ Selection of specific construction equipment (e.g., specialized pieces of equipment with smaller engines or equipment that will be more efficient and reduce engine runtime); ▪ Requiring equipment to use alternative fuel sources (e.g., electric-powered and liquefied or compressed natural gas), meet cleaner emission standards (e.g., U.S. EPA Tier IV Final emissions standards for equipment greater than 50-horsepower), and/or utilizing added exhaust devices (e.g., Level 3 Diesel Particular Filter); ▪ Minimizing the idling time of diesel-powered construction equipment to two minutes; ▪ Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM; ▪ Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy-duty diesel engines; and ▪ Application of Low-VOC paints to interior and/or exterior surfaces (e.g., paints that meet SCAQMD Rule 1113 "Low-VOC" or "Super-Compliant" requirements). 		

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 NA = Not applicable

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>Mitigation Measure 5-2C: Use Low- and Super Compliant VOC Architectural Coatings. The City shall require the use of Low- and Super-Compliant VOC Architectural Coatings in maintaining buildings in the Patrick Henry Drive Specific Plan Area through Covenants Conditions and Restrictions (CC&Rs) and Ground Lease. Developed parcels shall require within their CC&Rs and/or ground leases requirements for all future interior spaces to be repainted with architectural coatings that meet the “Low-VOC” or “Super-Compliant” requirements. “Low-VOC” refers to paints that meet the more stringent regulatory limits of South Coast Air Quality Management District AQMD Rule 1113. “Super-Compliant” refers to paints that have been reformulated to levels well below the “Low-VOC” limits.</p> <p>Mitigation Measure 5-2D: Implement TDM Program. Proposed residential, retail, commercial, and office land uses within the Patrick Henry Drive Specific Plan Area shall prepare and implement Transportation Demand Management (TDM) programs consistent with the requirements outlined Section 7.3 of the Patrick Henry Drive Specific Plan. Projects shall achieve a minimum reduction in vehicle miles traveled (VMT) of 20 percent compared to baseline conditions (i.e., without internal or external reductions</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		accounted for, such as geographic location, land use interconnectivity, etc.), with at least 10 percent of the reduction coming through project-specific TDM measures (e.g., transit subsidies, telecommuting options, etc.).		
		Even with implementation of Mitigation Measures 5-2A through 5-2D, this impact would remain significant and unavoidable .		
Impact 5-3: Generate Toxic Air Contaminant Emissions that Expose Sensitive Receptors to Substantial Pollutant Concentrations During Construction. Implementation of the Patrick Henry Drive Specific Plan would result in construction activities over the next approximately 20 years that generate toxic air contaminant emissions and could expose sensitive receptors to substantial pollutant concentrations. These activities represent a potentially significant impact .	S	Mitigation Measure 5-3A: Implement Mitigation Measure 5-2B. Even with implementation of Mitigation Measure 5-3, this impact would remain significant and unavoidable .	City; Individual project applicants	SU
Impact 5-4: Expose Sensitive Receptors to Substantial Operational Pollutant Concentrations	LS	N/A	N/A	N/A
Impact 5-5: Odors	LS	N/A	N/A	N/A
BIOLOGICAL RESOURCES				
Impact 6-1: Impacts on Riparian Habitat, Sensitive Natural Communities, Wetlands,	LS	N/A	N/A	N/A

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
Fish and Wildlife Corridors, and Fish and Wildlife Nursery Sites				
Impact 6-2: Potential Impacts on Threatened and Endangered Habitat. Development facilitated by the Patrick Henry Specific Plan could degrade the habitat of rare, threatened, or endangered species ¹ (also referred to as “special-status”) potentially present on a project site, and conflict with Policy 5.10.1-P1 of the Santa Clara General Plan (see “Regulatory Setting” above). The absence of City evaluation of the need for further biological resource surveys would be in violation of City policy and is therefore considered a <i>potentially significant impact</i> .	S	Mitigation 6-2. In order to keep current the biological resource evaluation prepared for the Patrick Henry Drive Specific Plan EIR, upon receiving applications for site-specific projects within the Specific Plan Area, the City shall evaluate the need for a specific biological resource survey of the project site and adjacent area that may be indirectly impacted by project work. If no biological resources are determined to be at risk as determined by a qualified biologist, no further survey shall be required. However, if the City determines that biological resources within the project area require further analysis, the project proponent shall be required to conduct a biological resource survey of the habitat and special-status species that may be impacted by project activities, either directly or indirectly. A report shall be provided to the City detailing survey methods, results, and avoidance and minimization measures required to protect any special-status species with potential to be impacted, in accordance with the regulatory protocols of the responsible jurisdictional agencies for the resource in question, including, but not limited to: USFWS, CDFW, and USACE. If no further surveys/investigation is requested by a	City; Individual project applicants	LS

¹Special-status species with potential to occur within the Specific Plan Area include: Congdon’s tarplant, arcuate bush mallow, burrowing owl, white-tailed kite, pallid bat, and Townsend’s big-eared bat; as well as nesting birds and roosting bats protected by the MBTA and CFGC.

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>permitting or other regulatory agency upon receipt of biological survey report, work may proceed as planned. Implementation of this measure would reduce the impact to a less-than-significant level.</p>		
<p>Impact 6-3: Potential Impacts on Special-Status Plants. There is a low potential for Congdon's tarplant (<i>Centromadia parryi</i> ssp. <i>congdonii</i>; California Rare Plant Rank 1B.2) and arcuate bush mallow (<i>Malacothamnus arcuatus</i>; California Rare Plant Rank 1B.2) to occur within the Specific Plan Area, especially if the area is left undisturbed for a long period of time (i.e., a year or longer). Without a proactive mitigation procedure in place, Plan implementation could inadvertently result in the removal of special-status plants. This is considered a potentially significant impact.</p>	S	<p>Mitigation 6-3. Before any project work within the Specific Plan Area, a qualified botanist shall conduct site-specific, focused surveys according to CDFW guidelines to determine presence or absence of special-status plant species on the individual project site and any adjacent potential area of disturbance. A comprehensive, site-wide survey should be conducted within May to September before project work begins, to encompass the Congdon's tarplant and arcuate bush mallow's blooming periods. Following the completion of the surveys, a survey results report shall be prepared and provided to the City. This report should include, but should not be limited to, the following: (1) a description of the survey methodology; (2) a discussion of the survey results; and (3) a map showing the survey area and the location of any special-status plants encountered. If no rare plants are found, then no further mitigation would be required.</p> <p>If rare plants are found during the survey, the number of individuals present shall be documented and the limits of population shall be marked with flagging. The flagged border of the population shall be avoided by construction</p>	City; Individual project applicants	LS

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>personnel for the duration of the project. If the species cannot be avoided or may be indirectly impacted, the applicant shall notify CDFW to discuss avoidance, minimization, and mitigation measures as appropriate for each species population, including measures to be taken and protocols to be followed if special-status plants are inadvertently disturbed during construction activities.</p> <p>CDFW may require the preparation and implementation of a mitigation plan that details avoidance, preservation, and/or compensation for the loss of individual special-status plant species. Mitigation may include the purchase of mitigation bank credits, preserving and enhancing existing on-site populations, creation of off-site populations through seed collection and/or transplantation and monitoring these populations to ensure their successful establishment, and/or preserving occupied habitat off-site in perpetuity. Specific amounts and methods of mitigation and/or credits shall be determined in formal consultation with CDFW and USFWS.</p> <p>Implementation of this measure would reduce the impact to a <i>less-than-significant level</i>.</p>		
Impact 6-4: Potential Impacts on Nesting Birds or Roosting Bats. The Federal Migratory Bird Treaty Act and California Fish and Game Code sections 3503, 3503.5, 3513,	S	Mitigation 6-4. The demolition of any buildings, disturbance of gravel substrate, and/or removal of trees, shrubs, or weedy vegetation shall be avoided during the	City; Individual project applicants	LS

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
<p>3800, and 4150 protect migratory and nesting birds, as well as roosting bats. Although the Patrick Henry Drive Specific Plan does not specify which trees or buildings might be removed under individual projects facilitated by the Plan, trees (potential nesting and roosting habitat) or buildings could be disturbed or removed by Plan implementation. The possibility of removing trees and/or buildings that contain nests or roosting bats is identified here as a potentially significant impact. Any direct removal of trees or indirect disturbance by construction or operational activities during the nesting season that causes nest abandonment and/or loss of reproductive effort (killing or abandonment of eggs or young) is considered a "take."</p> <p>There is a low potential for burrowing owl (<i>Athene cunicularia</i>; California species of special concern), white-tailed kite (<i>Elanus leucurus</i>; California Fully-Protected Species), pallid bat (<i>Antrozous pallidus</i>), and Townsend's big-eared bat (<i>Corynorhinus townsendii</i>; California species of special concern) to utilize the landscaped habitat within the Specific Plan Area for roosting and/or nesting, especially if the area is left undisturbed for a long period of time. In addition, many common bird species without a special status, though protected by the MBTA, MBPA, and California Fish and Game Code</p>		<p>February 1 through August 31 bird nesting period to the extent possible. If no demolition, gravel disturbance, vegetation, or tree removal is proposed during the nesting period, no further action is required. If it is not feasible to avoid the nesting period, the project applicant shall retain a qualified wildlife biologist to conduct a survey for nesting birds at most 14 days prior to the start of removal of trees, shrubs, grassland vegetation, or buildings, including prior to grading or other construction activity. If demolition of buildings, disturbance of gravel substrate, or vegetation removal efforts do not begin within the 14 days following the nesting bird survey, another survey shall be required. The area surveyed shall include all construction sites, access roads, and staging areas, as well as reasonably accessible areas within 150 feet outside the boundaries of the areas to be cleared or as otherwise determined by the biologist and dependent on species' life history requirements.</p> <p>If an active nest is discovered in the areas to be directly physically disturbed, or in other habitats within the vicinity of construction boundaries and may be disturbed by construction activities (as determined by the qualified biologist), clearing and construction shall be postponed until the qualified biologist has determined that the young have fledged (left the nest), the nest fails, or the nest is</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
(CFGC), may utilize buildings, gravel substrates, and the landscaped vegetation within the Plan Area for nesting, foraging, and roosting. Common bat species protected by the CFGC may also rarely utilize vegetation within the Specific Plan Area for individual roosting. Without a proactive mitigation procedure in place, Plan implementation could inadvertently result in the removal of existing trees containing nests or eggs of migratory birds, raptors, or bird species during the nesting season, or roosting bats, which would be considered unlawful take under the MBTA and the CFGC (see Regulatory Setting above). This is considered a potentially significant impact .		<p>otherwise determined to be inactive by the biologist (i.e. predation).</p> <p>To avoid impacts to roosting bats that may rarely utilize the Specific Plan Area vegetation and/or vacant buildings for day roosting, the project applicant shall retain a qualified wildlife biologist to conduct a survey for roosting bats at most 14 days prior to the start of demolition of any vacant buildings left with entry and egress points accessible to bats or removal of suitable bat roosting vegetation. If roosting bats are detected, the biologist shall enact a minimum of a 150-foot no-work buffer and confer with CDFW to determine potential roost protection or roost eviction practices. After conferring with CDFW, the protective buffer may be adjusted based on specific roost needs. Once bats have been suitably protected by a buffer and/or safely evicted from roosting sites (as approved by CDFW), construction may resume outside the buffered area.</p> <p>A nesting bird and roosting bat survey report prepared with the methods and results of the pre-project survey will be submitted to the City for review and approval prior to commencement of construction activities. Any additional construction monitoring, as determined through any necessary coordination/discretionary approvals with the resource agencies, will be documented per</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		requirements set forth in an approved mitigation monitoring and reporting program.		
		Implementation of this measure would reduce the impact to a <i>less-than-significant level</i> .		
Impact 6-5: Impacts on Protected Trees, Plants, and Shrubs	LS	N/A	N/A	N/A
CULTURAL AND HISTORIC RESOURCES				
Impact 7-1: Destruction/Degradation of Historic Resources. There may be one or more properties or features within the Specific Plan Area, now or in the future, that meets the CEQA definition of a historic resource, including properties or features eligible for listing in a local, State, or Federal register of historic resources. Future development projects that are otherwise consistent with the proposed Patrick Henry Drive Specific Plan may cause substantial adverse changes in the significance of one or more such historic resources. Substantial adverse changes that may occur include physical demolition, destruction, relocation, or alteration of one or more historic resources or its immediate surroundings such that the resource is "materially impaired." The significance of a historic resource would be considered	S	Mitigation 7-1. For any individual project within the Patrick Henry Drive Specific Plan Area that the City determines may involve a property that contains a potentially significant historic resource, the resource shall be assessed by a professional who meets the Secretary of the Interior's Professional Qualifications Standards to determine whether the property is a significant historic resource and whether or not the project may have a potentially significant adverse effect on the historic resource. If, based on the recommendation of the qualified professional, the City determines that the project may have a potentially significant effect, the City shall require the applicant to implement the following mitigation measures: (a) Adhere to at least one of the following Secretary of the Interior's Standards: ¹	City; Individual project applicants	SU

¹Under the CEQA Guidelines (section 15064.5[b][3]), a project's adverse impact on a historic resource generally can be mitigated to a less-than-significant level by following either of these standards.

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
potentially "materially impaired" when and if an individual future development project proposes to demolish or materially alter the physical characteristics that justify the determination of its significance (CEQA Guidelines section 15064.5[b]). Such adverse changes in the significance of a CEQA-defined historic resource would be a significant impact .		<ul style="list-style-type: none"> Secretary of Interior's <i>Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings</i>; or Secretary of Interior's <i>Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings</i>. <p>The qualified professional shall make a recommendation to the City as to whether the project fully adheres to the Secretary of the Interior's Standards, and any specific modifications necessary to do so. The final determination as to a project's adherence to the Standards shall be made by the City body with final decision-making authority over the project. Such a determination of individual project adherence to the Secretary of the Interior's Standards will constitute mitigation of the project historic resource impacts to a less-than-significant level (CEQA Guidelines section 15064.5).</p> <p>(b) If measure (a) is not feasible, the historic resource shall be moved to a new location compatible with the original character and use of the historic resource, and its historic features and compatibility in orientation, setting, and general environment shall be retained, such</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>that a substantial adverse change in the significance of the historic resource is avoided.¹ Implementation of measure (b) would reduce the impact to a <i>less-than-significant level</i>.</p> <p>If neither measure (a) nor measure (b) is feasible, then the City shall, as applicable and to the extent feasible, implement the following measures in the following order:</p> <p>(c) Document the historic resource before any changes that would cause a loss of integrity and loss of continued eligibility. The documentation shall adhere to the Secretary of the Interior's <i>Standards for Architectural and Engineering Documentation</i>. The level of documentation shall be proportionate with the level of significance of the resource. The documentation shall be made available for inclusion in the Historic American Building Survey (HABS) or the Historic American Engineering Record (HAER) Collections in the</p>		

¹One example of a substantial adverse change would be the loss of eligibility for listing on the California Register. The State Historical Resources Code encourages the retention of historic resources on-site and discourages the non-historic grouping of historic buildings into parks or districts. However, it is recognized that moving a historic building, structure, or object is sometimes necessary to prevent its destruction. Therefore, a moved building, structure, or object that is otherwise eligible may be listed in the California Register if it was moved to prevent its demolition at its former location and if the new location is compatible with the original character and use of the historic resource. A historic resource should retain its historic features and compatibility in orientation, setting, and general environment. (California Office of Historic Preservation, *California Register and National Register: A Comparison*, Technical Assistance Series 6; Sacramento, CA: California Department of Parks and Recreation, 2001)

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>Library of Congress, the California Historical Resources Information System (CHRIS), and the Bancroft Library, as well as local libraries and historical societies.</p> <p>(d) Retain and reuse the historic resource to the maximum feasible extent and continue to apply the Secretary of the Interior's Standards to the maximum feasible extent in all alterations, additions, and new construction.</p> <p>(e) Through careful methods of planned deconstruction to avoid damage and loss, salvage character-defining features and materials for educational and interpretive use on-site, or for reuse in new construction on the site in a way that commemorates their original use and significance.</p> <p>(f) Interpret the historical significance of the resource through a permanent exhibit or program in a publicly accessible location on the site or elsewhere within the Specific Plan Area.</p> <p>Implementation of measures (b), (c), (d), (e), and/or (f) would reduce a significant impact on historic resources, but not to a less-than-significant level. Without knowing the characteristics of the potentially affected historic resource or of the future individual development proposal, the City cannot determine with certainty that measure (a) or (b)</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		above would be considered feasible. Consequently, this impact is currently considered significant and unavoidable .		
Impact 7-2: Potential for Disturbance of Buried Archaeological Resources, Including Human Remains, and Tribal Cultural Resources. Development facilitated by the Patrick Henry Drive Specific Plan could disturb unrecorded sensitive archaeological resources or tribal cultural resources in the Plan Area. This possibility represents a potentially significant impact .	S	Mitigation 7-2. During the City's standard project-specific review process for all future, discretionary, public improvement and private development projects in the Patrick Henry Drive Specific Plan Area, the City shall determine the possible presence of, and the potential for new or substantially more severe impacts of the action on, archaeological resources and tribal cultural resources. The City shall require individual project applicants or environmental consultants to contact the California Historical Resources Information System (CHRIS) to determine whether the particular project is located in a sensitive area. Future discretionary development projects that CHRIS determines may be located in a sensitive area - i.e., on or adjoining an identified archaeological site - shall proceed only after the project applicant contracts with an archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards, to conduct a determination in regard to cultural values remaining on the site and warranted mitigation measures, as described directly below. In general, to make an adequate determination in these instances, the archaeologist shall conduct a preliminary field inspection to (1)	City; Individual project applicants	LS

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>assess the amount and location of visible ground surface, (2) determine the nature and extent of previous impacts, and (3) assess the nature and extent of potential impacts. Such field inspection may demonstrate the need for some form of additional subsurface testing (e.g., excavation by auger, shovel, or backhoe unit) or, alternatively, the need for on-site monitoring of subsurface activities (i.e., during grading or trenching).</p> <p>In addition, the City shall continue to notify the Native American tribes traditionally and culturally affiliated with the Specific Plan Area of the discretionary, public improvement and private development projects if those proposed improvements or projects are subject to a CEQA Negative Declaration (including Mitigated Negative Declaration) or Environmental Impact Report (EIR), in accordance with California Assembly Bill 52, and if a Native American tribe requests consultation, conduct a good faith consultation.</p> <p>Following field inspection and completion of all necessary phases of study as determined by the archaeologist and the City, damage to any identified archaeological resources shall be avoided or mitigated to the maximum extent possible. Preservation in place to maintain the relationship between the artifact(s) and the archaeological context is the preferred manner</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>of mitigating impacts on an archaeological site. Preservation may be accomplished by:</p> <ul style="list-style-type: none"> ▪ Planning construction to avoid the archaeological or tribal cultural site; ▪ Incorporating the site within a park, green space, or other open space element; ▪ Covering the site with a layer of chemically stable soil; or ▪ Deeding the site into a permanent conservation easement. <p>When in-place mitigation is determined by the City to be infeasible, a <i>data recovery plan</i>, which makes provisions for adequate recovery of culturally or historically consequential information about the site (including artifacts discovered on the site), subject to review and approval by the City, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be submitted to the CHRIS Northwest Information Center. If Native American artifacts are indicated, the studies shall also be submitted to the Native American Heritage Commission (NAHC). CHRIS and NAHC are recognized as experts in their respective disciplines.</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>Identified cultural resources shall be recorded on form DPR 422 (archaeological sites). Mitigation measures recommended by these two groups (CHRIS and NAHC), as reviewed and approved by the City, shall be undertaken prior to and during construction activities. Although the precise details of the mitigation measures would be specific to the particular project site, the measures shall be consistent with the avoidance and mitigation strategies described above in this programmatic mitigation measure.</p> <p><i>A data recovery plan</i> and data recovery for a historic resource shall not be required if the City determines that testing or studies already completed have adequately recovered the necessary data, provided that the data have already been documented in an EIR or are available for review at the CHRIS Northwest Information Center (CEQA Guidelines section 15126.4[b]).</p> <p>Resource identification training procedures shall be implemented for construction personnel, conducted by an archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards. In the event that subsurface cultural resources are otherwise encountered during approved ground-disturbing activities for a Plan Area construction activity, work within 50 feet shall</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>be stopped and a qualified archaeologist retained to evaluate the finds following the procedures described above. Project personnel shall not collect cultural resources. Although work may continue beyond 50 feet, the archaeologist shall be empowered to temporarily halt or redirect construction activities to ensure avoidance of adverse impacts to archaeological resources.</p> <p>If human remains are found, the rules set forth in State Health and Safety Code section 7050.5 and CEQA Guidelines section 15126.4(b) apply and shall be followed.</p> <p>Implementation of this measure would reduce the impact to a <i>less-than-significant level</i>.</p>		
GEOLOGY AND SOILS				
Impact 8-1: Effects of Strong Seismic Ground Shaking	LS	N/A	N/A	N/A
Impact 8-2: Potential Soil Erosion and Loss of Topsoil	LS	N/A	N/A	N/A
Impact 8-3: Potential Ground Instability Impacts. The potential for ground instability can depend on specific, highly localized underlying soil conditions. Determination of differential settlement, liquefaction, lateral spreading, and subsidence potential in the Specific Plan Area would require site-specific geotechnical studies for future individual	S	Mitigation 8-3. Subject to City review and approval, complete and implement the geotechnical mitigation recommendations identified in the required individual project- and site-specific geotechnical investigations and engineering studies for site-specific proposals, in coordination with City grading permit and building permit performance standards. Such	City; Individual project applicants	LS

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
development proposals. Possible ground instability conditions, if not properly engineered for, could result in associated significant damage to project buildings, other improvements, and adjacent property, with direct or indirect risks to life or property, representing a <i>potentially significant impact</i> .		recommendations shall address design- and construction-level details regarding engineering issues and solutions such as the type of building foundation, the extent of subsurface excavation, the details of retaining structures, and any need for subsurface water extraction. Incorporation of this mitigation requirement would reduce this impact to a <i>less-than-significant level</i> .		
Impact 8-4: Potential for Disturbance of Paleontological Resources. Development facilitated by the Patrick Henry Drive Specific Plan could disturb unrecorded paleontological resources in the Plan Area. This possibility represents a <i>potentially significant impact</i> .	S	<p>Mitigation 8-4. For all public improvement and private development projects in the Patrick Henry Drive Specific Plan Area, the following measures shall be implemented:</p> <p>(1) <i>Education Program.</i> Project applicants shall implement a program that includes the following elements:</p> <ul style="list-style-type: none"> Resource identification training procedures for construction personnel, conducted by a paleontologist who meets the Secretary of the Interior's Professional Qualifications Standards; Spot-checks and monitoring by a qualified paleontologist of all excavations deeper than seven feet below ground surface; and Procedures for reporting discoveries and their geologic context. 	City; Individual project applicants	LS

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>(2) <i>Procedures for Resources Encountered.</i> If subsurface paleontological resources are encountered, excavation shall halt within a buffer area of at least 50 feet around the find, where construction activities will not be allowed to continue until the project paleontologist evaluates the resource and its stratigraphic context. Work shall be allowed to continue outside the buffer area; however, the paleontologist shall be empowered to temporarily halt or redirect construction activities to ensure avoidance of adverse impacts to paleontological resources. During monitoring, if potentially significant paleontological resources are found, “standard” samples shall be collected and processed by a qualified paleontologist to recover micro vertebrate fossils. If significant fossils are found and collected, they shall be prepared to a reasonable point of identification. Excess sediment or matrix shall be removed from the specimens to reduce the bulk and cost of storage.</p> <p>Itemized catalogs of material collected and identified shall be provided to a local museum repository with the specimens. Significant fossils collected during this work, along with the itemized inventory of these specimens, shall be deposited in a local museum repository for permanent curatorship and storage. A report documenting the results of the monitoring and</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		salvage activities, and the significance of the fossils, if any, shall be prepared. The report and inventory, when submitted to the City, shall signify the completion of the program to mitigate impacts on paleontological resources.		
		Implementation of this measure would reduce the impact to a <i>less-than-significant level</i> .		
GREENHOUSE GAS EMISSIONS AND ENERGY				
Impact 9-1: GHG Emissions and Plan Consistency	LS	N/A	N/A	N/A
Impact 9-2. Wasteful, Inefficient, or Unnecessary Consumption of Energy Resources	LS	N/A	N/A	N/A
Impact 9-3. Conflict with or Obstruct a State or Local Plan for Renewable Energy or Energy Efficiency	LS	N/A	N/A	N/A
HAZARDS AND HAZARDOUS MATERIALS				
Impact 10-1: Project-Related Potential Impacts Due to Hazardous Materials Transport, Use, Storage, and Disposal	LS	N/A	N/A	N/A
Impact 10-2: Potential Exposure to Existing Hazardous Materials Contamination	LS	N/A	N/A	N/A
Impact 10-3: Project-Related Potential Asbestos and PCB Exposure	LS	N/A	N/A	N/A

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
Impact 10-4: Project-Related Potential Lead-Based Paint Exposure	LS	N/A	N/A	N/A
Impact 10-5: Potential for Hazardous Materials Near Schools	LS	N/A	N/A	N/A
Impact 10-6: Protocols for Government Code Section 65962.5 Sites	LS	N/A	N/A	N/A
Impact 10-7: Consistency With San Jose Airport Comprehensive Land Use Plan	LS	N/A	N/A	N/A
<i>HYDROLOGY AND WATER QUALITY</i>				
Impact 11-1: Construction Period and Post-Construction Water Quality Impacts	LS	N/A	N/A	N/A
Impact 11-2: Long-Term Water Quality Impacts from Project Operation	LS	N/A	N/A	N/A
Impact 11-3: Effects on Groundwater Recharge and Groundwater Management	LS	N/A	N/A	N/A
Impact 11-4: Drainage Patterns and Risk of Flooding	LS	N/A	N/A	N/A
<i>LAND USE AND PLANNING</i>				
Impact 12-1: Project Effects on the Physical Arrangement of the Community	LS	N/A	N/A	N/A
Impact 12-2: Project Consistency with Land Use Plans, Policies, and Regulations Adopted for the Purpose of Avoiding or Mitigating Environmental Effects	LS	N/A	N/A	N/A

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SU = Significant unavoidable impact
NA = Not applicable

See Table 1.1 for definitions.

Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
NOISE				
Impact 13-1: Plan-Related Temporary Construction Noise Levels. The implementation of the Patrick Henry Drive Specific Plan could result in construction and development activities in the Plan Area that generate noise levels above City standards and/or otherwise result in a substantial, temporary increase in ambient noise levels in the vicinity of the Plan Area. This represents a potentially significant impact .	S	<p>Mitigation 13-1: Reduce Construction Noise Levels. To reduce potential noise levels from Specific Plan related construction activities, the City shall ensure future development projects within the Plan Area:</p> <p>1) <i>Notify Residential and Commercial Land Uses of Planned Construction Activities.</i> This notice shall be provided at least one week prior to the start of any construction activities, describe the noise control measures to be implemented by the Project, and include the name and phone number of the designated contact for the Applicant/project representative and the City of Santa Clara responsible for handling construction-related noise complaints (per Section 8). This notice shall be provided to: A) The owner/occupants of residential dwelling units within 500 feet of construction work areas; B) The owner/occupants of commercial buildings (including Mission College) within 200 feet of construction work areas or within 400 feet of construction work areas if pile driving equipment will be used; and C) Mission College when construction work areas are within 500 feet of College athletic fields.</p> <p>2) <i>Notify Calaveras Creek Trail Users of Construction Activities.</i> Prior to the start of construction activities within 500 feet of</p>	City; Individual project applicants	LS

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>Calaveras Creek Trail, signs shall be posted along the trail warning of potential temporary elevated noise levels during construction. Signs shall be posted within 250 feet of impacted trail segments (i.e., portions of the trail within 500 feet of a work area) and shall remain posted throughout the duration of all substantial noise generating construction activities (typically demolition, grading, and initial foundation installation activities).</p> <p>3) <i>Restrict Work Hours.</i> All construction-related work activities, including material deliveries, shall be subject to the requirements of City Municipal Code Section 9.10.230. Construction activities, including deliveries, shall occur only during the hours of 7:00 AM to 6:00 PM, Monday through Friday, and 9 AM to 6 PM on Saturday, unless otherwise authorized by City permit. The applicant/project representative and/or its contractor shall post a sign at all entrances to the construction site informing contractors, subcontractors, construction workers, etc. of this requirement.</p> <p>4) <i>Control Construction Traffic and Site Access.</i> Construction traffic, including soil and debris hauling, shall follow City-designated truck routes and shall avoid routes (including local roads in the Plan Area) that contain residential dwelling units to the maximum</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>extent feasible given specific project location and access needs.</p> <p>5) <i>Construction Equipment Selection, Use, and Noise Control Measures.</i> The following measures shall apply to construction equipment used in the Plan Area: A) To the extent feasible, contractors shall use the smallest size equipment capable of safely completing work activities; B) Construction staging shall occur as far away from residential and commercial land uses as possible; C) All stationary noise-generating equipment such as pumps, compressors, and welding machines shall be shielded and located as far from sensitive receptor locations as practical. Shielding may consist of existing vacant structures or a three- or four-sided enclosure provide the structure/barrier breaks the line of sight between the equipment and the receptor and provides for proper ventilation and equipment operations; D) Heavy equipment engines shall be equipped with standard noise suppression devices such as mufflers, engine covers, and engine/mechanical isolators, mounts, etc. These devices shall be maintained in accordance with manufacturer's recommendations during active construction activities; E) Pneumatic tools shall include a noise suppression device on the compressed air exhaust; F) The applicant/project representative and/or their contractor shall</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		connect to existing electrical service at the site to avoid the use of stationary power generators; G) No radios or other amplified sound devices shall be audible beyond the property line of the construction site.		
		6) <i>Implement Construction Activity Noise Control Measures:</i> The following measures shall apply to construction activities in the Plan Area: A) Demolition: Activities shall be sequenced to take advantage of existing shielding/noise reduction provided by existing buildings or parts of buildings and methods that minimize noise and vibration, such as sawing concrete blocks, prohibiting on-site hydraulic breakers, crushing, or other pulverization activities, shall be employed to the maximum extent feasible; B) Demolition Site Preparation, Grading, and Foundation Work: During all demolition, site preparation, grading, and structure foundation work activities within 500 feet of a residential dwelling unit or 250 feet of a commercial building (including Mission College), a physical noise barrier capable of achieving a minimum 10 dB reduction in construction noise levels shall be installed and maintained around the site perimeter to the maximum extent feasible given site constraints and access requirements. Potential barrier options capable of achieving a 10 dB reduction in construction noise levels could include, but are not limited to: i) A six-foot-high concrete,		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>wood, or other barrier installed at-grade (or mounted to structures located at-grade, such as a K-Rail), and consisting of a solid material (i.e., free of openings or gaps other than weep holes) that has a minimum rated transmission loss value of 20 dB; ii) Commercially available acoustic panels or other products such as acoustic barrier blankets that have a minimum sound transmission class (STC) or transmission loss value of 20 dB; iii) any combination of noise barriers and commercial products capable of achieving a 10 dBA reduction in construction noise levels during demolition, site preparation, grading, and structure foundation work activities; iv) The noise barrier may be removed following the completion of building foundation work (i.e., it is not necessary once framing and typical vertical building construction begins provided no other grading, foundation, etc. work is still occurring on-site); and C) Pile Driving: If pile driving activities are required within 500 feet of a residential dwelling unit or 400 feet of a commercial building (including Mission College), the piles shall be pre-drilled with an auger to minimize pile driving equipment run times.</p> <p>7) <i>Prepare Project-Specific Construction Noise Evaluation.</i> Prior to the start of any specific construction project lasting 12 months or more, the City shall review and approve a</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>project-specific construction noise evaluation prepared by a qualified acoustical consultant that: A) Identifies the planned project construction sequence and equipment usage; B) Identifies typical hourly average construction noise levels for project construction equipment; C) Compares hourly average construction noise levels to ambient noise levels at residential and commercial land uses near work areas (ambient noise levels may be newly measured or presumed to be consistent with those levels shown in Table 13-2 and 13-3 of the Patrick Henry Drive Specific Plan Draft Environmental Impact Report (EIR); and D) Identifies construction noise control measures incorporated into the project that ensure: i) activities do not generate noise levels that are above 60 dBA Leq at a residential dwelling unit and exceed the ambient noise environment by at least 5 dBA Leq for more than one year; and ii) activities do not generate noise levels that are above 70 dBA Leq at a commercial building (including Mission College) and exceed the ambient noise environment by at least 5 dBA Leq for more than one year. Such measures may include, but are limited to: a) The requirements of Sections 4, 5, 6, and 8; B) Additional project and/or equipment-specific enclosures, barriers, shrouds, or other noise suppression methods. The use of noise control blankets on building facades shall be</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		considered only if noise complaints are not resolvable with other means or methods.		
		<p>8) <i>Prepare a Construction Noise Complaint Plan.</i> The Construction Noise Complaint Plan shall: A) Identify the name and/or title and contact information (including phone number and email) for a designated project and City representative responsible for addressing construction-related noise issues; B) Includes procedures describing how the designated project representative will receive, respond, and resolve construction noise complaints; C) At a minimum, upon receipt of a noise complaint, the project representative shall notify the City contact, identify the noise source generating the complaint, determine the cause of the complaint, and take steps to resolve the complaint; D) The elements of the Construction Noise Complaint Plan may be included in the project-specific noise evaluation prepared to satisfy Section 7 or as a separate document.</p> <p>9) <i>Owner/Occupant Disclosure:</i> The City shall require future occupants/tenants in the Plan Area receive disclosure that properties in the Plan Area may be subject to elevated construction noise levels from development in the Plan Area. This disclosure shall be provided as part of the mortgage, lease, sub-lease, and/or other contractual real-estate</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		transaction associated with the subject property.		
		With implementation of these measures, this impact would be <i>less than significant</i> .		
Impact 13-2: Plan-Related Temporary Construction Vibration Levels. The implementation of the Patrick Henry Drive Specific Plan could result in construction and development activities in the Plan Area that generate vibration levels above City standards and/or otherwise result excessive ground-borne vibration levels. This represents a <i>potentially significant impact</i> .	S	<p>Mitigation 13-2: Reduce Construction Vibration Levels. To reduce potential vibration-related structural damage and other excessive vibration levels from Specific Plan related construction activities, the City shall ensure future development projects within the Plan Area:</p> <p>1) <i>Notify Residential and Commercial Land Uses of Planned Construction Activities.</i> See Patrick Henry Drive Specific Plan Draft Environmental Impact Report (EIR) Mitigation Measure 13-1, Section 1.</p> <p>2) <i>Restrict Work Hours.</i> See Patrick Henry Drive Specific Plan Draft EIR Mitigation Measure 13-1, Section 2.</p> <p>3) <i>Prohibit Vibratory Equipment if Feasible.</i> The use of large vibratory rollers, vibratory/ impact hammers, and other potential large vibration-generating equipment (e.g., hydraulic breakers/hoe rams) shall be prohibited within 100 feet of any residential building façade and 50 feet of any commercial building façade during construction activities. Plate compactors and compactor rollers are acceptable, and</p>	City; Individual project applicants	LS

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>deep foundation piers or caissons shall be auger drilled.</p> <p>4) <i>Prepare Project-Specific Construction Vibration Evaluation Plan.</i> If it is not feasible to prohibit vibratory equipment per Section 3) due to site- or project-specific conditions or design considerations, the City shall review and approve a project-specific construction vibration evaluation that: A) Identifies the project's planned vibration-generating construction activities (e.g., demolition, pile driving, vibratory compaction); B) the potential project-specific vibration levels (given project-specific equipment and soil conditions, if known) at specific building locations that may be impacted by the vibration-generating work activities (generally buildings within 50 feet of the work area); C) Identifies the vibration control measures incorporated into the project that ensure equipment and work activities would not damage buildings or result in vibrations that exceed Caltrans' strongly perceptible vibration detection threshold for peak particle velocity (PPV) of 0.1 inches/second (in/sec). Such measures may include, but are not limited to: i) the requirements of Sections 1, 2, and 3; ii) the use of vibration monitoring to measure actual vibration levels; iii) the use of photo monitoring or other records to document building conditions prior to, during, and after construction activities; and iv) the use</p>		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		<p>of other measures such as trenches or wave barriers; D) Identifies the name (or title) and contact information (including phone number and email) of the Contractor and City-representatives responsible for addressing construction vibration-related issues; and E) Includes procedures describing how the construction contractor will receive, respond, and resolve to construction vibration complaints. At a minimum, upon receipt of a vibration complaint, the Contractor and/or City representative described in the first sub-bullet above shall identify the vibration source generating the complaint, determine the cause of the complaint, and take steps to resolve the complaint by reducing ground-borne vibration levels to peak particle velocity levels that do not exceed accepted guidance or thresholds for structural damage that are best applicable to potentially impacted buildings (e.g., see Patrick Henry Drive Specific Plan Draft EIR Table 13-6) and Caltrans' strongly perceptible vibration detection threshold (PPV of 0.1 in/sec, see Patrick Henry Drive Specific Plan Draft EIR Table 13-7).</p> <p>With implementation of these measures, this impact would be less than significant.</p>		
<p>Impact 13-3: On-site Noise Levels from Specific Plan Development. The implementation of the Patrick Henry Drive Specific Plan could result in new roadway and</p>	S	<p>Mitigation 13-3: Control Fixed and Other On-site Noise-Generating Sources and Activities. To ensure on-site, operations-related equipment and activities associated</p>	City; Individual project applicants	LS

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
infrastructure improvements and new residential, office, and other land uses that generate noise from on-site equipment, activities, or other operations in excess of applicable City standards. This represents a <i>potentially significant impact</i> .		with the Specific Plan do not generate noise levels that exceed City standards or otherwise result in a substantial permanent increase in ambient noise levels, future development projects shall submit a project-specific operational noise analysis to the City for review and approval prior to the issuance of the first building permit for the project, or as otherwise determined by the City. The noise analysis shall be prepared by a qualified acoustical consultant and shall identify all major fixed machinery and equipment, non-residential truck docks/dedicated loading zones, waste collection areas, and above ground parking garages included in the final project design/site plan. The noise analysis shall also document how project noise sources and activities will comply with the exterior sound limits established in Municipal Code Section 9.10.040, Schedule A and the noise compatibility guidelines in General Plan Table 8.14-1. Fixed machinery and equipment may include, but is not limited to, pumps, fans (including air intake or exhaust fans in parking garages), compressors, air conditioners, generators, and refrigeration equipment. The control of noise from such equipment may be accomplished by selecting quiet equipment types, siting machinery and equipment inside buildings, within an enclosure (e.g., equipment cabinet or mechanical closets, or behind a parapet wall or other barrier/shielding. Truck		

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
		docks/dedicated loading zones consist of a loading dock or other dedicated area for the regular loading and unloading of retail, commercial, or other non-residential goods from delivery trucks. The control of noise from such truck docks/loading areas, waste collection areas, and parking garages may be accomplished by placing such areas away from sensitive land uses, restricting activities or operating hours for certain areas, or other design means.		
		With implementation of these measures, this impact would be <i>less than significant</i> .		
Impact 13-4: Increases in Traffic Noise Levels from Specific Plan Development. The implementation of the Patrick Henry Drive Specific Plan could generate vehicle trips that substantially increase existing and future No Project traffic noise levels and/or exceed City noise and land use compatibility standards. This represents a <i>potentially significant impact</i> .	S	Mitigation 13-4. No feasible mitigation is available.	City	SU
Impact 13-5: Operational Vibrations	LS	N/A	N/A	N/A
Impact 13-6: Exposure to Airport-Related Noise	LS	N/A	N/A	N/A
<i>POPULATION AND HOUSING</i>				
Impact 14-1: Effects on Population Growth	LS	N/A	N/A	N/A

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
Impact 14-2: Population and Housing Displacement Effects	LS	N/A	N/A	N/A
Impact 14-3: Temporary Employment Impacts	LS	N/A	N/A	N/A
<i>PUBLIC SERVICES</i>				
Impact 15-1: Increase in Fire Protection/ Emergency Medical Service (EMS) Demands	LS	N/A	N/A	N/A
Impact 15-2: Increase in Police Service Demands	LS	N/A	N/A	N/A
Impact 15-3: Impacts on Public Schools	LS	N/A	N/A	N/A
Impact 15-4: Impacts on Parks and Recreational Facilities	LS	N/A	N/A	N/A
Impact 15-5: Impacts on Other Public Facilities	LS	N/A	N/A	N/A
Impact 15-6: Construction Period Impacts	LS	N/A	N/A	N/A
<i>RECREATION</i>				
Impact 16-1: Impacts on Parks and Recreational Facilities	LS	N/A	N/A	N/A
Impact 16-2: Construction Period Impacts	LS	N/A	N/A	N/A

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
TRANSPORTATION				
Impact 17-1: Impacts Related to Vehicle Miles Traveled; Conflict With Adopted Policies, Plans, or Programs Regarding Roadways	LS	N/A	N/A	N/A
Impact 17-2: Impacts on Transit	LS	N/A	N/A	N/A
Impact 17-3: Impacts on Bicycle Facilities	LS	N/A	N/A	N/A
Impact 17-4: Impacts on Pedestrian Facilities	LS	N/A	N/A	N/A
Impact 17-5: Hazards Due to Design Features or Incompatible Uses	LS	N/A	N/A	N/A
Impact 17-6: Emergency Access	LS	N/A	N/A	N/A
UTILITIES AND SERVICE SYSTEMS				
Impact 18-1: Specific Plan Inconsistency with General Plan and UWMP Growth Projections. The WSA prepared for the proposed Specific Plan includes development in the Plan Area that has not been identified in the General Plan (i.e., exceeds the General Plan land use projections for 2035, the General Plan horizon year), and therefore, because the 2015 Urban Water Management Plan (UWMP) was based on General Plan buildout projections, this WSA is inconsistent with General Plan and UWMP buildout projections. (In addition, the recently adopted 2020 UWMP was based on 2018 ABAG growth projections	S	Mitigation 18-1. Consistent with SB 221 and SB 610, no tentative map, Architectural/Design Review, or development agreement for a proposed, individual project shall be approved until the City of Santa Clara Water & Sewer Utilities Department confirms that water supplies are adequate for each individual project. Such confirmation shall include an updated description of the citywide water supply situation (including any plans for pumping additional groundwater) at that future time, reflecting any progress on City plans for expanding its recycled water program and any City requirements for implementing additional	City; Individual project applicants	LS

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Impacts	Significance Without Mitigation	Mitigation Measures	Mitigation Responsibility	Significance With Mitigation
that also did not include the Specific Plan growth projections.) Until the Specific Plan development exceeding General Plan growth projections is included in the General Plan and UWMP, (the Specific Plan is inconsistent with the General Plan/Urban Water Management Plan, and this inconsistency would represent a <i>potentially significant project and cumulative impact</i> .		“best management practices” (BMPs) related to recycled water use and/or water conservation. These City actions would ensure a continual monitoring of citywide water supply throughout implementation of the Specific Plan. Additionally, incorporation of measures to reduce water demand and, if necessary, identification of alternative water sources to offset project supply shortages would reduce this impact to a <i>less-than-significant level</i> .		
Impact 18-2: Project and Cumulative Need for Water, Wastewater, and Storm Drainage System Infrastructure	LS	N/A	N/A	N/A
Impact 18-3: Wastewater Treatment Capacity Impacts	LS	N/A	N/A	N/A
Impact 18-4: Project Impacts on Solid Waste Disposal and Recycling Service	LS	N/A	N/A	N/A
Impact 18-5: Electricity, Natural Gas, and Telecommunications Infrastructure	LS	N/A	N/A	N/A

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RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA ADOPTING THE PATRICK HENRY DRIVE
SPECIFIC PLAN, A SPECIFIC PLAN PURSUANT TO
GOVERNMENT CODE SECTION 65450, et seq.**

SCH # 2019120515

PLN2019-14257 (EIR, Specific Plan, General Plan Amendment, and Zoning Amendment)

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

WHEREAS, the City of Santa Clara (the “City”) is contemplating the adoption of the Patrick Henry Drive Specific Plan (the “Project”), a specific plan for a transit-oriented pedestrian-friendly neighborhood of up to 12,000 residential units with supportive retail uses, located on approximately 62 net acres of land located within one-half mile of the Tasman Drive light rail line that are currently developed with industrial uses;

WHEREAS, the proposed Specific Plan also includes an alternative development scenario that allows for up to 10,300 residential units, with up to 785,000 square feet of office space and up to 310,000 square feet of other non-residential uses; and

WHEREAS, under the proposed Specific Plan, the Patrick Henry Drive area is intended to be a walkable urban neighborhood, with parking reflective of a variety of available transit modes, including bicycle parking;

WHEREAS, a specific plan is a tool for providing regulatory direction for specific parts of a city, and can include policy guidance, regulatory requirements, and design guidelines;

WHEREAS, as a part of implementation of the Specific Plan, the City intends to adopt a General Plan Amendment (“GPA”) to amend the General Plan land use diagram by changing the existing land use designation of the Project Site from Light Industrial to four residential designations including Very High Density (51-100 du/ac); Village Residential (60-149 du/ac); Urban Village Residential (100-149 du/ac); and Urban Center Residential (120-250 du/ac); and one flexible residential/commercial designation entitled High Density Flex (60-149 du/ac or up to a 2.0 floor area ratio of commercial development);

WHEREAS, the GPA includes an amendment to Appendix 8.13 (the Climate Action Plan) setting forth vehicle trip reduction targets for the new land use designations of Village Residential (60-149 du/ac); Urban Village Residential (100-149 du/ac); and Urban Center Residential (120-250 du/ac); and High Density Flex (60-149 du/ac or up to a 2.0 floor area ratio of commercial development);

WHEREAS, as a part of implementation the Specific Plan, the City is also proposing to amend Title 18 (“Zoning”), of the City Code to create new zoning districts that implement the proposed General Plan designations, and to apply those zoning designations across the Project Site;

WHEREAS, the proposed Patrick Henry Drive Specific Plan is consistent with the Goals and Policies of the Future Focus Area section in the General Plan;

WHEREAS, notice of the public hearing on the proposed Specific Plan was published in the Santa Clara Weekly, a newspaper of general circulation for the City, on January 12, 2022;

WHEREAS, notices of the public hearing on the proposed Specific Plan were mailed to all property owners within 500 feet of the Project Site, according to the most recent assessor’s roll, and to all local agencies expected to provide essential facilities or services to the project, on January 13, 2022;

WHEREAS, Santa Clara City Charter Section 1007 and Government Code sections 65353 and 65453 require that the Planning Commission provide input to the City Council on proposed specific plans;

WHEREAS, on January 26, 2022, the Planning Commission reviewed the Specific Plan and conducted a public hearing, at which time all interested persons were given an opportunity to give testimony and provide evidence in support of and in opposition to the proposed Specific Plan.

WHEREAS, before considering adoption of the Specific Plan, the City Council reviewed and considered the potential environmental impacts of the Project, including the implementing General Plan Amendment, Zoning Code Amendment, and identified mitigation measures, and

adopted and certified the Environmental Impact Report (“EIR”) for the Project (SCH #2019120515), as well as a set of CEQA Findings and a Statement of Overriding Considerations, in accordance with the requirements of CEQA; and

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

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. Specific Plan Findings. That the City Council finds and determines that the Specific Plan is in the interest of the public good for the following reasons:

A. The proposed Specific Plan is deemed to be in the public interest, in that:

The Specific Plan is located in an urbanized area served by existing municipal services and implements smart growth principles by redeveloping underutilized properties with high intensity mixed-use, pedestrian- and transit-oriented development that will contribute to the City both socially and economically.

B. The proposed Specific Plan is consistent and compatible with the General Plan and any implementation programs that may be affected, in that:

The Specific Plan furthers and is consistent with the goals, policies and major strategies of the General Plan that enhance the City’s quality of life, preserve and cultivate neighborhoods, promote sustainability, enhance City identity, support General Plan Focus Areas and community vitality, maintain the City’s fiscal health and quality of services, and maximize health and safety benefits with the creation of a new land use designation that allows for the development of a high-density mixed-use transit-oriented environment.

C. The proposed Plan has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA), in that:

A Draft Environmental Impact Report (“DEIR”) was prepared in accordance with CEQA and the City circulated copies of the DEIR and Notice of Availability to the public agencies which have jurisdiction by law with respect to the Project, as well as to other interested persons, organizations and agencies, and the City sought the comments of such persons, organizations and agencies. The City prepared and circulated written responses to the comments received during the Comment Period and included those responses in a Final Environmental Impact Report (“FEIR”), in accordance with CEQA.

D. The potential impacts of the proposed amendment have been assessed and have been determined not to be detrimental to the public health, safety, or welfare, in that:

A Mitigation Monitoring and Reporting Program (MMRP) has been prepared for implementation with development under the Specific Plan in order to reduce potentially significant impacts identified in the DEIR and FEIR, that combined constitute the EIR for the Project, to less than significant and a set of CEQA Findings and a Statement of Overriding Considerations for the significant unavoidable impacts that cannot be mitigated to less than significant has been prepared in accordance with CEQA; and the City Council adopted all of these documents.

3. That based on the findings set forth in this Resolution, the Approvals, and the evidence in the City Staff Report and such other evidence as received at the public hearing on this matter, the City Council adopts the Specific Plan.

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED
AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING
THEREOF HELD ON THE 22nd DAY OF MARCH, 2022, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachment Incorporated by Reference:
Patrick Henry Drive Specific Plan

I:\PLANNING\Advance Planning\Specific Plans\Freedom Circle - Patrick Henry\Patrick Henry\Resos and ordinances\PC specific
plan reso.doc

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA TO APPROVE GENERAL PLAN AMENDMENT #97 TO (1) ADD THE LAND USE DESIGNATIONS OF VILLAGE RESIDENTIAL, URBAN VILLAGE, URBAN CENTER AND HIGH DENSITY FLEX DESIGNATIONS TO CHAPTER 5 OF THE GENERAL PLAN; (2) CHANGE THE LAND USE DESIGNATION FROM LIGHT INDUSTRIAL TO VERY HIGH DENSITY RESIDENTIAL, VILLAGE RESIDENTIAL, URBAN VILLAGE, URBAN CENTER AND HIGH DENSITY FLEX DESIGNATIONS FOR THE AREA BOUNDED BY THE MISSION COLLEGE CAMPUS TO THE SOUTH, CALABAZAS CREEK TO THE EAST, THE HETCH-HETCHY RIGHT-OF-WAY TO THE NORTH, AND GREAT AMERICA PARKWAY TO THE WEST; AND (3) UPDATE APPENDIX 8.13 (CLIMATE ACTION PLAN) WITH TRIP REDUCTION TARGETS FOR THE VILLAGE RESIDENTIAL, URBAN VILLAGE, URBAN CENTER AND HIGH DENSITY FLEX DESIGNATIONS

SCH # 2019120515

PLN2019-14257 (EIR, Specific Plan, General Plan Amendment, and Zoning Amendment)

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

WHEREAS, the City of Santa Clara (the “City”) is contemplating the adoption of the Patrick Henry Drive Specific Plan (the “Project”), a specific plan for a transit-oriented pedestrian-friendly neighborhood of up to 12,000 residential units with supportive retail uses, located on approximately 62 net acres of land located within one-half mile of the Tasman Drive light rail line that are currently developed with industrial uses;

WHEREAS, the proposed Specific Plan also includes an alternative development scenario that allows for up to 10,300 residential units, with up to 785,000 square feet of office space and up to 310,000 square feet of other non-residential uses;

WHEREAS, under the proposed Specific Plan, the Patrick Henry Drive area is intended to be a walkable urban neighborhood, with parking reflective of a variety of available transit modes, including bicycle parking;

WHEREAS, the proposed Patrick Henry Drive Specific Plan is consistent with the Future Focus Area Goals And Policies in the General Plan;

WHEREAS, as a part of implementation of the Specific Plan, the City intends to adopt a General Plan Amendment (“GPA”) to amend the General Plan land use diagram by changing the existing land use designation of the Project Site from Light Industrial to four residential designations including Very High Density (51-100 du/ac); Village Residential (60-149 du/ac); Urban Village Residential (100-149 du/ac); and Urban Center Residential (120-250 du/ac); and one flexible residential/commercial designation entitled High Density Flex (60-150 du/ac or up to a 2.0 floor area ratio of commercial development);

WHEREAS, the GPA includes an amendment to Appendix 8.13 (the Climate Action Plan) setting forth vehicle trip reduction targets for the new land use designations of Village Residential (60-149 du/ac); Urban Village Residential (100-149 du/ac); and Urban Center Residential (120-250 du/ac); and High Density Flex (60-149 du/ac or up to a 2.0 floor area ratio of commercial development);

WHEREAS, as a part of implementation the Specific Plan, the City is also proposing to amend Title 18 (“Zoning”), of the City Code to create new zoning districts that implement the proposed General Plan designations, and to apply those zoning designations across the Project Site;

WHEREAS, Santa Clara City Charter Section 1007 and Government Code Section 65353 require that the Planning Commission provide input to the City Council on any proposed General Plan Amendment;

WHEREAS, on January 26, 2022, the Planning Commission conducted a duly noticed public hearing to consider the GPA, at the conclusion of which, the Commission voted unanimously to recommend approval of the General Plan Amendment to the City Council;

WHEREAS, notice of the public hearing on the proposed General Plan Amendment was published in the Santa Clara Weekly, a newspaper of general circulation for the City, on January 12, 2022;

WHEREAS, notices of the public hearing on the General Plan Amendment were mailed to all property owners within 500 feet of the Project Site, according to the most recent assessor’s roll,

and to all local agencies expect to provide essential facilities or services to the project, on January 13, 2022;

WHEREAS, before considering adopting the General Plan Amendment for the Project Site, the City Council reviewed and considered the potential environmental impacts of the Project, identified mitigation measures, and adopted and certified the Environmental Impact Report (“EIR”) for the Project (SCH # 2019120515), as well as a set of CEQA Findings and a Statement of Overriding Considerations, in accordance with the requirements of CEQA; and

WHEREAS, the City Council has reviewed the General Plan Amendment; and

WHEREAS, on March 22, 2022, the City Council conducted a duly noticed public hearing to consider the GPA, at which time all interested persons were given an opportunity to give testimony and provide evidence in support of and in opposition to the proposed GPA.

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

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. General Plan Amendment Findings. That the City Council finds and determines that the General Plan Amendment is in the interest of the public good for the following reasons:

A. The proposed General Plan Amendment is deemed to be in the public interest, in that:

The proposed General Plan Amendment is a prerequisite to the adoption of the Project, which is located in an urbanized area served by existing municipal services and implements smart growth principles by redeveloping underutilized properties with high intensity mixed-use, pedestrian- and transit-oriented development that will contribute to the City both socially and economically.

B. The proposed General Plan Amendment is consistent and compatible with the rest of the General Plan and any implementation programs that may be affected, in that:

The Project furthers and is consistent with the goals, policies and major strategies of the General Plan that enhance the City's quality of life, preserve and cultivate neighborhoods, promote sustainability, enhance City identity, support Focus Areas and community vitality, maintain the City's fiscal health and quality of services, and maximize health and safety benefits with the creation of new land use designations that allow for the development of a mixed-use transit-oriented environment with densities ranging from 60 to 250 dwelling units per acre, and including the possibility of High Intensity Office Uses along Great America Parkway.

C. The proposed General Plan Amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA), in that:

A Draft Environmental Impact Report ("DEIR") was prepared in accordance with CEQA and the City circulated copies of the DEIR and Notice of Availability to the public agencies which have jurisdiction by law with respect to the Project, as well as to other interested persons, organizations and agencies, and the City sought the comments of such persons, organizations and agencies. The City prepared and circulated written responses to the comments received during the Comment Period and included those responses in a Final Environmental Impact Report ("FEIR"), in accordance with CEQA.

D. The potential impacts of the proposed General Plan Amendment have been assessed and have been determined not to be detrimental to the public health, safety, or welfare, in that:

The Council adopted a Mitigation Monitoring and Reporting Program (MMRP) for implementation with Project development to reduce potentially significant impacts identified in the EIR to less than significant and a set of CEQA Findings and a Statement of Overriding Considerations for the significant unavoidable impacts that cannot be mitigated to less than significant.

3. That the City Council hereby amends the General Plan by adding the following text to Subsection 5.2.2 (“Land Use Classifications and Diagram”) of Section 5.2 (“Land Use Diagram”) of Chapter 5 (“Goals and Policies”), to be inserted in the residential land use designations section, after the existing definition of “Very High Density Residential” :

“Village Residential

The purpose of the Village Residential designation is to accommodate multi-family residential development at very-high densities between 5-12 stories within the Patrick Henry Drive Specific Plan area. The residential density range for this zone is 60-149 dwelling units per acre.”

“Urban Village

The purpose of the Urban Village designation is to accommodate transit-oriented, multi-family residential development at very-high densities between 5-12 stories within the Patrick Henry Drive Specific Plan area. These urban-scale developments feature pedestrian-oriented facades and frontages. Urban Village developments include structured or below-grade parking and shared outdoor spaces proximate to transit. The residential density range for this zone is 100-149 dwelling units per acre.”

“Urban Center

The purpose of the Urban Center designation is to accommodate transit-oriented, multi-family residential development at very-high densities with no height limits except those imposed by the FAA due to flight paths for the San Jose International Airport, within the Patrick Henry Drive Specific Plan area. These urban-scale developments feature pedestrian-oriented facades and frontages. Urban Center developments include structured or below-grade parking and shared outdoor spaces proximate to transit. The residential density range for this zone is 120-250 dwelling units per acre.”

“High Density Flex

The purpose of the High Density Flex designation is to accommodate transit-oriented, multifamily residential development interspersed with office. Allowable height ranges between 5-12 stories. The residential density range for this zone is 60-149 dwelling units per acre. Office development is allowed at up to 2.0 FAR.”

4. That the City Council hereby amends the General Plan by changing the General Plan Land Use Designation for the Project Site by modifying Figures 5.2-2 and 5.2-3 of the General Plan to the land use designations described in the land use plan, Figure 4.3A, of the Patrick Henry Drive Specific Plan, which is attached for reference.

5. That the City Council hereby amends Appendix 8.13 of the General Plan by modifying the Climate Action Plan to include new trip reduction standards for the Village Residential, Urban Village, Urban Center and High Density Flex designations by re-titling the “High Density Residential” column of Table 9 of the Climate Action Plan to “High Density Residential Designations”, and adding an additional footnote to Table 9 stating that, “High Density Residential Designations include High Density Residential (37-50 DU/AC), Very High Density Residential (51-100 DU/AC), Village Residential (60-149 DU/AC), Urban Village (100-149 DU/AC), Urban Center (120-250 DU/AC), and High Density Flex (60-149 DU/AC or up to 2.0 FAR).

6. That based on the findings set forth in this Resolution, the EIR Resolution and the evidence in the City Staff Report and such other evidence as received at the public hearing on this matter, the City Council approves the General Plan Amendment.

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7. 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 22nd DAY OF MARCH, 2022, 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. Figure 4.3A of the Patrick Henry Drive Specific Plan

I:\PLANNING\Advance Planning\Specific Plans\Freedom Circle - Patrick Henry\Patrick Henry\Resos and ordinances\PC GPA
reso.doc

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING TITLE 18 OF “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA” TO ADD CHAPTER 18.27, REGULATIONS FOR THE PATRICK HENRY DRIVE AREA ZONING DISTRICTS, TO CHANGE THE ZONING DESIGNATIONS IN THE PATRICK HENRY DRIVE AREA FROM LIGHT INDUSTRIAL (ML) TO ZONING DESIGNATIONS WITHIN CHAPTER 18.27 FOR THE AREA BOUNDED BY MISSION COLLEGE TO THE SOUTH, GREAT AMERICA PARKWAY TO THE EAST, THE HETCH-HETCHY RIGHT-OF-WAY TO THE NORTH, AND CALABASAS CREEK TO THE WEST; AND ADDING A NEW SECTION 17.40.116 TO CHAPTER 17.40, CITYWIDE AFFORDABLE HOUSING REQUIREMENTS, TO SPECIFY AFFORDABILITY LEVELS APPLICABLE TO THE PATRICK HENRY DRIVE ZONING DISTRICTS

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

WHEREAS, the City of Santa Clara (the “City”) intends to allow for the development of a high-density residential neighborhood in the Patrick Henry Drive Specific Plan area;

WHEREAS, on March 22, 2022, the City Council approved a Specific Plan for the Patrick Henry Drive Plan Area, which contemplates a transit-oriented pedestrian-friendly neighborhood of up to 12,000 residential units with supportive retail uses;

WHEREAS, the Patrick Henry Drive Area is one of the “Future Focus Areas” identified in the City’s General Plan, each of which is intended to be a walkable urban neighborhood, with parking reflective of a variety of available transit modes, including bicycle parking;

WHEREAS, the General Plan contemplates that Future Focus Areas will include a variety of forms of high-density urban housing, including podium buildings, residential towers, and residential mixed-use buildings; and,

WHEREAS, on March 22, 2022 the City Council approved a resolution adopting General Plan designations for the Patrick Henry Drive plan area, with residential densities ranging

from 60 to 250 dwelling units per acre; and

WHEREAS, the Patrick Henry Drive Area is currently zoned Light Industrial (ML), which allows for uses such as manufacturing, processing, repairing and storing products; and

WHEREAS, the Santa Clara City Code (“SCCC”) currently does not include any zoning district that would implement the General Plan designations adopted in the March 22, 2022 General Plan Amendment resolution; and

WHEREAS, in order to effectuate the Project and the higher-density residential uses envisioned by the General Plan Amendment, it therefore is necessary to (a) create a new high-density residential zoning district that includes districts applicable to the Patrick Henry Drive plan area, (b) rezone the Patrick Henry Drive Plan Area to those new zoning districts, and (c) to modify bicycle parking standards.

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

SECTION 1: That a new Chapter 18.27, “Regulations for the Patrick Henry Drive Area (PHD) Districts”, is hereby added to Title 18 (entitled “Zoning”), of “The Code of the City of Santa Clara, California” (“SCCC”) as follows:

“Chapter 18.27

Regulations for the Patrick Henry Drive Area (PHD) Zoning Districts

18.27.010 Application.

The regulations set forth in this chapter apply to the Patrick Henry Drive Area (PHD) zoning districts.

18.27.020 Intent.

This Chapter is designed to implement the General Plan designations contained in the

Patrick Henry Drive Specific Plan, creating a high-density, transit-oriented residential district with supportive retail services. Residential uses are authorized in all zoning districts listed below in varying densities, and ground-floor office and retail uses are also allowed in all zoning districts listed below in selected locations. The Patrick Henry Drive Plan area is expected to be implemented over time, and this Chapter contains provisions for the continuation of existing industrial buildings and uses. This Chapter includes the following districts:

Patrick Henry Very-High-Density Residential Zone (PH-R5). The purpose of the PH-R5 Patrick Henry Very-High-Density Residential Zone is to provide land areas for the construction, use, and occupancy of high density and intensity multi-family developments (i.e., low-rise, mid-rise, and high-rise apartments and condominiums). It is the intent of this zone to encourage development to use innovative site planning, provide on-site recreational amenities and be located near major community facilities, business centers, transportation corridors, and/or major thoroughfares. The residential density range for this zone is 51-99 dwelling units per acre. This zone implements the Very High-Density land use designation in the General Plan.

Urban Village (UV). The purpose of the UV Urban Village Zone is to accommodate transit-oriented, multi-family residential development at very-high densities between 5-12 stories within the Patrick Henry Drive Specific Plan. These urban-scale developments feature pedestrian-oriented facades and frontages. Urban Village developments include structured or below-grade parking and shared outdoor spaces proximate to transit. The residential density range for this zone is 100-149 dwelling units per acre. This zone implements the Urban Village land use designation in the General Plan.

Village Residential (VR). The purpose of the VR Village Residential Zone is to accommodate multi-family residential development at very-high densities between 5-12 stories within the Patrick Henry Drive Specific Plan. The residential density range for this zone is 60-149 dwelling units per acre. This zone implements the Village Residential land use designation in the General Plan.

Urban Center (UC). The purpose of the UC Urban Center Zone is to accommodate transit-oriented, multi-family residential development at very-high densities with no height limits except those imposed by the FAA due to flight paths for the San Jose International Airport, within the Patrick Henry Drive Specific Plan area. These urban-scale developments feature pedestrian-oriented facades and frontages. Urban Center developments include structured or below-grade parking and shared outdoor spaces proximate to transit. The residential density range for this zone is 120-250 dwelling units per acre. Densities over 250 du/acre may be allowed for the provision of community benefits agreed upon with the City and formalized in a development agreement. This zone implements the Urban Center land use designation in the General Plan.

High Density Flex (HD Flex). The purpose of the HD Flex High Density Flex Zone is to accommodate transit-oriented, multi-family residential development interspersed with office on four parcels along the eastern edge of the Patrick Henry Drive Specific Plan Area. Allowable height ranges between 5-12 stories. The residential density range for this zone is 60-149 dwelling units per acre. Office development is allowed up to 2.0 FAR, per the choice of property owners. This zone implements the High-Density Flex land use designation in the General Plan.

18.27.030 Permitted Uses and Permit Requirements - Residential.

Residential Buildings (Permit Requirements)	
	P Allowed by Right MUP Minor Use Permit (Chapter 18.124) CUP Conditional Use Permit (Chapter 18.124) TUP Temporary Use Permit (Chapter 18.122) -- Not allowed
Land Use (see Article 8 for land use definitions).	PHD Residential Zones
Dwelling, Accessory Units	P
Dwelling, Multifamily	P
Dwelling, Second Unit	-
Dwelling, Single-Family	-
Dwelling, Two-Family	-
Employee Housing	P
Home Occupations	P
Live-Work Facilities	MUP
Mobile Home Park	-
Organizational Houses	-
Rooming and/or Boarding Houses	-
Supportive Housing	P
Transitional Housing	P
Assisted Living Facilities	CUP
Day Care Homes, Up to 14 Children	P
Community Care Facilities, Small	P
Community Care Facilities, Large	CUP
Emergency Shelters	-
Community Gardens	P
Parks and Public Plazas	P
Retail and Office Uses (ground floor only, in mixed-use buildings only)	
Retail	P
Off-sale of alcohol	P
Restaurants, including on-sale of alcohol	P
Bars	CUP
Office Uses	P

18.27.040 Permitted Uses and Permit Requirements – Office and Industrial.

Office and Industrial Uses, HD Flex Zone (Permit Requirements)	
	P Allowed by Right MUP Minor Use Permit (Chapter 18.124) CUP Conditional Use Permit (Chapter 18.124) TUP Temporary Use Permit (Chapter 18.122) -- Not allowed
Land Use (see Article 8 for land use definitions).	HD Flex
Residential Uses	
Caretaker Housing	CUP
Transitional Housing Facilities	-
Human Services Uses	
Community Care Facilities, Small	-
Community Care Facilities, Large	-
Emergency Shelters	-
Recreation, Education, and Public Assembly Uses	
Cemeteries and Mausoleums	-
Crematories	-
Fitness Facilities	P
Parks and Public Plazas	P
Public Schools	CUP
Private Schools	CUP
Public/Private Colleges and Universities	-
Equipment/Machine/Vehicle Training Facilities	CUP
Vocational/Trade Schools	-
Utility, Transportation, and Communication Uses	
Broadcasting and Recording Studios	-
Fuel Storage and Distribution Centers	-
Park and Ride Facilities	P
Parking Facilities	CUP
Wireless Telecommunications Facilities and Towers, Co-location/Small Cell	P
Wireless Telecommunication Facilities and Towers, Minor (less than 70 feet)	MUP
Wireless Telecommunication Facilities and Towers, Major (70 feet or higher)	CUP
Transit Stations and Terminals	P

18.27.050 Existing Buildings and Uses

(a) Notwithstanding any other provision in this Chapter, the lawful use of buildings existing prior to the adoption of this Chapter may continue, and shall continue to be governed by the standards of the prior zoning (including any re-tenanting, maintenance, repair, replacement, modification, expansions and restoration in the event of casualty), until such time as (i) the existing building in its entirety is demolished voluntarily (unless for the purposes of implementing maintenance, repair, replacement, expansion or restoration in the event of casualty), and/or (ii) the existing use (including any expansions) has been discontinued in its entirety or is replaced with a use not permitted in the prior zoning regulations but permitted or conditionally permitted by this Chapter, at which time the prior zoning shall become inapplicable and the other sections of this Chapter shall apply from that point forward.

(b) Allowed Uses. For parcels with legal uses of buildings existing prior to the adoption of this Chapter, permitted uses of the prior zoning district are allowed, and none of the other sections of this Chapter 18.27 shall apply to such building and use, until such time as the existing use (including any re-tenanting, maintenance, repair, replacement, modification, expansions and restoration in the event of casualty) has been discontinued in its entirety as set forth in subsection (a).

(c) Conditional Uses. For parcels with legal uses of buildings existing prior to the adoption of this Chapter, conditional uses of the prior zoning district are conditionally permitted, and none of the other sections of this Chapter 18.27 shall apply, until such time as the existing use (including any re-tenanting, maintenance, repair, replacement, modification,

expansions and restoration in the event of casualty) has been discontinued in its entirety as set forth in subsection (a).

(d) Development Standards. For parcels with legal uses of buildings existing prior to the adoption of this Chapter, development standards of the prior zoning district shall apply, and none of the other sections of this Chapter 18.27 shall apply, until such time as the existing use (including any re-tenanting, maintenance, repair, replacement, modification, expansions and restoration in the event of casualty) has been discontinued in its entirety as set forth in subsection (a).

18.27.060 Development Standards.

Development Feature (minimum unless otherwise indicated)	PH-R5	UV	VR	UC	HD Flex
Parcel Area (minimum) area required for each NEWLY CREATED parcel.					
Parcel Area	10,000	10,000	10,000	8,500	8,500
Street Frontage (feet)	70	70	70	60	70
Structure Coverage (maximum percentage)					
Parcel Area (less than 10,000 sq. ft.)	None	None	None	None	None
Parcel Area (less than 10,000 sq. ft.)	None	None	None	None	None
Setbacks (minimum) - Setback lines are measured from the back of walk.					
Residential (front, side corner and interior)	10	10	10	10	10
Mixed-Use (front, side corner and interior)	0	0	0	0	0
Office (front, side corner and interior)	0	0	0	0	0
Setback Encroachments (i.e., awning, balconies, stoops)	Setback encroachments are allowed per the quantitative standards of the PHD plan.				
Height (maximum) measured in feet					
Height (within 20 feet of the R1-6L, R1-8L, and R2 zones)	32	32	32	32	32
Height (all other zones)	135	160	160	FAA	160
Number of Stories (maximum)					
Number of Stories (all other zones)	10	12	12	FAA	12
Gross Residential Density (minimum to maximum) shown in number of dwelling units per acre					
Allowable Density	51-99	100-149	60-149	120-250	60-149
Recreation Space for Multi-Family Dwellings (minimum) measured in square feet per dwelling unit					
Private Recreation Space (required for a minimum of 50 percent of units)	Per the PDO and PHD plan				
Common Recreation Space (per unit)	Per the PDO and PHD plan				

18.27.070 Parking Requirements.

(a) Minimum Parking Requirements.

Use	For Residents / Employees	For Visitors / Customers
Residential	Minimum 1 space per unit for units greater than 550 SF Minimum 0.5 spaces per unit for units less than 550 SF	Minimum 0.05 spaces per unit
Retail / Flex	None required	Minimum 1 space per 1,000 SF
Office	Minimum one space for each 500 SF of gross floor area	Minimum 1 space per 3,000 SF
Community/Civic	None required	None required

(b) Shared Parking. Parking shared among uses is encouraged, and up to 20% of parking spaces provided may be shared between two uses. For the purposes of this title, those parking spaces shared between two uses count towards the parking requirement of both.

(c) Surface Parking. Surface parking is only allowed as a temporary or interim use.

(d) Mechanical parking stackers/lifts and tandem parking may be used to satisfy minimum requirements.

(e) Unbundled Parking. A maximum of one parking space shall be rented or sold with each unit. Additional parking spaces shall be rented or sold separately.

(i) As an alternative to renting or selling parking spaces separately from residential unit, property managers may implement a parking preference program, with prospective renters without cars put on a separate waiting list from renters with cars, and renters being chosen alternately from the two lists.

18.27.080 Minimum Bicycle Parking Requirements.

(i) For each multi-family unit, one Class 1 bicycle parking space per unit and one Class 2 bike rack, accommodating two bikes, per 15 units is required.

(ii) Mixed-use developments: One Class 1 bicycle parking space per 30 employees and one Class 2 bike rack for every 1,000 square feet of retail, flex or community use.

(iii) Office developments: One bicycle parking space per 6,000 square feet with 75 percent as Class One spaces and 25 percent as Class Two racks.”

SECTION 2: That all parcels in the Patrick Henry Drive Plan Area are hereby rezoned from Light Industrial (ML) to the districts in this Chapter, as indicated on the attached zoning map.

SECTION 3: That a new section 17.40.116 is hereby added to Chapter 17.40, Citywide Affordable Housing Requirements, of Title 17 (entitled “Development”), of “The Code of the City of Santa Clara, California” (“SCCC”) to read as follows:

“17.40.116 Affordability Levels – Patrick Henry Drive Specific Plan.

For either ownership or rental housing developed under the Patrick Henry Drive Area Zoning Districts in the Patrick Henry Drive Specific Plan Area, the following affordable housing requirements apply:

(a) Notwithstanding Subsection 17.40.080(a), residential ownership projects of ten or more units must provide at least fifteen percent (15%) of the units at affordable housing costs for extremely low, very low, low, moderate and above-moderate income households, or some combination of those income categories. A developer shall select income categories for each of the affordable units in three equal affordability levels such that for five percent of the units, the average income of purchasers will not exceed fifty percent (50%) of AMI; for the second five percent of the units, the average income of purchasers will not exceed eighty percent (80%) of AMI; and for the third five percent of the units, the average income of purchasers will not exceed one hundred twenty percent (120%) of AMI. Residential ownership projects of fewer than ten units may either provide one dwelling at an affordable housing cost for a household earning up to eighty percent (80%) of AMI, or pay an in-lieu fee identified for residential ownership projects in the affordable housing master fee schedule.

(b) Notwithstanding Subsection 17.40.090(a), for residential rental projects of ten or more units, a developer shall select income categories for each of the affordable units in three equal affordability levels such that for five percent of the units, the average income of

purchasers will not exceed fifty percent (50%) of AMI; for the second five percent of the units, the average income of purchasers will not exceed eighty percent (80%) of AMI; and for the third five percent of the units, the average income of purchasers will not exceed one hundred twenty percent (120%) of AMI. Residential rental projects of fewer than ten units may either provide an affordable unit at an affordable housing cost for a household earning up to eighty percent (80%) of AMI, or pay an in-lieu fee identified for residential rental projects in the affordable housing master fee schedule.

(c) In-Lieu Fee for Rental Units. In order for residential development projects under the Patrick Henry Drive Zoning Districts in the Patrick Henry Drive Plan Area to satisfy the affordable housing requirement through payment of an In Lieu Fee, the City Council shall establish a fee per square foot for the Specific Plan Area to reflect the reduced average AMI of 80 percent.”

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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 22ND day of MARCH, 2022, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

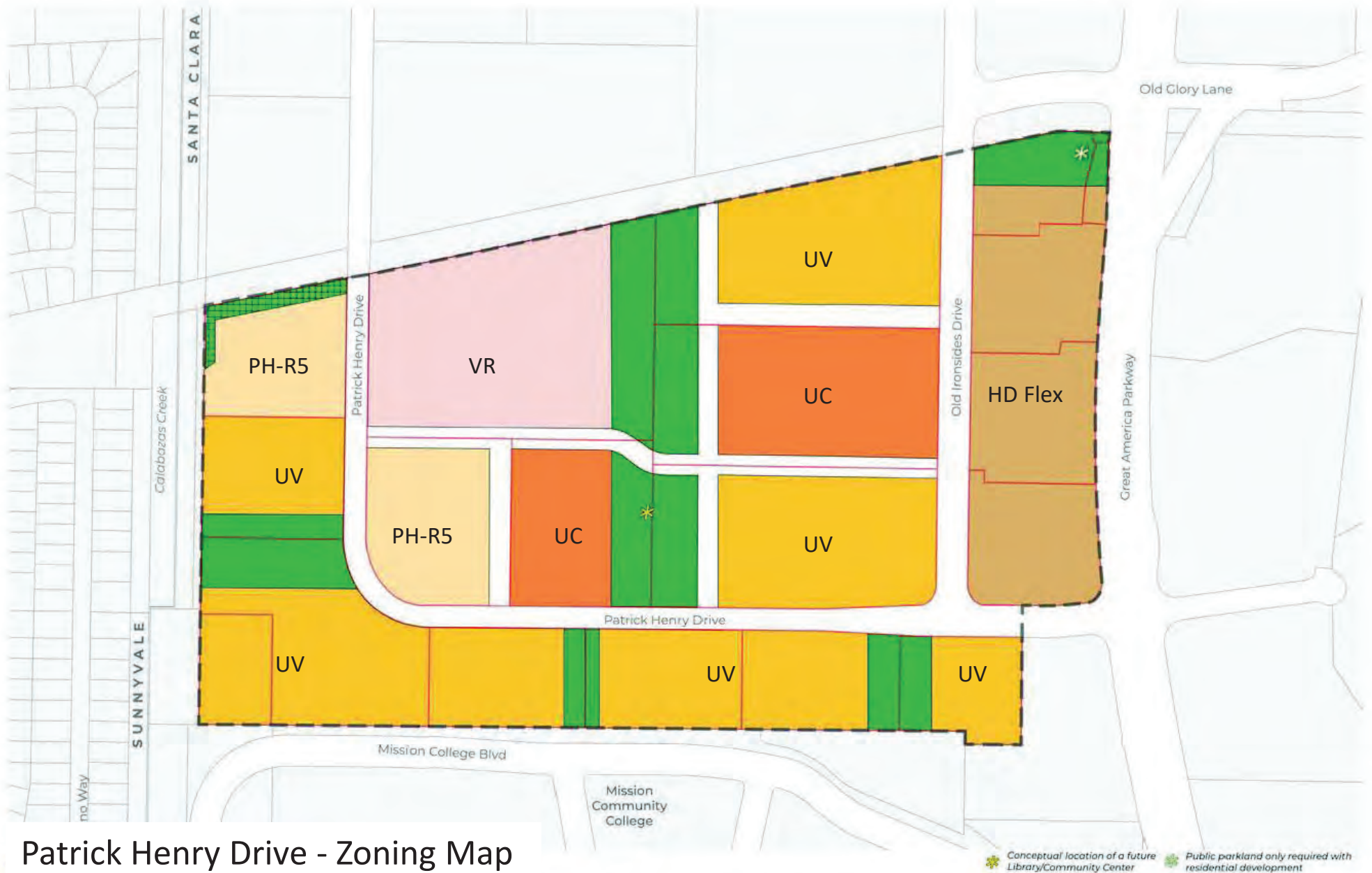
ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments:

1. Patrick Henry Drive Zoning Map



- | | | |
|---------------------------------------|---------------------------------------|-----------------------------|
| Study Area | PH-R5 - Very High Density Residential | HD Flex - High Density Flex |
| Existing Parcel (City of Santa Clara) | UV - Urban Village | VR - Village Residential |
| Existing Parcel (Study Area) | UC - Urban Center | Potential Trail Dedication |
| Open Space | | |

Conceptual location of a future Library/Community Center

Public parkland only required with residential development



5.4.7 Future Focus Areas Goals and Policies

Future Focus Areas are identified for Phase III of the General Plan. Each of these areas requires additional planning as prerequisites for development. Future Focus Areas are located north of the Caltrain corridor, adjacent to existing transit hubs or along major transportation corridors. The Future Focus Areas represent a change from existing underutilized office and industrial uses to higher-density residential and mixed-use neighborhoods with a full complement of supportive services. Careful planning of each area is essential to ensure the provision of adequate infrastructure and services, an appropriate interface with surrounding development and access to transit, open space and recreation. The Future Focus Areas are delineated by a red outline in Figure 5.4-1 and include:

- Central Expressway
- De La Cruz
- Great America Parkway

The Land Use Diagram designates future land uses and their location for each Future Focus Area. Confirmation and/or changes to these land use designations will occur in the context of the comprehensive planning process required as a prerequisite for residential development in any of these areas. General Plan Goals and Policies for the Future Focus Areas provide a guide for these planning efforts.

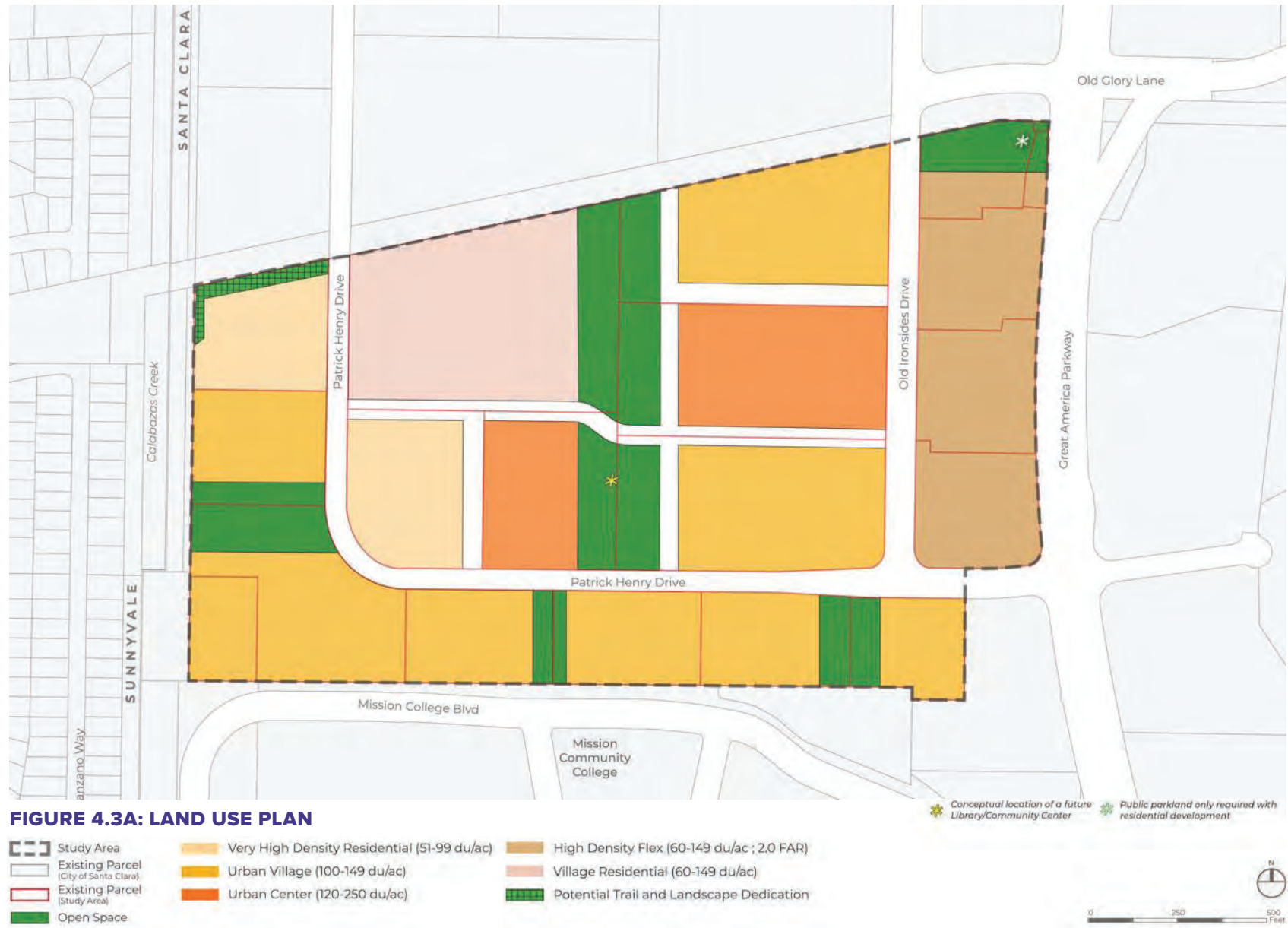
Future Focus Area Goals

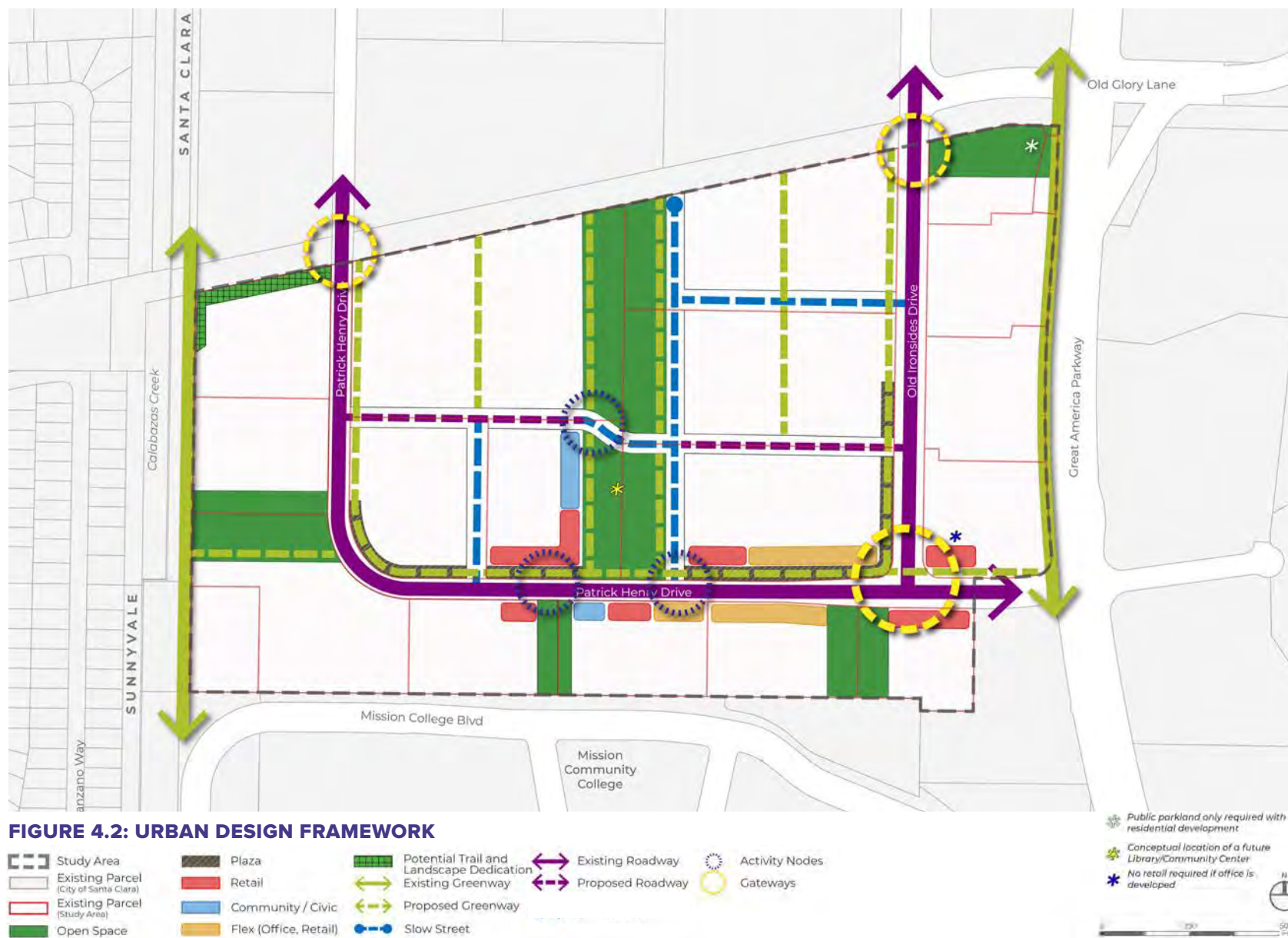
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| 5.4.7-G1 | All applicable prerequisites are met, and a comprehensive plan is adopted, prior to implementation of any Future Focus Area. |
| 5.4.7-G2 | Adequate infrastructure, services and funding are planned to support new development in Future Focus Areas. |
| 5.4.7-G3 | New residential development that includes provisions for compatibility with surrounding non-residential uses. |

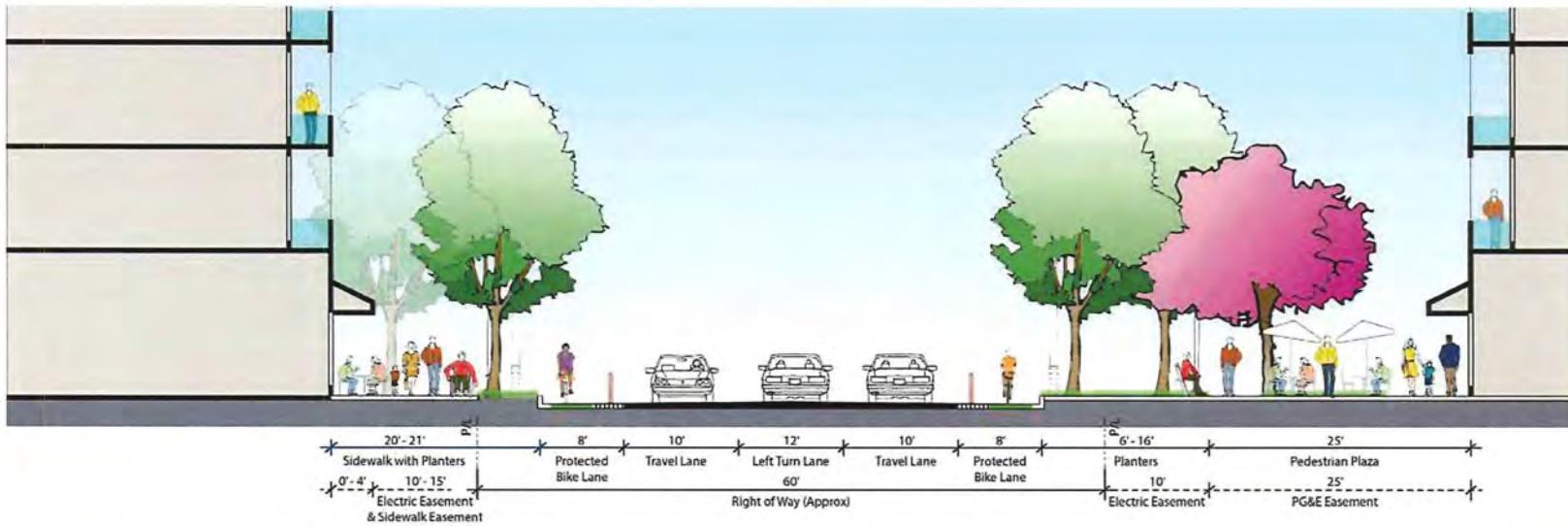
Future Focus Area Policies

- | | |
|----------|--|
| 5.4.7-P1 | Require the adoption of the comprehensive plan prior to any rezoning within that designated Future Focus Area. |
| 5.4.7-P2 | Implement development in Future Focus Areas in conformance with applicable General Plan policies for Neighborhood Compatibility, Mobility and Transportation, Public Services, and Environmental Quality. |
| 5.4.7-P3 | Allow Future Focus Area plans to be initiated by one or more private parties who provide funding to the City for planning the entire Focus Area; the City may include a reimbursement program for the private parties as part of the Future Focus Area Plan. |

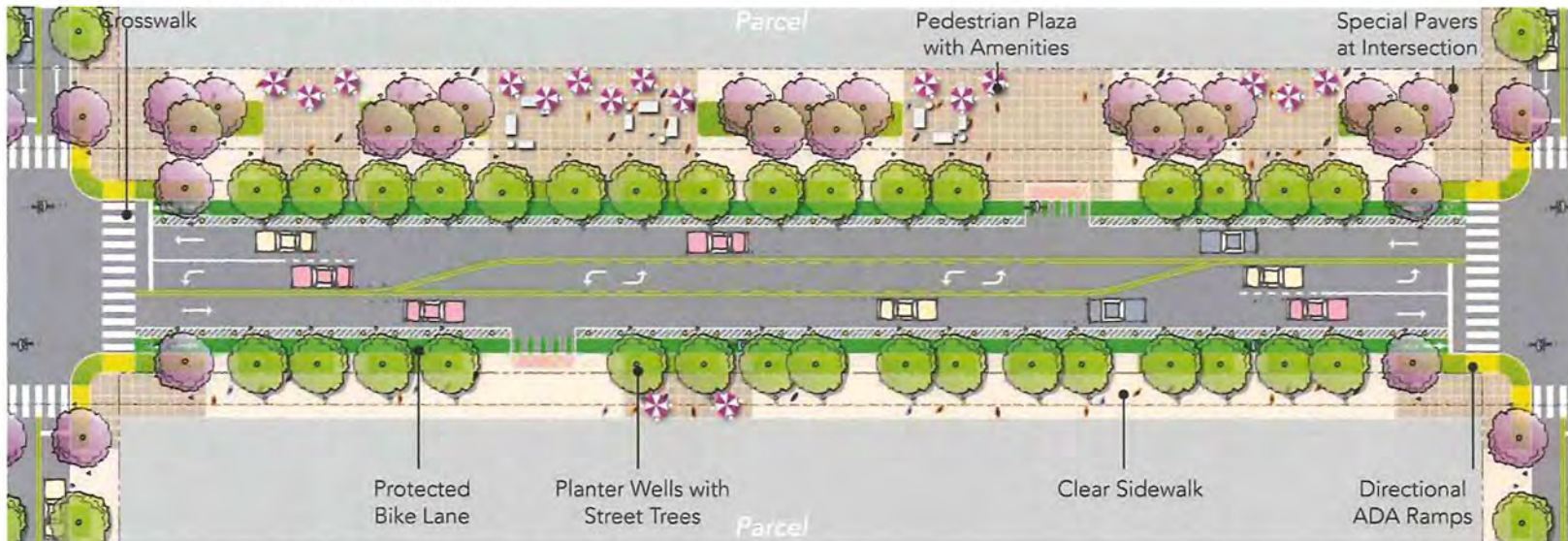
- 5.4.7-P4 Until such time as a comprehensive plan is adopted for a Future Focus Area, allow development in accordance with the land use designations on the Phase II General Plan Land Use Diagram.
- 5.4.7-P5 Discourage any new development that would preclude the implementation of the residential neighborhoods identified in the Future Focus Areas, Phases II and III, of the General Plan Land Use Diagrams.
- 5.4.7-P6 Encourage new comprehensive plans for Future Focus Areas to provide a full complement of uses, including neighborhood-oriented retail and commercial activities, open space, and public facilities.
- 5.4.7-P7 Implement appropriate measures for new residential development to reduce any land use conflicts with surrounding non-residential uses.
- 5.4.7-P8 Require development of public amenities, including parks and open space, in the first phase of development for all Future Focus Areas.
- 5.4.7-P9 Emphasize walkability and access to transit and existing roadways in Future Focus Area comprehensive plans.
- 5.4.7-P10 Provide access across expressways or major arterial streets so that new residential development in Future Focus Areas has adequate access to neighborhood retail, services and public facilities.







5.3.1D - Patrick Henry Drive Location 1 - Proposed Prototypical Option



5.3.1E - Patrick Henry Drive Location 1 - Proposed Prototypical Plan View Option

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA ADOPTING THE PATRICK HENRY DRIVE
SPECIFIC PLAN, A SPECIFIC PLAN PURSUANT TO
GOVERNMENT CODE SECTION 65450, et seq.**

SCH # 2019120515

PLN2019-14257 (EIR, Specific Plan, General Plan Amendment, and Zoning Amendment)

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

WHEREAS, the City of Santa Clara (the “City”) is contemplating the adoption of the Patrick Henry Drive Specific Plan (the “Project”), a specific plan for a transit-oriented pedestrian-friendly neighborhood of up to 12,000 residential units with supportive retail uses, located on approximately 62 net acres of land located within one-half mile of the Tasman Drive light rail line that are currently developed with industrial uses;

WHEREAS, the proposed Specific Plan also includes an alternative development scenario that allows for up to 10,300 residential units, with up to 785,000 square feet of office space and up to 310,000 square feet of other non-residential uses; and

WHEREAS, under the proposed Specific Plan, the Patrick Henry Drive area is intended to be a walkable urban neighborhood, with parking reflective of a variety of available transit modes, including bicycle parking;

WHEREAS, a specific plan is a tool for providing regulatory direction for specific parts of a city, and can include policy guidance, regulatory requirements, and design guidelines;

WHEREAS, as a part of implementation of the Specific Plan, the City intends to adopt a General Plan Amendment (“GPA”) to amend the General Plan land use diagram by changing the existing land use designation of the Project Site from Light Industrial to four residential designations including Very High Density (51-100 du/ac); Village Residential (60-149 du/ac); Urban Village Residential (100-149 du/ac); and Urban Center Residential (120-250 du/ac); and one flexible residential/commercial designation entitled High Density Flex (60-149 du/ac or up to a 2.0 floor area ratio of commercial development);

WHEREAS, the GPA includes an amendment to Appendix 8.13 (the Climate Action Plan) setting forth vehicle trip reduction targets for the new land use designations of Village Residential (60-149 du/ac); Urban Village Residential (100-149 du/ac); and Urban Center Residential (120-250 du/ac); and High Density Flex (60-149 du/ac or up to a 2.0 floor area ratio of commercial development);

WHEREAS, as a part of implementation the Specific Plan, the City is also proposing to amend Title 18 (“Zoning”), of the City Code to create new zoning districts that implement the proposed General Plan designations, and to apply those zoning designations across the Project Site;

WHEREAS, the proposed Patrick Henry Drive Specific Plan is consistent with the Goals and Policies of the Future Focus Area section in the General Plan;

WHEREAS, notice of the public hearing on the proposed Specific Plan was published in the Santa Clara Weekly, a newspaper of general circulation for the City, on January 12, 2022;

WHEREAS, notices of the public hearing on the proposed Specific Plan were mailed to all property owners within 500 feet of the Project Site, according to the most recent assessor’s roll, and to all local agencies expected to provide essential facilities or services to the project, on January 13, 2022;

WHEREAS, Santa Clara City Charter Section 1007 and Government Code sections 65353 and 65453 require that the Planning Commission provide input to the City Council on proposed specific plans;

WHEREAS, on January 26, 2022, the Planning Commission reviewed the Specific Plan and conducted a public hearing, at which time all interested persons were given an opportunity to give testimony and provide evidence in support of and in opposition to the proposed Specific Plan.

WHEREAS, as a part of their recommendation to the City Council, the Planning Commission recommended that the City Council add a seventh principle to the Specific Plan, as follows:

“7. Building a Vibrant Middle Class: Encourage the use of a local construction workforce and local business sourcing in the buildout within the Plan area. The employment of a local construction workforce that pays family-supporting wages will generate sales tax revenue for the City as those wages are recirculated within the City's business community. The availability of a trained construction workforce is essential for the success in implementing the Plan therefore the employment of apprentices in State of California approved training programs will also be encouraged”; and

WHEREAS, before the Specific Plan has been revised to reflect the Planning Commission's recommendation; and

WHEREAS, before considering adoption of the Specific Plan, the City Council reviewed and considered the potential environmental impacts of the Project, including the implementing General Plan Amendment, Zoning Code Amendment, and identified mitigation measures, and adopted and certified the Environmental Impact Report (“EIR”) for the Project (SCH #2019120515), as well as a set of CEQA Findings and a Statement of Overriding Considerations, in accordance with the requirements of CEQA; and

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

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. Specific Plan Findings. That the City Council finds and determines that the Specific Plan is in the interest of the public good for the following reasons:

A. The proposed Specific Plan is deemed to be in the public interest, in that:

The Specific Plan is located in an urbanized area served by existing municipal services and implements smart growth principles by redeveloping underutilized properties with high intensity mixed-use, pedestrian- and transit-oriented development that will contribute to the City both socially and economically.

B. The proposed Specific Plan is consistent and compatible with the General Plan and any implementation programs that may be affected, in that:

The Specific Plan furthers and is consistent with the goals, policies and major strategies of the General Plan that enhance the City's quality of life, preserve and cultivate neighborhoods, promote sustainability, enhance City identity, support General Plan Focus Areas and community vitality, maintain the City's fiscal health and quality of services, and maximize health and safety benefits with the creation of a new land use designation that allows for the development of a high-density mixed-use transit-oriented environment.

C. The proposed Plan has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA), in that:

A Draft Environmental Impact Report ("DEIR") was prepared in accordance with CEQA and the City circulated copies of the DEIR and Notice of Availability to the public agencies which have jurisdiction by law with respect to the Project, as well as to other interested persons, organizations and agencies, and the City sought the comments of such persons, organizations and agencies. The City prepared and circulated written responses to the comments received during the Comment Period and included those responses in a Final Environmental Impact Report ("FEIR"), in accordance with CEQA.

D. The potential impacts of the proposed amendment have been assessed and have been determined not to be detrimental to the public health, safety, or welfare, in that:

A Mitigation Monitoring and Reporting Program (MMRP) has been prepared for implementation with development under the Specific Plan in order to reduce potentially significant impacts identified in the DEIR and FEIR, that combined constitute the EIR for the Project, to less than significant and a set of CEQA Findings and a Statement of Overriding Considerations for the significant unavoidable impacts that cannot be mitigated to less than

significant has been prepared in accordance with CEQA; and the City Council adopted all of these documents.

3. That based on the findings set forth in this Resolution, the Approvals, and the evidence in the City Staff Report and such other evidence as received at the public hearing on this matter, the City Council adopts the Specific Plan.

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 22ND DAY OF MARCH, 2022, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachment Incorporated by Reference:
Patrick Henry Drive Specific Plan

I:\PLANNING\Advance Planning\Specific Plans\Freedom Circle - Patrick Henry\Patrick Henry\Resos and ordinances\PC specific plan reso.doc



55 Second Street
Suite 1700
San Francisco, CA 94105
415.227.0900 Phone
415.227.0770 Fax

March 16, 2022

415.227.3508 Direct
aguerra@buchalter.com

VIA E-MAIL

Honorable Mayor Gillmor and Members of the
City Council
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Patrick Henry Drive Specific Plan and Final EIR (SCH # 2019120515)

Dear Mayor Gillmor and Members of the City Council:

Buchalter, a Professional Corporation ("Buchalter"), represents O2Micro as land use counsel for the development of its property located at 3118 Patrick Henry Drive, Santa Clara, California ("O2Micro Property") in the southern portion of the Patrick Henry Drive Specific Plan (the "PHD Specific Plan") area. The City of Santa Clara ("City") included various stakeholders in its planning process, and identified O2Micro as Stakeholder #6 for the Specific Plan review process. Among the 11 stakeholders in the PHD Specific Plan, O2Micro is the only one who is not a developer.

The purpose of this letter is to respectfully request your support to promptly address my client's concern regarding the roadway connector option in the PHD Specific Plan.

About O2Micro

O2Micro is a local business which started on Patrick Henry Drive in 1995. Over the past 27 years, O2Micro has supported Santa Clara community-based organizations and has continued to do so through the recent unprecedented pandemic. In 2013, O2Micro stepped up and gave 7% of its land for a powerline easement at the City's request while its neighbors all refused. In 2019, O2Micro was honored with the "Best of Business" award from S.C. Chamber of Commerce for its contribution to the community.

buchalter.com

Los Angeles
Napa Valley
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Salt Lake City
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San Francisco
Scottsdale
Seattle

Mayor Gillmor and Members of the City Council

March 16, 2022

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Background about the PHD Specific Plan Road Connector

Since the early days of this planning effort, City staff has unilaterally proposed to locate a four-lane public roadway plus 2 sidewalks across the O2Micro Property to Mission College Boulevard (the “Road Connector”). Staff stated in writing that this is a condition of O2Micro’s right to develop its property with residential uses under the City’s PHD Specific Plan. The final Environmental Impact Report (“EIR”) estimates that the average daily traffic on the Road Connector could range between 19,340 to 29,840 vehicle trips, not including the Levi’s Stadium cut-through traffic (Chapter 13, Pages 13-42 and 13-42A). No other stakeholder in the PHD Plan Area has been expected to bear the sole burden of a major public roadway on its property.

Various drafts of the PHD Specific Plan and EIR stated that the City could only require the Road Connector if the West Valley-Mission Community College District Board of Trustees (the “Board of Trustees”) approved it. The documents noted this specifically even as the Planning Department consistently ignored O2Micro’s concerns¹, which are incorporated herein by reference.

In fact, O2Micro is not the only stakeholder to express concerns about the Road Connector. At the City Council April 20, 2021 study session, council members Suds Jain, Karen Hardy and Kevin Park expressed concerns regarding the Road Connector’s traffic and pedestrian safety impacts. On December 21, 2021, the Board of Trustees unanimously rejected the Road Connector (the “Board’s Rejection”) due to concerns over safety, traffic, noise, pollution, maintenance, expenses, etc. O2Micro agrees with the Board of Trustees’ concerns.

We appreciate and respect the Planning Commission’s recent confirmation in its January 26, 2022 recommendation to approve the PHD Specific Plan while acknowledging that the proposed PHD Specific Plan **does not** include the Road Connector on the O2Micro Property. Instead, the final PHD Specific Plan designates open space along both sides of the property line shared by O2Micro and Summerhill. However, the Board’s Rejection is not accurately reflected in the Final EIR and PHD Specific Plan recently released in January and February, 2022. Staff seems to be unilaterally ignoring the Planning Commission’s and the Board of Trustees’ “no road connector” scenario. The PHD Specific Plan now designates O2Micro’s open space so it is the same size as the Road Connector and 72% larger than the adjacent Summerhill’s open space just in case the open space area is needed for the Roadway Connector. This is simply a guise to reserve sufficient area on the O2Micro Property for the Road Connector in the future if staff is able to convince the Board of Trustees to change its mind. But such an approach is inconsistent with the Specific Plan’s provisions stating the Road Connector option depends on the Board of Trustees’ approval of the Road Connector. As the Council is aware, the Board of Trustees

¹ Letters from O2Micro or Buchalter on O2Micro’s behalf dated 3/1/2021, 3/31/2021, 9/13/2021, 12/22/2021, and 1/24/2022.

Mayor Gillmor and Members of the City Council

March 16, 2022

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already rejected the Road Connector. That decision is final.

Planning staff's attempts to interpret the Planning Commission's recommendations at its hearing by insisting that the Road Connector remain in the PHD Specific Plan in case the Trustees some day in the future change their minds has further confused the issue. While we appreciate staff suggesting that this option *could* be reflected in the EIR since the City studied it, the City no longer should identify the Road Connector as an option in the Specific Plan because the Specific Plan said the decision was up to the Board of Trustees. The Board of Trustees already rejected the Road Connector. Insisting the Road Connector remain in the Specific Plan does not reflect the Board's Rejection of the Road Connector. Moreover, the future conversion from open space to a Road Connector will cause new potential impacts on the plan area as well as on O2Micro's development plan. The environmental impacts of converting open space to a road have not been evaluated in the EIR, so if the City were to carry forward such an option in the Specific Plan when the EIR has not studied the consequences of that action, the City will be in violation of CEQA.

O2Micro is the sole stakeholder to be burdened with the significant future uncertainty of whether or not it will be required to install a public road. This does not make sense when the Board of Trustees already made a decision to reject the Road Connector. It is no longer an option. To keep the Road Connector in the Final Specific Plan is to keep open the possibility of replacing open space with the Road Connector, indefinitely.

Thus, we respectfully request that the City Council certify the Final EIR and adopt the Specific Plan without the Road Connector as the preferred option. That decision was within the Board of Trustees' discretion, and it was already made. Secondly, O2Micro requests that the open space on the O2Micro and Summerhill properties along the same property line be equal in size. There is no equitable reason for the open space designated on the O2Micro property to be 72% larger than the size designated for Summerhill's open space.

The Final PHD Specific Plan Should Eliminate the Road Connector Option based on the Board's Rejection.

After the Board's Rejection last year, the City released for public review the Final EIR and PHD Specific Plan in January, 2022. The PHD Specific Plan acknowledged the Board's Rejection but failed to accurately and consistently depict the circulation network. At the Planning Commission public hearing on January 26, 2022, Commissioner Lance Saleme strongly recommended that the Road Connector be removed from the official documents to avoid confusion and Chairperson Nancy Biagini supported Commissioner Saleme's recommendation (please see Attachment I).

The Final Specific Plan released in February, 2022 presents open space on both sides of the property line shared by O2Micro and Summerhill as the preferred option (please see

Mayor Gillmor and Members of the City Council

March 16, 2022

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Attachment II), and the Road Connector as the alternative option for “Potential future vehicle connection subject to the approval of the Mission College Board of Trustees” (please see Attachment III). The City also included language stating that the “roadway connection is shown in this PHD Specific Plan as a future alternative, subject to reconsideration by the Board of Trustees” (see page 88), only the Trustees have not reconsidered their decision, and the property owner O2Micro does not support it.

Given the Board’s Rejection, the City’s only option is to eliminate the Road Connector in its entirety from the Specific Plan. It is not an option, nor a part of the Plan. If the City is to respect the public input process and the Board’s Rejection, it cannot carry the Road Connector forward as if it is a feasible option. There is no evidence that the Board of Trustees may reconsider its unanimous rejection of the Road Connector. Even if the Board of Trustees were open some day in the future to consider a new road through its campus, the impacts of that change at that later date would need to be evaluated through a separate public review process in accordance with CEQA.

We respectfully request that the City Council change the Final PHD Specific Plan to remove the Road Connector in its entirety from the O2Micro Property. This includes, but is not limited to, removal of references to the Road Connector or “potential future vehicle connection” from the text on page 88 and from the exhibits in the Final PHD Specific Plan as listed in Attachment III.

The Final PHD Specific Plan No Road Connector Option Should be Revised so that the Open Space on the O2Micro Property Equals the Open Space on the Summerhill Property.

We agree with the Planning Commission’s recommendation that the Road Connector option be replaced with the No Road Connector option as the preferred land plan consistent with the Board’s Rejection. Currently, the Final Specific Plan shows that the open space on the O2Micro Property is noticeably larger than that on the adjacent Summerhill Property (please see Attachment II). While the Final Specific Plan fails to specify the exact size, the City staff showed in its presentation at the Planning Commission Hearing that the open space on the O2Micro and the adjacent Summerhill Properties are 15,800 sq. ft. and 9,200 sq. ft. respectively. The size of open space specified for O2Micro is exactly the same size as that of the Road Connector. This is simply a guise by staff to some day try to replace the open space with the Road Connector.

O2Micro agrees to provide open space. That has never been in question. O2Micro, however, respectfully requests that the City size the proposed open space depicted along the eastern boundary of the O2Micro Property to equal the open space on the Summerhill property along the same property line. This would be a fair and equitable distribution of open space and

Buchalter

Mayor Gillmor and Members of the City Council

March 16, 2022

Page 5

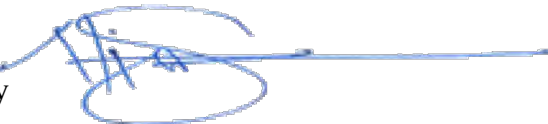
public amenities consistent with the Specific Plan open space requirements and the amount of development contemplated on both properties.

O2 Micro agrees with the comments provided during the public input process, the decision from the Board of Trustees and the City of Santa Clara Planning Commission. O2Micro will accept the open space scenario in the Specific Plan with the understanding that the Road Connector is completely removed from the Final Specific Plan.

My client welcomes an open collaborative discussion with the City of Santa Clara, and hopes to work with the City on a mutually acceptable plan that meets the community's interests without imposing greater impacts on O2Micro. We look forward to the City's certification of the Final EIR and approval of the Final PHD Specific Plan with the revisions O2Micro has requested.

Sincerely,

BUCHALTER
A Professional Corporation

By 

Alicia Guerra

AG:nj

cc: Hossam Haggag, City Clerk
Xander Abbe, City Attorney
Andrew Crabtree, Director of Community Development
Reena Brilliot, Assistant Director of Community Development
Lynn Lin
Yimin Zimmerer
Jane Zhang

Attachment I - Related Discussions at Planning Commission Hearing

The Road Connector was discussed in several occasions during the Planning Commission Hearing on January 26, 2022 (e.g. 0:30:20, 0:49:00, 0:50:30, 1:26:00, and 2:32:35 of the recording at [Planning Commission on 2022-01-26 6:00 PM - Jan 26th, 2022 \(granicus.com\)](https://www.granicus.com/publicinfo/PID.jsp?iD=17242&documentID=17242)). One reason that the staff wanted to keep the Road Connector in the Final EIR and PHD Specific Plan is in case the Board of Trustees changes its mind in the future. Another reason, as shown below, is that staff claimed to not know what specific pages need to be modified. To address the latter issue, we prepared the corresponding exhibits in Attachments II and III.

Lance Saleme: *"I think this is the point where we have to mention the proposed road. Is it possible to request that it move to an appendix or addendum to not lose the context of the fact that this investigation and the information is available, but to remove it from the official document and maybe move it to an investigated option's appendix?"*

Nancy Biagini: *"I will accept that as a further part of my motion."*

Xander Abbe: *"I apologize here. I have more legal concerns. You are suggesting modifying the specific without specifically identifying the pages and exactly what."*

Lance Saleme: *"Oh boy."*

Nancy Biagini: *"Oh lord. Are you talking about Lance's modification of my motion?"*

Xander Abbe: *"Yes."*

Lance Saleme: *"We can go through and then identify [the] specific pages where it's still present. The objective is to remove the mention of that proposed road from all of the official documents in order to meet the request of both the lawyer and the other commissioners, but to maintain Staff's work by having it available as an appendix or other addendum items within the same document."*

Xander Abbe: *"Okay, my legal opinion, in contrast to the others who we were just talking about, I am thinking of much more liberal view of this. I do not believe that edit is necessary from the perspective of protecting the City. That's why we turn on everything tonight. It's all about how I can best protect the City. I do not believe that edit is necessary from the legal protection standpoint. I disagree with the attorney for O2Micro Systems. I do not believe the document is internally inconsistent."*

Lance Saleme: *"Is there a way to alternately at least diminish its level of visible importance by greying it or doing something to hide the fact that this is not what we consider a built-in piece of the document? Do you understand what I am saying? We have to diminish its importance in the document to avoid confusion."*

Xander Abbe: *"I understand where you are coming from. Planning Commission is required under State Law to review the Specific Plan and make a recommendation on the Specific Plan"*

before it goes to the City Council. You are talking about a number of edits. We can take a 5-minute recess right now and I can page through and find the specific pages and then see if it reaches the conclusions."

Nancy Biagini: "Xander, let me try this. You talked about, I don't remember where it was, Trustees did not approve. What if you just simply, I am assuming that somewhere in the bazilian pages we have, what if that was just highlighted or bolded, so in other words, it is very clear that the trustee did not approve? Does that help if it's in the document that I think it's in? And does that meet with what you are talking about? Because I'm with you on this Commissioner Saleme, but I'm struggling. I don't want to make this an unwilled motion, but I want to get our thoughts in there."

Attachment II – Open Space as the Preferred Option in Final PHD Specific Plan

The following figures in the Final PHD Specific Plan showing the No Road Connector option (which is the project) should be revised to illustrate equal size of the open space on the O2Micro and Summerhill Properties rather than open space 72% larger on the O2Micro Property compared to the open space on the Summerhill Property:

- Figure 4.2 (Urban Design Framework);
- Figure 4.3A (Land Use Plan);
- Figure 4.3B (Ground Floor Activation)
- Figure 4.3C (Building Height);
- Figure 4.5 (Parks and Greenways);
- Figure 4.6.2 (Circulation);
- Figure 4.6.2.1B (Vehicular Network);
- Figure 4.6.2.2 (Pedestrian and Bicycle Network);

Figure 4.5 below serves as an example of a typical layout for the figures above regarding the open space option.

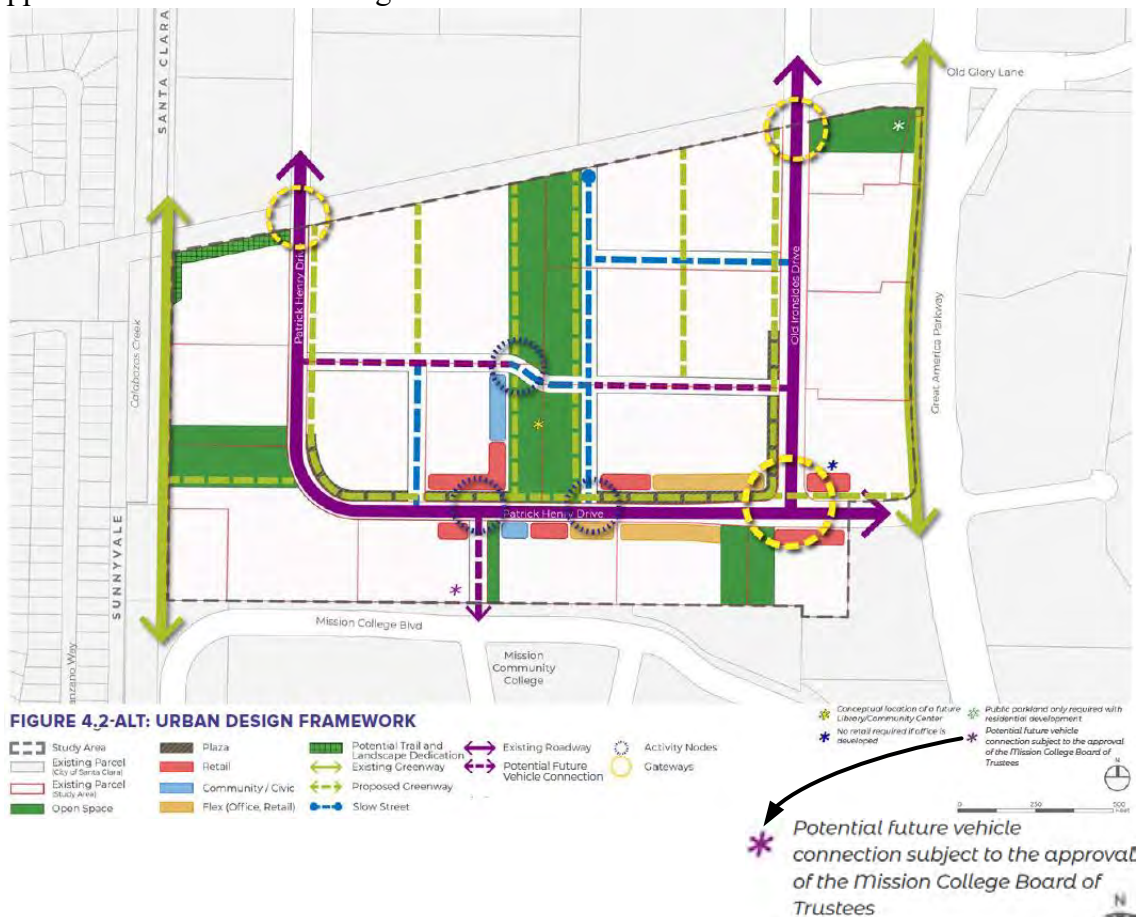


Attachment III - Road Connector as the Alternative Option in Final PHD Specific Plan

References to the Road Connector or “potential future vehicle connection” in the text on page 88, as well as the following figures in the Final Specific Plan showing the Road Connector should be removed:

- Figure 4.2-ALT (Urban Design Framework);
- Figure 4.3A-ALT (Land Use Plan);
- Figure 4.3B-ALT (Ground Floor Activation);
- Figure 4.3C-ALT (Building Height);
- Figure 4.5-ALT (Parks and Greenways);
- Figure 4.6.2-ALT (Circulation);
- Figure 4.6.2.1A-ALT (Street Types and Existing Easements);
- Figure 4.6.2.1B-ALT (Vehicular Network);
- Figure 4.6.2.2-ALT (Pedestrian and Bicycle Network);
- Key map on page 127; and
- Key map on page 132;

Figure 4.2-ALT serves as an example of a typical layout for the figures above. The Road Connector is marked with purple asterisk stating “Potential future vehicle connection subject to the approval of the Mission College Board of Trustees”.



Melissa Meslo

From: Mary Grizzle <mogrizzle2@gmail.com>
Sent: Tuesday, March 15, 2022 7:52 PM
To: Mayor and Council <MAYORANDCOUNCIL@SantaClaraCA.gov>; Nora Pimentel <NPimentel@SantaClaraCA.gov>;
cityclerk@santaclaraca.gov
Cc: Dan Meyberg <dan.meyberg@o2micro.com>; Yimin Wang <yimin_zimmerer@yahoo.com>
Subject: Patrick Henry specific Plan

Mayor Gillmor and Members of the City Council
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

March 15, 2022

Dear Mayor Gillmor and Members of the City Council,

As a long-time resident of the city of Santa Clara, I am extremely proud of how our neighborhood has emerged.

Recently I have been following the City's discussions regarding the Patrick Henry Drive Specific Plan. I attended the West Valley Mission Community College Board of Trustees Meeting in December last year, and was pleased that the trustees listened to my concerns and rejected the proposed roadway connecting Patrick Henry Drive and Mission College Boulevard on campus. Nevertheless, as of now, the roadway remains in the final Patrick Henry Drive Specific Plan as a viable option. It means that the proposed open space between Patrick Henry Drive and Mission College may not be implemented in the future. Instead, it may be replaced by the roadway. I'm sincerely concerned with this possibility, and would like to urge you to prevent it from happening.

People in our city want to live in a living environment that is safe and serene, and certainly not one surrounded by a maze of traffic. Orienting our residents and families to live in a healthy and sustainable way remain a high priority for the city of Santa Clara. We do not need more traffic, pollution and noise. Please eliminate this roadway from the final Specific Plan and make the open space stay in our community.

Thank you for allowing me to share my thoughts and concerns.

Respectfully submitted,

Mary Grizzle

mogrizzle2@gmail.com.



Agenda Report

22-90

Agenda Date: 3/22/2022

REPORT TO COUNCIL

SUBJECT

Public Hearing: Action to Waive First Reading and Introduce an Ordinance Amending Chapter 17.15 "Property Developments" of Title 17 "Development" of the Santa Clara City Code to Add Section 17.15.360 "Patrick Henry Drive Infrastructure Improvement Fee"; and Approve a Resolution Approving the Findings from the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study, Adopting the Nexus Study, Setting the Rates for the Infrastructure Impact Fee, and Establishing the Patrick Henry Drive Infrastructure Improvement Fund

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

BACKGROUND

On March 22, 2022, the City Council is scheduled to consider approval of the Patrick Henry Drive Specific Plan (Specific Plan) to guide the transition of an approximately 74-acre industrial area bounded by Mission College to the south, Great America Parkway to the east, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west into a transit-oriented neighborhood. The Specific Plan contemplates two unique land use scenarios per Table 1 below related to proposed residential units and office uses. The Specific Plan also incorporates approximately 310,000 square feet of neighborhood-oriented convenience retail and up to 14 acres of open space which will include a diverse network of public parks, publicly accessible green infrastructure, and private recreational spaces.

Table 1: Patrick Henry Drive Specific Plan Land Use Plan Scenarios

	Residential Units	Office (SF)	Non-Residential (SF)
Scenario A	12,000	-	310,000
Scenario B	10,300	785,000	310,000

Included with the Specific Plan and the accompanying Environmental Impact Report (EIR) are analyses of various infrastructure impacts and requirements to support the proposed development within the Specific Plan. Based on discussions with the prospective developers and properties owners of the Specific Plan, the City initiated the process of creating a Patrick Henry Drive Specific Plan Infrastructure Impact Fee (Fee) to facilitate development. The purpose of the Fee is to create an equitable distribution of area-wide and common infrastructure costs for all developers within the Specific Plan. Infrastructure that provides common benefits to development within the Specific Plan was analyzed and calculated for probable construction costs.

Impact fees are governed by State law (Assembly Bill 1600 (1987) Government Code Section 66000 et seq.) and allow a City to charge one-time fees to new developments to finance capital facility and infrastructure costs needed to serve those developments. Impact fees are established based on a reasonable relationship (i.e. nexus) between the impacts caused by new development and the improvements to mitigate those impacts that will be funded by the fee. These fees cannot be used to pay for the cost of existing deficiencies and are distinct from taxes and special assessments.

DISCUSSION

The City's Specific Plan consultant, MIG, contracted with municipal financial consultant Economic & Planning Systems, Inc. (EPS Consultants), to prepare a nexus study to justify the creation of the Fee. Cost estimates (in FY 2021-2022 dollars) were prepared for the Specific Plan's area-wide infrastructure items including on-site roadway facilities (e.g., traffic signals, traffic safety devices, pavement rehabilitation), sanitary sewer facilities and structures, storm drainage facilities, potable and recycled water facilities, emergency response vehicle and tiller aerial ladder apparatus, entry monuments and signs, the formation of a Transportation Management Association, and administrative costs. The specific infrastructure items are included in Table 2.

Table 2: Patrick Henry Drive Specific Plan Infrastructure Improvements

Item #	Description	Category	Total Costs
1	Sanitary Sewer Upgrades	Sanitary Sewer	\$9,570,000
2	Water Line Replacement	Potable Water	\$5,220,000
3	New Recycled Water Line	Non-potable Water	\$4,060,000
4	Stormwater Treatment Facilities	Storm Drainage	\$4,142,800
5	Public Access Roadways (includes land acquisition costs)	Roadway	\$52,945,240
6	Pavement Repair	Roadway	\$2,973,000
7	Traffic Improvements	Roadway	\$9,773,000
8	Traffic Fair Share Payments	Roadway	\$11,520,000
9	EMS Response Vehicle or Ambulance (2 each) and Tiller Aerial Ladder Apparatus	Fire	\$3,120,000
10	Entry Monument & Signs	Roadway	\$334,000
IMPROVEMENTS SUBTOTAL			\$103,658,040
11	Transportation Management Association Formation	Roadway	\$150,000
	2% Administrative Cost		\$2,076,161
TOTAL COST			\$105,884,201

Costs for the various infrastructure items include land acquisition, design, bid/award, construction, construction support, and project contingencies. The improvement subtotal equals \$103,658,040. In addition to improvement costs, also included is \$150,000 for the future formation of a Transportation Management Association (TMA) as proposed by the Specific Plan. As is typical with the creation of impact fees, the City also included a 2 percent administrative fee for administration of the Fee program moving forward. This 2 percent fee equates to an average of \$69,205.36 over the estimated 30-year life of the Fee and totals \$2,076,161. After combining the improvements costs, TMA formation costs, and the 2 percent administrative fee, the total common infrastructure costs equates to \$105,884,201.

As noted above, the Specific Plan includes up to 12,000 multifamily residential units as well as up to 310,000 square feet of supporting, neighborhood-serving commercial services. As the commercial development (e.g., clustered ground-floor retail) is expected to be ancillary to and supportive of the Specific Plan housing, the Fee is structured to apply only to new residential and office development. Additionally, upon further discussion with the Specific Plan developers and properties, in coordination with the Community Development Department, a determination was made to apply the total infrastructure costs to a maximum of 11,000 residential units for the purpose of calculating the Fee. This determination was based on recent information from the developers, property owners, and the Community Development Department that there is only interest in a maximum of 11,000 residential units at this time. If any additional residential units beyond 11,000 are proposed at a future date, the Fee can be modified at that time.

Table 3 provides the methodology by which the Fee will be calculated per unit. In summary, the total common infrastructure costs of \$105,884,201 are divided by the new multifamily unit count of 11,000, which equates to a proposed Fee of \$9,626 per new residential unit.

Table 3: Fee Methodology and Calculation

Fee Calculation		Amount
Total Common Infrastructure Cost	<i>a</i>	\$105,884,201
Number of New Multi-family Residential Units	<i>b</i>	11,000
Fee per New Multi-family Residential Unit	$c = a / b$	\$9,626

As noted earlier, the Specific Plan includes two land use scenarios. For land use Scenario B, which includes residential units and office uses, the nexus study calculates a fee equivalency from residential units to office uses. The fee equivalency results in a Fee of \$21.00 per square foot of new office uses. In Scenario B, the nexus study also assumes a total of 9,300 multi-family residential units in the fee calculation.

The City is required to identify a reasonable relationship (nexus) between an impact fee and new development, and to make findings regarding the following: the purpose of the fee; the projects the fee will be used to fund; the nexus between the needed projects and the type of development that will be charged a fee; and the nexus between the amount of the fee and the cost of the needed improvements. The nexus study is designed to support these findings.

On September 28, 2021, Governor Newsom approved Assembly Bill (AB) 602 (Grayson). AB 602 modifies the California Government Code related to Impact Fee creation, collection, and

administration. While AB 602 includes several provisions related to Impact Fees, the notable and pertinent provisions that apply to creation of a Patrick Henry Drive Specific Plan Infrastructure Impact Fee include the following: 1) when applicable, the nexus study must include the existing and proposed level of service for the facility that is being improved, and an explanation of why the new level of service is appropriate; and 2) approve a capital improvement plan as a part of the nexus study. The attached Ordinance (Attachment 1), Resolution (Attachment 2), and Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study (Attachment 3) include information that addresses the requirements of AB 602.

As development is approved and constructed within the Specific Plan, the City will coordinate with developers to include the subject infrastructure improvements with the scope of the approved development projects as much as possible. Inclusion of these improvements with the development projects will reduce construction impacts and provide the needed infrastructure as development occurs. In situations where improvements are included with development projects, the cost of these improvements will be credited towards any required Fee payments. In situations where the included improvements exceed the required Fee payments, the City will enter into a reimbursement agreement with developers subject to the availability of Fee funds for reimbursement and City Council approval.

Staff also recommends that Fee levels be adjusted annually, subject to Council approval, in line with the latest Construction Cost Index for San Francisco, published by Engineering News Record (ENR) or equivalent. The automatic Fee adjustment will occur when the City conducts its annual update of the Municipal Fee Schedule. Indexing the fees will allow fee revenue to keep up with construction costs and inflation.

Staff has closely coordinated the development of the Fee, including cost elements, calculation methodology, and escalation with the Patrick Henry Drive Specific Plan developer team and property owners. Consequently, the Patrick Henry Drive Specific Plan developer team and property owners support the creation of the Fee as outlined in this report.

ENVIRONMENTAL REVIEW

The action being considered is subject to a statutory exemption from the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code section 21080(b)(8)(D) as the purpose of the Fee is to collect revenue to fund capital projects (i.e. infrastructure) necessary to support the proposed development within the Specific Plan. Environmental analysis for the infrastructure improvements is included within the EIR prepared for the Specific Plan.

FISCAL IMPACT

The nexus study identifies a list of infrastructure items that would cost approximately \$105,884,201 to complete with the full cost of these improvements to be funded by the proposed Fee of \$9,626 per residential unit and \$21.00 per square foot of new office uses. Additionally, staff recommends that Fee levels be adjusted annually, subject to Council approval, to keep up with construction costs and inflation. Typical improvements such as public roadways, sanitary, storm, traffic, and water facilities will be operated and maintained by the City. Non-standard improvements such as the public access roadways and entry monument and signs will be maintained privately.

The recommended actions include the establishment of the Patrick Henry Drive Infrastructure Improvement Fund (Fund 542) to account for the impact fee revenues and project expenditures. It is anticipated that impact fee revenue will begin in FY 2022/23 and reach approximately \$3 to \$4 million. Budget actions will be included in the FY 2022/23 and FY 2023/24 Proposed Capital Improvement Program budget to recognize fee revenue and to appropriate those funds to support Fee Administration. Additional budget actions will be brought forward as necessary to recognize additional fee revenue and to appropriate the funding to support various projects as needed.

COORDINATION

This report has been coordinated with the Community Development Department, Water & Sewer Utilities Department, Silicon Valley Power, Fire Department, Finance Department and City Attorney's Office.

PUBLIC CONTACT

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

Public Notices for this agenda item were advertised twice in the Santa Clara Weekly more than 10 days prior to this meeting, once on 3/9/22 and once on 3/16/22. In addition, staff notified members of the City's development community by electronic mail on March 7, 2022. The City received minor comments related to the email and addressed the comments. Additionally, on March 7, 2022, staff posted the draft nexus study on the City's web page, placed it on file at the City Clerk's office and notified the development community that it was available.

ALTERNATIVES

1. Waive First Reading and Approve the Introduction of an Ordinance Amending Chapter 17.15 "Property Development" of Title 17 "Development" of the Santa Clara City Code to Add Section 17.15.360 "Patrick Henry Drive Infrastructure Improvement Fee"
2. Adopt a Resolution Approving the Findings from the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study, Adopting the Nexus Study, and Setting the Rates for the Infrastructure Impact Fee.
3. Approve the Patrick Henry Drive Specific Plan Infrastructure Impact Fees; and adjust fees annually in line with the latest Construction Cost Index for San Francisco, as published by Engineering News Record or equivalent, to keep up with construction costs and inflation.
4. Approve the establishment of the Patrick Henry Drive Infrastructure Improvement Fund (Fund 542) to account for the impact fee revenues and project expenditures.
5. Do not waive first reading and Introduce an Ordinance Amending Chapter 17.15 "Property Development" of Title 17 "Development" of the Santa Clara City Code to Add Section 17.15.360 "Patrick Henry Drive Infrastructure Improvement Fee", do not adopt a Resolution Approving the Findings from the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study and Setting the Rates for the Infrastructure Impact Fee, do not approve the Patrick Henry Drive Specific Plan Infrastructure Impact Fee and adjust fees annually in line with the latest Construction Cost Index for San Francisco, as published by Engineering News Record or equivalent, in order to keep up with construction costs and inflation, do not establish the Patrick Henry Drive

Infrastructure Improvement Fund and related budget amendments, and provide direction to staff for next steps.

RECOMMENDATION

Alternatives 1, 2, 3, and 4:

1. Waive First Reading and Approve the Introduction of an Ordinance Amending Chapter 17.15 "Property Development" of Title 17 "Development" of the Santa Clara City Code to Add Section 17.15.360 "Patrick Henry Drive Infrastructure Improvement Fee";
2. Adopt a Resolution Approving the Findings from the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study, Adopting the Nexus Study, and Setting the Rates for the Infrastructure Impact Fee;
3. Approve the Patrick Henry Drive Specific Plan Infrastructure Impact Fee; and adjust fees annually in line with the latest Construction Cost Index for San Francisco, as published by Engineering News Record or equivalent, to keep up with construction costs and inflation; and
4. Approve the establishment of the Patrick Henry Drive Infrastructure Improvement Fund (Fund 542) to account for the impact fee revenues and project expenditures.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: City Manager's Office

ATTACHMENTS

1. Ordinance
2. Resolution
3. Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA, AMENDING CHAPTER 17.15 “PROPERTY
DEVELOPMENTS” OF TITLE 17 “DEVELOPMENT” TO
ADD SECTION 17.15.360 (“PATRICK HENRY DRIVE
SPECIFIC PLAN INFRASTRUCTURE IMPACT FEE”) TO
ESTABLISH A DEVELOPMENT IMPACT FEE FOR THE
PATRICK HENRY DRIVE SPECIFIC PLAN AREA**

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

WHEREAS, on March 22, 2022, the City Council adopted the Patrick Henry Drive Specific Plan (the “Project”), a specific plan for a high-density mixed-use community of up to 12,000 residential units with supportive retail uses, located on approximately 74 acres of land bounded by Mission College to the south, Great America Parkway to the east, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west that are currently developed with industrial uses;

WHEREAS, on March 22, 2022, the City Council adopted and certified the Environmental Impact Report (“EIR”) for the Project (SCH #2019120515), as well as a set of CEQA Findings and a Statement of Overriding Considerations, in accordance with the requirements of CEQA;

WHEREAS, the Project and EIR specified that certain improvements to public facilities are necessary to support the Project and include sanitary sewer facility upgrades, potable water facility upgrades, non-potable water facility upgrades, storm water facility upgrades, public and private street improvements and expansions, traffic signal installations, traffic safety device installations, traffic signal mitigations, fair-share traffic payments, emergency response vehicle and tiller aerial ladder apparatus purchases, entry monument and signs, and formation of a transportation management association;

WHEREAS, in 2021, the Project Consultant, MIG, contracted with Economic & Planning Systems, Inc. (EPS Consultants), to prepare a nexus study to justify the creation of an infrastructure impact fee (“Infrastructure Impact Fee”) to apply to new residential and office development within the Project area;

WHEREAS, the intent of the of the Infrastructure Impact Fee is to create an equitable distribution of area-wide and common infrastructure costs for all new residential and office development within the Project area;

WHEREAS, the Department of Public Works has prepared a report entitled “Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study” (the “Study”), which provides the purpose, nexus, improvements, cost estimates, and justification for the creation of an Infrastructure Impact Fee, and is on file in the Office of the City Clerk, available for public inspection, and incorporated herein by this reference;

WHEREAS, the Study proposes that the fee applies to new residential and office uses within the Project area; and

WHEREAS, the Study recommends fee levels be adjusted annually to keep up with construction costs and inflation.

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

AS FOLLOWS:

SECTION 1: Intent and Purpose. The City Council of the City of Santa Clara does hereby find and declare:

(a) The City, pursuant to the home rule provisions of Article 11, Section 5, of the California Constitution, may make and enforce all ordinances and regulations with respect to municipal affairs.

(b) The City, pursuant to Article 11, Section 7, of the California Constitution, may make and enforce all local ordinances not in conflict with general laws.

(c) The purpose of this section is to implement the necessary improvements required to support the completion of the proposed development within the Patrick Henry Drive Specific Plan which was adopted by the City Council on March 22, 2022.

(d) The Patrick Henry Drive Specific Plan identified that certain improvements are necessary to support completion of the Specific Plan. These improvements include sanitary sewer facility upgrades, potable water facility upgrades, non-potable water facility upgrades, storm water facility upgrades, public and private street improvements and expansions, traffic signal installations, traffic safety device installations, traffic signal mitigations, fair-share traffic payments, emergency response vehicle and tiller aerial ladder apparatus purchases, entry monument and signs, and formation of a transportation management association.

(e) In order to provide equitable distribution of costs to complete such improvements, the intent of this fee is to distribute costs to new residential and office development within the Patrick Henry Drive Specific Plan area.

SECTION 2: That a new section 17.15.360 (entitled “Patrick Henry Drive Specific Plan Infrastructure Impact Fee” is hereby added to Title 17 (entitled “Development”) of “The Code of the City of Santa Clara, California” (“SCCC”) to read as follows:

“Section 17.15.360 Patrick Henry Drive Specific Plan Infrastructure Impact Fee

(a) Definitions. When used in this section, the following words and phrases will be defined as set forth below. When examples are given, they are illustrative only,

and they are not intended to be an exhaustive itemization of all potentially includable items.

(1) “Building” means any structure used or intended for supporting or sheltering any use or occupancy.

(2) “Building permit” means the permit issued or required for the construction or improvement of any structure in connection with the development of land pursuant to the California Building Code.

(3) “Costs” means amounts spent or authorized to be spent in connection with the planning, financing, acquisition and completion of the improvements identified in the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study including, without limitation, the costs of land, construction, engineering, administration, financing costs, legal and financial consulting fees, and incidental expenses.

(4) “Multifamily Residential Use” means a building or portion thereof used and designed as a residence for two or more families living independently of each other, including apartment houses, apartment hotels, and flats, but not including automobile courts, motels, hotels, or boarding houses. Each unit in the structure is separated from other units by one or more common, fire-resistant walls.

(5) “Office/R&D use,” in general, means any structure or portion thereof intended for occupancy by a business entity which will primarily provide clerical, professional or business services, and/or research and development activities for the business itself, or which will primarily provide clerical, professional or business services, and/or research and development activities to the public or other business entities. The

structure or portion thereof may also include light fabrication areas in the manner of conducting business.

(6) “Person” means any individual, domestic stock company, partnership of any kind, joint venture, club, business or common law trust, society, legal entity, or any other manner of owning property or conducting business.

(7) “Patrick Henry Drive Specific Plan Area” refers to the approximately 74 acres of land within the City of Santa Clara generally bounded by Mission College to the south, Great America Parkway to the east, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west.

(8) “Patrick Henry Drive Specific Plan Area Infrastructure Impact Fee Schedule” refers to the document, as amended from time to time, on file in the City’s Public Works Department used to determine applicability of the fees to particular land uses. If a proposed building use, or use within a portion of the building, does not fall under a use listed in such schedule, but, in the Director of Public Works or City Engineer’s opinion, closely corresponds to a use listed in such schedule, the Infrastructure Impact fees will be imposed.

(b) Imposition of Patrick Henry Drive Specific Plan Infrastructure Impact Fees.

(1) Imposition of Fee. The Patrick Henry Drive Specific Plan Infrastructure Impact Fee is hereby imposed upon every person (person having equitable or legal title, or other interest as owner, lessee, or otherwise) who causes the development of new Multifamily Residential Use Buildings or Office Buildings within the Patrick Henry Drive Specific Plan area, as each is defined herein, on or after June 4, 2022.

(2) Exceptions. There are no exceptions for the payment of the Patrick Henry Drive Specific Plan Infrastructure Impact Fee.

(3) Amount of Fee. The amount of the Patrick Henry Drive Specific Plan Infrastructure Impact Fee shall be established by resolution of the City Council.

(4) Fee Adjustments and Escalation.

(A) Periodic Adjustments to Patrick Henry Drive Specific Plan Infrastructure Impact Fee. The Patrick Henry Drive Specific Plan Infrastructure Impact Fee shall be adjusted periodically to reflect the current status of cost and scope of the improvements identified in the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study. The Director of Public Works or City Engineer shall make a periodic review of the improvements within the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study and make recommendations for amendment, if any, in a report to the City Council. After receiving such report and making it available for public distribution and review, the City Council shall give notice and, no less than ten days after public notice has been given, conduct a public hearing in which it shall consider these reports, receive testimony and information from any interested members of the public, and receive such other evidence as it may deem necessary. At the conclusion of that hearing, the City Council shall determine what changes, if any, are to be made to the Patrick Henry Drive Specific Plan Infrastructure Impact Fee.

(B) Annual Adjustments for Inflation. Unless otherwise modified by the City Council, Patrick Henry Drive Specific Plan Infrastructure Impact Fees will automatically adjust for inflation annually at the start of each fiscal year, using the latest Construction Cost Index for San Francisco, published by Engineering News Record

(ENR). If this index ceases to exist, the Director of Public Works shall substitute another construction cost index, which in his or her judgment is as nearly equivalent to the original index as possible. The automatic fee adjustment will occur when the City conducts its annual update of the municipal fee schedule unless it is otherwise modified by the City Council during its approval of the municipal fee schedule.

(5) Time of Payment of Fee. Any Infrastructure Impact Fees imposed under this section shall be due and payable prior to issuance of any building permit for a Multifamily Residential Use or Office Use project.

(6) Use of the Proceeds from the Patrick Henry Drive Specific Plan Infrastructure Impact Fee. The sums derived from the collection of the Patrick Henry Drive Specific Plan Infrastructure Impact Fee, and any interest thereon, shall be held by the City's Director of Finance and shall be distributed according to the fiscal and budgetary policies of the City. Such funds are to be used for the projects identified in the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study, as amended from time to time. In no case shall any of the moneys be used for maintenance.

(7) Provisions of Section Are Not Exclusive. The provisions of this section are intended to establish an alternative method for spreading the costs of certain public improvements against the land that will be primarily benefited thereby; the provisions of this section shall not be construed to limit the powers of the City Council to utilize any other method for accomplishing this purpose. This shall be in addition to any other requirements which the City Council is authorized to impose as a condition to approving development pursuant to State and local law.

(8) Developer Construction of Facilities. Patrick Henry Drive Specific Plan Infrastructure Impact Fees are the minimum to be paid by new residential or office development. Patrick Henry Drive Specific Plan Infrastructure Impact Fees are to be initially paid in all circumstances. However, if because of special conditions caused by a particular new development, a development is required (pursuant to SCCC 17.15.090 and/or 17.15.310) to construct the improvements included within the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study, the development will be reimbursed for such construction costs as determined by the Director of Public Works or City Engineer and based on the availability of fees paid to the City. To be entitled to such reimbursement, the new development must prove its claimed construction costs to the satisfaction of the Director of Public Works or City Engineer, or designee.

(9) Appeal from Decisions of City Staff. An appeal from a City staff decision shall be made within seven calendar days of the decision to the City Council. Written application for the appeal shall be filed with the City Clerk's office. The application shall state the factual basis of the appeal. The City Council will hear the appeal application at a public hearing to be conducted within thirty (30) calendar days of filing of the application. The decision of the City Council shall be final."

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

SECTION 3: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any

prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 4: Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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SECTION 5: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this XX day of XXXXXX, 2022, 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. Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
APPROVING THE FINDINGS OF THE PATRICK HENRY DRIVE
SPECIFIC PLAN INFRASTRUCTURE IMPACT FEE NEXUS
STUDY, ADOPTING THE NEXUS STUDY, AND SETTING THE
IMPACT FEES FOR FISCAL YEAR 2021-2022**

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

WHEREAS, on March 22, 2022, the City Council adopted the Patrick Henry Drive Specific Plan (the “Project”), a specific plan for a transit-oriented neighborhood of up to 12,000 residential units with supportive retail uses, located on approximately 74-acres of land bounded by Mission College to the south, Great America Parkway to the East, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west that are currently developed with industrial uses;

WHEREAS, on March 22, 2022, the City Council adopted and certified the Environmental Impact Report (“EIR”) for the Project (SCH #2019120515), as well as a set of CEQA Findings and a Statement of Overriding Considerations, in accordance with the requirements of CEQA;

WHEREAS, the Project and EIR specified that certain public improvements are necessary to support the Project and new level of service which include sanitary sewer facility upgrades, potable water facility upgrades, non-potable water facility upgrades, storm water facility upgrades, public and private street improvements and expansions, traffic signal installations, traffic safety device installations, traffic signal mitigations, fair-share traffic payments, emergency response vehicle and tiller aerial ladder apparatus purchases, entry monument and signs, and formation of a transportation management association, collectively the capital improvement plan;

WHEREAS, in 2021, the Project consultant, MIG, contracted with Economic & Planning Systems, Inc. (EPS Consultants), to prepare a nexus study to justify the creation of an infrastructure impact fee (“Infrastructure Impact Fee”) to apply to new residential and office development within the Project area;

WHEREAS, the intent of the of the Infrastructure Impact Fee is to create an equitable distribution of area-wide and common infrastructure costs for all new residential and office development within

the Project area;

WHEREAS, the Department of Public Works has prepared a report entitled “Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study” (the “Study”), which provides the purpose, nexus, improvements, cost estimates, and justification for the creation of an Infrastructure Impact Fee, and is on file in the Office of the City Clerk, available for public inspection, attached hereto and incorporated herein by this reference;

WHEREAS, the Study proposes that the fee applies to new residential and office uses within the Project area;

WHEREAS, the Study recommends fee levels be adjusted annually in order to keep up with construction costs and inflation;

WHEREAS, the Study provides an evaluation of the need for an infrastructure impact fee and establishes the nexus between the imposition of such impact fee and the estimated reasonable cost of providing the improvements for which the fees are charged;

WHEREAS, The Mitigation Fee Act, California Government Code section 66000 et seq., requires that, in any action establishing a fee as a condition of approval of a development project, a local agency shall make the following findings:

- 1) Under Government Code Section 66001(a)(1), identify the purpose of the fee.
- 2) Under Government Code Section 66001(a)(2), identify the use to which the fee is to be put.
- 3) Under Government Code Section 66001(a)(3), determine how there is a reasonable relationship between the fee’s use and the type of development project on which the fee is imposed.
- 4) Under Government Code Section 66001(a)(4), determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.
- 5) Under Government Code Section 66001(b), Determine how there is a reasonable

relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed;

WHEREAS, the City wishes to adopt this proposed Infrastructure Impact Fee in accordance with the calculations and recommendations contained in the Study;

WHEREAS, pursuant to Sections 6062a and 66018 of the California Government Code, notice of a public hearing to be held on March 22, 2022 was published in the *Weekly*, a newspaper of general circulation in the City, on March 9, 2022 and March 16, 2022;

WHEREAS, on March 7, 2022, a notice of the public hearing to be held on March 22, 2022 was emailed to persons who requested notice of new and increased fees in accordance with Government Code Section 66019;

WHEREAS, on March 22, 2022, the City Council held a public hearing with respect to the Study and the proposed Infrastructure Impact Fee;

WHEREAS, the Study was made available for public inspection at least ten days before the public hearing by placing the data on file with the City Clerk's Office on March 7, 2022 in accordance with Government Code 66016;

WHEREAS, on March 22, 2022 the City Council introduced an ordinance to add Section 17.15.360, "Patrick Henry Drive Specific Plan Infrastructure Impact Fee," to Chapter 17.15 ("Property Developments") of Title 17 ("Development") establishing an infrastructure impact fee for the Project area.

WHEREAS, the City Council adopts a Master Fee Schedule as part of its budget, fixing and establishing fees, rates, and charges for good and services provided by the City; and,

WHEREAS, pursuant to the Mitigation Fee Act (California Government Code Section 66000 et seq.), the City Council now desires to approve the Study and proposed Infrastructure Impact Fee.

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

1. That in accordance with the Mitigation Fee Act and the Report, and based on the facts and substantial evidence in the record, the Infrastructure Impact Fee is hereby adopted by the City Council based on the following findings:

A. Development projects in the Project area will create the need for improvements to support increased residential and office uses in the Project area.

B. The Project provides the analysis and justification for the need for the required improvements with new residential and office development within the Project.

C. The Study estimates the cost of each infrastructure improvement necessary to support the anticipated new residential and office development in the Project and substantiates an Infrastructure Impact Fee rate that will charge each new development project only for the portion of the costs of the improvements necessary to support that development project.

D. There is a reasonable relationship between the need for the identified improvements and the development projects on which the Infrastructure Impact Fee will be imposed.

E. The Infrastructure Impact Fee does not exceed the estimated reasonable cost of providing the facilities for which the Infrastructure Impact Fee is imposed. The Infrastructure Impact Fee is not levied, collected, or imposed for general government purposes.

F. As the purpose of this Resolution is to begin collection of an impact fee to fund improvements identified within and necessary to support development within the Project for which an EIR was adopted by the City Council, the setting and imposition of the Infrastructure Fee is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 21080(b)(8)(D) of the California Public Resources Code.

2. That the Fee is hereby imposed upon every person or entity having equitable or legal title, or other interest as owner, lessee, or otherwise who causes the development of new Multifamily Residential Use Buildings or Office Buildings within the Project area on or after June 4, 2022 at the following rate:

Multi-Family Residential	\$9,626 per dwelling unit
Office	\$21.00 per square foot

3. That unless otherwise modified by the City Council, the Infrastructure Impact Fee shall automatically adjust for inflation annually at the start of each fiscal year, based on the latest Engineering News Record Construction Cost Index. If this index ceases to exist, the Director of Public Works shall substitute another construction cost index, which in his or her judgment is as nearly equivalent to the original index as possible.

4. That the Study is hereby approved, confirmed, and adopted.

5. Effective date. This resolution shall become effective 60 days following the date of its passage and adoption.

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 _____, 2022, 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. Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study

The Economics of Land Use



Final Report

Patrick Henry Drive Specific Plan Area Infrastructure Impact Fee Nexus Study

Prepared for:

City of Santa Clara

Prepared by:

Economic & Planning Systems, Inc. (EPS)

*Economic & Planning Systems, Inc.
1330 Broadway
Suite 450
Oakland, CA 94612
510 841 9190 tel*

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Denver
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March 2022

EPS #171093

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1. INTRODUCTION AND FEE OVERVIEW

Introduction

This Nexus Report provides analysis and technical documentation to support the adoption of a development impact fee program for the Patrick Henry Drive Specific Plan (PHDSP) area (Plan Area) in the City of Santa Clara (City). Development impact fees are one-time charges on new development collected and used by the City to cover the cost of capital facilities and improvements required to serve real estate development. The PHDSP Area Infrastructure Impact Fee would be applicable to future development in the PHDSP only and will not replace or exempt development from other City-wide impact fees.

This Nexus Report has been prepared by Economic & Planning Systems, Inc. (EPS), with direction and input from City staff. It provides a legal basis for requiring payment of a PHDSP area-wide development impact fee consistent with Mitigation Fee Act (AB 1600/ Government Code Section 66000 et seq.) and subsequent related legislation. The PHDSP Area Infrastructure Impact Fee Program must be approved by the City Council and will be effective 60 days following the City's final action on the ordinance authorizing collection of the fee.

The PHDSP, to be adopted by the Santa Clara City Council before the approval of the PHDSP Infrastructure Area Impact Fee, provides the land use and regulatory framework for the development of a high-density, mixed-use neighborhood. This PHDSP Area Infrastructure Impact Fee is based on the land use program and level of service standards/requirements described in the PHDSP (and supporting environmental documents) as well as current estimates of the infrastructure and improvement costs needed to accommodate these land uses and standards.

Legal Context

This Nexus Study is designed to provide the necessary technical analysis to support a PHDSP Area Infrastructure Impact Fee to be established by a City Ordinance and Resolution. The Mitigation Fee Act allows the City to adopt, by resolution, the PHDSP Area Infrastructure Impact Fee consistent with the supporting technical analysis and findings provided in this Nexus Report. The Resolution approach to setting the fee allows periodic adjustments of the fee amount that may be necessary over time, without amending the enabling ordinance.

Impact fee revenue are used to cover the cost of constructing capital and infrastructure improvements required to serve new development and growth in the City. As such, impact fees must be based on a reasonable nexus, or connection, between new development and the need for specific capital facilities and improvements. Impact fee revenue cannot be used to cover the operation and maintenance costs of these or any other facilities and infrastructure. In addition, impact fee revenue cannot be collected or used to cover the cost of pre-existing infrastructure needs or deficiencies.

In establishing, increasing, or imposing a fee as a condition for the approval of a development project, Government Code 66001(a) and (b) state that the local agency must:

1. Identify the purpose of the fee;
2. Identify how the fee is to be used;
3. Determine how a reasonable relationship exists between the fee use and type of development project for which the fee is being used;
4. Determine how the need for the public facility relates to the type of development project for which the fee is imposed; and
5. Show the relationship between the amount of the fee and the cost of the public facility.

In September 2021, the State of California adopted Assembly Bill (AB) 602, which includes several new requirements related to the development and implementation of impact fee programs. The key provisions related to the calculations documented in this Nexus Report are summarized below.

- **Capital Improvement Plan:** AB 602 requires that jurisdictions adopt a capital improvement plan as part of the nexus study process. This adoption can occur at the same time as the fee ordinance adoption. Accordingly, this Nexus Report relies on a PHDSP Area Long-Term Capital Improvement Plan to be approved by the City Council in conjunction with the PHDSP Area Infrastructure Impact Fee Program.
- **Explanation of Level of Service and Fee Increase:** AB 602 requires that the nexus study provide explanations if the fee calculation is based on a change in existing levels of service. Since the PHDSP Area Infrastructure Impact Fee will be new to the City and only apply to a defined area, existing or city-wide service standards are not used as a basis for the fee calculation. This Nexus Report is based on service standards that have been developed for, and are unique to, the PHDSP area, as documented in the Plan and referenced as appropriate in this document.

All State statutory requirements have been followed in establishing this PHDSP Area Infrastructure Impact Fee, as documented in subsequent chapters. **Chapter 3** summarizes the specific findings that explain or demonstrate this nexus.

If the PHDSP Area Infrastructure Impact Fee is adopted, this Nexus Report and the technical information it contains should be maintained and reviewed periodically by the City to ensure Impact Fee accuracy and to enable the adequate programming of funding sources. To the extent that infrastructure requirements, costs, and development potential changes over time, the PHDSP Infrastructure Impact Fee Program (Fee Program) will need to be updated. Further information on the implementation and administration of the Fee program is provided in **Chapter 4**.

PHDSP Area Infrastructure Impact Fee

Table 1 shows the PHDSP Area Infrastructure Impact Fee supported by the nexus findings and analysis contained in this Nexus Report. As currently calculated, the fee would be applied to all new multifamily residential and office development projects within the PHDSP area (retail uses will be exempt and PHDSP does not include single-family development). The PHDSP Area Infrastructure Impact Fee Program will be independent and separate from all other City, Santa Clara County, other agency, or regional development impact fees that may also be applicable to the PHDSP development.

Table 1 Proposed PHDSP Area Infrastructure Impact Fee (FY\$21-22)

Use	Measure	Fee ¹
Multi-family Residential ²	per Unit	\$9,626
Office	per Square Foot	\$21

[1] Fee is set to cover full costs of required PHDSP infrastructure facilities and includes a two (2) percent administrative fee to cover City costs of reporting, managing, and updating fee program.

[2] Single family residential use is not permitted in the PHDSP area.

Source: BKF; City of Santa Clara; Hexagon Transportation Consultants; Economic & Planning Systems, Inc.

The calculated PHDSP Area Infrastructure Impact Fee amounts of \$9,626 per multifamily residential unit and \$21.00 per office square foot includes a program administration fee equal to 2 percent of the program costs, consistent with other Mitigation Fee Act program administrative costs in many other California jurisdictions.¹ It covers the cost of infrastructure needed to serve build-out of the Plan Area, as specified in more detail in Appendix A for the PHDSP Area Long-Term Capital Improvement Plan. In particular, the PHDSP Area Infrastructure Impact Fee covers the following infrastructure items:

- On-Site and Off-Site Roadway Facilities (i.e., traffic signals, traffic safety devices, pavement).
- Sanitary Sewer Facilities and associated structures.
- Potable Water Facilities.
- Monuments and Signage.
- Formation of a Transportation Management Association.
- Non-potable Water Facilities (i.e., Recycled Water).
- Storm Drainage Facilities.
- Emergency Response Apparatus/Equipment.
- All land right of way acquisition costs needed to support on-site public infrastructure.

¹ The 2 percent administration cost is designed to cover expenses for preparing subsequent updates to the impact fee technical report as well as the required reporting, auditing, collection and other annual administrative costs involved in overseeing the program. Development impact fee programs throughout California have applied similar administrative charges. The cost of preparing this Nexus Report has been paid directly by the developers in the Specific Plan area outside of this fee.

2. PHDSP LAND USE AND INFRASTRUCTURE ASSUMPTIONS

This chapter documents the land use growth projections and infrastructure improvement costs used to calculate the PHDSP Area Infrastructure Impact fee. The assumptions are based on information from the PHDSP and cost analysis developed by City of Santa Clara staff, with support from transportation and civil engineering consultant firms Hexagon and BKF, respectively.

Existing and Planned Development

The PHDSP covers an approximately 74-acre area in the City of Santa Clara bounded by Mission College to the south, Great America Parkway to the East, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west (see **Figure 1**). Before approval of the PHDSP, the area is primarily zoned as “Light Industrial” (or ML), which allows for manufacturing, processing, repair, and storage uses. Consistent with this zoning, existing uses include electrical supply stores and several office and warehouse buildings housing R&D labs and software training institutes. A nine-acre section of the Plan Area is currently zoned as “Planned Development” (PD). The existing street, utilities and related infrastructure is sufficient to accommodate this level of development.

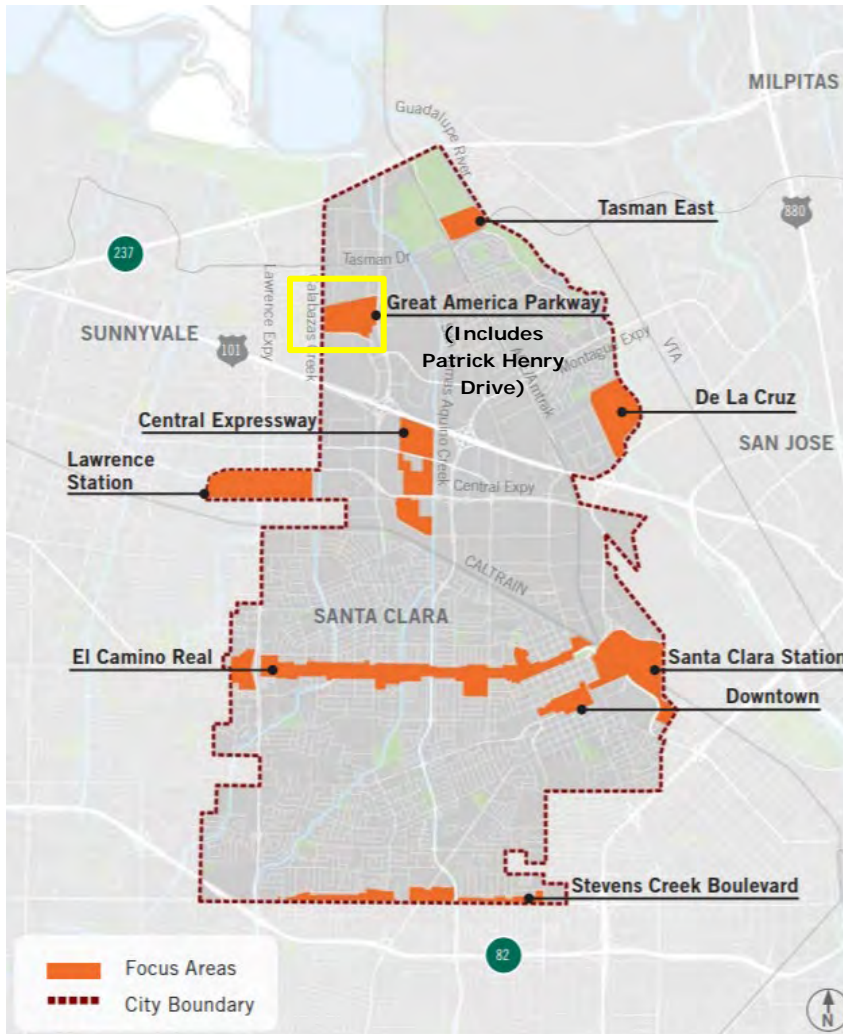
Figure 1 PHDSP Area Boundaries



Source: City of Santa Clara

With expected adoption in 2022, the PHDSP is designated by the City's 2010-2035 General Plan as one of nine Focus Areas in the City with potential to contribute to the City's Regional Housing Needs Allocation (RHNA) goals (see **Figure 2**). The PHDSP Plan Area provides an opportunity to develop higher-density residential homes supported by local amenities and accessible jobs, cultivating a vibrant and diverse mixed-use neighborhood.

Figure 2 City of Santa Clara Focus Areas



Source: City of Santa Clara

Implementation of the PHDSP involves updating the zoning from ML to Residential, Flex, and Mixed-Use designations, which would allow for a high-density, residential mixed-use neighborhood. As summarized in **Table 2**, the PHDSP considers two development scenarios for the Plan Area. Scenario A allows for up to 12,000 residential units at full build-out, along with 310,000 square feet of neighborhood-serving commercial and community space (e.g., retail, fitness, and public uses such as a library). Scenario B would include 785,000 square feet of office in place of 1,700 residential units, reducing the number of units to 10,300. The current level of public infrastructure (e.g., streets, utilities, storm drainage, and the like) is not sufficient to serve this level of development.

Table 2 PHDSP Buildout Scenarios

PHD Specific Plan Alternative	Multi-Family Residential Units	Office Square Feet	Other Commercial / Community-Serving Square Feet
Scenario A			
Maximum Allowable	12,000	-	310,000
Amount Assumed in Fee Calculation ¹	11,000	-	-
Scenario B			
Maximum Allowable	10,300	785,000	310,000
Amount Assumed in Fee Calculation ¹	9,300	785,000	-
Difference (Scenario B - Scenario A)	1,700	785,000	-

[1] As a conservative assumption, the impact fee is calculated based on 1,000 units less than the maximum development allowed under the PHDSP. This assumption is designed to assure that new development will cover the total cost of required infrastructure even if the maximum build-out potential is not achieved.

While the PHSDP designates the maximum allowable development that can occur within the PHDSP Plan Area, actual development may be less and will likely unfold over many years. To be conservative, the impact fee calculation assumes that the amount of development that is likely to occur in the Plan Area will be less than the maximum allowable. In particular, the fee calculation assumes slightly more than 90 percent of the total allowable residential development will be achieved within the Plan Area, or 1,000 less units than what is permitted. This assumption is designed to ensure that adequate fee revenue is generated to cover the full cost of required infrastructure needed to serve new development in the Plan Area.

Given that the Plan Area consists of multiple property owners and existing uses, the timing of future development, and thus generation of fee revenue, will depend on economics and a variety of other factors. Existing property owners may wish to continue to operate under the current light industrial zoning for the foreseeable future while others may seek to pursue residential development in the short-term. For the initial set of property owners who are interested in residential development, funding for any required up-front infrastructure may need to come from sources other than the Plan Area Infrastructure Impact Fee. Consequently, infrastructure phasing will likely require a process for developer credits and reimbursements, as described further in **Chapter 4**.

Plan Area Capital Improvements and Costs

Development impact fees are derived from a list of specific capital improvement projects and associated costs that are needed in part or in full to accommodate new growth. These infrastructure improvements, in turn, are based on the amount of new growth and corresponding public level of service standards/requirements defined in the PHDSP. The capital improvements included in the fee program need to be described in sufficient detail to generate cost estimates.

The cost of capital improvements included in the PHDSP Area Infrastructure Impact fee are based on information provided by City staff, working in consultation with civil engineers (BKF and Hexagon) and input from local property owners/developers. None of the capital projects included in the PHDSP Area Infrastructure Impact Fee address existing deficiencies (e.g., these improvements are not required by existing land uses in the area). The specific infrastructure and improvement categories include:

- On-Site Roadway
- Sanitary Sewer
- Potable Water
- Non-potable Water
- Emergency Response
- Monuments & Signage
- Transportation Management Association Formation

Table 3 summarizes the costs defined in the PHDSP Area Long-Term Capital Improvement Plan to be approved by the City Council in conjunction with the PHDSP Area Infrastructure Impact Fee Program. As shown, the estimated infrastructure hard and soft costs amount to a total of \$105.9 million (additional cost detail is provided in **Appendix A Table A-2**). A 2 percent administrative charge is included to account for program administration.

The infrastructure items shown in **Table 3** represent improvements that will be needed to address new development in the PHDSP Plan Area. Moreover, the infrastructure analysis underlying the fee program suggests that these improvements will be needed regardless of whether Scenario A or Scenario B is ultimately developed. This means that the 785,000 square feet of office is expected to generate the same demand for infrastructure, and associated costs, as 1,700 multifamily residential units. In addition, the analysis finds that the PHDSP Plan Area is likely to require a similar level of infrastructure even if full build-out does not occur. Specifically, a level of development representing about 90 percent maximum allowable development is

expected to require the full array of transportation, utilities and related infrastructure items defined in the PHDSP Area Long-Term Capital Improvement Plan.

Table 3 PHDSP Area Long-Term Capital Improvement Plan (FY\$21-22)

Item	Description	Category	Total Costs ^{1,2}
1	Sanitary Sewer Upgrades	Sanitary Sewer	\$9,570,000
2	Water Line Replacement	Water	\$5,220,000
3	New Recycled Water Line	Water	\$4,060,000
4	Stormwater Treatment Facilities	Storm Water	\$4,142,800
5	New Roadways Improvement Cost	Roadway	\$21,914,000
6	Roadway Pavement Treatment	Roadway	\$2,973,000
7	Specific Plan Traffic Improvements	Roadway	\$1,305,000
8	Non-Specific Plan Traffic Improvements	Roadway	\$8,468,000
9	Traffic Fair Share Payments	Roadway	\$11,520,000
10	EMS Response Vehicle or Ambulance (2 each) and Tiller Aerial Ladder Apparatus	Emergency Response	\$3,120,000
11	Entry Monument & Signs	Monuments & Signage	\$334,000
12	Transportation Management Association Formation	Roadway	\$150,000
	Subtotal		\$72,776,800
	Real Estate (Land) Cost ³		\$31,031,240
	2% Administrative Cost ⁴		<u>\$2,076,161</u>
	Total Infrastructure Cost		\$105,884,201

[1] Includes a 15 percent contingency cost when applicable.

[2] Delivery costs are calculated as a percentage of construction costs. 20 percent is for Design, 10 percent for Administration and Permitting, 5 percent to Construction Management, and 10 percent to Inspection.

[3] Real estate costs and market land values are assumed at \$155/SF and includes a 1 percent administrative cost.

[4] The 2 percent administration cost is designed to cover expenses for subsequent updates to the development impact fee technical report and as well as the required reporting, auditing, collection and other annual administrative costs involved in overseeing the program. Development impact fee programs throughout California have applied similar administrative charges.

Source: BKF; City of Santa Clara; Hexagon Transportation Consultants; Economic & Planning Systems, Inc.

3. *PLAN AREA INFRASTRUCTURE FEE CALCULATION AND NEXUS FINDINGS*

This chapter documents the PHDSP Area Infrastructure Impact Fee calculation and methodology as well as required nexus findings. Specifically, it demonstrates "nexus" between new development in the PHDSP and the infrastructure improvements needed to serve it, as required under Government Code Section 66000 (also referred to as AB1600/the Mitigation Fee Act).

Nexus Findings

The development impact fee to be collected for new residential and office land uses in the Plan Area is calculated based on the proportionate share of the total facility use that these land use represents. As the commercial development is expected to be ancillary to and supportive of PHDSP housing and/or office (e.g., clustered ground-floor retail), the PHDSP Area Infrastructure Impact Fee is limited to residential and office development. However, retail development will be subject to other applicable City-wide fees, including the existing City-wide traffic impact fee.

With this context, the following findings are made regarding the Fee Program.

Purpose of Fee

The purpose of the Fee Program is to provide a funding mechanism to help the City provide adequate infrastructure necessary to support development as described in the PHDSP Area Long-Term Capital Improvement Program (CIP).

Use of Fees

The fee charged to residential and office development will be used to fund additions and improvements to infrastructure necessary to accommodate growth consistent with the PHDSP and level of service requirements described therein. Infrastructure additions and improvements include transportation, utilities, storm drainage, and other facilities. The list of eligible capital projects and costs are summarized in **Chapter 2** and further detailed in **Appendix A**.

Relationship between Use of Fees and Type of Development

Development of new residential units and office space in the Plan Area will require additional infrastructure capacity consistent with the level of public services and facilities defined therein. This infrastructure is not currently required by existing land uses in the area.

Relationship between Need for Facility and Type of Project

The specific infrastructure improvements identified in this study are designed to accommodate residential and office development. In addition, the infrastructure is based on the land use and urban design goals and level of service standards and associated facilities described in the PHDSP.

Relationship between Amount of Fees and Cost of or Portion of Facility Attributed to Development on which Fee is Imposed

The fee levels calculated in this Nexus Report are based on a fair share cost allocation to new PHDSP development. In particular, 100 percent of the costs are allocated to the planned residential and office development because (1) the identified infrastructure is not required by existing land uses in the area, and (2) all new commercial development is assumed to be ancillary or supporting the residential or office development (e.g., ground floor retail). New commercial development will, however, be responsible for paying all applicable citywide fees.

PHDSP Area Infrastructure Impact Fee Calculation

The following steps describe the methodology for calculating the Plan Area Infrastructure Impact Fee level. The specific calculations are shown in **Table 4**:

1. Determine the total amount of land uses that will benefit from the infrastructure improvements. In this case, the Fee Program applies to the 11,000 residential units (Scenario A) or 9,300 residential units and 785,000 square feet of office (Scenario B), representing the bulk of permissible growth under the PHDSP (discussed in **Chapter 2**).
2. Determine the infrastructure needed to serve new development (identified by the City and shown on **Table 3**).
3. Determine the cost of infrastructure to be funded by the Fee Program (also estimated in **Table 3**).
4. Divide the allocated cost by the number of residential units to determine the justifiable fee per unit for residential development (Scenario A).
5. Determine a dwelling unit equivalency factor between office and residential units. This is derived by dividing the amount of proposed office square footage that could be developed instead of residential development (as detailed under Scenario B and shown in **Table 4**).
6. Use the dwelling unit equivalency factor to convert the residential fee to an equivalent fee per square foot for office development.

Table 4 Plan Area Infrastructure Impact Fee Calculation (FY\$21-22)

Fee Calculation		Amount	
		Scenario A	Scenario B
Total Infrastructure Cost ¹	<i>a</i>	\$105,884,201	\$105,884,201
Number of Multi-family Residential Units ²	<i>b</i>	11,000	9,300
Square Footage of Office ²	<i>c</i>	-	785,000
Dwelling Unit Equivalency Factor ³	$d = 785,000 / 1,700$		462
Fee per Multi-family Residential Unit⁴	$e = \$105.9M / 11,000$	\$9,626	\$9,626
Fee per Office Square Foot⁴	$f = e / d$	-	\$21

[1] See Table 3 for PHDSP capital improvements and cost estimates.

[2] As a conservative assumption, the impact fee is calculated based on 1,000 units less than the maximum development allowed under the PHDSP Specific Plan. This assumption is designed to assure that new development will cover the total cost of required infrastructure even if the maximum build-out potential is not achieved.

[3] The fee calculation assumes infrastructure cost equivalency between 785,000 sq. ft. of office and 1,700 residential units.

[4] Fee is set to cover full costs of required PHDSP infrastructure facilities. Includes a 2 percent administrative fee to cover City costs of reporting, managing, and updating fee program.

Source: BKF; City of Santa Clara; Hexagon Transportation Consultants; Economic & Planning Systems, Inc.

4. PHDSP AREA INFRASTRUCTURE IMPACT FEE IMPLEMENTATION AND ADMINISTRATION

The proposed PHDSP Fee Program is anticipated to be adopted by the City through an ordinance establishing and authorizing collection of the fee. The City will also adopt a resolution approving the PHDSP Area Long-Term Capital Improvement Program and establishing the fee amount. This chapter describes the additional implementation and administrative issues and procedures to be addressed in the Fee Program.

Credits and Reimbursement

As is typical with development impact fee programs, some of the required infrastructure and facilities may be needed upfront before adequate revenue from the fee collection would be available to fund such improvements. Consequently, private funding may be necessary to pay for infrastructure facilities when needed. This private funding may be in the form of land-secured bonds, developer equity, or another form of private funding. There shall be no adjustment to the Fee Program based on the method by which a constructing party funds or constructs eligible project costs.

Fee Credits

Impact fee ordinances frequently allow for fee credits if a developer provides a particular facility or improvement that replaces facilities that would have otherwise been funded in whole or in part by the PHDSP Area Infrastructure Impact Fee. For example, the City may elect to offer a fee credit to developers who provide transportation related improvements, consistent with those specified in the current Area Fee program. The fee credit is usually equal to the most current cost estimate of the infrastructure item (as defined by annual cost review or other recent evaluation of cost) regardless of the actual cost to construct. The City's Ordinance should allow for fee credits under specific terms.

Fee Reimbursements

Fee reimbursements are typically considered for developers who contribute more funding and/or build and dedicate infrastructure items that exceed their proportional obligation, especially if the project funded is a priority project. Such reimbursements should be provided as fee revenue becomes available but should not compromise the implementation of other priority capital projects. As will be more specifically detailed in an Infrastructure Fee Program Reimbursement Agreement (Fee Reimbursement Agreement), a form of which shall be approved by the City Council, reimbursements will be provided under the following conditions:

- A Constructing Owner shall have executed a Fee Reimbursement Agreement with the City.
- Constructing Owner-installed improvements or dedicated public facility land in excess of a Constructing Owner's obligations, which shall be illustrated and identified in a Fee Reimbursement Agreement, would be eligible for reimbursement. Only funds collected from

the Fee Program shall be used to reimburse a developer who installed eligible infrastructure improvements identified in this report. Reimbursements are an obligation of the Fee Program and not an obligation of the City General Fund or other operating funds.

The total amount of reimbursement for completed infrastructure will be based on the most current cost estimate of the infrastructure item (as defined by annual cost review or other recent evaluation of cost) or the actual costs incurred for eligible hard costs based on a properly bid construction contract. Soft costs will be calculated as a fixed percentage (e.g., 20 percent) of hard costs. Descriptions of hard costs and soft costs will be more specifically detailed in the Fee Reimbursement Agreement. All hard costs will be subject to verification by the City and actual costs expended will go through a true-up process upon completion of the infrastructure component. The true-up process, which will be more specifically detailed in the Fee Reimbursement Agreement.

Periodic Program Updates and Fee Adjustments

This fee program is based on the estimated PHDSP development program as well as the associated capital facility needs as of 2022. It is recognized that these individual projects and associated costs may change over time due to economic, technological, or other factors. The amount of residential development may also deviate from the projections assumed in the Fee Program. These factors may affect the appropriate fee level needed to cover necessary infrastructure. Accordingly, the Nexus Study should be updated periodically to account for these potential changes. Ideally this would occur every five (5) years, however, more frequent updates may be necessary to account for major changes.

The Development Impact Fee Ordinance should also allow for an automatic annual adjustment to account for inflation. This adjustment will be based on data from the Engineering News Record Construction Cost Index.

Annual Reporting and Fund Management

State Law (at Govt. Code. §§ 66001(c), 66006(b)(1)) stipulates that each local agency that requires payment of a fee make specific information available to the public annually within 180 days of the last day of the fiscal year. This information includes the following:

- A description of the type of fee in the account
- The amount of the fee
- The beginning and ending balance of the fund
- The amount of fees collected and interest earned
- Identification of the improvements constructed
- The total cost of the improvements constructed
- The fees expended to construct the improvement
- The percentage of total costs funded by the fee

If sufficient fees have been collected to fund specific improvements, the agency must specify the approximate date for the development of that improvement. Because of the dynamic nature of growth and capital equipment requirements, the City should monitor inventory activity, the need for infrastructure improvements, and the adequacy of the fee revenues and other available funding. Formal annual review of the Fee Program should occur, at which time adjustments should be made. Costs associated with this monitoring and updating effort are included in the PHDSP Area Infrastructure Impact Fee and are assumed to be 2 percent of overall Fee Program capital costs.

State Law also requires that if any portion of a fee remains unexpended or uncommitted in an account for five years or more after deposit of the fee, the City Council shall make findings once each year: (1) to identify the purpose to which the fee is to be put, (2) to demonstrate a reasonable relationship between the fee and the purpose for which it was charged, (3) to identify all sources and amounts of funding anticipated to complete financing of incomplete improvements, and (4) to designate the approximate dates on which the funding identified in (3) is expected to be deposited into the appropriate fund (§66001(d)).

If adequate funding has been collected for planned improvements, an approximate date must be specified as to when the cost of the improvement will be incurred. If the findings show no need for the unspent funds, or if the conditions discussed above are not met, and the administrative costs of the refund do not exceed the refund itself, the local agency that has collected the funds must refund them (Govt. Code §66001(e)(f)).

APPENDIX A:

PHDSP Area Long-Term
Capital Improvements and Cost Estimates



Table A-1 PHDSP Area Long-Term Capital Improvement Plan

Item	Description	Scope
1	Sanitary Sewer Upgrades	Abandon or remove existing sanitary sewer mains and install 5,080 LF of new 8 to 39 inch sanitary sewer mains
2	Water Line Replacement	Abandon and remove 1,900 LF of 8" AC Water Main and 4,000 LF of 12" AC Water Main and install 4,000 LF of 12" DIP Water Main
3	New Recycled Water Line	Abandon and remove 1,100 LF of 8" PVC RCW Main and 2,900 LF of 12" Yelomine RCW Main and install 4,000 LF of 12" DIP RCW Main
4	Stormwater Treatment Facilities	Post-Constructuion Stormwater Treatment facilities estimated at 4% of total impervious area for existing roadways
5	New Roadways Improvement Cost	Creation of new 192,610 SF of roadways to support the plan area. Inclucdes roadway construction costs and land acquisition costs
6	Roadway Pavement Treatment	Existing roadway pavement treatment; grind and overlay at Patrick Henry Drive, Old Ironsides Drive, Old Glory Lane and slurry seal at Great America Parkway
7	Specific Plan Traffic Improvements	Traffic improvements at various locations
8	Non-Specific Plan Traffic Improvements	Traffic improvements at various locations
9	Traffic Fair Share Payments	Fair share payments for traffic improvements at various locations
10	EMS Response Vehicle or Ambulance (2 each) and Tiller Aerial Ladder Apparatus	One tractor drawn aerial ladder apparatus and two Type 1 fire ambulances
11	Entry Monument & Signs	Four entry monuments and signs
12	Transportation Management Association Formation	Formation of a transportation management association to determine needs for a shuttle

Source: City of Santa Clara

Table A-2 PHDSP Area Long-Term Capital Improvements and Construction Cost Estimates (FY \$21-22)

Item	Description	Category	Estimated Cost	Construction Costs (Rounded) ¹	Delivery Costs ²	Total Costs
1	Sanitary Sewer Upgrades	Sanitary Sewer	\$5,073,221	\$6,600,000	\$2,970,000	\$9,570,000
2	Water Line Replacement	Water	\$3,055,000	\$3,600,000	\$1,620,000	\$5,220,000
3	New Recycled Water Line	Water	\$2,430,000	\$2,800,000	\$1,260,000	\$4,060,000
4	Stormwater Treatment Facilities	Storm Water	\$2,483,772	\$2,856,800	\$1,286,000	\$4,142,800
5	New Roadways Improvement Cost	Roadway	\$13,140,630	\$15,113,000	\$6,801,000	\$21,914,000
6	Roadway Pavement Treatment	Roadway	\$1,781,500	\$2,050,000	\$923,000	\$2,973,000
7	Specific Plan Traffic Improvements	Roadway	\$781,500	\$900,000	\$405,000	\$1,305,000
8	Non-Specific Plan Traffic Improvements	Roadway	\$5,071,080	\$5,840,000	\$2,628,000	\$8,468,000
9	Traffic Fair Share Payments	Roadway	\$11,516,032	\$11,520,000	\$0	\$11,520,000
10	EMS Response Vehicle or Ambulance (2 each) and Tiller Aerial Ladder Apparatus	Emergency Response	\$2,704,757	\$3,120,000	\$0	\$3,120,000
11	Entry Monument & Signs	Monuments & Signage	\$200,000	\$230,000	\$104,000	\$334,000
12	Transportation Management Association Formation	Roadway	\$150,000	\$150,000	\$0	\$150,000
Subtotal			\$48,387,492	\$54,779,800	\$17,997,000	\$72,776,800
Real Estate (Land) Cost ³						\$31,031,240
2% Administrative Cost ⁴						<u>\$2,076,161</u>
Total Infrastructure Cost						\$105,884,201

[1] Includes a 15 percent contingency cost when applicable.

[2] Delivery costs are calculated as a percentage of construction costs. 20 percent is for Design, 10 percent for Administration and Permitting, 5 percent to Construction Management, and 10 percent to Inspection.

[3] Real estate costs and market land values are assumed at \$155/SF and includes a 1 percent administrative cost.

[4] The 2 percent administration cost is designed to cover expenses for subsequent updates to the development impact fee technical report and as well as the required reporting, auditing, collection and other annual administrative costs involved in overseeing the program. Development impact fee programs throughout California have applied similar administrative charges.

Source: BKF; City of Santa Clara; Hexagon Transportation Consultants; Economic & Planning Systems, Inc.



City of Santa Clara

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Agenda Report

22-419

Agenda Date: 3/22/2022

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 with 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.

ATTACHMENTS

1. City Council and Stadium Authority Staff Referrals



**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION**
Updated 3/15/22



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
1.	1/25/22	Council Meeting	Postpone Action on Task Force on Diversity, Equity, and Inclusion's Letter regarding Elected Police Chief until after 2022 Priority Setting (Pending Completion of 2022 Priority Setting)	CMO	TBD	
2.	1/11/22	Council Meeting	Action on a Written Petition (Council Policy 030) submitted by Keith Stattenfield requesting to place an agenda item at a future Council meeting to discuss requirements from the CAO on approving an update to the CC&Rs of the Case del Rey HOA Bylaws	CAO	April 5, 2022	
3.	1/11/22	Council Meeting	Update on Review and Monitoring of Transportation Demand Management (TDM) Measures. Staff to Issue RFP to Support online reporting and tracking of TDM Measures and Present a Template to Complete the Forms	DPW	TBD	
4.	1/11/22	Council Meeting	Action on a Council Written Request (Council Policy 030) submitted by CM Jain requesting to place an agenda item at a future Council Meeting to discuss making the Youth Soccer Park parking lot available when there are no events at the Youth Soccer Park 1. Investigate ADA Improvements for parking 2. Investigate whether the City can engage a private operator to manage for parking 3. Investigate whether the 49ers can use their practice facility for parking 4. Determine the fair market value of VIP parking	Parks & Rec/CAO	TBD	
5.	1/5/22	Joint City/VTA Study Session re: BART to Santa Clara	1. Set a meeting with VTA near the proposed Santa Clara BART Station location to provide details to the public regarding station design (tentatively scheduled for 3/22/22) 2. Funding a Brokaw undergrounding study for February 8, 2022 Priority Setting Session	DPW	May 10, 2022	
6.	12/14/21	Council Meeting	Action on Amendment No. 1 to the Agreement for the Performance of Services with Wilson, Ihrig & Associates for Noise Monitoring Services at Vantage CA2 Data Center and Owens Corning Facility and Related Budget Amendment: item continued to get more information on broadcasting, moving from the Northside to the stadium, and an implementation timeline	CDD	April 19, 2022	
7.	12/7/21	Council Meeting	Written Petition (030) to be added to Future Agenda: 10A: Action on a Written Petition (Council Policy 030) Submitted by Jared Peters Requesting to Place an Agenda Item at a Future Council Meeting to Consider making a Policy Decision Regarding the City Assuming Responsibility of an Unstable and Dangerous Sound Wall in the Laurel Park East Neighborhood	DPW	April 19, 2022	



**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION**
Updated 3/15/22



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
8.	10/19/21	Council Meeting	Written Petition (CP 030) regarding 1601 Civic Center Drive to be added to a future meeting agenda.	CDD/CMO	Spring 2022	
9.	9/28/21	Council Meeting	Approve staff recommendation for Item 6. Public Hearing: 2020-2021 Consolidated Annual Performance and Evaluation Report (CAPER) with changes to increase grant funding to \$30,000 for 7 agencies and fund the remaining 4 from the City's General Fund.	Community Development/ Housing	May 2022	
10.	9/28/21	Council Meeting	Refer the following Written Petition submitted by Councilmember Jain to the City Attorney's Office for review, prior to being heard by the Governance Committee: 10 B. Request to Place an Agenda Item at a Future Meeting to Consider Hiring an Ethics Consultant for Upcoming Elections Requested that the City Attorney's Office provide an update to Council on findings.	City Attorney	2022	
11.	8/17/21	Council Meeting (Priority Setting Check-in)	Staff to return at a future Council meeting with draft ordinance to adopt recommended procurement reforms	Finance	Early 2022	
12.	8/17/21	Council Meeting (Priority Setting Check-in)	Direct staff to bring back on a future agenda a presentation on Councilmember conflict of interest, including what staff currently does and what the Council is responsible for	City Manager/ City Attorney	TBD	
13.	6/15/21	Council Meeting	Request to provide date-based search capability on City website	IT/City Manager	May 2022	
14.	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	Spring 2022	
15.	1/12/21	Council Meeting	Provide a Study Session on pros/cons lifecycle cost/benefits of artificial surfacing including turf (staff will return to Council with an Information Memo)	Parks & Rec	Summer 2022	
16.	10/13/20	Council Meeting	Community Benefits 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	Spring 2022	
17.	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 2022	
18.	4/30/19	Council Meeting	Number of public transit riders for large stadium events	49ers Stadium Manager	TBD	
19.	4/30/19	Council Meeting	Ask Stadium Manager for analysis to support their position that reducing the cost of	49ers Stadium	TBD	



**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION**
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	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
			parking would likely adversely impact public transit ridership, resulting in more cars on the roads	Manager		
20.	10/2/18	Council Meeting	Amend sign ordinance to prohibit signs on public property	Parks & Rec/ City Attorney	TBD	
21.	3/13/18	Council Meeting	Develop a Stadium Authority Financial Reporting Policy in conjunction with the Stadium Authority Auditor and the external auditor	Finance	Early 2022	

	Date Assigned	Source	Items Referred to 2022 Council Priority Setting	Assigned Department	Projected Completion	Completed
1.	1/25/22	Council Meeting	Refer Swim Club Facility Condition Discussion to 2022 Priority Setting	Parks & Rec	2022 Priority Setting Session	
2.	1/25/22	Council Meeting	Refer Senior Transportation Letter to 2022 Priority Setting	Parks & Rec	2022 Priority Setting Session	
3.	12/7/21	Council Meeting	Written Petition (030) to be added to 2022 Priority Setting Session Agenda: 10C: Action on a Council Written Request (Council Policy 030) Submitted by Councilmember Jain Requesting to Place an Agenda Item at a Future Council Meeting to Consider a Neighborhood Stadium Relations Committee	CMO	2022 Priority Setting Session	
4.	11/16/21	Council Meeting	Refer a <u>Potential Quiet Zone Policy</u> to the 2022 Goal Setting Session on February 8 and direct staff to research any funding sources available before the meeting	DPW	2022 Council Priority Setting Session	
5.	11/16/21	Council Meeting	Refer the <u>Vision Zero Policy</u> to the Goal Setting Session in February 2022 and return to Council with a funding source in the amount of \$315K prior to the priority setting session – potential funding source identified before Priority Setting)	DPW/Finance	2022 Council Priority Setting Session	
6.	10/19/21	Council Meeting	Discussion of New City Hall into New Santa Clara Downtown Plan at the 2022 Priority Setting Session	CDD	2022 Priority Setting Session	
7.	10/19/21	Council Meeting	Discussion of Proposal of a New City Film Commission at the 2022 Priority Setting Session	CMO	2022 Priority Setting Session	
8.	10/19/21	Council Meeting	Discussion of Construction of Lawn Bowl Facility for consideration at the 2022 Priority Setting Session	Parks & Rec/CMO	2022 Priority Setting Session	
9.	10/19/21	Council Meeting	Discussion of Future Ballot Measure Discussion in 2022 for Infrastructure Bond or Tax to 2022 Priority Setting Session	CDD/City Attorney/Finance	2022 Priority Setting Session	



**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
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	Date Assigned	Source	Items Referred to 2022 Council Priority Setting	Assigned Department	Projected Completion	Completed
10.	10/19/21	Council Meeting	Discussion of Rainbow Crosswalk Painting to 2022 Priority Setting Session (unless actions occur prior)	DPW/CMO	2022 Priority Setting Session	
11.	9/7/21	Council Meeting	Agendize Written Petition submitted by David Donaldson to a future Council Agenda to Consider Placing a Ballot Measure on the 2022 Ballot for Charter Amendments calling for the voters to consider Campaign Reform actions relative to donations from Santa Clara businesses and residents, City matching funds for donations, funding caps, and disclosures of funding raising activities. The component regarding Mayor and Council salaries will be removed. Directed staff to return with a comparison of what other cities do.	City Clerk/City Attorney	2022 Priority Setting Session	
12.	8/17/21	Council Meeting (Priority Setting Check-in)	Implement pilot meeting management protocol for Council meetings recommended by the Mayor and revisit/assess at 2022 Priority Setting Session in January/February 2022. City Attorney to return to Council with resolution outlining this process.	City Attorney	2022 Priority Setting Session	
13.	2/23/21	Council Meeting	Return with information in 6 months on a cost analysis on City's undertaking of responsibility of sewer laterals on and options for potential grant program and/or insurance policies	Water & Sewer	2022 Priority Setting Session	



COMPLETED 2022
CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
Updated 3/15/22



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
1.	9/7/21	Council Meeting	Shorten term of amendment to the agreement for the performance of services with Wilson, Ihrig & Associates for Noise Monitoring Services at Levi's Stadium from 18 months to 6 months and directed staff to return with a proposal for owning versus leasing equipment and the cost benefit for monitoring the noise data and quality of reporting.	CDD	March 2022	3/8/22	Approved by Council at 3/8/22 Council Meeting
2.	12/14/21	Council Meeting	Defer Loyaltan to future meeting to develop strategy for the sale of the property; staff to coordinate a visit to the property for interested Councilmembers	CMO/SVP	TBD	3/8/22	Approved by Council at 3/8/22 Council Meeting
3.	11/16/21	Council Meeting	Consider Resolution to support the bid to FIFA for the 2026 World Cup and related events.	CMO/CAO	February 22, 2022	2/22/22	Approved by Council at 2/22/22 Council Meeting
4.	10/26/21	Council Meeting	Item 4: Presentation on Business Tax Ballot Measure and Other Potential Revenue Measures for November 2022 Ballot: Explore a business tax that strikes a balance with the value of a business-friendly city (key priority) and progressive tax with input and advice of a consultant.	CMO/Finance	2022 Priority Setting Session	2/8/22	Approved by Council at 2/8/22 Priority Setting Session
5.	8/24/21	Council Meeting (Study Session)	Directed staff to: <ul style="list-style-type: none">Engage with HomeBase to design City Plan Framework and start prep for workgroup discussionsFast-track Task Force/Housing Commission development and implementationFast-track HomeKey progress where possible, especially in entitlements processing Explore short-term basic services, including bathrooms, showers, laundry, cell phone charging and others	CDD/City Clerk/ City Attorney/ Police	2022	1/25/22	Approved by Council at 1/25/22 Council Meeting
6.	5/4/21	Council Meeting	Parking Maintenance District No. 122 – Engage with property owners to discuss options for increasing their share of the annual O&M costs and potential for dissolving the district	Public Works	February 2022	1/25/22	Reported at Council Meeting
7.	8/17/21	Council Meeting (Priority Setting	Directed staff to return to Council at a future date with changes to the eligibility for serving on City Commissions that expands the eligibility	City Attorney	12/7/21	1/11/22	Approved by Council at 1/11/22 Council



**City of
Santa Clara**
The Center of What's Possible

COMPLETED 2022
CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
Updated 3/15/22



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
		Check-In)	requirement from Santa Clara electorate to Santa Clara resident – deferred to December				Meeting
8.	8/17/21	Council Meeting (Priority Setting Check-in)	Direct staff to explore a consultant for a TDM Study (scope, cost, ongoing cost) and talk to other cities and gather anything that may be able to be shared	CDD	12/14/21	1/11/22	Reported at Council Meeting
9.	11/9/21	Council Meeting	Project Homekey: Look for alternate site in Santa Clara better suited for this use	CDD	TBD	11/9/21	Update to Council emailed to Council on 3/10/22