



# CITY OF SANTA CLARA

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## CITY COUNCIL MEETING

### AGENDA

A complete agenda packet with back-up reports is available at either City Library beginning Saturday before the Tuesday meeting or at the City Clerk's Office on weekdays. A complete agenda packet is also available at the City Council meeting and on the City's website.

**June 24, 2014**

**5:00 pm**

#### **Development Study Session Council Chambers**

Presentation of the results of the Sports Management Study regarding the development of the International Swim Center

**6:00 pm**

#### **Closed Session**

##### **Council Conference Room**

Conference with Real Property Negotiator

Pursuant to Government Code Section 54956.8

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

Negotiating Party(ies): William A. Witte, President, Related California

City Negotiator: Julio J. Fuentes, City Manager (or designee)

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

and

Conference with Real Property Negotiator

Pursuant to Government Code Section 54956.8

Property: APN 104-03-036, 104-03-038, 104-03-039, 104-03-040

Negotiating Party(ies): Kurt Wittek, Montana Property Group, LLC

City Negotiator: Julio J. Fuentes, City Manager (or designee)

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

and

Conference with Real Property Negotiator

Pursuant to Government Code Section 54956.8

Property: APN 104-03-038, 104-03-039, 104-03-040, 104-43-50, 104-55-16 and 104-43-049

Negotiating Party(ies): Larry MacNeil and Jim Mercurio, The San Francisco 49ers

City Negotiator: Julio J. Fuentes, City Manager (or designee)

Under Negotiation: Parking Rights Agreement

and

Conference with Real Property Negotiator  
Pursuant to Government Code Section 54956.8  
Property: APN 224-02-002, 224-02-013, 224-02-014, 224-02-020 and 224-02-023  
Negotiating Party(ies): Steve Zamudio, Colliers International  
City Negotiator: Julio J. Fuentes, City Manager (or designee)  
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property  
(provisions, price and terms of payment)  
and  
Conference with Real Property Negotiator  
Pursuant to Government Code Section 54956.8  
Property: APN 224-28-035  
Negotiating Party(ies): Don Jessup, Silicon Valley Associates  
City Negotiator: Julio J. Fuentes, City Manager (or designee)  
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property  
(provisions, price and terms of payment)  
and  
City Council/Governing Board of the Successor Agency to the City of Santa Clara Redevelopment Agency  
Conference with Legal Counsel - Existing Litigation  
Pursuant to Government Code Section 54956.9(a)  
*Vinod K. Sharma, et al v. Successor Agency to the  
Redevelopment Agency of the City of Santa Clara, et al.*  
Sacramento County Superior Court Case No. 34-2013-80001396  
and  
Liability Claims  
Pursuant to Government Code Section 54956.9(e)(3)  
Claimant: Sarah Doty  
Date of Claim: June 19, 2014  
Agency Claimed Against: City of Santa Clara  
and  
Conference with Legal Counsel - Anticipated Litigation  
Pursuant to Government Code Section 54956.9(d)(2) - Exposure to Litigation  
Number of potential cases: 1  
and  
Conference with Legal Counsel - Anticipated Litigation  
Pursuant to Government Code Section 54956.9(d)(4) - Initiation of litigation  
Number of potential cases: 1

## **REGULAR MEETING**

### **7:00 PM in the City Hall Council Chambers**

APPEAL OF HEARING DECISIONS OF THE CITY COUNCIL MUST BE MADE TO THE SUPERIOR COURT WITHIN 90 CALENDAR DAYS OF FINAL ACTION. BECAUSE OF THE AGENDA PROVISION FOR RECONSIDERATION, FINAL ACTION IS DEEMED TO OCCUR AT THE END OF THE NEXT REGULAR MEETING PURSUANT TO CITY COUNCIL POLICY (P&P 042). (CODE OF CIVIL PROCEDURE SECTION 1094.6)

- 1. PLEDGE OF ALLEGIANCE AND STATEMENT OF VALUES:**
- 2. ROLL CALL:**
- 3. APPROVAL OF MINUTES:**
  - A.** May 13, 2014.
  - B.** May 20, 2014.
- 4. CONTINUANCE/EXCEPTIONS:**

**5. SPECIAL ORDER OF BUSINESS:**

**A.** Approval of a Memorandum of Understanding (MOU) for a Sister City Relationship with Limerick, Ireland with the support of Santa Clara Sister Cities Association and the City's Cultural Commission.

1. Minutes of the Cultural Commission - June 9, 2014: Request to note and file.  
\* Recommendation: Approval of a Memorandum of Understanding for a Sister City Relationship with Limerick, Ireland.

**6. UNFINISHED BUSINESS:**

**A.** Possible Reconsideration of Actions Taken at Immediately Preceding Meeting. (See Summary of Actions for potential reconsideration, which is attached to the posted Agenda and is in the Agenda Packet Binder in the Council Chambers.)

**B.** Pass to print an Ordinance adding a new Chapter 17.35 (Parks and Recreational Land) to Title 17 (Development) to the City Code to ensure that new residential development provides adequate park and recreational land and/or pays a fee in lieu of dedications in order to mitigate the impacts of the new growth.

**7. 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.]

**A. Departmental Reports**

1. Adoption of a Resolution calling a General Municipal Election to be held on Tuesday, November 4, 2014 for the election of Mayor and two City Council Members; adoption of a Resolution requesting that the Santa Clara County Board of Supervisors consolidate the election with the Statewide General Election; adoption of a Resolution adopting regulations for Candidate Statements of Qualifications submitted to voters and levying a share of the cost of the Candidates' Statements on the candidates; and authorization to publish the Notice of Election.
2. Approval for the use of City Electric forces for the installation of facilities at Monroe Street and Monticello Way; 2008 El Camino Real; 4551 Great America Parkway; South side of Stars and Stripes Drive; East side of Centennial Drive; and 3065 Bowers Avenue.
3. Approval of the renewal of the Excess Workers Compensation Insurance Policy from California State Association of Counties Excess Insurance Authority in an amount not to exceed \$568,000.

4. Acceptance of the Monthly Financial Status Reports for April 2014.
5. Set July 15, 2014 for a Public Hearing to consider the adoption of a Resolution confirming the report on the cost of weed abatement and making assessment to pay the related costs and expenses in conjunction with the 2014 Weed Abatement Program and authorization to publish the Notice of Public Hearing.
6. Approval of the renewal of insurance with Navigators Specialty Insurance Company for the period of July 1, 2014 to July 1, 2015, in the amount of \$27,616, for the Convention Center Maintenance District No. 183 Parking Garage and Common Areas.
7. Note and file the Departmental Activity Report for the month of April 2014.
8. Approval for the renewal of the Earthquake and Flood Insurance for the period of July 1, 2014 to July 1, 2015, in the amount of \$74,510, for the Grizzly Hydroelectric Plant.
9. Approval of the renewal of the City's Master Property Insurance and Excess Boiler and Machinery Insurance for the period July 1, 2014 - July 1, 2015 and authorize payment of insurance premium to Alliant Insurance Services, in the amount of \$619,416; approval of the renewal of Boiler and Machinery Insurance for the Donald Von Raesfeld (DVR) Power Plant for the period of July 1, 2014 - July 1, 2015 and authorize payment of insurance premium to Alliant Insurance Services, in the amount of \$217,838; approval of the renewal of the Excess Liability Insurance for the period July 1, 2014 - July 1, 2015 and authorize payment of insurance premium to Alliant Insurance Services, in the amount of \$168,710.

**B. Agreements**

1. Approval of an Indemnity Agreement between the City, Santa Clara Stadium Authority and the City of Sunnyvale regarding Special Law Enforcement Units for Levi's Stadium events.
2. Approval of Call No. 14-1 for Professional Services with NexLevel Information Technology, Inc., in an amount not to exceed \$770,825, for Advanced Metering Infrastructure and Utility Communication Infrastructure support services.
3. Approval of a Call Agreement with Castrovilla Inc. dba Blue Earth Energy Management Services and Call No. 14-1 for Professional Services, in an amount not to exceed \$217,733, for the Keep Your Cool Direct Install Program third party energy efficiency program.
4. Approval of Amendment No. 4 to the Master Agreement with Elster Solutions, LLC, in an amount not to exceed \$42,920.80 for a total not to exceed amount of \$7,490,173.20, to provide a new System License Agreement and System Maintenance Agreement for Elster's EnergyAxis Management System software.

5. Approval of an Agreement for the Operation of a Convention and Visitors Bureau with the Santa Clara Chamber of Commerce and Convention-Visitors Bureau (SCCC-CVB), in an amount not to exceed \$1,521,526, for convention and visitors services for Fiscal Year 2014-2015.
6. Approval of a Call Agreement with Efficiency Services Group, LLC and Call No. 14-1 for Professional Services, in an amount not to exceed \$431,925, for the Small Business Snapshot Audit and Direct Install Program third party energy efficiency program.
7. Approval of Amendment No. 1 to the Master Service Agreement for Information Technology Outsourcing Services with Unisys Corporation , in an amount not to exceed \$11,000,000 for a two year term ending June 30, 2016 and authorization to execute amendments, which do not exceed the contract value, as needed based on technology needs.
8. Adoption of Ordinance No. 1927 which approves the Second Amendment to the Development Agreement with The Irvine Company, LLC; 2525 Augustine Drive, LLC; and 3255 Scott Boulevard, LLC for the properties located at 2620-2790, 2425, 2465 and 2475 Augustine Drive (including properties on Bowers Avenue and Scott Boulevard).
9. Approval of Amendment No. 1 to the Real Estate Lease Agreement with Peninsula Corridor Joint Powers Board (PCJPB) to extend the term of the Lease to June 30, 2017 for transit parking at the Santa Clara Train Station.
10. Approval of a Call Agreement with Reichman, Karten, Sword, Inc. dba RKS Research & Consulting, Call No. 14-1 for Professional Services, in an amount not to exceed \$26,250, for augmentation of existing statewide market research, and authorization to execute any future amendments to Call No. 14-1.
11. Approval of a Call Agreement with dystrick design, Inc. and Call No. 14-1 for Professional Services, in an amount not to exceed \$272,809, to support the electric utility's marketing and communications needs.
12. Approval of an Agreement for the Performance of Services with AlliedBarton Security Services LP, for a total not to exceed amount of \$390,000, to perform site security services for the exterior grounds and parking structure at the Santa Clara Convention Center Complex (Maintenance Assessment District No. 183).

**C. Reports for Information and Possible Action**

1. City's 2013 Comprehensive Annual Financial Report (CAFR) Award from the Government Finance Officers Association of the United States and Canada (GFOA).

**D. Minutes to Note and File**

1. Planning Commission - April 30, 2014.
2. Planning Commission - April 16, 2014.
3. Historical and Landmarks Commission - March 6, 2014.
4. Historical and Landmarks Commission - April 3, 2014.
5. Historical and Landmarks Commission - May 1, 2014.

**E. Routine Written Petitions for Approval**

1. Eric Keller, DR Horton, 2855 Kaiser Drive: Special Permit request to allow the use of a temporary office trailer for two years on a portion of The Gallery at Central Park Development. Staff Recommendation: Approval, subject to conditions (PLN2014-10395).

**8. BOARDS AND COMMISSIONS FOR ACTION:**

**9. CONSENT ITEMS PULLED FOR DISCUSSION:**

**10. PUBLIC PRESENTATIONS:**

This item is reserved for persons to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City. The law does not permit Council action on, or extended discussion of, any item not on the agenda except under special circumstances. The Council, or staff, may briefly respond to statements made or questions posed, and the Council 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 forms available by the door in the Council Chambers.

**11. REPORTS FOR COUNCIL ACTION:**

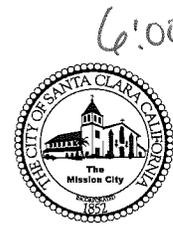
- A. Acceptance and appropriation of a donation from the San Jose Pioneer Lions Club, in the amount of \$500, to purchase supplies for the Community Emergency Response Team Program and authorization to transmit a letter of appreciation.
- B. Adoption of a Resolution authorizing the acceptance and appropriation of a California Department of Alcoholic Beverage Control (ABC) grant, in the amount of \$75,000, to be utilized to fund a variety of overtime assignments to curb alcohol-related challenges in the community and authorization to transmit a letter of appreciation to the ABC Grant Assistance Program.
- C. Approval to submit an application for the 2014 Byrne Justice Assistance Grant (JAG) from the Bureau of Justice Assistance and approval and appropriation of estimated revenue, in the amount of \$15,847, to purchase equipment for the Patrol and Traffic Divisions.

- 12. BILLS AND CLAIMS/PROGRESS PAYMENTS:**  
(Lists are available in the Council Office and the City Clerk's Office.)
- A. Approval of Bills and Claims and Progress Payments.
- 13. REPORTS OF COUNCILORS AND SPECIAL COUNCIL COMMITTEES:**
- A. Reports regarding conference attendance, if any.
- 14. CITY MANAGER REPORTS:**
- 15. CLOSED SESSION MATTERS:**
- A. City Attorney Reports:
- B. Approval to set July 1, 2014 at 6:00 pm for a Closed Session in the Council Conference Room for a Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a) *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.*, Sacramento County Superior Court Case No. 34-2013-80001396.
- 16. ADJOURNMENT:**
- A. To Tuesday evening, **July 1, 2014** at 7:00 pm for the regular scheduled meeting in the City Hall Council Chambers.



# CLOSED SESSION NOTICE

City of Santa Clara, California



The **CITY COUNCIL OF THE CITY OF SANTA CLARA** will meet in closed session on **Tuesday, June 24, 2014, at 6:00 p.m.**, or as soon thereafter as the matter can be discussed, in the Council Conference Room located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to it/them:

- CONFERENCE WITH REAL PROPERTY NEGOTIATOR**  
Pursuant to Gov. Code § 54956.8  
Property: APN 097-01-039, APN 097-01-073, APN 104-01-102, APN 104-03-036  
Negotiating Party(ies): William A. Witte, President, Related California  
City Negotiator: Julio J. Fuentes, City Manager (or designee)  
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)
  
- CONFERENCE WITH REAL PROPERTY NEGOTIATOR**  
Pursuant to Gov. Code § 54956.8  
Property: APN 104-03-036, APN 104-03-038, APN 104-03-039, APN 104-03-040  
Negotiating Party(ies): Kurt Wittek, Montana Property Group, LLC  
City Negotiator: Julio J. Fuentes, City Manager (or designee)  
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)
  
- CONFERENCE WITH REAL PROPERTY NEGOTIATOR**  
Pursuant to Gov. Code § 54956.8  
**Property:** APN 104-03-038; 104-03-039; 104-03-040; 104-43-50; 104-55-16; and 104-43-049  
**Negotiating Party(ies):** Larry MacNeil and Jim Mercurio, The San Francisco 49ers  
**City Negotiator:** Julio J. Fuentes, City Manager (or designee)  
**Under Negotiation:** Parking Rights Agreement
  
- CONFERENCE WITH REAL PROPERTY NEGOTIATOR**  
Pursuant to Gov. Code § 54956.8  
Property: APN 224-02-002; 224-02-013; 224-02-014; 224-02-020; and 224-02-023  
Negotiating Party(ies): Steve Zamudio, Colliers International  
City Negotiator: Julio J. Fuentes, City Manager (or designee)  
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)
  
- CONFERENCE WITH REAL PROPERTY NEGOTIATOR**  
Pursuant to Gov. Code § 54956.8  
Property: APN 224-28-035  
Negotiating Party(ies): Don Jessup, Silicon Valley Associates  
City Negotiator: Julio J. Fuentes, City Manager (or designee)  
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)

- CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION**  
Pursuant to Gov. Code § 54956.9(a)  
*Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.*, Sacramento County Superior Court Case No. 34-2013-80001396
  
- LIABILITY CLAIMS**  
Pursuant to Gov. Code § 54956.9(e)(3)  
**Claimant:** Sarah Doty  
**Date of Claim:** June 19, 2014  
**Agency Claimed Against:** City of Santa Clara
  
- CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION**  
Pursuant to Gov. Code § 54956.9(d)(2) – Exposure to litigation  
**Number of potential cases:** 1
  
- CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION**  
Pursuant to Gov. Code § 54956.9(d)(4) – Initiation of litigation  
**Number of potential cases:** 1

Date: June 20, 2014

  
RICHARD E. NOSKY, JR. /cc  
City Attorney

# CLOSED SESSION NOTICE

Successor Agency to the City of Santa Clara  
Redevelopment Agency



The **GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY** will meet in closed session on **Tuesday, June 24, 2014, at 6:00 p.m.**, or as soon thereafter as the matter can be discussed, in the Council Conference Room located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to it/them:

**CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION**

Pursuant to Gov. Code § 54956.9(a)

*Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.*, Sacramento County Superior Court Case No. 34-2013-80001396

Date: June 20, 2014

A handwritten signature in black ink, appearing to read "R. Nosky".

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RICHARD E. NOSKY, JR.  
Successor Agency Counsel

6/24/13

3A

**MINUTES OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA  
FOR MEETING HELD ON TUESDAY EVENING, MAY 13, 2014**

The City Council of the City of Santa Clara met at 5:00 pm to continue the Study Session from the May 6, 2014 Council meeting regarding the 2325 Park Avenue project. With a quorum present, the City Manager introduced the item and then he, the Director of Planning and Inspection, and the City Attorney provided a brief update and answered Council questions. The following people addressed the Council with comments of concern: Bob O'Keefe (provided handout), Steve Gebbie, Joe Hastings, Susan Colbeck, Kathy Kelsey, Alyssa Thompson, Mark Colbeck and Sarah Doty. The City Attorney, the Director of Planning and Inspection, and the City Manager answered questions that arose during public comment and answered further Council questions.

With no public comment, the Council then met at 6:00 pm for a Closed Session in the Council Conference Room for a Conference with Labor Negotiators pursuant to Government Code Section 54957.6; City designated representative: Julio J. Fuentes, City Manager (or designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers); Unit # 4 - City of Santa Clara Professional Engineers; Units # 5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees); Unit # 9 - Miscellaneous Unclassified Management Employees; Unit # 9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit # 10 - PSNSEA (Public Safety Non-Sworn Employees Association; Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 097-01-039, APN 097-01-073, APN 104-01-102, APN 104-03-036; Negotiating party(ies): William A. Witte, President, Related California; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-03-036, APN 104-03-038, APN 104-03-039, APN 104-03-040; Negotiating party(ies): Kurt Wittek, Montana Property Group, LLC; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and City Council/City Council acting as the Governing Board of the Successor Agency to the City of Santa Clara Redevelopment Agency Conference with Legal Counsel-Existing Litigation pursuant to Government Code Section 54956.9(a); *Vinod K. Sharma, et al. v. Successor Agency to the*

Redevelopment Agency of the City of Santa Clara, et al.,  
Sacramento County Superior Court Case No. 34-2013-80001396 (City  
Attorney - 05/09/14).

The Council reconvened in the Council Chambers at 7:02 pm and the regular meeting was opened with the recitation of the Pledge of Allegiance and Statement of Values in the Council Chambers.

Present: Council Members Debi Davis, Patrick Kolstad, Lisa M. Gillmor, Patricia M. Mahan, and Teresa O'Neill and Mayor Jamie L. Matthews. Absent: Vice-Mayor Jerry Marsalli (excused).

Staff present: City Manager, Assistant City Manager - Alan Kurotori, Assistant City Manager - Sheila Tucker, Director of Planning and Inspection, Director of Public Works/City Engineer, City Attorney and City Clerk/Auditor.

2. **MOTION** was made by Kolstad, seconded and unanimously carried (Marsalli absent), that, per the Executive Assistant to the Mayor and City Council's memo (05/13/14), the Council **excuse** Vice-Mayor Marsalli from attendance at this evening's meeting.
  
- 4A. As a Special Order of Business, the Council proceeded with the presentation regarding the **49ers Museum** at **Levi's Stadium** and its educational outreach program. Jessie Lovejoy, Museum Director, addressed the Council with comments and made an electronic presentation.
  
- 4B. Also as a Special Order of Business, the Council proceeded with the presentation regarding the **Vote Ethics Program** and Council of Trust. The City Clerk/Auditor introduced the item and Dr. Tom Shanks, the City's ethics consultant, then addressed the Council with an electronic presentation regarding ethical campaigning.
  
- 4C. Also as a Special Order of Business, the Council proceeded with the Joint City Council, Sports and Open Space Authority, Housing Authority, Stadium Authority and Successor Agency to the City of Santa Clara Redevelopment Agency Study Session to review the **Proposed Operating Budget, Proposed Capital Improvement Project (CIP) Budget** and **Five Year Financial Plan** for **Fiscal Year 2014-15**. The City Manager introduced the item and the Director of Finance/Assistant City Manager reviewed his memos (05/09/14 and 05/13/14) and made an electronic presentation. The 2014-15 Proposed Annual Budget totals \$660.3 million and is considered a balanced budget. The Successor Agency (formerly the Redevelopment Agency) 2014-15 Proposed Budget totals \$19 million, the Housing

Authority totals \$0.2 million, and the Sports and Open Space Authority totals \$4.2 million. The 2014-15 Proposed Capital Improvement Plan Project Budget totals \$68.3 million. The Director of Public Works/City Engineer continued the electronic presentation by reviewing significant Public Works CIP projects, the Director of Water and Sewer Utilities reviewed significant Water and Sewer CIP projects, the Chief of Police reviewed significant Police CIP projects, the Fire Chief reviewed significant Fire projects, the Director of Information and Technology (IT) reviewed significant IT CIP projects, the City Librarian reviewed significant Library CIP projects, the Assistant Director of Electric Utility reviewed significant Silicon Valley Power CIP projects, and the Director of Parks and Recreation reviewed significant Parks and Recreation CIP projects. The City Manager made further comments. The following people addressed the Council with comments: Alan Everett, Steve Van Dorn, and Rob Avina (provided handout). A Council discussion followed and Council questions were answered by the Director of Finance/Assistant City Manager and City Manager. By consensus, the Council referred the request for preservation of an orchard located at 166 Saratoga Avenue to the City Manager.

- 5B. As an item of Unfinished Business, the Council proceeded to consider the project located at **2121 Laurelwood Road**, including adoption of a Resolution adopting a Mitigated Negative Declaration (MND) and Mitigation Monitoring or Reporting Program (MMRP); adoption of a Resolution rezoning the property from Planned Development (PD) to Light Industrial (ML) to allow conversion and expansion of an existing legal nonconforming commercial warehouse use to a self-storage facility and adoption of a Resolution approving the use permit to allow outdoor vehicle storage and leasing in conjunction with a reduced minimum on-site parking requirement (CEQ2013-01164/ PLN2013-09776). The Director of Planning and Inspection reviewed his memo (05/05/14). **MOTION** was made by Gillmor, seconded and unanimously carried (Marsalli absent), that the Council **adopt Resolution No. 14-8129** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION, MAKING FINDINGS WITH RESPECT THERETO, AND ADOPTING A MITIGATION MONITORING OR REPORTING PROGRAM FOR THE PROJECT LOCATED AT 2121 LAURELWOOD ROAD, SANTA CLARA", which approves a **Mitigated Negative Declaration (MND)** and **Mitigation Monitoring or Reporting Program (MMRP)**; **Resolution No. 14-8130** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, REZONING THE PROPERTY LOCATED AT 2121 LAURELWOOD ROAD, SANTA CLARA, FROM PLANNED DEVELOPMENT (PD) TO LIGHT INDUSTRIAL (ML)" which **rezones** the property from Planned Development (PD) to **Light Industrial (ML)** to allow conversion and expansion of an existing legal nonconforming commercial warehouse use to a self-

storage facility and Resolution No. 14-8131 entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA TO APPROVE THE USE PE IT FOR THE UHAUL CENTER PROJECT LOCATED AT 2121 LAURELWOOD ROAD, SANTA CLARA" which approves the use permit to allow outdoor vehicle storage and leasing in conjunction with a reduced minimum on-site parking requirement (CEQ2013-01164/ PLN2013-09776).

- 6A.1 MOTION was made by Gillmor, seconded and unanimously carried (Marsalli absent), that, per the Senior Staff Aide's memo (05/06/14), the Council **approve** the publication of the June 2014 Mission City SCENES.
- 6A.2 MOTION was made by Gillmor, seconded and unanimously carried (Marsalli absent), that, per the Director of Finance/Assistant City Manager's memo (04/29/14), the Council **accept** the Monthly Financial Status Reports for March 2014.
- 6A.3 MOTION was made by Gillmor, seconded and unanimously carried (Marsalli absent), that, per the Director of Electric Utility's memo (04/29/14), the Council **approve** the use of City Forces for the installation of facilities on the east side of Great America Parkway 400 feet south of Tasman Drive.
- 6A.4 MOTION was made by Gillmor, seconded and unanimously carried (Marsalli absent), that, per the Director of Public Works/City Engineer's memo (04/10/14), the Council **approve** the Homestead Road - Kiely Boulevard Traffic Signal Interconnect and Coordination Project (CE 11-12-02), performed by Bay Area Lightworks, Inc., which installed traffic signal interconnection between seven (7) signalized intersections and **authorize** the recordation of a Notice of Completion with the County Recorder.
- 6A.5 MOTION was made by Gillmor, seconded and unanimously carried (Marsalli absent), that, per the City Manager's memo (05/09/14), the Council **note and file** the May 13, 2014 update of the 2013-2015 Council Strategic Plan Monthly Report from September 13, 2013 through May 13, 2014 and **set** June 30, 2014 from 8:00 am to 4:00 pm for the next Six-Month Strategic Planning Retreat at the Santa Clara Convention Center.
- 6B.1 MOTION was made by Gillmor, seconded and unanimously carried (Marsalli absent), that, per the Director of Public Works/City Engineer's memo (04/16/14), the Council **approve**, and authorize the City Manager to execute, an Agreement for Design Professional Services with HMH Engineers, in an amount not to exceed \$90,500, for the El Camino Real/Lawrence Expressway On/Off Ramp Embankment Landscape Improvement Project.

- 6B.2            **MOTION** was made by Gillmor, seconded and unanimously carried (Marsalli absent), that, per the Director of Public Works/City Engineer's memo (04/25/14), the Council **approve**, and authorize the City Manager to execute, **Amendment No. 1** to the **Agreement for Design Professional Services** with **RMC**, in an additional amount not to exceed \$75,013, for a total not to exceed amount of \$871,353, for the **Trimble Road Trunk Sanitary Sewer Improvements** and **authorize** the City Manager to make minor, non-substantive modifications, if necessary.
- 6B.3            **MOTION** was made by Gillmor, seconded and unanimously carried (Marsalli absent), that, per the Public Works/City Engineer's memo (04/24/14), the Council **approve**, and authorize the City Manager to execute, an **Agreement for the Performance of Services** with the **City of San Jose**, in an amount not to exceed \$150,000, for **Materials Testing and Log of Boring Services** and **authorize** the City Manager to make minor, non-substantive modifications, if necessary.
- 6B.4            **MOTION** was made by Gillmor, seconded and unanimously carried (Marsalli absent), that, per the Director of Electric Utility's memo (04/22/14), the Council **approve**, and authorize the City Manager to execute, a **Call Agreement** with **Cooper Compliance Corp.** for **consulting services** and **Call No. 14-1** for **Professional Services**, in an amount not to exceed \$21,500, to assist the Electric Department with **North American Electric Reliability Corporation (NERC) Reliability Standards**.
- 6B.5            **MOTION** was made by Gillmor, seconded and unanimously carried (Marsalli absent), that, per the Director of Electric Utility's memo (04/29/14), the Council **adopt Resolution No. 14-8132** entitled, "RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA FOR THE APPROVAL OF A POWER MANAGEMENT AND ADMINISTRATIVE SERVICES AGREEMENT, AN AMENDED AND RESTATED FACILITIES AGREEMENT, AND AN AMENDED AND RESTATED SCHEDULING COORDINATION PROGRAM AGREEMENT WITH THE NORTHERN CALIFORNIA POWER AGENCY" which approves, and authorizes the City Manager to execute, a **Power Management and Administrative Services Agreement**, an **Amended and Restated Facilities Agreement** and an **Amended and Restated Scheduling Coordination Program Agreement** with the **Northern California Power Agency (NCPA)**.

6C.1            **MOTION** was made by Gillmor, seconded and unanimously carried  
6C.2            (Marsalli absent), that the Council **note and file** the following  
**Informational Memo's**: Preliminary Candidate's Guide for the  
General Municipal Election of November 4, 2014 (City Clerk/City  
Auditor - 05/09/14) and Proclamation for the week of May 16-23,  
2014 as Santa Clara County Affordable Housing Week (Director of  
Planning and Inspection - 05/08/14).

6E.1            **MOTION** was made by Gillmor, seconded and unanimously carried  
(Marsalli absent), that, per the Director of Planning and  
Inspection's memo (05/06/14), the Council **approve** the **Special  
Permit** request submitted by John Hurley, **St. Clare Parish School -  
725 Washington Street**, to conduct a three day annual community  
festival to be held on May 30, 2014 through June 1, 2014 and on  
June 5, 2015 through June 7, 2015, subject to conditions (PLN2014-  
10303).

7A.            **PUBLIC HEARING**: The Mayor declared the hearing open for  
reconsideration of the second dwelling unit project located at  
**1277 Lafayette Street**. The Director of Planning and Inspection  
reviewed his memo (05/06/14) and made an electronic presentation  
regarding the project. Project applicant, Sal Caruso, addressed  
the Council with comments and also made an electronic  
presentation. Project appellants, Joe Howard and Sarah Doty,  
addressed the Council with comments of concern regarding the  
proposed project and also made an electronic presentation. The  
following people addressed the Council with comments of concern:  
Shirley Odon, Kay Ammon, Alyssa Thompson, Joe Hastings, Stan  
Carlson, Marigam Carlsen and Judy Tucker. Mr. Caruso and property  
owner, Eugene Kousunsly, provided final comments in support of the  
project and answered Council questions. With no further public  
input, **MOTION** was made by Mahan, seconded and unanimously carried  
(Marsalli absent), that the Council **close** the public hearing. The  
Director of Planning and Inspection and the City Attorney then  
answered further Council questions. **MOTION** was then made by Mahan,  
seconded and unanimously carried (Marsalli absent), that the  
Council **overturn** Resolution No. 14-8115 originally approved on  
February 25, 2014, which rezoned the property at 1277 Lafayette  
Street to RD-Planned Development to allow the expansion of an  
existing single-family residence and construction of a new two-car  
garage and second dwelling unit, subject to conditions and to  
**refer** to the City Manager to waive additional permitting fees  
should the applicant choose to redesign the project to make it  
consistent with the recommendations of the Historical and  
Landmarks Commission. Pursuant to City Council policy (P&P 042),  
Resolutions do not become final until the following Council  
meeting, to allow the Council to exercise their option to

reconsider. At the March 18, 2014 Council Meeting, the Council approved a motion to reconsider Resolution No. 14-8115, and so the Resolution did not go into effect. With the motion to over-turn the prior action, Resolution No. 14-8115 is not valid.

7B. PUBLIC HEARING: The Mayor declared the hearing open for consideration of the project located at 3515-3585 Monroe Street - Monticello Village Project, including the adoption of a Resolution approving and certifying an Environmental Impact Report (EIR) and adopting a Statement of Overriding Considerations and a Mitigation Monitoring or Reporting Program (MMRP); adoption of a Resolution rezoning the property from Planned Industrial (MP) to Planned Development (PD) to allow construction of a mixed-use development of apartments, retail and amenities with associated parking and other site improvements; and adoption of a Resolution approving of the Vesting Tentative Parcel Map, subject to conditions (PLN2013-09665, PLN2013-09666, PLN2013-09667 and CEQ2013-01150). The City Manager introduced the item and provided an update on the proposed project. Carlene Matchniff, Vice President of Apartment Development with The Irvine Company, addressed the Council with comments and made an electronic presentation. Ms. Matchniff then answered Council questions. With no public comment, MOTION was made by Mahan, seconded and unanimously carried (Marsalli absent), that the Council **close** the public hearing. MOTION was then made by Mahan, seconded and unanimously carried (Marsalli absent), that, per the Director of Planning and Inspection's memo (05/08/14), the Council **adopt** Resolution No. 14-8133 entitled, "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 OR REPORTING PROGRAM FOR THE MONTICELLO VILLAGE PROJECT LOCATED AT 3515-3585 MONROE STREET, SANTA CLARA" which approves and certifies an Environmental Impact Report (EIR) and adopts a Statement of Overriding Considerations and a Mitigation Monitoring or Reporting Program (MMRP); Resolution No. 14-8134 entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, REZONING THE PROPERTY LOCATED AT 3515-3585 MONROE STREET, SANTA CLARA FROM PLANNED INDUSTRIAL (MP) TO PLANNED DEVELOPMENT (PD)" which rezones the property from Planned Industrial (MP) to Planned Development (PD) to allow construction of a mixed-use development of apartments, retail and amenities with associated parking and other site improvements and Resolution No. 14-8135 entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING THE VESTING TENTATIVE PARCEL MAP FOR THE PROPERTY LOCATED AT 3515-3585 MONROE STREET, SANTA CLARA, TO CREATE TWO PARCELS FOR PURPOSES OF FINANCING AND CONVEYANCE" which approves the Vesting Tentative Parcel Map, subject to conditions (PLN2013-09665, PLN2013-09666, PLN2013-09667 and CEQ2013-01150).

11A. **MOTION** was made by Davis, seconded and unanimously carried (Marsalli absent), that the Council **approve** the **bills and claims** and **Progress Payments**.

14A. The City Attorney reported that earlier in the evening, the Council met for a Closed Session in the Council Conference Room for a Conference with Labor Negotiators pursuant to Government Code Section 54957.6; City designated representative: Julio J. Fuentes, City Manager (or designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers); Unit #4 - City of Santa Clara Professional Engineers; Units #5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees); Unit #9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit #10 - PSNSEA (Public Safety Non-Sworn Employees Association) and the Council unanimously approved (Marsalli absent) a Successor Memorandum of Understanding (MOU) with Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers). The key elements of the Successor MOU, which became effective by the Council's approval this evening, include: a two-year term from December 2012 through December 2014; two 1.25% of base salary signing bonus stipends in the first MOU year, with the first to be paid at the end of the first full pay period following Council approval and the second in the first full pay period in July 2014 and a 0.5% further stipend the first full pay period in January 2015; a 2% pay increase in base salary effective December 21, 2014; the City will pay the increase in the Kaiser employee only rate for both years; an increase in personal leave from 24 to 32 hours per year; and a 1.5% increase in rubber gloving pay for those classifications that currently receive that pay, effective retroactively to December 22, 2013; and a pilot program concerning the timing of lunch breaks for employees working a 9/80 schedule is included. The terms of this MOU are already ratified by IBEW's membership and have been approved by the City Council. These terms are now effective. The City Council directed staff to prepare and bring back to the Council an MOU document consistent with these approved terms. The City Attorney reported that the Council also met for a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 097-01-039, APN 097-01-073, APN 104-01-102, APN 104-03-036; Negotiating party(ies): William A. Witte, President, Related California; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/ Exchange/Lease of Real Property

(provisions, price and terms of payment) and that there was no reportable action; Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-03-036, APN 104-03-038, APN 104-03-039, APN 104-03-040; Negotiating party(ies): Kurt Wittek, Montana Property Group, LLC; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and that there was no reportable action; and City Council/City Council acting as the Governing Board of the Successor Agency to the City of Santa Clara Redevelopment Agency Conference with Legal Counsel-Existing Litigation pursuant to Government Code Section 54956.9(a); Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al., Sacramento County Superior Court Case No. 34-2013-80001396 and that there was no reportable action.

- 14B. **MOTION** was made by Davis, seconded and unanimously carried (Marsalli absent) that, per the City Attorney's memo (05/09/14), the Council **set May 20, 2014** at 6:00 pm for a Closed Session in the Council Conference Room for a Conference with Labor Negotiators pursuant to Government Code Section 54957.6; City designated representative: Julio J. Fuentes, City Manager (or designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers); Unit #4 - City of Santa Clara Professional Engineers; Units #5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - AFSCME - Local 101 (American Federation of State, County and Municipal Employees); Unit #9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit #10 - PSNSEA (Public Safety Non-Sworn Employees Association); and Conference with Legal Counsel-Existing Litigation pursuant to Government Code Section 54956.9(a); Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al., Sacramento County Superior Court Case No. 34-2013-80001396.

15A.

**MOTION** was made by O'Neill, seconded and unanimously carried (Marsalli absent), that, there being no further business, the Council adjourn the meeting at 9:45 pm, to Tuesday evening, **May 20, 2014** at 6:00 pm for a Closed Session in the Council Conference Room and at 7:00 pm for the regular scheduled meeting in the City Hall Council Chambers.

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

City Clerk

APPROVE: \_\_\_\_\_

Mayor

DRAFT

6/24/13

3B

**MINUTES OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA  
FOR MEETING HELD ON TUESDAY EVENING, MAY 20, 2014**

The City Council of the City of Santa Clara met at 6:00 pm, on the above-mentioned date, in the City Hall Council Chambers for the regular scheduled meeting. With a quorum present and with no public comment, the Council then met for a Closed Session in the Council Conference Room for a City Council/City Council acting as the Governing Board of the Successor Agency to the City of Santa Clara Redevelopment Agency Conference with Legal Counsel-Existing Litigation pursuant to Government Code Section 54956.9(a); *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.*, Sacramento County Superior Court Case No. 34-2013-80001396 and for a Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a); *James Weaver v. City of Santa Clara, et al.* United States District Court Case No. CV12-06334 PSG (City Attorney - 05/16/14).

The Council reconvened in the Council Chambers at 7:00 pm and the regular meeting was opened with the recitation of the Pledge of Allegiance and Statement of Values in the Council Chambers.

Present: Council Members Debi Davis, Patrick Kolstad, Lisa M. Gillmor, Patricia M. Mahan, Jerry Marsalli and Teresa O'Neill and Mayor Jamie L. Matthews.

Staff present: Assistant City Manager - Alan Kurotori, Assistant City Manager - Sheila Tucker, Director of Planning and Inspection, Director of Public Works/City Engineer, Assistant City Attorney Alexander Abbe and City Clerk/Auditor.

3A. **MOTION** was made by Davis, seconded and unanimously carried with Marsalli abstaining (not present at the meeting), that the **Minutes** for the meeting of **April 22, 2014** be adopted as written.

5A. As a Special Order of Business, the Council proceeded with the recognition of **outgoing Youth Commission members**. Recreation Program Supervisor along with the Mayor, presented a City tile and certificate in recognition of service to Jeff Hara (2 years), Emily Packer (1 year), Rafal Saeed (3 years), and Hannah Villalpando (4 years). Photographs were then taken (Director of Parks and Recreation - 04/29/14).

- 5B. Also as a Special Order of Business, the Council proceeded with the appointment of the 2014-15 Youth Commission. The Recreation Program Supervisor reviewed the Director of Parks and Recreation's memo (04/29/14). MOTION was made by Gillmor, seconded and unanimously carried, that the Council **appoint** Sarisha Kurp, Tamara Pantic, Alyssa Riley and Tara Singh and **reappoint** Samia Abbasi, Ajaipal Chahal, Karla Cisneros, Devleena Das, Vyvy Nguyen, Sheryl Ratman, Andrew Rauschhuber, Michelle Vo, Shana Vu, Ryan Winter and Ashley Wong.
- 5C. Also as a Special Order of Business, the Council proceeded with the presentation of a Youth Commission scholarship. The Recreation Program Supervisor introduced the item and Youth Commission Chair, Jeff Hara, reviewed the scholarship criteria and fundraising elements. Chair Hara then presented the scholarship, in the amount of \$850, to Sufyan Abbasi. Photographs were then taken (Director of Parks and Recreation - 04/29/14).
- 6B. MOTION was made by O'Neill, seconded and unanimously carried, that, per the City Attorney's memo (05/20/14), the Council **adopt** a Negative Declaration pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15050(b) and **adopt Ordinance No. 1925** entitled, "AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, TO ADD ARTICLE V (POLYSTYRENE FOAM DISPOSABLE SERVICE WARE) TO CHAPTER 13.20 (STORM DRAINS AND DISCHARGES) TO TITLE 13 (PUBLIC SERVICES) OF THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE" which adds Article V (Polystyrene Foam Disposable Service Ware) to Chapter 13.20 (Storm Drains and Discharges) to Title 13 (Public Services) of the City Code to **prohibit the use of polystyrene foam disposable food service ware.**
- 7A.1 MOTION was made by Mahan, seconded and unanimously carried, that, per the City Manager's memo (05/08/14), the Council **note and file** the Departmental Activity Report for the month of February 2014.
- 7A.2 MOTION was made by Mahan, seconded and unanimously carried, that, per the Director of Electric Utility's memo (05/06/14), the Council **approve** the use of City Electric forces for the installation of facilities at 2727 Augustine Drive.
- 7A.3 MOTION was made by Mahan, seconded and unanimously carried, that, per the Director of Finance/Assistant City Manager's memo (05/06/14), the Council **accept** the Santa Clara Convention Center and Convention-Visitor's Bureau (SCCC-CVB) Activity Report for Fiscal Year 2013-14 Third Quarter.

- 7A.4 **MOTION** was made by Mahan, seconded and unanimously carried, that, per the Director of Human Resources' memo (05/01/14), the Council **approve** the **job description** for **Utility Business Systems Manager**, **set** the control point at \$11,370 per month, and add this specification to the City's Conflict of Interest Code, Disclosure Category 1.
- 7A.5 **MOTION** was made by Mahan, seconded and unanimously carried, that, per the Director of Public Works/City Engineer's memo (05/05/14), the Council **accept** the **donations** given in support of the **27th Annual Arbor Day/Earth Day celebration** held on April 25, 2014.
- 7A.6 **MOTION** was made by Mahan, seconded and unanimously carried, that, per the Director of Human Resources' memo (05/01/14), the Council **approve** the **revised job description** for **Per Diem Police Officer Special Events As Needed**.
- 7A.7 **MOTION** was made by Mahan, seconded and unanimously carried, that, per the Chief of Police's memo (05/13/14), the Council **pass to print Ordinance No. 1926** entitled, "AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 5.35 (TAXICABS) OF TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA TO ENSURE THAT PEDICABS ARE REGULATED LIKE TAXICABS" which amends Chapter 5.35 (**Taxicabs**) of Title 5 (**Business Licenses and Regulations**) of the **City Code** to ensure that pedicabs are regulated like taxicabs.
- 7A.8 **MOTION** was made by Mahan, seconded and unanimously carried, that, per the Director of Water and Sewer Utilities' memo (05/14/14), the Council **adopt Resolution No. 14-8136** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING A WATER SUPPLY ASSESSMENT FOR A PROPOSED OFFICE/RETAIL DEVELOPMENT AT 2455-2727 AUGUSTINE DRIVE AND 3333 BOWERS AVENUE" which approves a **Water Supply Assessment** for the **proposed Santa Clara Square development** located at **2455-2727 Augustine Drive** and **3333 Bowers Avenue**.
- 7B.1 **MOTION** was made by Mahan, seconded and unanimously carried, that, per the Director of Electric Utility's memo (05/06/14), the Council **approve**, and authorize the City Manager to execute, a **Call Agreement** with **SBW Consulting** and **Call No. 14-1**, in an amount not to exceed \$101,250, for the **CoolerMiser Direct Install Program** third party energy efficiency program.

- 7B.2 **MOTION** was made by Mahan, seconded and unanimously carried, that, per the Director of Electric Utility's memo (05/06/14), the Council **approve**, and authorize the City Manager to execute, **Call No. 14-1** for Professional Services with **Energy & Resource Solutions, Inc.**, in an amount not to exceed \$1,090,333, for **management and administration of business energy efficiency public benefit programs** for Fiscal Year 2014-15.
- 7B.3 **MOTION** was made by Mahan, seconded and unanimously carried, that, per the Director of Electric Utility's memo (05/06/14), the Council **approve**, and authorize the City Manager to execute, **Amendment No. 1 to Work for Others Agreement No. 64556** with **Battelle Memorial Institute, Pacific Northwest Division**, to extend the termination an additional three (3) weeks or until June 30, 2014, at no additional cost to the City, to complete a **study on the potential impacts of increasing the use of solid state lighting with lighting controls**.
- 7B.4 **MOTION** was made by Mahan, seconded and unanimously carried, that, per the Director of Electric Utility's memo (05/06/14), the Council **approve**, and authorize the City Manager to execute, a **Fiber Lease Agreement** with **BarnesandNoble.com, LLC** for **long term use of dark fiber routes**.
- 7B.5 **MOTION** was made by Mahan, seconded and unanimously carried, that, per the Director of Water and Sewer Utilities' memo (05/06/14), the Council **approve**, and authorize the City Manager to execute, **Amendment No. 2 to the Agreement for Design Professional Services with Schaaf and Wheeler, Consulting Civil Engineers and Service Order No. 6**, in an amount not to exceed \$130,000 for a total not to exceed amount of \$280,000, to provide **various specialized engineering services**.
- 7B.6 **MOTION** was made by Mahan, seconded and unanimously carried, that, per the Director of Water and Sewer Utilities' memo (05/06/14), the Council **approve**, and authorize the City Manager to execute, **Amendment No. 4 to the agreement for Design Professional Services with GHD, Inc. and Service Order No. 9**, in an amount not to exceed \$390,000 for a total not to exceed amount of \$901,000, to provide **various specialized engineering services**.
- 7C.1 **MOTION** was made by Mahan, seconded and unanimously carried, that, per the, the Council **note and file** the **Informational Memo** entitled, "Status of 166 Saratoga Avenue - Bayto Townhomes (Director of Planning and Inspection - 05/14/14).

8A.

**PUBLIC HEARING:** The Mayor declared the hearing open for adoption of a Resolution approving Water Rate Schedule 2014-01, Recycled Water Rate Schedule 2014-02 setting the water rates for Fiscal Year 2014-15, effective immediately for water delivered on or after June 1, 2014 and billed beginning July 1, 2014; and adoption of a Resolution approving Sewer Service Schedules S-14 setting sewer service charges for Fiscal Year 2014-15, effective immediately for services provided on or after June 1, 2014 and billed beginning July 1, 2014. The City Clerk reported that 22 protests were received, which do not constitute a majority of the 22,639 customers. Jack Leader addressed the Council with comments of concern. The Director of Water and Sewer Utilities made an electronic presentation regarding the proposed rate schedules. With no further public comment, **MOTION** was made by Davis, seconded and unanimously carried, that the Council **close** the public hearing. **MOTION** was then made by Kolstad, seconded and unanimously carried, that the Council **adopt Resolution No. 14-8137** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, ESTABLISHING WATER RATE SCHEDULE 2014-01 AND RECYCLED WATER RATE SCHEDULE 2014-02 FOR CITY SERVICE" which approves Water Rate Schedule 2014-01, Recycled Water Rate Schedule 2014-02 setting the water rates for Fiscal Year 2014-15, effective immediately for water delivered on or after June 1, 2014 and billed beginning July 1, 2014 and **adopt Resolution No. 14-8138** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, PURSUANT TO SECTION 13.10.090 (ENTITLED "RATES- USERS WITHIN CITY") OF THE "CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" ESTABLISHING MONTHLY SEWER CHARGES" which approves Sewer Service Schedules S-14 setting sewer service charges for Fiscal Year 2014-15, effective immediately for services provided on or after June 1, 2014 and billed beginning July 1, 2014.

9A.

**MOTION** was made by Davis, seconded and unanimously carried, that, per the Director of Public Works/City Engineer's memo (05/05/14), the Council **award** the Public Works Contract for the Street Corporation Yard Bunker Wash Area Sewer Connection Project to KJ Woods Construction, Inc., in the amount of \$88,000, and **authorize** the City Manager to execute change orders up to approximately 10% of the original contract price, or \$8,800 for a total amount not to exceed \$96,800 (CE 13-14-07).

12.

Under Public Presentations, Ethan Winston, Rob Avina (provided handout) and Candace Avina (provided handout) addressed the Council with comments of concern regarding the 166 Saratoga Project. By consensus, the Council **referred** the issue to the City Manager to bring back a report to the June 10, 2014 Council meeting.

Lisa Jensen addressed the Council with comments of support for preserving the Ulistac Natural Area.

Tiah Esquibel, Miss Santa Clara Outstanding Teen 2014 and Madison Givens, Miss Santa Clara 2014, thanked Council for the scholarships and support that they have received from the City.

- 13A. **MOTION** was made by Davis, seconded and unanimously carried, that, per the Director of Parks and Recreation's memo (04/28/14), the Council **accept** a **donation**, in the amount of \$10,000, from **The White Living Trust for Senior Center Activities at the Santa Clara Senior Center** (account 084-1114-59650-(A)-20903); **approve** the appropriation of funds, in the amount of of \$10,000, for the Senior Center Activities at the Santa Clara Senior Center (account 084-1114-87XXX-(A)20903); and **authorize** the transmittal of a letter of appreciation signed by the Mayor and City Manager.
- 13B. **MOTION** was made by Davis, seconded and unanimously carried, that, per the Acting Housing and Community Services Division Manager's memo (05/05/14), the Council **approve** a minor **amendment** to the **City's 2013-14 Annual Plan** for use of **Community Development Block Grant (CDBG)** and **Home Investment Partnerships Act (HOME)** Entitlement Funds, in the amount of \$9,000 to continue to fund the **Outreach & Escort Special Needs Transportation Program** through the end of Fiscal Year 2013-14; **approve** the transfer and appropriation of funds, in the amount of \$9,000, of CDBG program income from the Neighborhood Conservation & Improvement Program [account 562-5543-54650-5542-(G)CDBG] to the Housing & Community Services Division Contracted Services account [account 562-5544-80810-5510-(I)2454-(G)CDBG] to provide additional CDBG funding for the Outreach & Escort Special Needs Transportation Program; and **approve**, and authorize the City Manager to execute, **Amendment No. 1** to the **Public Service Grant Agreement** with **Outreach & Escort, Inc.** and all related documents to provide special needs transportation services.
- 13C. **MOTION** was made by O'Neill, seconded and unanimously carried, that, per the Director of Planning and Inspection's memo (05/16/14), the Council **appoint** **Council Member Mahan** as an **alternate** to serve on the **Neighborhood Preservation Ordinance Ad-hoc Committee**.
- 13D. **MOTION** was made by Davis, seconded and unanimously carried, that, per the Economic Development Officer/Assistant City Manager and Director of Electric Utility's memo (05/16/14), the Council **adopt** **Resolution No. 14-8139** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, AUTHORIZING CITY MANAGER TO EXECUTE

PURCHASE AND SALE AGREEMENT FOR REED STREET PROPERTY" which authorizes the City Manager to negotiate and execute a Purchase and Sale Agreement with Bradford Manufacturing Company for the acquisition of approximately 8.75 acres of vacant land located at Reed and Grant Streets for future electric utility use; approve the establishment of the Capital Improvement Project 2412 - Reed Street Property for Future Utility Use; and approve the appropriation of funds, in the amount of \$9,000,000, to the Reed Street Property for Future Utility Use project (account 591-1377-80200-2412) from Electric operating cash (account 091-44199).

13E. In consideration of a Resolution authorizing the execution and delivery of the Loan Agreement between Banc of America Preferred Funding Corporation for the financing of the Phase Shifting Transformer Project and other related expenditures and documents, subject to final review by the City Attorney, to complete the transaction. Assistant City Manager Tucker noted an amendment to page 3 of the Resolution, provision 2, which should read \$34 million. MOTION was made by O'Neill, seconded and unanimously carried, that, per the Director of Electric Utility and Director of Finance/Assistant City Manager's memo (05/09/14), the Council adopt Resolution No. 14-8140 entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH BANC OF AMERICA PREFERRED FUNDING CORPORATION AND THE BORROWING THEREUNDER IN AN AMOUNT NOT TO EXCEED \$34 MILLION AGGREGATE PRINCIPAL AMOUNT PAYABLE FROM AVAILABLE ELECTRIC REVENUES; DECLARING THE CITY'S INTENTION TO REIMBURSE CERTAIN EXPENDITURES FROM THE PROCEEDS THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS RELATING THERETO" which authorizes the City Manager to execute and deliver a Loan Agreement between Banc of America Preferred Funding Corporation for the financing of the Phase Shifting Transformer Project and other related expenditures and documents, in substantially similar form as presented, subject to final review by the City Attorney, to complete the transaction.

14A. MOTION was made by Mahan, seconded and unanimously carried, that the Council approve the bills and claims and Progress Payments.

15A. Under Reports of Councilors and Special Council Committees, Council Member Marsalli reported that the Santa Clara Veteran's Memorial Committee will be hosting a Remembrance Observance at the Veteran's Memorial at Central Park on Monday, May 26, 2014 at 3:00 pm.

Mayor Matthews reported that he volunteered at the South of Forest Neighborhood Association for a successful volunteer day on

Saturday, May 17, 2014. Mayor Matthews also reported that he, City Manager Fuentes and Council Member Davis attended a dedication of Midtown Park.

Council Member O'Neill reported that Memorial Services for former Council Member Aldyth Parle were held on May 17, 2014 at the Mission City Center for the Performing Arts.

Council Member Mahan reported that a retirement celebration was held for Local History Librarian, Mary Hanel.

- 15B. **MOTION** was made by Gillmor, seconded and unanimously carried, that, per the Council Officers and Elected Full Time Employees Performance/Salary Review Committee's memo (05/15/14), the Council **delegate authority** to the City Manager to **authorize and grant merit increases** to **Elected Full-Time Positions**.
16. Assistant City Manager Sheila Tucker reported that May 18-24 is National Public Works Week. She also reported that the San Tomas Aquino Spur Trail project was awarded Project of the Year by the Silicon Valley Chapter of the American Public Works Association (APWA) in the transportation category.
- 17A. The City Attorney reported that earlier in the evening, the Council met for a Closed Session in the Council Conference Room for a City Council/City Council acting as the Governing Board of the Successor Agency to the City of Santa Clara Redevelopment Agency Conference with Legal Counsel-Existing Litigation pursuant to Government Code Section 54956.9(a); *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.*, Sacramento County Superior Court Case No. 34-2013-80001396 and that there was no reportable action and for a Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a); *James Weaver v. City of Santa Clara, et al.* United States District Court Case No. CV12-06334 PSG and that there was no reportable action.
- 17B. **MOTION** was made by Davis, seconded and unanimously carried that, per the City Attorney's memo (05/16/14), the Council **set June 10, 2014** at 6:00 pm for a Closed Session in the Council Conference Room for a Conference with Legal Counsel-Existing Litigation pursuant to Government Code Section 54956.9(a); *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.*, Sacramento County Superior Court Case No. 34-2013-80001396.

18A.

**MOTION** was made by Davis, seconded and unanimously carried, that, there being no further business, the Council adjourn the meeting at 7:47 pm, **In Memory of Gilbert G. Pereira** (long time Santa Clara resident and business owner) to Tuesday evening, **June 10, 2014** at 6:00 pm for a Closed Session in the Council Conference Room and at 7:00 pm for the regular scheduled meeting in the City Hall Council Chambers.

ATTEST: \_\_\_\_\_  
City Clerk

APPROVE: \_\_\_\_\_  
Mayor

DRAFT

Meeting Date: 6/24/14

# AGENDA REPORT

Agenda Item # SA

City of Santa Clara, California



**Date:** June 16, 2014

**To:** City Manager for Council Action

**From:** Management Analyst

**Subject:** Special Order of Business: Request from Santa Clara Sister Cities Association for the City of Santa Clara to Approve a Memorandum of Understanding for a Sister City Relationship with Limerick, Ireland

## **EXECUTIVE SUMMARY:**

In 2010, the City of Santa Clara entered into a Memorandum of Understanding (MOU) as a Friendship City with Limerick, Ireland. The current MOU had a duration for a period of four years from the date of June 11, 2010. The friendship city designation allowed for the City to participate in typical exchanges with Limerick, but in a more limited scope. These past four years the Santa Clara Sister Cities Association has been fully engaged in working with the Cultural Commission, community groups and contacts in Limerick to fully explore if there is solid foundation on which to build a potential sustainable relationship.

The Cultural Commission was approached by Santa Clara Sister Cities Association at the June 2, 2014 regularly scheduled Commission meeting to request support of their request for the City of Santa Clara to enter into a sister city relationship with Limerick, Ireland. The Cultural Commission convened a special noticed meeting to take action on the request. A special noticed Commission meeting was convened on June 9, 2014 which the Commission unanimously approved support of the MOU for Limerick, Ireland to become a sister city with the City of Santa Clara.

More detailed information in regards to the establishment of a Sister City Relationship with Limerick, Ireland is in the "Discussion" section of this report.

## **ADVANTAGES AND DISADVANTAGES OF ISSUE:**

Santa Clara values opportunities to foster friendship, goodwill, and greater understanding between its citizens and those of communities around the world. A principal duty of the Cultural Commission is to act in an advisory capacity to the City Council on all matters pertaining to international exchange and in all matters related to its current sister city relationships. Establishing a new long-term international relationship should be approached cautiously, with care taken to assure that it be beneficial and sustainable for both communities through financial and community support.

## **ECONOMIC/FISCAL IMPACT:**

No additional funding is requested for support of the new Sister City Relationship with Limerick, Ireland. The City has not funded prior sister city exchanges with our current sister cities. Santa Clara Sister Cities

City Manager for Council Action

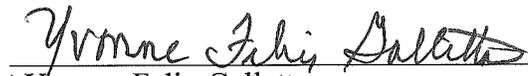
Subject: Special Order of Business: Request from Santa Clara Sister Cities Association for the City of Santa Clara to Approve a Memorandum of Understanding for a Sister City Relationship with Limerick, Ireland  
June 16, 2014

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Association, a non-profit organization, will develop fundraising efforts, and outreach to local Irish named or owned businesses for financial support.

**RECOMMENDATION:**

Staff recommends that Council approve the Memorandum of Understanding for a Sister City Relationship between City of Santa Clara, California and Limerick, Ireland with the support of Santa Clara Sister Cities Association and the City's Cultural Commission.

  
\_\_\_\_\_  
Yvonne Felix Galletta  
Management Analyst

APPROVED:

  
\_\_\_\_\_  
Julio J. Fuentes  
City Manager

***Documents Related to this Report:***

1) *MOU for a Sister City Relationship between the cities of Limerick, Ireland & Santa Clara, CA*  
Document2

**DISCUSSION:**

There have been several formal and informal meetings and exchanges between the two communities including:

- Contacts between Santa Clara University (SCU) and the University of Limerick;
- An official visit by Limerick's Mayor with a delegation in early 2008;
- Limerick's hosting of a band from Wilcox High School, which competed in Limerick's International Band Competition;
- Attendance of supporters at International Exchange Commission meetings (I.E.C. merged with Cultural Commission in 2013);
- Mayor Mahan's meeting with Limerick city officials while attending the 2009 Sister City International Annual Conference; and
- 2010 visiting delegation from Limerick, Ireland of students and adults from Salesian School, plus officials from Limerick City which included Mayor Kevin Kiely.

Before additional consideration of entering into a sister city relationship, an additional issue had to be clarified. Sister Cities International protocol stated that "... a new sister cities partnership would be recognized between a U.S. and an international community, even though another partnership may exist between that international community and a different U.S. community, only if a cooperative agreement among all involved communities was filed with Sister Cities International." Limerick already has a sister city; Spokane, WA, which approved Santa Clara's relationship with Limerick in 2010 as long as it was referred to as a "friendship city" relationship. Currently, Sister Cities International (SCI) Membership Committee approved a revised policy which will be voted by the Executive Committee on June 20, 2014 removing the requirement of a cooperative agreement among all involved communities. The City has been

City Manager for Council Action

Subject: Special Order of Business: Request from Santa Clara Sister Cities Association for the City of Santa Clara to Approve a Memorandum of Understanding for a Sister City Relationship with Limerick, Ireland  
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assured by the Membership Director of SCI that the Executive Committee vote is a formality since the Executive Board has approved the changed in principle, but are still going through the approval process for the exact language of the policy. Santa Clara Sister Cities Association has reached out to their counterpart in Spokane, WA, to offer to work cooperatively on projects and continue to build strong relationships with all parties.

The Cultural Commission (merged with International Exchange Commission) reviewed existing Guidelines for establishing Sister City Relationship with Limerick, Ireland. Many of the criteria has been met by the Limerick activities over the past four plus years, including:

- No current sister-city relationship with another community in Ireland;
- Established diplomatic relations between the United States and Ireland;
- Common characteristics between Santa Clara and Limerick, such as similar size and population, educational interests, a proud history, an enthusiasm for sports and the arts, and an economy with a heavy focus on technology;
- Support of local individuals with strong ties to Limerick for the development of the relationship;
- Groups in both communities with a proven ability to support exchanges;
- A period of successful activities with an active interest in developing more; and
- A group/organization/committee in each city made up of private citizens who can design and carry out activities promoting exchange.

There are also criteria that has not been met, such as:

- Preference given to international cities which do not already have an affiliation in the U.S.;
- A multi-year plan for developing the relationship endorsed by both groups. This plan should show how their activities would further the objectives of the sister city program; and
- Enough private funding to carry out various activities with concrete plans for further fundraising and identifying sources of support (this source has yet to be identified).

The Cultural Commission supports the request of Santa Clara Sister Cities Association to establish a Sister City Relationship with Limerick, Ireland, and will work to support future endeavors.

**MEMORANDUM OF UNDERSTANDING  
FOR A SISTER CITY RELATIONSHIP**

**BETWEEN THE CITIES OF  
LIMERICK, IRELAND  
AND  
SANTA CLARA, CALIFORNIA  
UNITED STATES OF AMERICA**

**Whereas**, the cities of Santa Clara, California, United States of America and Limerick, Republic of Ireland share similar goals of international cooperation, mutual prosperity, and world peace; and

**Whereas**, many residents of Santa Clara trace their ancestry to Limerick as well as many other cities in Ireland and have built many friendships with its citizens; and

**Whereas**, they believe it to be in their collective interest to broaden and strengthen ties between the two cities; and

**Whereas**, they place similar values on developing separate plans for developing joint activities centered including but not limited to exchanges to educate citizens and promote education, training, innovation, environmental stewardship and entrepreneurship, culture and athletics; and

**Whereas**, they will identify activities, common to all, that can generate new initiatives to further nurture economic, social, and cultural relationships; and

**Whereas**, the purpose of this relationship is to increase economic development, cultural exchanges, educational opportunities, technical exchanges for both cities, and to increase awareness of both cities as being centers for education, innovation and business development; and

**Whereas**, both cities are committed to mutual support organizing and developing the experiences, common activities, and future programs of the Sister City relationship on the basis of previous agreements of mutual cooperation and directions set forth by this declaration;

**Now**, therefore, we the Mayors of Santa Clara, California and Limerick, Ireland, do believe that this pact will further contribute to the cause of world peace and to the development of friendly relations between the peoples of Ireland and the United States and our two cities; and

Further, we affix our signatures and our city seals on this declaration to establish our relationship as Sister Cities.

Signed \_\_\_\_\_  
Mayor of Limerick, Ireland

Signed \_\_\_\_\_  
Mayor of Santa Clara, California

Dated \_\_\_\_\_

Dated \_\_\_\_\_



**CULTURAL COMMISSION**  
City of Santa Clara

**Minutes of the June 9, 2014 Meeting**



**Commissioners Present:** Bunny Lockwood, Kathleen Ryan, Loretta Beavers, Eversley Forte, Barbara Stahl and Carolyn Schuk

**Commissioners Absent:** Unexcused: Kent Neal

**Staff Liaison:** Yvonne Galletta

**Visitors:** Council Member Teresa O'Neill  
Kathy Watanabe, President of Santa Clara Sister Cities Association  
Raj Chahal, Santa Clara Sister Cities Association  
AJ Chahal  
Michael O'Halloran

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**MATTERS FOR COUNCIL ACTION** – That the Limerick, Ireland Memorandum of Understanding to be a Sister City with the City of Santa Clara be approved by Council and signed by the Mayor.

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I. Call to Order and Roll Call: Chair Fatima Fagundes called the meeting to order at 7:03 p.m.

II. New Business:

a. Santa Clara Sister Cities Association

- 1) Request for Cultural Commission to support Sister Cities Association's request for the City of Santa Clara to enter into a Memorandum of Understanding ("MOU") for a Sister Cities Relationship with Limerick, Ireland

Sister Cities Association President Kathy Watanabe presented the Limerick, Ireland MOU background and information. She referred to her letter of June 2, 2014 stating the request to the Cultural Commission to support the City entering into a sister city relationship with Limerick, Ireland (see attached). Previously, Sister Cities International required cooperative agreements between international cities and their U.S. sister cities when more than one relationship existed. President Watanabe confirmed with Sister Cities International the ability for foreign cities to have more than one Sister City in the U.S. They are currently amending their policy. Some international cities have as many as four sister city relationships.

Commissioner Forte asked about monetary considerations. Commissioner Lockwood asked about bandwidth considerations. President Watanabe said it is in process, but fundraising efforts will need to be increased accordingly. The City has not funded prior exchanges with our other sister cities in Coimbra, Portugal and Izumo, Japan. City Council Member O'Neill mentioned existing business and school relationships, and their fundraising efforts. There is some outreach to local Irish named or owned businesses. Commissioner Forte asked the difference between Friendship and Sister Cities. Watanabe answered the difference is the length of term: Friendship is temporary; Sister is permanent.

The City Council should review and approve the MOU with Limerick, Ireland with Santa Clara's Sister Cities Association. M/S/C

III. Public Presentations: None

IV. The meeting adjourned at approximately 7 p.m.

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Respectfully submitted,

  
Loretta Beavers   
Acting Secretary



**Santa Clara Sister Cities Association**  
**Coimbra, Portugal**      **Izumo, Japan**  
*Established August 4, 1972*      *Established October 11, 1986*

June 2, 2014

**EXECUTIVE BOARD**

Kathy Watanabe  
President

Raj Chahal  
Vice President

Yuki Ikezi  
Vice President – Izumo

Tedra Nikolai  
Vice President –  
Coimbra

A.J. Chahal  
President –SCA  
Youth Commission

Loretta Beavers  
Secretary

Patrick Nikolai  
Treasurer

**DIRECTORS**

Linda Eserini  
Corresponding Secretary  
Membership Director

John G. Figueira, Jr.  
Past President  
1982 – 2001

Lorraine Figueira  
Past Secretary  
1985 – 2001

May Ban  
Director at Large

Ms. Yvonne Galletta  
Cultural Commission  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050

Dear Yvonne:

On behalf of Santa Clara Sister Cities Association (“SCSCA”), I am writing to request that the Cultural Commission support SCSCA in requesting that the Santa Clara City Council approve our request to add the City of Limerick, Ireland to our Sister Cities family.

Attached for your review is the Memorandum of Understanding (“MOU”) that SCSCA and the City of Limerick have been working on the last few months. The MOU has the key components of the relationship we are looking to establish but there is also room to add on if necessary.

Currently, Santa Clara has a Friendship City relationship with Limerick that will expire shortly. SCSCA would like to make this a more permanent relationship by making Limerick an official Sister City with Santa Clara.

Both cities are going through some exciting times in terms of growth, education, culture, business and sports. This seems like an opportune time for both cities to work together to explore opportunities with each other and build on the relationship already established through the Friendship City relationship.

SCSCA would like the Cultural Commission for this opportunity to request support of this endeavor before the City of Santa Clara City Council. Please let us know if you have any questions. .

Sincerely,

Kathy Watanabe  
President

**Whereas**, the cities of Santa Clara, California, United States of America and Limerick, Republic of Ireland share similar goals of international cooperation, mutual prosperity, and world peace; and

**Whereas**, many residents of Santa Clara trace their ancestry to Limerick as well as many other cities in Ireland and have built many friendships with its citizens; and

**Whereas**, many Irish citizens currently live and work in Santa Clara; and

**Whereas**, they believe it to be in their collective interest to broaden and strengthen ties between the two cities; and

**Whereas**, they place similar values on developing separate plans for developing joint activities centered including but not limited to exchanges to educate citizens and promote education, training, innovation, environmental stewardship and entrepreneurship, culture and athletics; and

**Whereas**, they will identify activities, common to all, that can generate new initiatives to further nurture economic, social, and cultural relationships; and

**Whereas**, the purpose of this relationship is to increase economic development, cultural exchanges, educational opportunities, technical exchanges for both cities, and to increase awareness of both cities as being centers for education, innovation and business development; and

**Whereas**, both cities are committed to mutual support for organizing and developing the experiences, common activities, and future programs of the Sister City relationship on the basis of previous agreements of mutual cooperation and directions set forth by this declaration;

**Now**, therefore, we, the Mayors of Santa Clara, California and Limerick, Ireland, do believe that this pact will further contribute to the cause of world peace and to the development of friendly relations between the peoples of Ireland and the United States and our two cities; and

Further, we affix our signatures and our city seals on this declaration to establish our relationship as Sister Cities.

\_\_\_\_\_  
JAMIE MATTHEWS  
Mayor  
[DATE]

\_\_\_\_\_  
[NAME OF ELECTED OFFICIAL]  
Lord Mayor  
[DATE]



**Date:** June 17, 2014

**To:** City Manager for Council Action

**From:** Director of Parks & Recreation

**Subject:** Pass to Print an Ordinance Adding a New Chapter 17.35 "Park and Recreational Land" to Title 17 ("Development") of "the Code of the City of Santa Clara, California"

### EXECUTIVE SUMMARY:

In April 2013, the Santa Clara City Council adopted a set of Council Goals including to "Ensure Fiscal Responsibility." One of the supporting strategic objectives was to "Develop a new Housing Development Impact Fee for parks acquisition and recreation facility development." In May 2013, the City contracted Willdan Financial Services, Inc. to conduct the Nexus Study and to work with the Parks & Recreation Department and other departments including Planning, Finance, City Attorney and Economic Development. The completed *New Housing Development Impact Nexus Study* documents and supports the five (5) statutory findings required by California Government Code (CGC) Section 66000 (Mitigation Fee Act) and provides the rational basis for application of CGC Section 66475 (Quimby Act). The Council adoption of "*An Ordinance Adding a New Chapter 17.35 "Park and Recreational Land" to Title 17 ("Development") of "The Code of the City of Santa Clara, California"* will achieve the policy objectives of ensuring that new residential development provides adequate park and recreational land and/or pays a fee in lieu of dedication in order to mitigate the impacts of the new growth.

**Background.** The City General Plan 2010-2035 (Plan) includes several policies and goals related to the provision of parks, open space and recreation facilities.<sup>i</sup> Among the Plan tasks anticipated were: to complete a Parks & Open Space Needs Assessment; to consider increasing the existing park acres per 1000 residents ratio from a standard of 2.4 to 3.0; and, to complete an assessment of and identify funding opportunities for new parkland and/or recreational facilities. The *Nexus Study* includes a park inventory that provides substantiated sizes of city parks and park facilities that serve and are used by neighborhoods and the community. In 2010, the existing population of the City of Santa Clara was 116,468. The projected growth over the duration of the Plan was 38,332 resulting in a total population of 154,800. In order to provide the same level of service (2.53 acres per 1000 residents) to new residents and not adversely impact existing parkland resources,<sup>ii</sup> the best practice is to pay for new public parkland and facilities as growth occurs.

**State Law & Comparable City Practices.** To meet the demand for new neighborhood and community parkland generated by new residential subdivisions and new non-subdivided residential projects such as apartments, all ten (10) of the comparable cities evaluated have adopted ordinances consistent with the State of California's Quimby Act<sup>iii</sup> enacted in 1977 and revised in 1982 (Quimby), and the State's Mitigation Fee Act<sup>iv</sup> enacted in 1987 (MFA). In contrast, only the City of Santa Clara has neither a Quimby nor a MFA ordinance and method to address and fund parkland acquisition and development for new residents (See Table A). Compared to neighboring cities whose adopted standards are between 3.0 up to 5 acres per 1000 residents, the City of Santa Clara has the lowest level of service standard at 2.4 park acres per 1000 residents.

City Manager for Council Action

Subject: Pass to Print an Ordinance Adding a New Chapter 17.35 “Park and Recreational Land” to Title 17 (“Development”) of the Code of the City of Santa Clara, California.

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Table A—Comparable Parkland Acquisition & Dedication Ordinances			
City	Municipal Code Titles (Date)	Type	
		Quimby—LOS	MFA
Campbell	Park Impact Fees and Land Dedication Subdivisions (1994)	Yes – 3.0	
Cupertino	Parkland Dedication Ordinance (1986, 2011)	Yes – 3.0	Yes
Fremont	Development Impact Fees (1990)	Yes – 5.0	Yes
Gilroy	Public Facilities Impact Fees (2004)		Yes
Milpitas	Dedication of Land or Payment of Fee or Both, for Recreational Purposes (1976, 1998, 2001)	Yes – 3.5	
Morgan Hill	Development Impact Mitigation Fees (1993, 2003, 2009)		Yes
Mtn. View	Park Land Dedication or Fees In Lieu Thereof (1997)	N/A—3.0	Yes
Palo Alto	Parkland Dedication or Fees In Lieu Thereof (2006)	Yes – 5.0	
San Jose	Parkland Dedication Ordinance (1988)	Yes – 3.0	
	Park Impact Ordinance (1992)		Yes
<i>Santa Clara</i>	<i>Dwelling Unit Tax (1969) \$15 1st bedroom+\$5 add, max \$50/unit</i>	<i>No – 2.4</i>	<i>No</i>
Sunnyvale	Park & Open Space Dedication (1986, 1999, 2009, 2011)	Yes—4.25	Yes

**In Lieu Fee Revenue Comparisons.** The City relies upon its Dwelling Unit Tax adopted in 1969 and development agreements or other general fund sources to fund park acquisition and development. The City’s ability to fund acquisition and development of future parkland and recreation facilities to meet growth needs is further limited by the method and amount of the fee. The City’s fee is based on a set 1969 “per bedroom” amount of \$15 for the first bedroom, \$5 for each additional bedroom, and limited to \$50 per housing unit. Even if corrected for inflation, in 2014 values, the \$15 fee is \$96.90 and \$5 is \$32.30. Comparable cities fees are set by rationally based formulas that take into consideration variables such as the type of housing (single family/multi-family) and occupant density (average persons per unit), and the Fair Market Value of land. Using such formulas, comparable cities are receiving from about \$5,000 dollars per unit in Morgan Hill, to almost \$39,000 per unit in North San Jose. In terms of total revenues generated from development for parkland acquisition, the City of Santa Clara ranked lowest in FY 2012-13 with less than \$895

Table B—Comparable Cities’ Fees Collected FY 2012-13	
Campbell	\$618,323
Cupertino	\$2,484,000
Fremont	\$2,671,792
Morgan Hill	\$1,601,885
Mtn. View	\$13,268,690
Palo Alto	\$1,284,000
San Jose	\$24,100,000
<i>Santa Clara</i>	<i>\$895</i>
Sunnyvale	\$3,330,249

City Manager for Council Action

Subject: Pass to Print an Ordinance Adding a New Chapter 17.35 "Park and Recreational Land" to Title 17 ("Development") of the Code of the City of Santa Clara, California.

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annual parkland fee revenues and no parkland dedication. Comparable cities' revenues were between \$618,000 and \$24 million dollars per year (after dedication of parkland and receiving credit for on-site park amenities). The City of Santa Clara has accumulated less than \$9,500 in total over the past five (5) fiscal years, and dedicated 1 acres of parkland.<sup>v</sup>

**The New Housing Development Impact Nexus Study.** The Administrative Draft of the *New Housing Development Impact Nexus Study* prepared by Willdan Financial Services, Inc. is comprised of a series of eleven (11) data tables and narrative, organized into five chapters that document and establish the maximum justified public facilities fee for parks and recreation. It establishes the "nexus" between the impact of new housing development, amount of parkland needed to serve new residents, and the amount of the fees due in lieu of dedication. Chapter 1 provides a background, facility standards and cost allocation approach used in the study. Chapter 2 provides analysis of land use types, growth projections, and housing occupant density. Chapter 3 summarizes the existing park and recreation facilities inventory for Santa Clara and derives park facility standards (Quimby 3.0; MFA 2.53 acres per 1000 residents), unit costs, facilities to accommodate new growth, parks cost per capita and an initial fee schedule. See Table C below for a comparison of comparable cities' adopted fees and the proposed fee value for Santa Clara substantiated by the Nexus Study. Chapter 4 discusses the implementation process. Chapter 5 summarizes the five statutory findings required for adoption of the proposed fee ordinance in accord with the Mitigation Fee Act; followed by Appendices.

**Community Input.** The Department conducted a series of outreach and community input sessions to share preliminary data and initial information from the Nexus Study, to listen to concerns, and to consider ways to incorporate suggestions in to a draft ordinance. Publicly noticed meetings included: Developer Focus Group Meetings on March 5, and April 7, 2014; Planning Commission review on March 12, 2014; Parks & Recreation Commission reviews on March 18, 2014. Additional feedback was gleaned from the Parks & Recreation Department public opinion survey of 400 residents conducted by Strategic Research Associates from March 5 to April 5, 2014.

**Commission & Council Consideration.** On April 15, 2014 the Parks & Recreation Commission discussed the proposed ordinance and wanted to see less credit for dedication of on-site amenities in recognition that residents can and will still use public parks, particularly those with larger facilities such as athletic fields, not available in their residential complexes, and that private open space and recreational amenities conversely are not available to the general public. The Commission was concerned that without such an ordinance now, the City would have insufficient parkland to meet the growth needs of the City for neighborhood and community parks, sports fields and the ability to fund acquisition and development of these facilities in the future. The Commission unanimously (7-0) recommended that Council adopt a new housing development impact fee ordinance, with a maximum credit for on-site parks and recreation amenities limited to 50% of applicable fees and an accelerated timeline for phasing in the full impact fee. At the June 10, 2014 Development Study Session, the City Council reviewed the Nexus Study and Draft Ordinance and received input. Council discussed several aspects of the proposed ordinance including: assuring additional public parkland dedication or payment of a fee based on the fair market value of land in lieu of dedication to address impacts of new housing development; and, achieving the right balance of parkland fees that will help Santa Clara maintain its reputation as an attractive place for business, provide incentives for affordable housing, and provide sufficient high quality neighborhood and community parks and facilities for residents. On June 18, 2014, the Planning Commission discussed the need for additional parkland; how the ordinance

City Manager for Council Action

Subject: Pass to Print an Ordinance Adding a New Chapter 17.35 “Park and Recreational Land” to Title 17 (“Development”) of the Code of the City of Santa Clara, California.

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would be implemented; how the ordinance may effect housing prices and affordability; and the benefits of the ordinance. The Commission recommended (4-3) that Council adopt a new housing development impact fee ordinance as proposed.

**Proposed New City Ordinance—Chapter 17.35 “Park and Recreational Land” Implementation.**

Based on the community and developer input, and a review of comparable ordinances, staff developed and refined the draft ordinance (See Exhibit B) to include findings for both the Quimby Act and the Mitigation Fee Act. If a development is subject to the Quimby Act, then fees would be based on 3 acres per 1000 residents. For all other development, the City will calculate land dedication/fees based on the existing standard (2.53 acres per 1000 residents) through the Mitigation Fee Act. For subdivisions greater than 50 parcels/units, there is a dedication of parkland, a fee, or a combination of parkland and fee. For subdivision of 50 units or fewer, only a fee will be required, since most sites will be of a smaller size, making land dedication less feasible. The ordinance provides a formula for calculation of the parkland acreage required: average density times the Standard divided by 1000. For example:  $2.9 \times 3.0 / 1000 = .0087$  acres/ unit. The fees will be based on Fair Market Value of land otherwise required to be dedicated as established by an annual survey of land for each of the 3 sub areas of the City 95050, 95051, 95054. Once collected, the fees will be used as provided in Quimby & MFA: land acquisition; improvement; and for projects involving subdivisions only, rehabilitation. Quimby cannot be used for maintenance. The priority for establishing new parks will be on acquisition in underserved areas and completion of additional parks facilities/development. The proposed ordinance includes “credits” against fees owed. The limit of 25%fee credit recognizes the fact that residents use off-site community and neighborhood parks & facilities and that private open space and recreational amenities conversely are not available to the general public. The credit incentives are toward

**Table C—Comparable Cities’ Fees  
(Fee/Dwelling Unit Type) (based on land values)**

City/Area	Single Family	Multi Family	Secondary Residential Unit <700sqft
North San Jose	\$38,900	\$34,800	\$5,900
<i>Santa Clara (Quimby Act Fee)</i>	<i>\$34,849 *</i>	<i>\$26,918 *</i>	<i>\$4,575 *</i>
<i>Santa Clara (Mitigation Fee Act)</i>	<i>\$29,764 *</i>	<i>\$22,990 *</i>	<i>\$3,900 *</i>
Mountain View	\$25,000	\$25,000	n/a
Downtown San Jose	\$21,600	\$19,300	\$3,250
West San Jose	\$19,500	\$17,400	\$2,950
Campbell	\$17,105	\$17,105	n/a
Cupertino	\$15,750	\$9,100	n/a
Fremont	\$11,578	\$9,500	\$3,196
Palo Alto	\$10,639	\$6,964	\$3,521
South San Jose	\$8,700	\$7,700	\$1,300
Morgan Hill	\$4,987	\$4,805	n/a
Sunnyvale	\$69/sf	\$69/sf	\$69/sf

Comparable cities’ fees are actuals adopted by resolution. \*Santa Clara values are proposed based on the maximum amount justified in the *New Housing Development Impact Nexus Study*; see tables 9a and 9b. If the ordinance is approved, Council will adopt an annual fee resolution to set actual fees to be charged using Fair Market Value. See ordinance 17.35.040.

City Manager for Council Action

Subject: Pass to Print an Ordinance Adding a New Chapter 17.35 "Park and Recreational Land" to Title 17 ("Development") of the Code of the City of Santa Clara, California.

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dedicating land for public park purposes and active and useful recreational amenities by aggregating four or more elements on a minimum space of .75 acres. There is an additional Senior & Low Income Housing Credit of 15%.

**Council Development Study Session Follow Up.** At the June 10, 2014 City Council Development Study Session, Council requested additional information on the following topics and questions.

- **Santa Clara Parks Inventory.** The list of Santa Clara Parks included is found in the *Nexus Study* on pages 7 and 8. (See Table 3: Park Land Inventory).
- **What is the ratio of actual parklands in other cities?** Comparable city parkland ratio standards and ordinances focus on impacts to and provision of "neighborhood and community parks." Cities generally take a conservative view of the park acres used in their development impact calculation and definition of parks. For reporting purposes, the "actual" parkland within city limits may not equal the amount of parkland calculated and used for the parkland standard ratio due to the narrower purposes and legal requirements of Quimby and MFA. That said, most comparable cities have additional or more "actual" parkland and park types within city limits such as: regional parks, special park facilities, County parks, State or national parks, and special park Districts. There are also variations in the definition of parkland, which makes reporting and comparison of "actual public parkland acres" among cities more complex, and beyond the scope and focus of this study.<sup>vi</sup> Table C<sup>vii</sup> below provides a list of city parkland and additional parkland within city limits but not counted toward Quimby or MFA.
- **What have other cities actually done with the fees collected?** Table E<sup>viii</sup> below provides a sampling of projects funded through parkland fees as reported in annual financial reports.
- **Comparison of housing prices among comparable cities.** Table F<sup>ix</sup> below provides a comparison of median prices for residential housing (single family, condos & new homes) sold in the comparable cities. The price of housing, driven by factors of supply and demand among others, has continued to increase post Great Recession.
- **Can the City use existing open space to mitigate impacts of new development?** The existing 295 acres of Santa Clara parks and open space are already used by the public for parks and recreational uses. The *Nexus Study* concluded that the City will need an additional 75 to 115 acres to meet the needs of the new residents. If new development is not able to dedicate the parkland, then the fees in lieu may be used by the City for parkland acquisition and development. Therefore, to count existing parkland toward the requirement for new parkland would only increase the density of park use rather than mitigate the demand. According to CEQA, California Public Resources Code (21004), "*In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than this division. However, a public agency may use discretionary powers provided by such other law for the purpose of mitigating or avoiding a significant effect on the environment subject to the express or implied constraints or limitations that may be provided by law.*" The adoption of the new Park and Recreational Land

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ordinance in conformance with CEQA, Quimby, MFA and the General Plan will provide the City with the powers to mitigate the increased need/demand for new neighborhood and community parkland generated by new residential subdivisions and new non-subdivided residential projects.

- **How much parkland have we dedicated in large developments in the last several years?** The City has dedicated 1 acre of new parkland in the past five years (BAREC site). The City is anticipating about 2 more acres of public parkland, approved but not dedicated yet (old Kaiser site).
- **How much parkland dedication is included in upcoming large developments, i.e. Related and Montana projects?** The parkland dedication ordinance does not impact commercial development. In the case of Montana and Related projects, there may be public open space incorporated into these projects if negotiated as part of a Development Agreement. Initial schematic designs indicate some public park space, but the final locations and amounts have not been determined.
- **If fees will only be extracted from large developments, where would we find the land to mitigate offsite?** The in lieu fees will be assessed on all projects that are not exempt in the ordinance, not just "large developments." In most cities that are built out similar to Santa Clara, new parkland is acquired through purchase of existing parcels at Fair Market Value, whether built or vacant, and the existing use is converted into parkland. Often this is done in the same way developers acquire/aggregate multiple parcels. There are many "best practices" and models of how this can be done successfully.

**Next Steps.** If the City Council "passes to print" the ordinance, the City Attorney's Office will prepare a summary and forward to the City Clerk's Office for publication. The City Clerk's Office publishes the summary and posts it in three public places. The City Clerk's Office will then prepare a draft Agenda Report for final adoption (second reading). If the ordinance is adopted, the Council will review and adopt a fee resolution on an annual basis to set fees to be charged using Fair Market Value of property.

### **ADVANTAGES AND DISADVANTAGES OF ISSUE:**

**Advantages.** Adoption of the proposed ordinance will add a new Chapter 17.35 titled "Park and Recreational Land" to Title 17 ("Development") of City code that will allow the City to acquire and develop between 96.98 acres and 115 acres of parkland to meet the demand for new neighborhood and community parkland generated by new residential subdivisions and new non-subdivided residential projects.<sup>x</sup> Under the new ordinance, if the new development does not dedicate the new parkland, then the City would receive fees in lieu of dedication valued between \$385 million and \$452 million over the General Plan horizon of 2010-2035.

From a development perspective, the ordinance proposes up to 25% credit for on site dedication of parkland, private open space and recreational facilities assuring both adequate parkland for new residents, and a financial incentive to the developer for including an attractive feature that adds tangible marketable value, particularly in denser housing types. Any fees charged to the developer are one-time costs that are generally passed on to the new resident owner through sales price or amortized over a period of time and apportioned

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rebounded with values remaining strong and rising. Since all surrounding cities already have parkland dedication ordinances in place at the same or higher standard, implementation of the ordinance in Santa Clara would not cause any long term harm to the housing market or development community. The phasing allows for a six month, graduated timeframe for full implementation of the fees.

**Disadvantages.** Due to the timeline for phase-in of approximately six months, projects with development applications already "deemed complete" ("in the pipeline") will be exempt from the new ordinance.

**ECONOMIC/FISCAL IMPACT:**

If the ordinance were adopted, new residential development would be required either to dedicate the new parkland and facilities, or pay fees to the City in lieu of dedication. The estimated value is between \$385 million and \$452 million over the General Plan horizon of 2010-2035. Without the ordinance, the parkland standard may decrease below the existing 2.53 acres per 1000. This could potentially degrade the existing park system due to the additional impacts caused by cumulative growth, increasing Capital costs. Or, the City would have to identify yet unknown/undedicated sources of Capital funds in an equivalent amount to acquire parkland and develop new facilities to meet the additional growth needs.

**RECOMMENDATION:**

That the Council pass to print *An Ordinance Adding a New Chapter 17.35 "Park and Recreational Land" to Title 17 ("Development") of the Code of the City of Santa Clara, California.*



James F. Teixeira  
Director of Parks & Recreation

APPROVED:



Julio J. Fuentes  
City Manager

***Documents Related to this Report:***

- 1. New Housing Development Impact Nexus Study Administrative Draft***
- 2. An Ordinance Adding a New Chapter 17.35 ("Park and Recreational Land") to Title 17 ("Development") of The Code of the City of Santa Clara, California***

## ENDNOTES

<sup>i</sup> City of Santa Clara General Plan 2010-2035, Chapter 5.1.1 P24, and Parks Open Space and Recreational Goals 5.91- G1 to G4 and Policies P1 to P21).

<sup>ii</sup> If sufficient new acreage and facilities is not provided, then there is a deficit and the existing park facilities will experience increased demand, density of use beyond capacity, diversity of use beyond design criteria, and accelerated/premature deterioration.)

<sup>iii</sup> Quimby Act—California Government Code Section 66477.

<sup>iv</sup> Mitigation Fee Act—California Government Code Section 66000ff.

<sup>v</sup> Actual “public” park acres “dedicated” to the City from 2009-2014 is a 1 acre parcel from the BAREC development by development agreement. While other new housing development projects have been approved, such as Gallery at Central Park (Old Kaiser Hospital site), and more recently Monticello development, the park parcel/land has not been dedicated to the City as of this report date; it would add another 2 acres. There is currently no mandate or requirement for public parkland dedication in Santa Clara, so it is optional. Private “parkland” and playgrounds are not accessible to the general public.

<sup>vi</sup> According to the Trust for Public Land (TPL) report *2012 City Parks Facts*, the City of Fremont, California has a total of 21,396 park acres within the city limits, including Don Edwards San Francisco Bay National Wildlife refuge (14,839 acres), East Bay Regional Park District (5,707 acres), and Fremont Recreation Division (850 acres). The City of San Jose has a total of 15,950 acres within city limits, including Don Edwards San Francisco Bay National Wildlife Refuge (6,800 acres), Santa Clara County Parks (3,910 acres), San Jose Department of Parks, Recreation and Neighborhood Services (3,417 acres), and Santa Clara County Open Space Authority (1,823 acres). By these figures, Fremont has 73.3 acres per 1000 residents, and San Jose has 16.9 acres per 1000.

<sup>vii</sup> Table D.

<b>City</b>	<b>Population 2010 Census</b>	<b>Neighborhood &amp; Community Park Acres</b>	<b>Additional Public Parkland</b>	<b>Source</b>
Campbell	39,349	84		
Cupertino	58,302	162	18	McClellan Ranch
Fremont	214,089	850	20,546	Trust for Public Land Survey
Morgan Hill	37,882	86	275	2007 Trails and Natural Resources Study
Mountain View	74,006	196	776	Shoreline Regional Park
Palo Alto	64,403	162	4,000	Mid-Peninsula Regional Park District
San Jose	945,942	164	12,533	Trust for Public Land Survey
Santa Clara	116,468	252	230.46	SCG&TC & BMX Park
Sunnyvale	140,081	299	177	Baylands Park

viii Table E.

<b>Table E—Comparable Cities Use of Parkland Funds</b>				
<b>City</b>	<b>Fees FY2012-13</b>	<b>Examples of Projects Funded FY2012-13</b>	<b>Fees FY2011-12</b>	<b>Examples of Projects Funded FY2011-12</b>
Campbell	\$611,114	Stojanovich Park (\$662,500)	\$535,454	See 2012/13
Cupertino	\$2,484,900	Environmental Education Classroom at McClellan Ranch (\$800,000); Stevens Creek Corridor Park Phase 2 (\$650,000)	\$40,500	No expenditures in this FY
Fremont	\$2,671,792	Permanent Skate Park (\$2.04M), Central Park Softball lighting (\$264,145); Play Area Surface (\$52,658); Central Park Picnic Area (\$27,085); Central Park North Restroom Building (\$67,920); Well and Pump Replacement (\$145,334); Indoor Soccer/Lacrosse Study (\$86,397)	\$2,003,912	Poured in Place Play Area Surface (\$369,355); Central Park Softball Lighting (\$47,975)
Morgan Hill	\$1,601,885	Land Acquisition (\$25,300); Llagas Creek Trail (\$2,098); El Toro Trail (\$83,834); Madrone Channel Trail (\$70,462); General Plan update (\$4,221); Villa Mira Monte (\$10,557)	\$772,579	Land Acquisition (\$3,000); Llagas Creek Trail (\$76,608), El Toro Trail (\$81,781); Madrone Channel Trail (\$148,053); Aquatics Central Pool Drain Retrofit/Replace (\$216,524)
Mountain View	\$13,268,690	Rock Church Teen Ctr. Renovation (\$962,176); Landels Park Restroom (\$360,000); Fayette Park Design (\$200,000); Stevens Creek Trail Access (\$120,000); Permanente Creek Trail (\$41,000)	\$6,069,510	Crittenden Park Turf Replacement, Design and construction (\$1.4M), Rock Church Refurbishment (\$600,000), Permanente Creek Trail (\$187,210), Parks and Trails Maintenance Projects (\$23,500)
Palo Alto	\$1,223,560	El Camino Park Fields (1,793,000); El Camino Dog Park (\$260,000); El Camino Park Parking and restrooms (\$450,000); Park Restrooms (\$220,000).	\$370,754	No expenditures in this FY
San Jose	\$24,100,000	Lower Guadalupe River Trail (\$3.4M), Commodore Children's Park (\$1.1M); Backesto Park (\$271,000), Buena Vista Park(\$241,000); \$19.5 re-budgeted to FY13/14 for projects underway	\$1,500,000	Del Monte Park land acquisition (\$1.7M); Three Creeks Trail (\$1.1M); Newhall Park (\$1.3M); River Oaks Turnkey Park (\$873,000); Calabazas Play lot (\$725,000); Watson Park Soccer Fields (\$522,000); Fair Swim Pool (\$512,000)

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Santa Clara	\$895	No expenditures in FY	\$4,410	No expenditures in FY
Sunnyvale	\$3,330,249	Seven Seas Park (\$955,173); Park Bldg. Rehab (\$97,032); Sr. Center Rehab (\$48,533); Playground Equipment Replacement (\$305,076); Park Furniture & Fixtures (\$61,200); Park Bldg. Roof Repairs (\$40,423); Pool & swim bldg. improvements (\$76,989); Golf building improvements (\$54,581); Safety upgrades & lighting (\$45,515); Theatre Stage Lighting (\$14,322)	\$3,408,396	Seven Seas Park Development (\$887,071); Park Furniture and Fixtures Replacement (\$83,446); Parking Lot Resurfacing (\$24,896); Tennis Center Rehabilitation (\$221,820); Community Center Comprehensive Infrastructure (\$123,376); Park Building Rehab (\$19,088); Swim Pools Infrastructure (\$31,418) Playground Equipment Replacement (\$131,054);

<sup>ix</sup> Table F.

Table F—Comparable Cities Home Sale Activity and Median Price 2013 From DataQuick News.com					
County/City	As of April 2014	# Sold 2013	2013	2012	% Change Year-to-Year
<b>Santa Clara County</b>		<b>20,700</b>	<b>\$ 645,000</b>	<b>\$ 525,000</b>	<b>22.86%</b>
CAMPBELL	\$ 831,000	554	\$ 701,000	\$ 625,000	12.16%
CUPERTINO	\$ 1,380,000	512	\$ 1,200,000	\$ 1,045,750	14.75%
FREMONT		2,563	\$ 605,000	\$ 475,000	27.37%
GILROY	\$ 581,000	755	\$ 495,000	\$ 415,000	19.28%
MILPITAS	\$ 598,000	800	\$ 580,000	\$ 435,000	33.33%
MORGAN HILL	\$ 1,074,000	738	\$ 625,000	\$ 500,000	25.00%
MOUNTAIN VIEW	\$ 1,174,000	759	\$ 800,000	\$ 769,250	4.00%
PALO ALTO	\$ 2,418,750	670	\$ 1,720,000	\$ 1,495,000	15.05%
SAN JOSE	\$ 691,157	11,050	\$ 570,000	\$ 438,000	30.14%
SANTA CLARA	\$ 673,750	1,214	\$ 635,000	\$ 540,000	17.59%
SUNNYVALE	\$ 743,750	1,326	\$ 767,500	\$ 645,000	18.99%

<sup>x</sup> Depending upon whether the combination of new development is subject to either Quimby or MFA as well as other factors such as the Fair Market Value of land determined by annual survey for each of the 3 ZIP code areas of the City.

# CITY OF SANTA CLARA

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## PARK AND RECREATION FACILITIES DEVELOPMENT IMPACT FEE STUDY

ADMINISTRATIVE DRAFT

MAY 28, 2014



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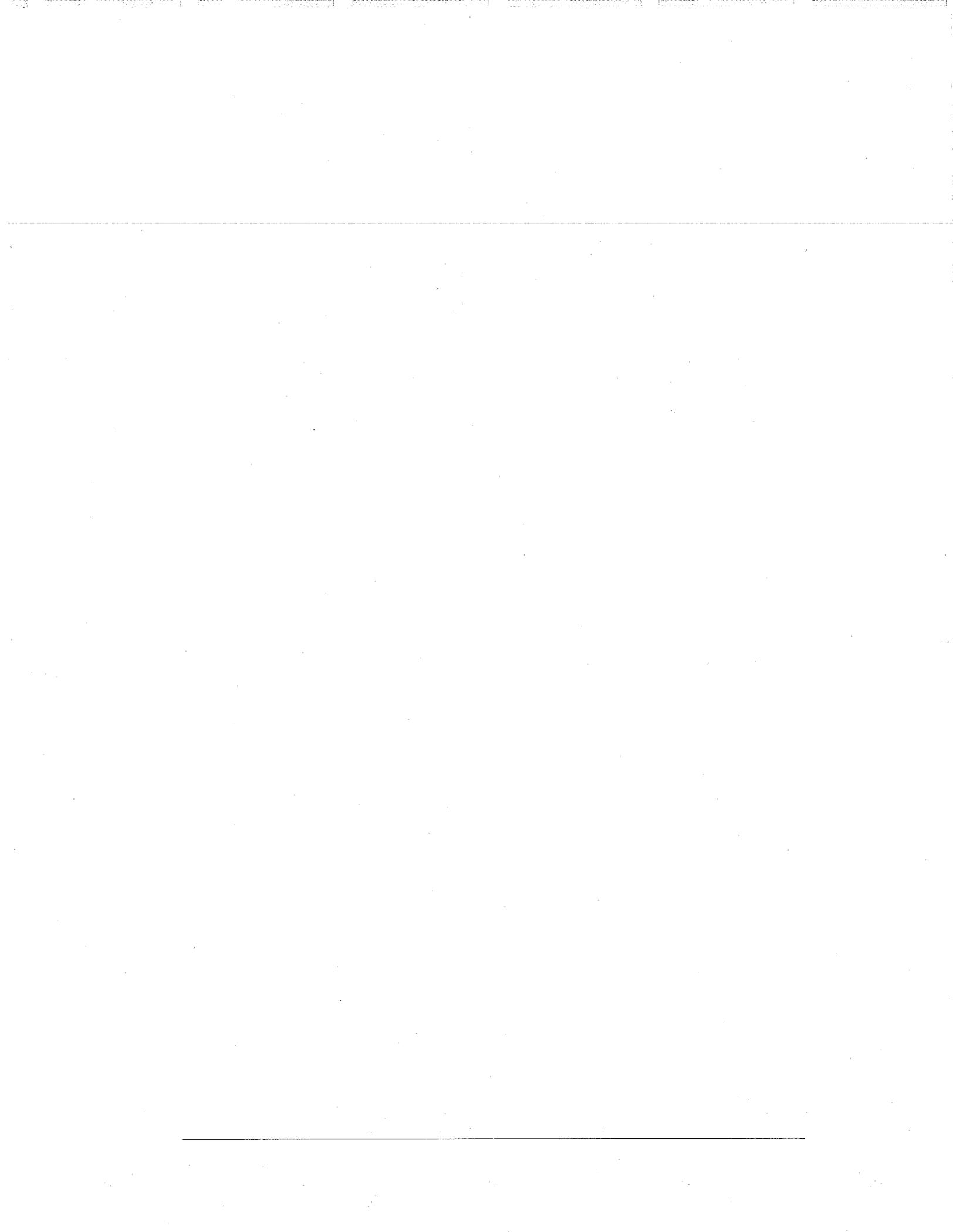
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# 1. Introduction

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This report summarizes an analysis of the need for public facilities and capital improvements to support future development within the City of Santa Clara through 2035. It is the City's intent that the costs representing future development's share of these facilities and improvements be imposed on that development in the form of a development impact fee, also known as a public facilities fee. The public facilities and improvements included in this analysis of the City's public facilities fee program all fall into the parks and recreation facilities category.

## Background and Study Objectives

The primary policy objective of a public facilities fee program is to ensure that new development pays the capital costs associated with growth. To fulfill this objective, public agencies should review and update their fee programs periodically to incorporate the best available information. The primary purpose of this report is to create fees that incorporate current capital facility plans to serve a 2035 service population for the City of Santa Clara.

In 2013, the Santa Clara City Council adopted a strategic objective to develop a draft new housing development impact fee ordinance for parks acquisition and recreation facility development to meet its continued goal of ensuring fiscal responsibility. In May 2013, Willdan Financial Services was selected by the City to conduct a nexus study and to work with the City to engage stakeholders and solicit input on the study and draft ordinance processes.

The City imposes public facilities fees under authority granted by the *Mitigation Fee Act*, contained in *California Government Code* Sections 66000 *et seq.* This report provides the necessary findings required by the *Act* for adoption of the fees presented in the fee schedules contained herein.

Depending on the characteristics of the development project, the City may use the Quimby Act to calculate impact fees. The Quimby Act allows a city to require developers to dedicate at least three acres and up to five acres per 1,000 residents, if the city's existing park standard as of the last Census justifies the higher level.

## Public Facilities Financing In California

The changing fiscal landscape in California during the past 30 years has steadily undercut the financial capacity of local governments to fund infrastructure. Three dominant trends stand out:

- ◆ The passage of a string of tax limitation measures, starting with Proposition 13 in 1978 and continuing through the passage of Proposition 218 in 1996;
- ◆ Declining popular support for bond measures to finance infrastructure for the next generation of residents and businesses; and
- ◆ Steep reductions in federal and state assistance.

Faced with these trends, many cities and counties have had to adopt a policy of "growth pays its own way." This policy shifts the burden of funding infrastructure expansion from existing taxpayers onto new development. This funding shift has been accomplished primarily through the imposition of assessments, special taxes, and development impact fees also known as public facilities fees. Assessments and special taxes require approval of property owners and

are appropriate when the funded facilities are directly related to the developing property. Development fees, on the other hand, are an appropriate funding source for facilities that benefit all development jurisdiction-wide. Development fees need only a majority vote of the legislative body for adoption.

## Organization of the Report

The determination of a public facilities fee begins with the selection of a planning horizon and development of projections for population and employment. These projections are used throughout the analysis of different facility categories, and are summarized in Chapter 2.

Chapter 3 is devoted to documenting the maximum justified public facilities fee for parks and recreation facilities.

Chapter 4 describes the fee implementation process. The five statutory findings required for adoption of the proposed public facilities fees in accordance with the *Mitigation Fee Act* (codified in *California Government Code* Sections 66000 through 66025) are summarized in Chapter 5.

## Facility Standards and Cost Allocation Approach

A facility standard is a policy that indicates the amount of facilities required to accommodate service demand. Examples of facility standards include building square feet per capita and park acres per capita. Standards also may be expressed in monetary terms such as the replacement value of facilities per capita. The adopted facility standard is a critical component in determining development's need for new facilities and the amount of the fee. Standards determine new development's fair share of planned facilities and ensure that new development does not fund deficiencies associated with the existing city infrastructure.

The parks and recreation facilities fees calculated in this report use an existing inventory demand standard translated into facility costs per capita to determine new development's fair share of planned facility costs. A cost standard provides a reasonable method for converting disparate types of facilities, in this case parkland and special use recreational facilities, into a single measure of demand (capital cost per capita). The cost standard is based on the **existing inventory** of parks and recreation facilities. New development would fund the expansion of facilities at the same rate that existing development has provided facilities to date, thus by definition, there is no existing deficiency.

## 2. Land Use Assumptions

---

This chapter describes the projections of growth used in this study. The existing service population in 2010 is used as the base year of the study and the planning horizon is the year 2035. This chapter also describes the sources of the unit costs for land and buildings used in this study.

### Use of Growth Projections for Impact Fees

Estimates of the existing service population and projections of growth are critical assumptions used throughout this report. These estimates are used as follows:

- ◆ Estimates of total development in 2035 are used to determine the total amount of public facilities required to accommodate the future service population.
- ◆ Estimates of existing and new development are used to allocate the fair share of total planned facility costs between existing and new development.

### Land Use Types

To ensure a reasonable relationship between each fee and the type of development paying the fee, growth projections distinguish between different land use types. The land use types used in this analysis are defined below.

- ◆ **Single-family:** Detached and attached one-family dwelling units.
- ◆ **Multi-family:** All attached multi-family dwellings such as duplexes, condominiums, plus mobile homes, apartments, and dormitories.
- ◆ **Accessory Dwelling Unit:** dwelling unit not exceeding 640 square feet in floor area, and which includes a kitchen, one-bedroom sleeping quarters, and a bathroom on a lot with an existing single-family dwelling.

The City should have the discretion to impose the parks and recreation facilities fee based on the specific aspects of a proposed development regardless of zoning. The guideline to use is the probable occupant density of the development. The fee imposed should be based on the land use type that most closely matches the probable occupant density of the development.

### Growth Projections for City of Santa Clara

Park and recreation facilities in Santa Clara primarily serve residents in the City of Santa Clara. Therefore residents comprise the park and recreation facilities service population.

The base year for this study is the year 2010, the date of the most recent federal census. The planning horizon is 2035. Resident growth between 2010 and 2035 comprises the growth increment in this analysis. The Santa Clara General Plan identified total projected residents in 2035.

**Table 1** shows estimates of the growth in terms of residents between 2010 and 2035.

**Table 1: Parks Service Population**

	Residents
Existing (2010)	116,468
Growth (2010 - 2035)	<u>38,332</u>
<b>Total (2035)</b>	<b>154,800</b>

Note: Figures rounded to the hundreds.

Sources: US Census, 2010; Santa Clara General Plan.

## Occupant Densities

Occupant densities ensure a reasonable relationship between the increase in service population and amount of the fee. Developers pay the fee based on the number of additional housing units for residential development. The fee schedule must convert service population estimates into these measures of housing units. This conversion is done with average occupant density factors by land use type, shown in **Table 2**. The residential occupant density factors for both the various types of dwelling units were derived from the most recently available data from US Census' American Community Survey.

**Table 2: Occupant Density**

<i>Residential</i>	
Single Family	2.90 Residents Per Dwelling Unit
Multi-family and Accessory Dwelling Units	2.24 Residents Per Dwelling Unit

Sources: U.S. Census Bureau, 2010-2012 American Community Survey, Tables B25024 and B25033.

# 3. Parks & Recreation Facilities

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The following chapter documents the nexus analysis, demonstrating the need for new park and recreation facilities demanded by new development. This analysis documents two separate fees based on the *Quimby Act* and the *Mitigation Fee Act*. The City would collect the fee based a standard of 3.0 acres per 1,000 residents if the development was subject to the *Quimby Act* land dedication requirement. For all other development, the City would collect based on the existing standard through the *Mitigation Fee Act*. The City would only collect one of the two fees depending on which was appropriate.

## Existing Park and Recreation Facilities Inventory

The City of Santa Clara maintains several park and recreation facilities throughout the city. **Table 3** summarizes the City's existing parkland inventory in 2010, the year of the last census. All facilities are located within the City limits. Additionally, a list of other park facilities not included in this inventory (cemeteries and historic properties) are included in **Appendix Table A.4** for informational purposes only.

**Table 3: Park Land Inventory**

	Developed Acreage	Unimproved /Open Space
<i><u>Community Parks</u></i>		
Central Park	45.04	-
Subtotal Community Parks	45.04	-
<i><u>Mini/Pocket Parks</u></i>		
Geof Goodfellow Sesquicentennial Park	0.18	-
Memorial Cross Park	0.34	-
Mid Town Park (BAREC)	-	1.00
Rotary Park	0.20	-
War Memorial Playground	0.87	-
Subtotal Mini/Pocket Parks	1.59	1.00
<i><u>Neighborhood Parks</u></i>		
Agnew Park	1.97	-
Bowers Park	8.50	-
Bracher Park	3.45	-
City Plaza Park	1.60	-
Earl R. Carmichael Park	8.32	-
Everett Alvarez Jr. Park	1.61	-
Fairway Glen Park	4.00	-
Former Kaiser Hospital Site	-	2.30
Fremont Park	4.31	-
Fuller Street Park	2.39	-
Henry Schmidt Park	7.50	-
Homeridge Park	4.28	-
Jenny Strand Park	9.69	-
Larry J. Marsalli Park	7.19	-
Lick Mill Park	11.77	-
Live Oak Park	9.98	-
Machado Park	2.65	-
Mary Gomez Park	5.64	-
Maywood Park	6.98	-
Montague Park	5.65	-
Parkway Park	4.49	-
Steve Carli Park	1.60	-
Thamien Park	3.40	-
Warburton Park & Pool	3.95	-
Westwood Oaks Park	1.75	-
Subtotal Neighborhood Parks	122.67	2.30

**Table 3: Park Land Inventory (Continued)**

	Developed Acreage	Unimproved /Open Space
<i>Public Open Space</i>		
Agnews Historic Park, Mansion & Auditorium	14.50	-
Civic Center Park	1.63	-
Ulistac Natural Area	-	40.08
Subtotal Public Open Space	16.13	40.08
<i>Recreation Facilities</i>		
Reed Street Dog Park	1.72	-
Santa Clara Senior Center	2.14	-
Santa Clara Youth Soccer Park	11.00	-
Subtotal Recreation Facilities	14.86	-
<i>Recreational Trails</i>		
	3.72	3.87
<i>Joint Use Facilities</i>		
Mission College Sports Complex	19.40	-
Elmer Johnson Field	5.10	-
Mission City Center for the Performing Arts	-	-
Montague Swim Center	2.50	-
Townsend Field	5.00	-
Washington Park Baseball Field	8.20	-
Steve Carli Park Sports Field	3.92	-
Skate Park	0.90	-
Teen Center	1.00	-
Walter E. Schmidt Youth Activity Center	1.50	-
Subtotal Joint Use Facilities	47.52	-
<b>Grand Total</b>	<b>251.53</b>	<b>47.25</b>

Sources: City of Santa Clara; Willdan Financial Services.

## Improved Parkland Equivalent

Before calculating the existing standards, unimproved parkland owned by the City must be converted to an equivalent amount of improved parkland. **Table 4** details this conversion. The conversion is based on the ratio of the cost of an improved acre of land relative to an acre of unimproved parkland. The City of Santa Clara Parks and Recreation Department provided the estimate of the value of unimproved park land. The estimate of the value of improved parkland is developed below in Table 6.

**Table 4: Improved Parkland Equivalent**

Type	Cost per Acre	Acres	Total
Unimproved Parkland <sup>1</sup>	\$ 3,658,000		
Improved Parkland	<u>3,977,000</u>		
Unimproved Parkland Land Costs as a Relative Percentage of Parkland Costs		92%	
Unimproved Parkland		47.25	
	x	<u>0.92</u>	
Equivalent Improved Acres			43.47

Note: Figures have been rounded.

<sup>1</sup> Value of unimproved parkland provided by City of Santa Clara Parks and Recreation.

Sources: City of Santa Clara Parks and Recreation Department; Tables 3, 6 and A.3, Willdan Financial Services.

## Park Facility Standards

Park facility standards establish a reasonable relationship between new development and the need for expanded park facilities. Information regarding the City's existing inventory of existing parks facilities was obtained from City staff.

The most common measure in calculating new development's demand for parks is the ratio of park acres per resident. In general, facility standards may be based on the Mitigation Fee Act (using a city's existing inventory of park facilities), or an adopted policy standard contained in a master facility plan or general plan. Facility standards may also be based on a land dedication standard established by the Quimby Act.<sup>1</sup>

### MITIGATION FEE ACT

The Mitigation Fee Act does not dictate use of a particular type or level of facility standard for public facilities fees. To comply with the findings required under the law, facility standards must not burden new development with any cost associated with facility deficiencies attributable to existing development.<sup>2</sup> A simple and clearly defensible approach to calculating a facility standard is to use the city's existing ratio of park acreage per 1,000 residents. Under this approach, new development is required to fund new park facilities at the same level as existing residents have provided those same types of facilities to date.

### QUIMBY ACT

The Quimby Act does specify facility standards to use for parkland dedication. The Act only includes dedication of parkland and does not require construction of park improvements. The Act specifies that the dedication requirement must be a minimum of 3.0 acres and a maximum of 5.0 acres per 1,000 residents. Funds collected through the Quimby ordinance

<sup>1</sup> California Government Code §66477.

<sup>2</sup> See the *benefit and burden* findings in Chapter 11, *Mitigation Fee Act Findings*.

can only be used for purchasing land to create neighborhood and community parks, not open space. The city can require residential developers to dedicate above the three-acre minimum if the city's existing park standard as of the last Census justifies the higher level (up to five acres per 1,000 residents). The standard used must also conform to the City's adopted general or specific plan standards.

The Quimby Act only applies to land subdivisions. A city cannot apply the Quimby Act to development on land subdivided prior to adoption of a Quimby ordinance, such as development on infill lots. The Quimby Act also would not apply to residential development on future approved projects on single parcels, such as many types of multi-family development.

The Quimby Act allows payment of a fee in lieu of land dedication. The fee is calculated to fund acquisition of the same amount of land that would have been dedicated. The fee does not include the cost of park improvements because the land dedication requirement does not include improvements.

The Quimby Act allows use of in-lieu fee revenue for any park or recreation facility purpose. Allowable uses of revenue include land acquisition, park improvements including recreation facilities, and rehabilitation of existing park and recreation facilities.

### ***CITY OF SANTA CLARA PARK FACILITIES STANDARDS***

To calculate new development's need for new parks, municipalities commonly use a ratio expressed in terms of developed park acres per 1,000 residents. **Table 5** shows the existing standard for improved park acreage per 1,000 residents and documents the City's standard as of the last Census for the Quimby Act standard.

**Table 5: Existing Level of Service**

	Mitigation Fee Act Standard	Quimby Act Standard
Improved Park Acreage	251.53	N/A
Unimproved Park Acreage Equivalent	43.47	N/A
Total - Park Acres	295.00	N/A
Service Population (Residents)	116,468	N/A
Level of Service Standard (Acres per 1,000 Residents)	2.53	3.00

Sources: Tables 1, 3 and 4; Willdan Financial Services.

## Parkland Unit Costs

**Table 6** shows the estimated cost per acre for developing parkland, including land acquisition, special use facilities and the vehicles and equipment needed to serve those facilities. The land value of \$3.6 million per acre was developed based on recent land transactions within the City limits, and is detailed in **Appendix Table A.3**.

The value of special use facilities, vehicles and equipment (detailed in **Appendix Tables A.1 and A.2**, respectively), is allocated across all parkland and added to the cost of land acquisition per acre to determine the total cost to develop an acre of parkland in the City.

**Table 6: Parkland Unit Costs**

Item	Total Value	Cost Per Acre
Improvements and Special Use Facilities ( <i>Appendix Table A.1</i> )	\$ 78,100,633	
Vehicles and Equipment ( <i>Appendix Table A.2</i> )	2,198,000	
Total - Special Use Facilities, Vehicles, Equipment	\$ 80,298,633	
Improved Park Acres	251.53	
Improvements and Special Use Facilities Cost per Acre		\$ 319,000
Land Acquisition ( <i>Appendix Table A.3</i> )		\$ 3,658,000
Total Special Use Facilities, Park Acquisition and Development Cost per Acre		\$ 3,977,000

Note: Figures have been rounded to the nearest thousand.

Sources: Table 2, and Appendix Tables A.1, A.2 and A.3; City of Santa Clara; Willdan Financial Services.

## Facilities Needed to Accommodate New Development

Table 7 shows the park facilities needed to accommodate new development at the existing standard. To achieve the standard by the planning horizon, depending on the amount of development subject to the Quimby Act, new development must fund the purchase and improvement of between 96.98 and 115 parkland acres, at a total cost ranging between \$386 and \$452 million.

The facility standards and resulting fees under the Quimby Act are higher, because development will be charged to provide 3.0 acres of parkland per 1,000 residents, and 2.53 acres of improvements, whereas development not subject to the Quimby Act will be charged to provide only 2.53 acres of parkland per 1,000 residents, and 2.53 acres of improvements. Since the exact amount of development that will be subject to the Quimby fees is unknown at this time, Table 7 presents the range of total facility costs that may be incurred depending on the amount of development subject to the Quimby Act.

**Table 7: Park Facilities to Accommodate New Development**

	Calculation	Parkland	Improvements	Total Range <sup>1</sup>
<i>Parkland (Quimby Act), Improvements (Mitigation Fee Act)<sup>2</sup></i>				
Facility Standard (acres/1,000 residents)	A	3.00	2.53	
Resident Growth (2010-2035)	B	38,332	38,332	
Facility Needs (acres)	$C = (B / 1,000) \times A$	115.00	96.98	
Average Unit Cost (per acre)	D	\$ 3,658,000	319,000	
Total Cost of Parkland To Serve New Development	$E = C \times D$	\$ 420,670,000	\$ 30,936,620	\$ 451,606,620
<i>Parkland and Improvements - Mitigation Fee Act<sup>3</sup></i>				
Facility Standard (acres/1,000 residents)	F	2.53	2.53	
Resident Growth (2010-2035)	G	38,332	38,332	
Facility Needs (acres)	$H = (G / 1,000) / F$	96.98	96.98	
Average Unit Cost (per acre)	D	\$ 3,658,000	319,000	
Total Cost of Parkland To Serve New Development	$I = H \times D$	\$ 354,752,840	\$ 30,936,620	\$ 385,689,460

Note: Totals rounded to the thousands.

<sup>1</sup> Values in this column show the range of the cost of parkland acquisition and development should all development be either subject to the Quimby Act, or to the Mitigation Fee Act, respectively.

<sup>2</sup> Cost of parkland to serve new development shown if all development is subject to the Quimby Act (Subdivisions of 50 units or more). Parkland charged at 3.0 acres per 1,000 residents; improvements charged at the existing standard.

<sup>3</sup> Cost of parkland to serve new development shown if all development is subject to the Mitigation Fee Act. Parkland and improvements are charged at the existing standard.

Sources: Tables 1, 5, and 6; City of Santa Clara.

## Parks Cost per Capita

Table 8 shows the cost per capita of providing new park facilities at the existing facility standard. The cost per capita is shown separately for land and improvements.

**Table 8: Cost per Capita - Existing Level of Service**

	Calculation	Land		Improvements
		Quimby Fee	Impact Fee	Impact Fee
Parkland Investment (per acre)	A	\$ 3,658,000	\$ 3,658,000	\$ 319,000
Existing Level of Service (acres per 1,000 residents)	B	3.00	2.53	2.53
Total Cost Per 1,000 capita	$C = A \times B$	\$ 10,974,000	\$ 9,254,700	\$ 807,100
Cost Per Resident	$D = C / 1,000$	\$ 10,974	\$ 9,255	\$ 807

Sources: Tables 6 and 7; Willdan Financial Services.

## Use of Fee Revenue

The City plans to use park facilities fee revenue to purchase parkland or construct improvements to add to the system of park and recreation facilities that serves new development. The City may only use impact fee revenue to provide facilities and intensify usage of existing facilities needed to serve new development. Depending on the amount of

development subject to the Quimby Act, new development must fund the purchase and improvement of between 96.98 and 115 parkland acres through the planning horizon of 2035.

## Fee Schedule

In order to calculate fees by land use type, the investment in park facilities is determined on a per resident basis for both land acquisition and improvement. These investment factors (shown in Table 8) are investment per capita based on the unit cost estimates and facility standards.

The City anticipates that the park fees would be the primary revenue source to fund new development's investment in park facilities. **Tables 9.a and 9.b** show the park facilities fee based on the minimum Quimby standard and the existing standard, respectively. The City would collect the fee based on only one of the two approaches as appropriate. Each fee includes a component for park improvements based on the City's existing standard. The investment per capita is converted to a fee per dwelling unit.

The total fee includes an administrative charge to fund costs that include: (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

**Table 9.a: Park Facilities Fee Schedule - Quimby Act**

Land Use	A	B	C = A x B	D = C x 0.02	E = C + D
	Cost Per Capita	Density	Base Fee <sup>1</sup>	Admin Charge <sup>1, 2</sup>	Total Fee <sup>1</sup>
<i>Single Family</i>					
Parkland	\$ 10,974	2.90	\$ 31,825	\$ 637	\$ 32,462
Improvements	807	2.90	2,340	47	2,387
Total	\$ 11,781		\$ 34,165		\$ 34,849
<i>Multifamily Family</i>					
Parkland	\$ 10,974	2.24	\$ 24,582	\$ 492	\$ 25,074
Improvements	807	2.24	1,808	36	1,844
Total	\$ 11,781		\$ 26,390		\$ 26,918

<sup>1</sup> Persons per dwelling unit or per 1,000 square feet of nonresidential.

<sup>2</sup> Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

Sources: Tables 2 and 8; Willdan Financial Services.

**Table 9.b: Park Facilities Fee Schedule - Mitigation Fee Act**

Land Use	A	B	C = A x B	D = C x 0.02	E = C + D
	Cost Per Capita	Density	Base Fee <sup>1</sup>	Admin Charge <sup>1, 2</sup>	Total Fee <sup>1</sup>
<i>Single Family</i>					
Parkland	\$ 9,255	2.90	\$ 26,840	\$ 537	\$ 27,377
Improvements	807	2.90	2,340	47	2,387
Total	\$ 10,062		\$ 29,180		\$ 29,764
<i>Multifamily Family</i>					
Parkland	\$ 9,255	2.24	\$ 20,731	\$ 415	\$ 21,146
Improvements	807	2.24	1,808	36	1,844
Total	\$ 10,062		\$ 22,539		\$ 22,990

<sup>1</sup> Persons per dwelling unit or per 1,000 square feet of nonresidential.

<sup>2</sup> Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

Sources: Tables 2 and 8; Willdan Financial Services.

# 4. Implementation

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## Impact Fee Program Adoption Process

Impact fee program adoption procedures are found in the *California Government Code Section 66016*. Adoption of an impact fee program requires the City Council to follow certain procedures including holding a public meeting. A fourteen-day mailed public notice is required for those registering for such notification. Data, such as an impact fee report, must be made available at least 10 days prior to the public meeting. Your legal counsel should inform you of any other procedural requirements as well as advice regarding adoption of an enabling ordinance and/or a resolution. After adoption there is a mandatory 60-day waiting period before the fees go into effect. This procedure must also be followed for fee increases.

## Inflation Adjustment

Appropriate inflation indexes should be identified in a fee ordinance including an automatic adjustment to the fee annually. Separate indexes for land and construction costs should be used. Calculating the land cost index may require the periodic use of a property appraiser. The construction cost index can be based on the City's recent capital project experience or can be taken from any reputable source, such as the *Engineering News-Record*. To calculate prospective fee increases, each index should be weighed against its share of total planned facility costs represented by land or construction, as appropriate.

## Reporting Requirements

The City should comply with the annual and five-year reporting requirements of the *Act*. For facilities to be funded by a combination of public fees and other revenues, identification of the source and amount of these non-fee revenues is essential. Identification of the timing of receipt of other revenues to fund the facilities is also important.

## Fee Accounting

The City should deposit fee revenues into separate restricted fee accounts for each of the fee categories identified in this report. Fees collected for a given facility category should only be expended on new facilities of that same category.

## Programming Revenues and Projects with the CIP

The City should commit all projected fee revenues and fund balances to specific projects in its Capital Improvements Program. These should represent the types of facilities needed to serve growth and described in this report. The use of the CIP in this manner documents a reasonable relationship between new development and the use of those revenues. The CIP also provides the documentation necessary for the City to hold funds in a project account for longer than five years if necessary to collect sufficient monies to complete a project.

The City may decide to alter the scope of the planned projects or to substitute new projects as long as those new projects continue to represent an expansion of the City's facilities. If the total cost of facilities varies from the total cost used as a basis for the fees, the City should consider revising the fees accordingly.

## 5. Mitigation Fee Act Findings

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Fees are assessed and typically paid when a building permit is issued and imposed on new development projects by local agencies responsible for regulating land use (cities and counties). To guide the imposition of facilities fees, the California State Legislature adopted the *Mitigation Fee Act* with Assembly Bill 1600 in 1987 and subsequent amendments. The Act, contained in *California Government Code* §§66000 – 66025, establishes requirements on local agencies for the imposition and administration of fees. The Act requires local agencies to document five statutory findings when adopting fees.

The five findings in the Act required for adoption of the maximum justified fees documented in this report are: 1) Purpose of fee, 2) Use of fee Revenues, 3) Benefit Relationship, 4) Burden Relationship, and 5) Proportionality. They are each discussed below and are supported throughout this report.

### Purpose of Fee

- ◆ *Identify the purpose of the fee (§66001(a)(1) of the Act).*

We understand that it is the policy of the City that new development will not burden the existing service population with the cost of facilities required to accommodate growth. Council Goal 2013-14 states that as a strategic objective, the City would “Develop a new Housing Development Impact fee for parks acquisition and facility development.” The purpose of the fees proposed by this report is to implement this policy by providing a funding source from new development for capital improvements to serve that development. The fees advance a legitimate City interest by enabling the City to provide parks and recreational facilities to new development.

### Use of Fee Revenues

- ◆ *Identify the use to which the fees will be put. If the use is financing facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in §65403 or §66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the facilities for which the fees are charged (§66001(a)(2) of the Act).*

Fees proposed in this report, if enacted by the City, would be available to fund expanded facilities to serve new development. Facilities funded by these fees are designated to be located within the City. Fees addressed in this report have been identified by the City to be restricted to funding parks and recreation facilities.

An estimate of the amount of parkland needed to serve new development is identified in Chapter 3 of this report. More thorough descriptions of certain planned facilities, including their specific location, if known at this time, are included in master plans, capital improvement plans, or other City planning documents or are available from City staff. The City may change the list of planned facilities to meet changing needs and circumstances of new development, as it deems necessary. The fees should be updated if these amendments result in a significant change in the fair share cost allocated to new development.

## Benefit Relationship

- ◆ *Determine the reasonable relationship between the fees' use and the type of development project on which the fees are imposed (§66001(a)(3) of the Act).*

We expect that the City will restrict fee revenue to the acquisition of land, construction of facilities and buildings, and purchase of related equipment, furnishings, vehicles, and services used to serve new development as described above under the "Use of Fee Revenues" finding. The City should keep fees in segregated accounts. Facilities funded by the fees are expected to provide a citywide network of facilities accessible to the additional residents and workers associated with new development. Under the Act, fees are not intended to fund planned facilities needed to correct existing deficiencies. Thus, a reasonable relationship can be shown between the use of fee revenue and the new development residential and non-residential use classifications that will pay the fees.

## Burden Relationship

- ◆ *Determine the reasonable relationship between the need for the public facilities and the types of development on which the fees are imposed (§66001(a)(4) of the Act).*

Facilities need is based on a facility standard that represents the demand generated by new development for those facilities. Facilities demand is determined as follows:

The service population is established based upon the number of residents living in Santa Clara. Service population correlates to the demand for parks and recreation facilities.

For parks and recreational facilities, demand is measured by a single facility standard (park acres per 1,000 service population) that can be applied across land use types to ensure a reasonable relationship to the type of development.

The standards used to identify growth needs are also used to determine if planned facilities will partially serve the existing service population by correcting existing deficiencies. This approach ensures that new development will only be responsible for its fair share of planned facilities, and that the fees will not unfairly burden new development with the cost of facilities associated with serving the existing service population.

Chapter 2, *Land Use Assumptions* provides a description of how service population and growth projections are calculated. Facility standards are described in the *Facility Inventories, Plans & Standards* sections of in Chapter 3.

## Proportionality

- ◆ *Determine how there is a reasonable relationship between the fees amount and the cost of the facilities or portion of the facilities attributable to the development on which the fee is imposed (§66001(b) of the Act).*

The reasonable relationship between each facilities fee for a specific new development project and the cost of the facilities attributable to that project is based on the estimated service population growth the project will accommodate. Fees for a specific project are based on the project's size or increases in the number of dwelling units. Larger new development projects can result in a higher service population, resulting in higher fee revenue than smaller

projects in the same land use classification. Thus, the fees can ensure a reasonable relationship between a specific new development project and the cost of the facilities attributable to that project.

See *Chapter 2, Growth Projections*, or the *Service Population* section for a description of how service population or dwelling units adjustment factors are determined for different types of land uses. See the *Fee Schedule* section of *Chapter 3* for a presentation of the proposed facilities fees.

# Appendix

**Appendix Table A.1: Park Improvements and Equipment Inventory**

Name	Description	Building Square Feet	Total Facility Value
<i>Community Parks</i>			
Central Park Tennis Center	Pro Shop, restrooms and bleachers	2,502	\$ 858,288
Central Park - Service Center Shop/Garage	Computers networked w. 6 computers	3,744	1,671,841
Central Park - Service Center Sheds	Sheds	380	35,757
Central Park - Service Center Shop/Garage	Shop/Garage	3,492	616,578
Central Park Ballfield/Scorers' booth(s)	Bleachers, PA system, scoreboard and lights	5,045	107,065
Subtotal Community Parks		15,163	3,289,529
		30,326	\$ 3,289,529
<i>Mini/Pocket Parks</i>			
War Memorial Playground	Restrooms, storage shed and Pixar themed outdoor play equip.	5,000	\$ 172,474
Subtotal Mini/Pocket Parks		5,000	\$ 172,474
<i>Cemetaries</i>			
Agnews Historic Cemetery	Museum building, restrooms, contains Historical collection	600	\$ 129,818
Mission City Memorial Park - All Buildings	Office, Chapel	10,056	1,525,971
Subtotal Public Open Space		10,656	\$ 1,655,789

Sources: City of Santa Clara Parks and Recreation Department; City of Santa Clara PEPIP-CA Property Schedule, January 17, 2014; Willdan Financial Services.

**Table A.1: Park Improvements and Equipment Inventory (Continued)**

Name	Description	Building Square Feet	Total Facility Value
<i>Neighborhood Parks</i>			
Agnew Park	Recreation Building, Restrooms, Storage Shed and Outdoor Play Equip.	1,708	\$ 257,890
Bowers Park	Park Building, Restrooms, Storage Shed and Outdoor Play Equipment	1,680	367,949
Bracher Park	Restrooms, Storage Shed and Outdoor Play Equipment	520	273,101
City Plaza Park Gazebo	Gazebo	1,000	162,062
City Plaza Park	Mission Library	8,507	
Earl R. Carmichael Park, Gymnastics Ctr.	Sports Center, Shed, Restrooms, Indoor Gymnastics equipment; Equip.	3,626	432,007
Everett Alvarez Jr. Park	Restrooms, Storage Shed and Outdoor Play Equipment	500	176,368
Fuller Street Park	Restrooms, Storage Shed and Outdoor Play Equipment	500	74,409
Henry Schmidt Park	Recreation Building - Historical collection, Restrooms, Storage; Equipment	2,622	459,381
Homeridge Park	Restrooms, Storage Shed and Outdoor Play Equipment	480	183,197
Jenny Strand Park	Restrooms, Storage Shed and Outdoor Play Equipment	202	120,970
Larry J. Marsalli Park	Scorer's Booth, PA System, Restroom and Storage	530	144,980
Lick Mill Park	Recreation Building w/ kitchen, Storage, Restrooms, Equipment	3,700	889,577
Live Oak Park	Restrooms and storage building, Outdoor Play Equipment	1,500	237,321
Machado Park	Recreation Building, Restrooms, Storage Shed and Outdoor Play Equipment	1,680	322,144
Mary Gomez Park - Includes Pool	Pool locker rooms, restrooms and office; Outdoor Play Equipment	3,148	2,040,040
Maywood Park	Recreation Building, Restrooms, Storage Shed and Outdoor Play Equipment	1,680	324,043
Montague Park - Includes Pool and Buildings	Recreation Building, Storage shed and restrooms, Outdoor Play Equipment	6,350	1,856,355
Parkway Park	Restrooms and Storage building; Outdoor Play Equipment	874	436,265
Steve Carli Park	Restrooms, Outdoor Play Equipment	256	65,023
Thamien Park	Restrooms, Outdoor Play Equipment	500	198,312
Warburton Park - Includes Pool	Restrooms, Outdoor Play Equipment	-	1,061,964
Westwood Oaks Park	Recreation Building, Restrooms, Shed and Outdoor Play Equip.	1,680	340,680
Subtotal Neighborhood Parks		43,243	\$ 10,424,038

Sources: City of Santa Clara Parks and Recreation Department; City of Santa Clara PEP-CA Property Schedule, January 17, 2014; Willdan Financial Services.

**Table 6: Park Improvements and Equipment Inventory (Continued)**

Name	Description	Building Square Feet	Total Facility Value
<i>Recreation Facilities</i>			
Central Park - Community Rec Center	Sound and stage equip.; kitchen; alarm systems, 15 computers	29,630	\$ 15,070,384
George F. Haines International Swim Center	Swim Center Building	8,776	3,734,920
George F. Haines International Swim Center	Swim Center Grandstand	3,700	1,504,783
George F. Haines International Swim Center	Diving Pool Grandstand	400	53,146
George F. Haines International Swim Center	Snackbar/restroom #1	743	141,428
George F. Haines International Swim Center	Snackbar/restroom #2	743	137,655
George F. Haines International Swim Center	Chlorine Storage	60	103,855
George F. Haines International Swim Center	Diving Tower	25	154,437
George F. Haines International Swim Center	Training Pool	3,190	271,541
George F. Haines International Swim Center	Racing Pool	12,996	1,715,980
George F. Haines International Swim Center	Diving Pool Building #10	4,560	650,564
George F. Haines International Swim Center	Warehouse #1	960	222,196
George F. Haines International Swim Center	Warehouse #2	2,300	410,979
George F. Haines International Swim Center	Equipment Shed	900	156,929
Santa Clara Golf and Tennis Club	Restroom	430	148,698
Santa Clara Golf and Tennis Club	Restroom	430	148,698
Santa Clara Golf and Tennis Club	Cart Storage Building	4,572	1,599,527
Santa Clara Golf and Tennis Club	Golf Course Maintenance building	6,000	1,723,434
Santa Clara Golf and Tennis Club	Pro Shop	9,700	9,582,832
Santa Clara Senior Center	Kitchen, alarm, Guard Card Reg. sys., fitness equipment; 35 computers	44,710	14,894,873
Santa Clara Youth Soccer Park	Full Concession kitchen, Offices, Meeting rooms, restrooms	5,855	687,057
Skate Park	Skate Park and Restrooms	432	141,179
Teen Center	Kitchen; 7 computers; 11 stand alones (in lab); 2 laptops	8,750	3,558,506
Walter E. Schmidt Youth Activity Center	Security alarm system; Guard Card Reg. System; 17 Computers	19,746	5,572,728
Subtotal		182,711	\$ 62,386,329
<b>Grand Total - Park Improvements and Recreation Facilities</b>		<b>307,262</b>	<b>\$ 78,100,633</b>

Sources: City of Santa Clara Parks and Recreation Department; City of Santa Clara PEPIC-CA Property Schedule, January 17, 2014; Willdan Financial Services.

**Table A.2: Parks and Recreation Department  
Vehicle and Equipment Inventory**

Vehicle	Year	Make	Model	Estimated Replacement Cost
51	1988	Jacobsen	Hyd Drp Tr	\$ 8,112
1376	1989	John Deere	Grdn Tract	7,482
1432	1989	Ditchwitch	2310	32,686
1433	1989	Ditchwitch	S5A	3,936
1436	1989	John Deere	270	7,055
1549	1990	Stow	T3000	-
1585	1990	Ariens	Rt8020	2,763
1656	1991	Generac	Sd060	-
1705	1991	Jacobsen	H6125	9,116
1767	1992	Stihl	Bt-308	3,022
1776	1992	Ford	Super Duty	-
1802	1992	Nac-Robin	Np-2T	1,614
1803	1992	Nac-Robin	Np-2T	1,614
1908	1994	Ditchwitch	1020K	8,298
1909	1994	Jacobsen	H-683	7,117
1951	1994	Beughling	B100	16,775
2020	1995	Sase	Grinder	-
2038	1995	Ford	F350	-
2091	1995	Lily	Wfr	-
2092	1995	Sdi	200-20Ke8M	15,589
2138	1996	Ford	F250	34,278
2139	1996	Ford	F250	34,278
2156	1996	Mightymac	Ps350T-10	2,471
2252	1997	Honda	Hrc216K	-
2292	1997	Ford	F250	33,914
2295	1998	Case	570L/Mxt	60,147
2297	1996	Jacobsen	Gk526	10,940
2298	1998	Ryan	544874B	-
2299	1998	Mightymac	Ps350T-10	2,493
2300	1998	Honda	Em2500Xk1A	-
2380	1999	Billygoat	Bc2401A	2,933
2381	1999	Wacker	Wp1550Aw	2,376
2389	1998	I/R	P175Wjd	16,797
2417	1999	Chetech	28-006-A	13,038
2425	2001	Dodge	Br2500 Hd	29,933
2426	2001	Dodge	Br2500 Hd	29,933
2436	2001	Dodge	Br3500	34,209
2437	2001	Dodge	Br3500	34,209
2438	2001	Dodge	Br3500 Hd	34,232
2444	2001	Dodge	Br2500 Hd	29,060
2473	2000	Wacker	Bs500	3,786
2477	2001	Genie	Tmz34	-
2492	2001	Jacobsen	Hr-9016	105,662
2493	2001	Jacobsen	Hr-9016	105,662
2496	2001	Bcs	850-30	4,461

Source: Santa Clara Parks and Recreation.

**Table A.2: Parks and Recreation Department  
Vehicle and Equipment Inventory**

Vehicle	Year	Make	Model	Estimated Replacement Cost
2499	2001	Honda	Em3500	2,319
2515	2001	Dodge	Ram 3500	26,806
2537	2001	Dodge	B3500	24,834
2540	2001	Dodge	Br2500	30,421
2541	2001	Dodge	Br2500	30,421
2542	2001	Dodge	Br2500	30,421
2546	2001	Stone	65Cmed	3,712
2583	2002	Turco	F15B	9,027
2584	2002	Ryan	544944	4,780
2585	2002	Bluebird	Bc18	4,003
2586	2002	Ryan	Lwnaire28	7,521
2587	2002	Bluebird	P18	2,262
2588	2002	Bluebird	P18	2,262
2589	2002	John Deere	220A	8,529
2592	2002	Ford	Ranger	19,021
2593	2002	Ford	Ranger	19,021
2594	2002	Ford	Ranger	19,021
2595	2002	Ford	Ranger	19,021
2596	2002	Ford	Ranger	20,374
2597	2002	Ford	Ranger	19,021
2599	2002	Case	570L/Mxt	62,032
2635	2002	Tennant	Sweeper	52,474
2641	2002	John Deere	Pro Gator	27,919
2642	2002	John Deere	Pro Gator	27,919
2643	2002	John Deere	Pro Gator	27,919
2644	2002	John Deere	Pro Gator	27,919
2645	2002	John Deere	Pro Gator	27,933
2648	2002	Bobcat Ir	553-F	25,423
2683	2003	Toro	228-D	7,633
2695	2003	Nissan Indust.	Forklift	35,429
2696	2003	Smithco	Sweepstar 50	10,545
2697	2003	New Rider	1000	34,603
2698	2004	John Deere	4610	21,922
2734	2005	Ford	Ranger	21,922
2735	2005	Ford	Ranger	21,922
2736	2005	Ford	Ranger	21,922
2737	2005	Ford	Ranger	21,922
2738	2005	Ford	Ranger	21,922
2739	2005	Ford	Ranger	21,922
2740	2005	Ford	Ranger	13,298
2812	2006	Selma	H6125	13,298
2813	2006	Jacobsen	H6125	33,858
2814	2006	Jacobsen	Utility	33,858
2820	2007	Ford	F350	72,906
2871	2007	Ford	E350	24,008

Source: Santa Clara Parks and Recreation.

**Table A.2: Parks and Recreation Department  
Vehicle and Equipment Inventory**

Vehicle	Year	Make	Model	Estimated Replacement Cost
2865	2008	Ford	Ranger	29,934
2956	2009	Ford	Ranger	25,871
2957	2010	Ford	Ranger	25,871
2958	2009	Ford	Ranger	25,871
2959	2009	Ford	Ranger	25,871
2960	2009	Ford	Ranger	25,871
2961	2009	Ford	Ranger	25,871
2962	2009	Ford	Ranger	25,871
2963	2009	Ford	Ranger	25,871
2964	2009	Ford	Ranger	25,871
2965	2009	Ford	Ranger	25,871
2966	2009	Ford	Ranger	25,871
2955	2009	Ford	Ranger	28,078
21904	2001	Genie	Awp	-
799	1978	Christy	1020Hf	10,797
1992	1994	Dayton	5Z591	1,607
2111	1996	Case	1825	22,157
2235	1997	Toro	Wrkman4300	45,267
2236	1997	Steelco	Utility	7,086
2419	1999	Whiteman	Wc92Ph8	3,457
				\$ 2,198,000

Note: Total rounded to the 1,000s.

Source: Santa Clara Parks and Recreation.

Appendix Table A.3: Land Valuation

APN	Description	Sale / Transfer /		Value	Cost per acre
		Appraisal Date	Acres		
290-26-041	Kaiser Property Park Parcel	9/9/2008	1.92	\$ 7,516,095	\$ 3,914,633
290-26-022	900 Kiely Blvd. (Northwest Parcel)	1/30/2014	3.02	12,365,991	4,094,699
303-17-051	BAREC/Midtown Park Parcel	12/23/2011	1	1,930,000	1,930,000
303-17-053	BAREC land/Midtown Housing in development		11	34,000,000	3,090,909
205-38-021	Texas Instruments	9/23/2011	4.365	44,370,000	10,164,948
290-34-043	Residential 972 Blossom Dr. 95050-5117	11/5/2013	0.14	610,000	4,357,143
220-13-030	Residential 2132 Rockhurst Ct., 95051	1/31/2014	0.16	960,000	6,000,000
290-34-046	Residential 940 Blossom Dr. 95050-5117	6/30/2013	0.14	441,736	3,155,257
224-12-092	Residential 1846 Los Padres., 95050	9/13/2013	0.13	675,000	5,192,308
303-14-030	Residential 202 Kerry Dr., 95050	5/1/2014	0.14	780,000	5,571,429
316-11-026	Residential 3772 Carlisle Ave., 95051	4/30/2014	0.15	1,025,000	6,833,333
104-56-048	Residential 4750 Cheeney St.; 95054	4/22/2008	0.075	823,000	10,973,333
097-95-058	Residential 841 E. River Parkway; 95054	7/21/2011	0.078	1,305,000	16,730,769
101-22-059	Residential 958 Leith Ave., 95054	5/1/2014	0.14	667,000	4,764,286
101-23-031	Residential 744 Orkney Ave., 95054	4/23/2014	0.135	546,000	4,044,444
Various	Reed / Grant Street	12/11/2013	8.745	8,000,000	914,808
224-02-022	Reed / Grant Street	12/11/2013	0.293	320,000	1,092,150
224-02-003	Reed / Grant Street	12/11/2013	0.459	1,050,000	2,287,582
<b>Total / Average Cost per Acre</b>			<b>32.09</b>	<b>\$ 117,384,822</b>	<b>\$ 3,657,988</b>

Sources: Trulia.com; Carnegie-Blum Partners; City of Santa Clara; Willdan Financial Services.

Appendix Table A.4: Cemeteries and Historical Properties

	Developed Acres	Unimproved/ Open Space
<i>Public Cemeteries and Historical Properties</i>		
Agnews Historic Cemetery	1.07	-
Harris Lass House (History Museum)	0.94	-
Triton Museum Grounds/Headen-Inman House	6.54	-
Mission City Memorial Park	21.60	-
Subtotal Cemeteries	30.15	-

Source: City of Santa Clara.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SANTA CLARA,  
CALIFORNIA, ADDING A NEW CHAPTER 17.35 (“PARK  
AND RECREATIONAL LAND”) TO TITLE 17  
 (“DEVELOPMENT”) OF “THE CODE OF THE CITY OF  
SANTA CLARA, CALIFORNIA”**

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

**WHEREAS**, the City of Santa Clara is the Government entity responsible for providing park facilities within the City of Santa Clara;

**WHEREAS**, the population of the City of Santa Clara has increased by over 100% since the early 1990’s;

**WHEREAS**, the demand for new neighborhood and community parkland generated by development of new residential subdivisions and new non-subdivided residential projects has increased accordingly;

**WHEREAS**, the City of Santa Clara 2010-2035 General Plan includes a number of policies to maintain and increase the amount of available parkland, and to identify potential funding opportunities for new parkland and/or recreational facilities and an assessment of potential parkland dedication fees;

**WHEREAS**, the 2010-2035 General Plan includes a goal that “[n]ew parks, open space and recreation [be] provided with new development so that existing facilities are not overburdened”;

**WHEREAS**, the City has conducted a nexus study and a review of comparable cities’ park impact fees internally and through public process; and,

**WHEREAS**, the Parks and Recreation Department has recommended that the City Council establish a parkland dedication and fee requirement based on the results of the nexus study and Parks Master Plan Inventory.

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

**SECTION 1: Findings and Purpose.** The City Council hereby finds that residential developments have a significant effect on the use and availability of park and recreation space and facilities, and that the limited open space and recreation amenities provided by these residential developments are insufficient to meet the needs of the residents for open space and recreation facilities. The intent of this Chapter is to require that such developments contribute their fair share toward the purchase, development and/or improvement of park and recreational facilities. The provisions of this Chapter are enacted pursuant to the Charter, the City of Santa Clara General Plan and the authority granted as well as sections 66000-66025, 66477 and 66479 of the Government Code (the "Mitigation Fee Act" and the "Quimby Act"), as may be applicable.

**SECTION 2: General Standard.** In accordance with the City of Santa Clara Nexus Study (April 2014), it is hereby found and determined that the City of Santa Clara currently provides park and recreational facilities to its residents at a ratio of 2.53 acres per thousand residents. The public interest, convenience, health, welfare and safety require that a minimum of 3.0 acres of property for each one thousand (1,000) persons residing within the City of Santa Clara be devoted to public park and recreational facilities.

**SECTION 3:** That a new Chapter 17.35 ("Park and Recreational Land") of Title 17 ("Development") of "The Code of the City of Santa Clara, California" ("SCCC") is hereby added to read as follows:

## “Chapter 17.35

### PARK AND RECREATIONAL LAND

Sections:

- 17.35.010 Definitions.
- 17.35.020 Requirement to provide park and recreational facilities.
- 17.35.030 Formula for calculation of land dedication requirement.
- 17.35.040 Formula for calculation of fee in-lieu of land dedication.
- 17.35.050 Criteria for requiring both dedication and fee.
- 17.35.060 Use of land and fees.
- 17.35.070 Credit for private open space.
- 17.35.080 Procedure.
- 17.35.090 Exceptions.

**17.35.010 Definitions.**

(a) “Active Recreational Use” shall mean activity that requires the use of organized play areas, including, but not limited to, softball, baseball, football and soccer fields, tennis and basketball courts, fitness stations and various forms of children’s play equipment.

(b) “Approving Authority” shall mean the board, body or individual otherwise empowered by this Code or state law to approve the development application.

(c) “Average Density” shall mean the average number of persons per household, as established by City Council resolution, in accordance with the most recent available Federal Census data.

(d) “Complete Application” means an application for a residential development that has been determined to be complete by the Department of Planning & Inspection.

(e) “Dwelling Unit Categories” shall mean the following three types of dwellings, as they are defined by the Zoning Ordinance, for which a separate dedication and/or fee requirement is to be set by Council resolution:

- (1) Multiple Dwelling
- (2) Single-Family Dwelling
- (3) Accessory Dwelling Unit

(f) "Parkland Dedication Standard" shall mean the acreage of park and recreational facilities to be provided per 1000 City residents, which shall be initially set at 3.0 acres per 1000 residents, and as may be periodically adjusted by City Council resolution.

**17.35.020 Requirement to provide park and recreational facilities.**

Every person who constructs or causes to be constructed a dwelling unit or dwelling units or who subdivides residential property shall dedicate land, pay a fee in-lieu thereof, or provide a combination of such dedication and fee, at the discretion of the City, for the purpose of developing new or rehabilitating existing park or recreational facilities, at the time and according to the standards and formula contained in this Chapter.

(a) For subdivisions containing more than fifty (50) parcels, condominium developments of more than fifty (50) dwelling units, and residential developments not including a subdivision, the City may impose a parkland dedication requirement, a fee in-lieu of such dedication, or a combination of the two.

(b) Except as otherwise provided in this section, for subdivisions of fifty (50) parcels or fewer, the City may impose a fee only. Notwithstanding the foregoing, if a condominium project, stock cooperative, or community apartment project contains fifty (50) parcels or fewer, but will contain more than fifty (50) dwelling units, the City may impose a parkland dedication requirement, a fee in-lieu of such dedication, or a combination of the two.

**17.35.030 Formula for calculation of land dedication requirement.**

The formula for determining the required acreage to be dedicated shall be as follows:

- (a) The Average Density for the specific Dwelling Unit Category; multiplied by
- (b) The Parkland Dedication Standard; divided by
- (c) 1000 Population

By way of example, as of the adoption date of this Chapter, the Average Density for a single-family detached dwelling unit is 2.9 persons, and the Parkland Dedication Standard is 3.0 acres per 1000 residents. For a single-family detached unit, the required acreage would therefore be  $2.9 \times 3.0 / 1000 = 0.0087$  acres per single-family detached unit.

**17.35.040 Formula for calculation of fee in-lieu of land dedication.**

(a) When a fee is required to be paid in-lieu of parkland dedication, the maximum amount of such fee shall be determined by the fair market value of the amount of land that would otherwise be required to be dedicated pursuant to SCCC 17.35.030, as set forth below. The date of valuation of the property for in-lieu fee purposes shall be the date that the City determines that the developer's application for a parcel map or tentative subdivision map, or application for projects not involving a subdivision, is complete.

(b) Fair market value.

(1) The City shall determine the fair market value of the Property by using the average per acre land value for property in the City of Santa Clara, based upon a survey of land values and sale records in the City. The City Council shall set a minimum of three such average values, one for each of the three existing Zip codes in the City (95050, 95051, 95054). The City Council may, at its discretion, set average values for additional subregions of the City. The City Council shall review the fair market values not less than annually and set the values in a Council resolution.

(2) If the developer objects to this determination of fair market value, the developer may elect to have the value established by appraisal. If the developer chooses this option, the developer shall deposit with the City an amount sufficient to cover the cost of an appraisal, which the City shall conduct. The appraisal shall be completed prior to approval of the

tentative or parcel map, or for developments not involving a subdivision, prior to the issuance of a building permit.

(c) Based on the determination of fair market value set forth above in subsection (b)(1), for each of the Dwelling Unit Categories, the City Council shall set the amount of fees to be paid in-lieu of parkland dedication in a Council resolution, which the Council shall review annually.

**17.35.050 Criteria for requiring both dedication and fee.**

In subdivisions of over fifty (50) parcels of land, in condominium developments of more than fifty (50) dwelling units, and in residential developments not involving a subdivision, a combination of land dedication and fee payment may be required. In any such case, the sum of the in-lieu fees and the fair market value of the land to be dedicated shall equal the amount that would otherwise be required if the developer paid only an in-lieu fee pursuant to this Chapter.

(a) When only a portion of the land to be developed is identified in the Parks, Open Space, and Recreation Goals and Policies of the General Plan as the site for a local park, the portion identified in the General Plan shall be dedicated for local park purposes and a fee computed pursuant to the provisions of SCCC 17.35.040 shall be paid for any additional land that would have been required to be dedicated pursuant to SCCC 17.35.030.

(b) When a major part of the local park or recreational site has already been dedicated and only a small portion of land is needed from the subdivision to complete the site, the remaining portion shall be dedicated and a fee computed pursuant to the provisions of SCCC 17.35.040 shall be paid in an amount equal to the value of the land which would otherwise have been required to be dedicated pursuant to SCCC 17.35.030, the fees to be used for the improvement of the existing park and recreational facility or for the improvement of other local parks and recreational facilities in the area serving the subdivision.

(c) If, as a result of a recent annexation or boundary change, the General Plan does not specify the specific amount of park and recreational land for a proposed subdivision containing more than fifty (50) parcels or a residential development not involving a subdivision of more than fifty (50) dwelling units, the City Council shall determine whether it accepts a land dedication, payment of a fee, or a combination of both a dedication and fee, based upon the following factors:

- (1) The topography, geology, access and location of land in the development available for dedication;
- (2) The size and shape of the development and land available for dedication;
- (3) The feasibility of dedication; and
- (4) The availability of previously dedicated park property.

(d) The determination of the City as to whether land shall be dedicated, or whether a fee shall be charged, or a combination thereof, shall be final and conclusive.

**17.35.060 Use of park in-lieu fees.**

The fees collected pursuant to this Chapter shall be deposited to the Park Impact Fee Fund, and shall be used for the purposes set forth below.

(a) Money within the Park Impact Fee Fund shall be segregated by fee source and used and expended primarily for the acquisition and/or expansion of parks and recreational facilities reasonably related to serving the public by way of purchase of necessary land.

(b) In the alternative, for residential projects involving subdivisions only, if the City Council finds that there is already sufficient land available for such uses, then as a second priority, this money shall be used for the improvement and rehabilitation of existing land and facilities for park and recreational purposes.

(c) Except as otherwise provided in this section, for developments involving a subdivision of land, the land, fees, or combination thereof shall be used to serve the subdivision. Notwithstanding the foregoing, for subdivisions for which the City requires the payment of fees or a combination of a land dedication and fees, the fees may be spent on facilities in a neighborhood other than the neighborhood of the subdivision, if all of the following requirements are met:

- (1) The neighborhood in which the fees are to be expended has fewer than three (3) acres of park area per 1000 members of the neighborhood population;
- (2) The neighborhood of the subdivision for which the fees are paid has a park area that meets or exceeds the Parkland Dedication Standard;
- (3) The City holds a public hearing before using the fees;
- (4) It is reasonably foreseeable that residents of the subdivision will use the proposed park and recreational facilities in the neighborhood where the fees are used; and
- (5) The neighborhood where the fees are used is within a 10-minute walking distance of the subdivision.

**17.35.070 Credit for private open space.**

Where private open space is to be provided in a proposed residential development, and where the developer has submitted a written request with the project application for a credit against the amount of parkland dedication or the amount of the in-lieu fee thereof, a minimum of one (1.0) acre of open space must first be dedicated to the City for public park purposes. A maximum credit of twenty-five (25) percent of the value of the land devoted to private open space that is eligible for credit may be given against the requirement of land dedication or fees in-lieu thereof required by this Chapter, if the Approving Authority finds that it complies with this section and that it is in the public interest to do so. In order to receive such a credit, the

Approving Authority must make findings that the private open space meets the following standards:

(a) The calculation of private open space shall not include features required to be included by zoning and building codes and other applicable laws, including but not limited to yards, court areas, setbacks, decorative landscape areas required with residential site design and other open areas.

(b) The private open space shall be devoted to Active Recreational Uses, and for developments involving a subdivision, shall be wholly or partially owned and maintained by the future residents of the development. The private ownership and maintenance of the open space shall be restricted for such use by a recorded written agreement, conveyance, covenant or restrictions. Such document shall be subject to the prior review and approval of the City Attorney, and any future proposed amendments must be first submitted to the City Attorney for approval prior to adoption.

(c) The space shall be reasonably adapted for use for recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location, and the developer must propose and agree to design and construct the necessary recreational and park facilities and improvements associated with each element of the private open space set forth below; said facilities and improvements shall be constructed prior to the issuance of a certificate of use and occupancy for the units that are receiving the credit.

(d) Facilities proposed for the open space shall be in substantial compliance with the provisions of the Parks, Open Space, and Recreation Goals and Policies of the General Plan.

(e) The developer shall supply a covenant to maintain the open space to the City Attorney prior to approval of the final subdivision map for review and approval. Once approved

by the City Attorney, such document shall be recorded simultaneously with the final subdivision map.

(f) The private open space must contain at least four (4) of the following eight (8) elements:

(1) Turfed play field, comprised of a single unit of land which is generally level and free of physical barriers which would inhibit group play activities with a minimum contiguous area of one-half (0.50) acres;

(2) Children's play apparatus area that conforms to the then current Federal Consumer Product Safety Commission guidelines;

(3) Landscaped and furnished, park-like quiet area;

(4) Recreational community gardens;

(5) Family picnic area;

(6) Game, fitness or sport court area;

(7) Accessible swimming pool (minimum size 42' × 75') with adjacent deck and lawn areas;

(8) Recreation center buildings and grounds.

(g) Shape and Size.

(1) The combined area of Active Recreational Uses for a facility to qualify is a minimum of three quarters (0.75) acre.

(2) The shape and location of the open space shall provide the greatest utility possible to the greatest number of residents of the development for which credit is sought. If limited access recreation areas are proposed, their credit value can only be applied against the park fee obligation generated by those residents with access to the said recreation area.

(3) Irregularly shaped pieces of property of less than optimum utility or burdened by topographic considerations that render them unsuitable for Active Recreational Uses shall not be eligible for credit.

(h) Housing developments for which 100% of the units are affordable to low- and/or moderate-income households, and housing developments for senior citizens authorized by the California Civil Code or the Federal Fair Housing Amendments Act, will be eligible for up to an additional 15% credit toward the parkland dedication requirement or fees in-lieu thereof, provided that the Approving Authority finds that (1) the development complies with all other provisions of this section and that (2) providing the additional credit would serve the public interest.

**17.35.080 Procedure.**

(a) Upon receiving a complete application for a residential development or subdivision, the Director of Parks and Recreation shall determine the conditions necessary to comply with the requirements for parkland dedication or fees in-lieu thereof as set forth in this Chapter and said conditions shall be proposed to the Approving Authority as conditions of approval for the project. The establishment of such conditions for projects that do not involve a subdivision shall comply with the procedures set forth in Government Code Sec. 66001 et seq.

(b) At the time of project approval, the Approving Authority shall consider the recommendation of the Director of Parks and Recreation and make a final determination as to the land to be dedicated and/or fees to be paid by the developer.

(c) Any in-lieu fees imposed under this Chapter shall be due and payable to the City prior to issuance of a building permit for each dwelling unit.

(d) Refunds. In the event a developer does not use a building permit for construction of a dwelling unit, the City will refund the fee collected for that dwelling unit at the time of

expiration of the building permit. In addition, the City shall commit the funds to the uses authorized under this Chapter within five (5) years of the latter of the date the fee was paid, the issuance of buildings permits on one-half of the lots created by the subdivision, or the construction of one-half of the dwelling units for developments not involving subdivisions. If such fees are not committed within this time, they, without any deductions, shall be distributed and paid to the then record owners of the properties in the same proportion that the size of their lot bears to the total area of all lots within the development.

**17.35.090 Exceptions.**

This Chapter shall not apply to the following developments:

- (a) Commercial or industrial subdivisions that involve no residential component.

Notwithstanding the foregoing, the City may, at its discretion, impose a condition on the approval of a parcel map or subdivision map requiring that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels within four years, the City may require the owner of each parcel to pay the fee as a condition of the issuance of the permit.

- (b) Convalescent hospitals and similar dependent care facilities.

- (c) Residence halls on the campus of a college or university.

- (d) In the event that a developer pays a fee or dedicates land pursuant to this Chapter for a multifamily rental housing development without a subdivision, and the developer or his successors subsequently subdivides the development within fifteen (15) years, the developer or his successors shall not be required to pay the fee or dedicate land for the subsequent subdivision that would be required under this Chapter.”

**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: Constitutionality, severability.** If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

**SECTION 6: 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." The fees shall be phased in pursuant to the Implementation and Phasing Schedule set forth in Attachment 1, attached hereto and incorporated herein by this reference.

**PASSED FOR THE PURPOSE OF PUBLICATION** this \_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:	COUNCILORS:
NOES:	COUNCILORS:
ABSENT:	COUNCILORS:
ABSTAINED:	COUNCILORS:

ATTEST: \_\_\_\_\_  
ROD DIRIDON, JR.  
CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:  
1. Fee Implementation and Phasing Schedule

F:\ORDINANCES\14.0374 Chapter 17.35 Park and Recreational Land 06-19-14.doc

## Attachment 1

### Fee Implementation Schedule

Adoption of Ordinance June 24, 2014	
Effective Date (60 days+) August 26, 2014	Exempt
Complete Application August 27—September 30, 2014	25% of fee due
Complete Application October 1 – November 15, 2014	50% of fee due
Complete Application November 16 – December 31, 2014	75% of fee due
Complete Application after January 1, 2015	100%

Meeting Date: 6/24/14

# AGENDA REPORT

Agenda Item # MA-1

City of Santa Clara, California



**Date:** May 15, 2014

**To:** City Manager for Council Action

**From:** City Clerk/City Auditor

**Subject:** Adoption of a Resolution Calling a General Municipal Election to be held on Tuesday, November 4, 2014 for the Election of Mayor and Two City Council Members; Adoption of a Resolution Requesting the Board of Supervisors of the County of Santa Clara Consolidate the Election with the Statewide General Election; Adoption of a Resolution Adopting Regulations for Candidate Statements of Qualifications Submitted to the Voters and Levying a Share of the Cost of the Candidates' Statements; and Authorization to Publish the Notice of Election

## EXECUTIVE SUMMARY:

Attached for Council consideration are four Resolutions and one Notice of Election. The Resolutions include; 1) calling and giving notice of the holding of a General Municipal Election to be held on November 4, 2014 for the election of municipal officers; 2) requesting the Board of Supervisors of the County of Santa Clara consolidate the election with the Statewide General Election; and 3) adopting regulations for Candidate Statements of Qualifications and determining to levy a share of the costs of the Candidates' Statements on the candidates. Authorization is also requested for the publication of the Notice of Election.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

The adoption of resolutions is required under California Elections Code Sections 10002 and 10403. The publication of the Notice of Election is required under California Elections Code Section 12101.

## ECONOMIC/FISCAL IMPACT:

The estimated costs for holding the election are expected to be approximately \$240,000, which is already included in the City Clerk's Fiscal Year 2014-15 budget.

**RECOMMENDATION:**

That the Council:

1. Adopt a Resolution Calling a General Municipal Election to be held on Tuesday, November 4, 2014 for the election of Mayor and two City Council Members;
2. Adopt a Resolution requesting the Santa Clara County Board of Supervisors consolidate the election with the Statewide General Election;
3. Adopt a Resolution adopting regulations for Candidate Statements of Qualifications submitted to the voters and levying a share of the cost of the Candidates' Statements on the candidates; and
4. Authorization to publish the Notice of Election.



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Rod Diridon, Jr.  
City Clerk

***Documents Related to this Report:***

- 1) ***Resolutions***
- 2) ***Notice of Election***

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

**A RESOLUTION OF THE CITY OF SANTA CLARA,  
CALIFORNIA CALLING A GENERAL MUNICIPAL  
ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4,  
2014, FOR THE ELECTION OF THE MAYOR AND TWO  
CITY COUNCIL MEMBERS**

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

**WHEREAS**, pursuant to Section 600.01 of the City Charter of the City of Santa Clara, a General Municipal Election is required to be held in the City of Santa Clara on the first Tuesday following the first Monday in November of even numbered years, for the election of each municipal elective officer whose term of office regularly expires at that time; and

**WHEREAS**, the terms of the following elected officials will be expiring November 2014: Mayor – Jamie L. Matthews; Council Member, Seat 2 – Patrick Kolstad; and Council Member, Seat 5 – Patricia M. Mahan.

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

1. That pursuant to the requirements of the City Charter, there is called to be held, on Tuesday, November 4, 2014, a General Municipal Election in the City of Santa Clara for the purpose of electing the following officers of the City of Santa Clara: Mayor and Council Member Seats Nos. 2 and 5.

2. That in accordance with Section 700 of the City Charter and Section 12101 of the California Elections Code, the City Clerk is hereby directed on behalf of the City Council to cause notice of the time and place of the holding of the election to be published in an official newspaper of the City in the time, form and manner as required by law.

3. The City Clerk is hereby authorized and directed to certify to the due adoption of this Resolution.

4. 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.

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE \_\_\_ DAY OF \_\_\_\_\_, 2014, BY THE FOLLOWING

VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference: None

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

**A RESOLUTION OF THE CITY OF SANTA CLARA,  
CALIFORNIA REQUESTING THAT THE BOARD OF  
SUPERVISORS OF THE COUNTY OF SANTA CLARA  
CONSOLIDATE A GENERAL MUNICIPAL ELECTION  
WITH THE STATEWIDE GENERAL ELECTION TO BE  
HELD ON NOVEMBER 4, 2014**

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

**WHEREAS**, the City Council of the City of Santa Clara called a General Municipal Election to be held on November 4, 2014, to elect the Mayor and two members of the City Council, each for a four-year term; and

**WHEREAS**, it is desirable that the General Municipal Election be consolidated with the Statewide General Election to be held on the same date for purposes of encouraging voter turn-out and the resultant economies of scale resulting from having the precincts, polling places, election officers, and canvassing of the two elections be the same.

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

1. The Board of Supervisors of the County of Santa Clara is hereby requested to order the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 4, 2014, to elect the Mayor and two members of the City Council (Council Member Seat Nos. 2 and 5), each for a four-year term of office and that the election will be held and conducted in accordance with the provisions of law regulating the statewide election.
2. The Registrar of Voters is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

3. The Board of Supervisors is requested to issue instructions to the Registrar of Voters to take any and all steps necessary for the holding of the consolidated election.
4. The City of Santa Clara recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.
5. The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters.
6. The City Clerk shall certify the passage and adoption of this resolution and enter it into the book of original resolutions.
7. 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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8. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED  
AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA AT A REGULAR  
MEETING THEREOF HELD ON THE \_\_\_ DAY OF \_\_\_\_\_, 2014, BY THE FOLLOWING

VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference: None

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

**A RESOLUTION OF THE CITY OF SANTA CLARA,  
CALIFORNIA ADOPTING REGULATIONS FOR  
CANDIDATE STATEMENTS OF QUALIFICATIONS  
SUBMITTED TO THE VOTERS FOR AN ELECTION ON  
TUESDAY, NOVEMBER 4, 2014, AND LEVYING A SHARE  
OF THE COST OF THE CANDIDATES' STATEMENTS ON  
THE CANDIDATES**

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

**WHEREAS**, California Elections Code Section 13307 contains certain requirements regarding a candidate's ballot statement of qualifications, including that the governing body of any local agency adopt may regulations pertaining to materials prepared by any candidate for a municipal election; and

**WHEREAS**, California Elections Code Section 13307 further provides that a local agency may require candidates to bear all or part of the costs attributable to the candidate's statement.

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

1. General Provisions. Each candidate for elective office to be voted for in the General Municipal Election held in the City of Santa Clara on November 4, 2014 may prepare a candidate's ballot statement of qualifications on the form provided by the City Clerk. The statement may include the name, age and occupation of the candidate, and a brief description of no more than 200 words regarding the candidate's education and qualifications. The statement shall not include any reference to party affiliation of the candidate, including membership or activity in partisan political organizations. The statement shall be filed in typewritten form in the office of the City Clerk at the same time the candidate's nomination papers are filed. The statement may be withdrawn, but not changed, until 5:00 p.m. of the next working day after the close of the

nomination period.

2. Foreign Language Policy. Pursuant to the Federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq., as amended from time to time), the County of Santa Clara Registrar of Voters is required to translate and print the candidate's statement into five languages: Chinese, English, Spanish, Tagalog and Vietnamese.
3. Payment. The candidate shall be required to pay for the cost of printing the candidate's statement in English in the voter's pamphlet and translating and printing the candidate's statement into any of the languages referred to in Paragraph 2. If a candidate agrees to adhere to the City of Santa Clara Voluntary Campaign Expenditure Limit, as stated in Section 2.130.160 of the City Code of the City of Santa Clara, the candidate will be responsible for one-half of the estimated cost of the voter's pamphlet, calculated on a pro-rata shared basis per candidate. It is estimated that each candidate is responsible for \$1,150 toward the cost of the voter's pamphlet, which shall be paid at the time of filing of nomination papers to the City of Santa Clara. If the ultimate cost to the City of the voters pamphlet exceeds the \$1,150 estimated amount, the City will pay the additional costs. If the \$1,150 is more than the actual cost, there will be no refund to the candidate. Based the foregoing, the City Council of the City of Santa Clara hereby determines to levy the pro-rata charge of \$2,300 (to be reduced to the \$1,150 amount if the expenditure limit is accepted) for each candidate's statement of 200 words or less.
4. Additional Materials. No candidate will be permitted to include additional materials in the sample ballot package (the voter's pamphlet).
5. The City Clerk shall provide a copy of this Resolution to each candidate or the candidate's representative at the time nominating petitions are issued.

6. This resolution shall take precedence over all previous and/or conflicting resolutions establishing Council policy on payment for candidate's statements.
7. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.
8. 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.
9. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE \_\_\_ DAY OF \_\_\_\_\_, 2014, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:
NOES:	COUNCILORS:
ABSENT:	COUNCILORS:
ABSTAINED:	COUNCILORS:

ATTEST:

\_\_\_\_\_  
 ROD DIRIDON, JR.  
 CITY CLERK  
 CITY OF SANTA CLARA

Attachments incorporated by reference: None

**CITY OF SANTA CLARA**

**NOTICE OF HOLDING A MUNICIPAL ELECTION FOR MAYOR AND  
TWO CITY COUNCIL MEMBERS**

**NOTICE IS HEREBY GIVEN** that on Tuesday, November 4, 2014, a General Municipal Election consolidated with the Statewide General Election will be held in the City of Santa Clara, Santa Clara County, California, for the election of Mayor and Council Member Seats, Numbers 2 and 5.

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

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk  
City of Santa Clara

Meeting Date: 4/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-2



**Date:** May 6, 2014  
**To:** City Manager for Council Action  
**From:** Director of Electric Utility  
**Subject:** Approval for Use of City Forces, Electric Department Estimates

### EXECUTIVE SUMMARY:

It is requested that the City Council find that City Forces, supplemented by Public Works and Contract Labor, if necessary, can best perform the installation of the following electric facilities and approve the use of City Forces, therefore:

Estimate No: 33516-D  
 Title/Location: Removal of Facilities and Streetlight Reconductoring, Monroe Street and Monticello Way  
 Type of Job: New Business  
 Description of Work: Removal of facilities (4 Padmount transformers), reconductor existing streetlights from underground to overhead.

Estimated Cost:	\$23,255.73	Customer/Developer Contribution:	\$ 23,255.73
		Salvaged Plant	\$ .00
		Customer Service Charge	\$ .00

Estimate No: 33147  
 Title/Location: Santa Clara Town Centre, 2008 El Camino Real  
 Type of Job: New Business  
 Description of Work: Install 4,175' of 1/0AL Tri 15kV cable; 4,236' of 600AL Tri 15KV cable; 2 500kVA (120/208V) and four padmounted vacuum switches.

Estimated Cost:	\$592,997.27	Customer/Developer Contribution:	\$ 316,695.00
		Salvaged Plant	\$ .00
		Customer Service Charge	\$ 276,302.27

Estimate No: 33402  
 Title/Location: Street Light Relocation, 4551 Great America Parkway  
 Type of Job: Street Lights  
 Description of Work: Remove underground street light wires crossing Great America Parkway and replace with new wires. Relocate existing street light and also replace an additional 100' of wire.

Estimated Cost:	\$4,761.86	Customer/Developer Contribution:	\$ .00
		Salvaged Plant	\$ 1,156.35
		Customer Service Charge	\$ 3,605.51

Estimate No: 33534  
Title/Location: Temporary Power for Trailer Staging Area across from Levi's Stadium, South side Stars & Stripes Drive, East of Centennial Drive  
Type of Job: New Business/Temporary Power  
Description of Work: Cut into underground secondary cable and connect customer service. Install 400A 3-phase meter.

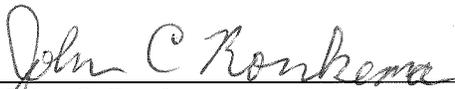
Estimated Cost:	\$4,604.41	Customer/Developer Contribution:	\$	4,604.41
		Salvaged Plant	\$	.00
		Customer Service Charge	\$	.00

Estimate No: 33113 Phase B  
Title/Location: Intel Third Feed, 3065 Bowers Avenue  
Type of Job: New Business  
Description of Work: Four new vacuum disconnect switches and six new bridge mains to serve Intel Campus on Bowers Avenue and Central Expressway

Estimated Cost:	\$257,464.15	Customer/Developer Contribution:	\$	257,464.15
		Salvaged Plant	\$	.00
		Customer Service Charge	\$	.00

**RECOMMENDATION:**

That Council approve the use of City Electric forces for the installation of facilities at Monroe Street and Monticello Way; 2008 El Camino Real; 4551 Great America Parkway; South side Stars & Stripes Drive, East of Centennial Drive; and 3065 Bowers Avenue.

  
\_\_\_\_\_  
John C. Roukema  
Director of Electric Utility

APPROVED  
  
\_\_\_\_\_  
Julio J. Fuentes  
City Manager

*Documents related to this report: None*



**Date:** May 22, 2014

**To:** City Manager for Council Action

**From:** Director of Human Resources

**Subject:** Request for Approval and Authorization for City Manager to Execute the Renewal of Excess Workers' Compensation Insurance Policy with the California State Association of Counties Excess Insurance Authority

**EXECUTIVE SUMMARY:**

Council approved the purchase of an Excess Workers' Compensation Insurance Policy in Fiscal Year 2004-2005 and subsequent renewals from California State Association of Counties (CSAC) Excess Insurance Authority. The primary reason for joining with CSAC was to reduce the escalating costs affecting the Excess Workers' Compensation Insurance market.

A quotation has been received from CSAC for a renewal policy. The new policy would be effective July 1, 2014 – July 1, 2015. The renewal policy with a self-insured retention (SIR) limit of \$500,000 has a rate of \$0.5159 per \$100 of payroll dollars, and the estimated premium is \$568,000. The rate for the FY 14-15 is based on an estimated payroll of \$110,088,360 and is subject to a final payroll audit. The renewal policy continues statutory limits for Workers' Compensation liability.

**ADVANTAGES AND DISADVANTAGES OF ISSUE:**

Approval of the renewal policy will allow for the continuance of Excess Workers' Compensation Insurance to cover occupational injuries/illnesses sustained by City employees in excess of the SIR limit of \$500,000 per claim. Since the first \$5,000,000 in coverage is pooled between participating members, the possibility exists the City may receive assessments or dividends depending on the adequacy of the pool's overall funding relative to member losses.

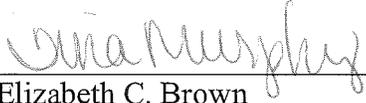
**ECONOMIC/FISCAL IMPACT:**

The FY 14-15 estimated premium represents an approximate 12.83% cost increase from the FY 13-14 estimated premium. Based on the current \$500,000 self-insured retention limit and the statutory limits provided by CSAC, there is not any competition in the open market that is less costly. Since partnering with CSAC, the City's cost for Excess Worker' Compensation Insurance has continued to be less than the open market. Sufficient funds are available in the FY 14-15 Workers' Compensation Insurance Budget (081-0136-87840).

City Manager for Council Action  
Subject: California State Association of Counties  
Excess Workers' Compensation Insurance Policy  
May 22, 2014  
Page 2

**RECOMMENDATION:**

That the Council approve, and authorize the City Manager to execute, the renewal of the Excess Workers' Compensation Insurance Policy from California State Association of Counties Excess Insurance Authority in an amount not to exceed \$568,000.

*for*  
  
\_\_\_\_\_  
Elizabeth C. Brown  
Director of Human Resources

APPROVED:

  
\_\_\_\_\_  
Julio J. Fuentes  
City Manager

Certified as to Budget Form   
\_\_\_\_\_  
081-0136-87840      \$ 568,000.00

  
\_\_\_\_\_  
Gary Ameling  
Director of Finance

**MAJORITY VOTE OF COUNCIL**

***Documents Related to this Report:***

1) *CSAC Excess Insurance Authority 2014/15 Budget Estimates, March 2014*

I:\Greg\AgendaReports\ExcessWCPolicy(FY14-15)

**CSAC Excess Insurance Authority  
2014/15 Budget Estimates, March 2014  
City of Santa Clara**

These budget estimates have been prepared to aid you in budgeting for the 2014/15 fiscal year. It is important to keep in mind that we are still in the process of determining the Programs' total cost and the allocation thereof. At this time, updated estimates are being provided for Property, EWC, PWC, GLI and PGL. The estimates provided are intended to be conservative, but because there is a chance that final premiums will be in excess of these estimates, we recommend you budget towards the high end of the range.

**Excess Workers' Compensation Program**

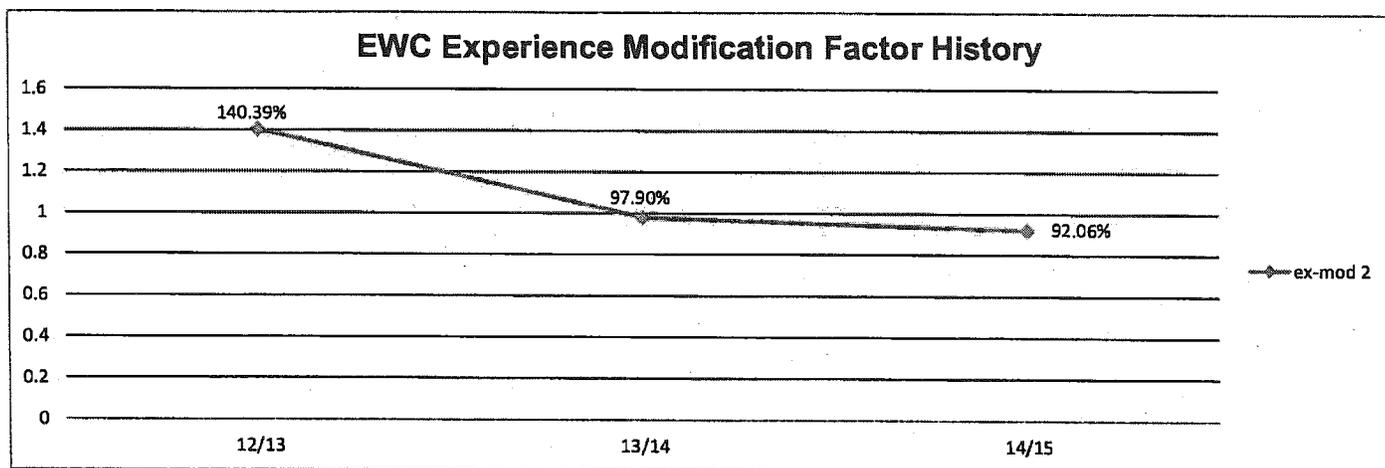
Estimated Premium:	<b>\$563,000</b>	to	<b>\$568,000</b>
Payroll Audit:	<b>-\$7,784</b>		
Estimated Collectible:	<b>\$555,216</b>	to	<b>\$560,216</b>

If you have directed us to apply the 2012/13 payroll audit to your 2014/15 premium, then you will see it included in the total collection shown. If you have decided to handle the payroll audit outside of your premium, the Estimated Premium shown is the estimated total collection.

The EWC premium projections have been updated to reflect your entity's estimated 2014/15 exposure, provided on your renewal application, as well as losses based on the June 30, 2013 data collection. Since the October estimate, we received and updated the pool rates. The pool rate for your rating group has increased an average of 7.2% from last year. Still in place from previous estimates is the assumption of excess and reinsurance rate increases of 10-15%. The estimates thus have become more accurate, but are still conservative due to the pending reinsurance and excess rate increases. Once updated, we will distribute final premium numbers as we get closer to the renewal date of 7/1/2014.

Your experience modification factors (ex-mod) have been calculated for 2014/15. In the table below, ex-mod 1 reflects your ex-mod for the \$125K to \$300K rating layer, while ex-mod 2 reflects your ex-mod for the \$300K to \$1M rating layer. Therefore if your SIR is \$300K or higher, you will only see ex-mod 2 below. Your ex-mod represents how your loss rate (based on 7 years of payroll and losses) compares to the average loss rate for your rating group. An ex-mod of less than 100% indicates that your loss rate is better than the average, while one that is greater than 100% indicates that your loss rate is worse than average.

As you can see over the past three years your ex-mod has continued to drop and is below 100% which indicates a lower than average loss rate



<u>Estimated Payroll</u>	\$110,088,360	<u>Premium History</u>	
		2013/14:	\$503,428
		2012/13:	\$524,174

Meeting Date: 6/24/14

# AGENDA REPORT

Agenda Item # 7A-4

City of Santa Clara, California



**Date:** June 10, 2014  
**To:** City Manager for Council Action  
**From:** Director of Finance/Assistant City Manager  
**Subject:** Acceptance of the Monthly Financial Status Reports for April 2014

## EXECUTIVE SUMMARY:

In compliance with the Charter of the City of Santa Clara, Article IX, Sections 904(d) and (h) and the State of California Government Code Sections 41004 and 53646, the following reports for April 2014 are submitted for your information and acceptance:

1. Summaries of Revenues and Expenditures (Operating and Capital Improvement Funds)
2. All Funds Cash Position
3. Summary of Portfolio
4. Summary Schedule of Investments
5. Investment Maturity Distribution
6. List of Securities Brokers and Dealers
7. Attachment A: Investment Inventory With Market Value

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

These reports provide monthly revenues and expenditures summaries and summary investment schedules.

## ECONOMIC/FISCAL IMPACT:

Costs associated with the regular preparation of these reports are included in the General Fund Operating Budget.

## RECOMMENDATION:

That the Council accept the Monthly Financial Status Reports for April 2014 as presented.

Gary Ameling  
Director of Finance/Assistant City Manager

APPROVED:

Julio J. Fuentes  
City Manager

## *Documents Related to this Report:*

- 1) *Monthly Financial Status Reports for April 2014*

# **CITY OF SANTA CLARA**

## **MONTHLY FINANCIAL STATUS REPORTS**



**SUMMARIES OF REVENUES AND EXPENDITURES**

**ALL FUNDS CASH POSITION**

**SUMMARY OF PORTFOLIO**

**SUMMARY SCHEDULE OF INVESTMENTS**

**INVESTMENT MATURITY DISTRIBUTION**

**LIST OF SECURITIES BROKERS AND DEALERS**

**ATTACHMENT A: INVESTMENT INVENTORY WITH MARKET VALUE**

**April 2014**

# CITY OF SANTA CLARA

## MONTHLY FINANCIAL STATUS REPORTS

### TABLE OF CONTENTS

		Page #
1	Summaries of Revenues and Expenditures (Operating and Capital Improvement Funds)	1
2	All Funds Cash Position	3
3	Summary of Portfolio	4
4	Summary Schedule of Investments	5
5	Investment Maturity Distribution Schedule	6
6	List of Securities Brokers and Dealers	7
7	Attachment A: Investment Inventory With Market Value	

**CITY OF SANTA CLARA  
OPERATING FUNDS  
SUMMARY OF REVENUES AND EXPENDITURES  
Fiscal Year 2013-2014  
as of April 30, 2014**

Fund Description	Fund #	EXPENDITURES			REVENUES		
		Appropriations <sup>(1)</sup>	Expenditures To Date	Unexpended Balance	Budgeted Resources <sup>(2)</sup>	Receipts and Net Transfers In/(Out) To Date <sup>(3)</sup>	Unrealized (Unanticipated) Revenue
General Fund	001	\$ 156,328,124	\$ 121,320,935	\$ 35,007,189	\$ 156,328,124	\$ 134,400,435	\$ 21,927,689
Downtown Parking Mtce.	025	173,083	116,558	56,525	173,083	168,358	4,725
Convention Center Mtce.	026	1,339,009	1,073,010	265,999	1,339,009	1,120,890	218,119
Public Facilities Corp. Debt	431	2,507,246	2,500,478	6,768	2,507,246	2,507,304	(58)
Debt Service	441	7,196,825	7,195,376	1,449	7,196,825	7,196,825	-
Vehicle Equipment	050	5,497,608	1,790,997	3,706,611	5,497,608	5,147,687	349,921
Automotive Services	053	4,116,450	3,447,110	669,340	4,116,450	3,437,522	678,928
Senior Nutrition Program	111	193,868	110,241	83,627	193,868	112,106	81,762
Communications Tech. Srv.	047	801,751	384,944	416,807	801,751	677,560	124,191
Communications Equip.	048	1,317,991	953,611	364,380	1,317,991	1,098,326	219,665
Electric Utility Funds	091/191	322,728,690	243,184,724	79,543,966	322,728,690	252,203,945	70,524,745
Electric Utility Debt	491	92,853,353	89,807,213	3,046,140	92,853,353	92,857,608	(4,255)
Water Utility Fund	092	30,627,631	22,755,192	7,872,439	30,627,631	25,613,494	5,014,137
Sewer Utility Fund	094	17,987,689	15,668,516	2,319,173	17,987,689	15,213,045	2,774,644
Cemetery	093	934,236	738,862	195,374	934,236	773,587	160,649
Solid Waste Utility Fund	096	19,804,675	14,861,201	4,943,474	19,804,675	16,245,812	3,558,863
Water Recycling Program	097	2,722,282	1,841,670	880,612	2,722,282	2,468,673	253,609
<b>TOTAL</b>		<b>\$ 667,130,511</b>	<b>\$ 527,750,638</b>	<b>\$ 139,379,873</b>	<b>\$ 667,130,511</b>	<b>\$ 561,243,177</b>	<b>\$ 105,887,334</b>

(1) - Budgeted appropriations include encumbered 6-30-13 appropriations plus FY13-14 appropriations.

(2) - Budgeted Resources include Estimated Revenues, Net Operating Transfers and Fund Beginning Balance.

(3) - Includes Actual Revenues, Net Operating Transfers and Budgeted Decreases (Increases) to Fund Reserves.

**CITY OF SANTA CLARA  
CAPITAL IMPROVEMENT FUNDS  
SUMMARY OF REVENUES AND EXPENDITURES  
Fiscal Year 2013-2014  
as of April 30, 2014**

Fund Description	Fund #	EXPENDITURES			REVENUES		
		Appropriations <sup>(1)</sup>	Expenditures To Date	Unexpended Balance	Budgeted Resources <sup>(2)</sup>	Receipts and Net Transfers In/(Out) To Date <sup>(3)</sup>	Unrealized (Unanticipated) Revenue
Street Beautification	531	\$ 732,972	\$ 209,450	\$ 523,522	\$ 732,972	\$ 733,172	\$ (200)
Parks & Recreation	532	4,030,711	250,461	3,780,250	4,030,711	3,817,019	213,692
Streets & Highways	533	12,667,924	3,699,744	8,968,180	12,667,924	5,716,565	6,951,359
Section 2105 Gas Tax	521	1,029,621	295,951	733,670	1,029,621	1,116,262	(86,641)
Major City Streets	522	3,297,912	707,769	2,590,143	3,297,912	3,166,443	131,469
Section 2103 Gas Tax	523	2,064,436	-	2,064,436	2,064,436	2,996,904	(932,468)
Select City Streets	524	1,566,659	230,483	1,336,176	1,566,659	1,621,085	(54,426)
Traffic Mitigation	525	14,567,136	626,840	13,940,296	14,567,136	12,355,316	2,211,820
Street Lighting	534	4,443,029	70,676	4,372,353	4,443,029	4,229,644	213,385
Storm Drain	535	3,274,755	419,495	2,855,260	3,274,755	3,254,658	20,097
Fire	536	684,307	94,508	589,799	684,307	644,809	39,498
Library	537	570,859	51,680	519,179	570,859	570,859	-
Public Buildings	538	2,200,118	228,430	1,971,688	2,200,118	2,201,821	(1,703)
General Govmnt - Other	539	11,924,759	2,900,386	9,024,373	11,924,759	10,830,356	1,094,403
Community Services	562	4,372,998	1,642,953	2,730,045	4,372,998	920,608	3,452,390
Electric Utility	591	96,726,284	15,964,596	80,761,688	96,726,284	80,567,047	16,159,237
Water Utility	592	13,938,331	2,969,141	10,969,190	13,938,331	13,461,055	477,276
Cemetery	593	98,900	35,049	63,851	98,900	98,900	-
Sewer Utility	594	45,252,912	10,630,746	34,622,166	45,252,912	33,780,240	11,472,672
Solid Waste Utility	596	756,798	431,882	324,916	756,798	745,729	11,069
Water Recycling Prgm.	597	1,060,000	161,094	898,906	1,060,000	1,060,000	-
University Project Area CIP	938	4,255,629	4,255,629	-	4,255,629	4,255,629	-
Bayshore North Proj Area CIP	939	43,401,973	41,532,304	1,869,669	43,401,973	43,322,551	79,422
<b>TOTAL</b>		<b>\$ 272,919,023</b>	<b>\$ 87,409,267</b>	<b>\$ 185,509,756</b>	<b>\$ 272,919,023</b>	<b>\$ 231,466,672</b>	<b>\$ 41,452,351</b>

(1) - Budgeted appropriations include unexpended 6-30-13 appropriations plus FY13-14 appropriations, and exclude unallocated appropriations.

(2) - Budgeted Resources include Estimated Revenues, Net Operating Transfers and Fund Beginning Balance.

(3) - Includes Actual Revenues, Net Operating Transfers and Budgeted Decreases (Increases) to Fund Reserves.

**CITY OF SANTA CLARA  
ALL FUNDS - CASH POSITION  
as of April 30, 2014**

TOTAL - ALL FUNDS CASH POSITION

Cash - Active	\$ 70,672,696
Savings & Investments	<u>545,576,450</u>
 TOTAL	 <u><u>\$ 616,249,146</u></u>

DETAIL OF SELECTED FUND CASH BALANCES:

	ELECTRIC	WATER	SEWER	SELECTED CONTINGENCY RESERVE
Operating Cash	\$ 69,538,540	\$ 10,709,172	\$ 17,399,344	
Construction Cash	68,544,116	13,468,294	30,825,671	
Replacement & Improvement		303,090	1,507,553	
Water Conservation		73,125		
Green House Gas	19,504			
Renewable Energy Reserve	688,124			
Rate Stabilization Fund Reserve	25,000,000			
Cost Reduction Fund Reserve	77,258,577			
DVR Power Plant Contracts Reserve	5,078,163			
Working Capital (Emergency) Reserve				\$ 17,599,232
Capital Projects Reserve				9,745,876
Building Inspection Reserve				7,944,475
Non-Expendable Land Proceeds				81,427,134
TOTALS	<u><u>\$ 246,127,024</u></u>	<u><u>\$ 24,553,681</u></u>	<u><u>\$ 49,732,568</u></u>	<u><u>\$ 116,716,717</u></u>

**CITY OF SANTA CLARA  
SUMMARY OF PORTFOLIO**

All securities held by the City of Santa Clara as of April 30, 2014 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 Successor Agency of the Redevelopment Agency of the City of Santa Clara (SA), the Sports and Open Space Authority (SOSA), and the Housing Authority (HA) as of April 30, 2014.

	<b>BOOK VALUE</b>	<b>PERCENTAGE</b>
City	\$512,596,734	96.91%
SA	15,102,976	2.86%
SOSA	263,307	0.05%
HA	937,869	0.18%
Unrestricted	\$528,900,886	100.00%
Restricted Bond Proceeds	16,675,564	
Total	<b>\$545,576,450</b>	

Not shown above are the Stadium Authority funds held in separate bank accounts totaling \$286,922 on April 30, 2014.

On April 30, 2014 the principal cost and market value of the City's unrestricted pooled cash portfolio were \$528,900,886 and \$526,674,561, respectively. In addition, the accrued interest was \$1,410,445.

Investment Strategy and Market Update

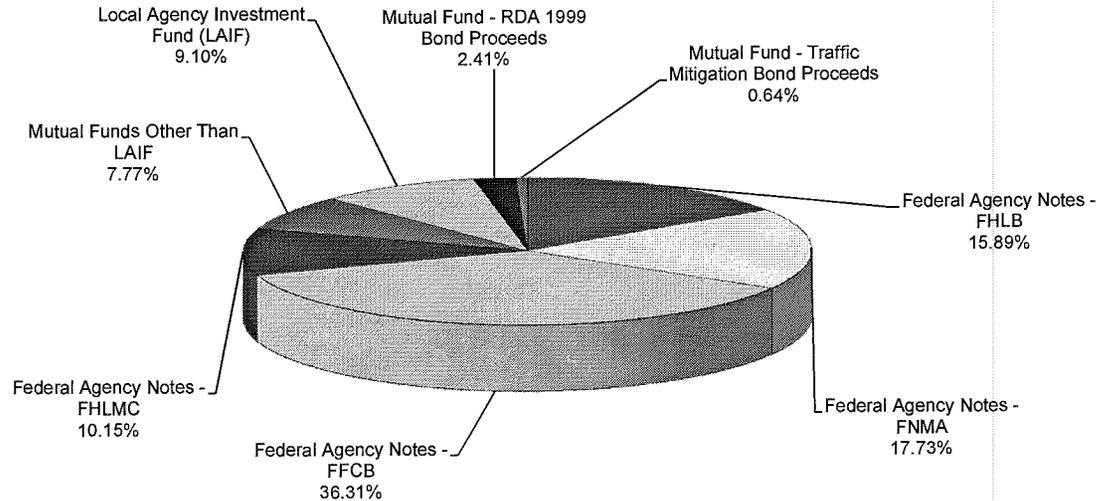
The City's investment strategy for April 2014 was to invest funds not required to meet current obligations, in securities listed in the prevailing Investment Policy Statement, with maturities not to exceed five years from date of purchase. This strategy ensures safety of the City's funds, provides the liquidity to meet the City's cash needs, and earns a reasonable portfolio return.

As of April 30, 2014, City's portfolio consists of approximately 80% of securities issued by four different Federal Agencies. In addition, to comply with the 1986 Tax Reform Act arbitrage regulations, a portion of the City's bond proceeds is invested in yield-restricted investments. These yield-restricted investments are not included in the calculation of the City's portfolio yield. The average maturity of the City's portfolio was 2.34 years and the City's portfolio yield vs. the 12-month average yield of two-year Treasury Notes was as follows:

<u>PERIOD</u>	<b>CITY'S PORTFOLIO</b>	<b>BENCHMARK</b>	<b>AVERAGE DAYS TO MATURITY</b>
	<u>RETURN</u>	<u>RETURN</u>	
April 2014	0.71%	0.41%	856
March 2014	0.70%	0.33%	897
April 2013	0.95%	0.25%	1,020

**CITY OF SANTA CLARA  
SUMMARY OF INVESTMENTS APRIL 30, 2014**

<u>INVESTMENT TYPE</u>	<u>BOOK VALUE</u>	<u>% OF PORTFOLIO</u>	<u>PER INVESTMENT POLICY</u>
U.S. Treasury Notes	\$ -	0.00%	No Limit
Federal Agency Notes - FHLB	86,688,410	15.89%	No Limit
Federal Agency Notes - FNMA	96,732,869	17.73%	No Limit
Federal Agency Notes - FFCB	198,055,594	36.31%	No Limit
Federal Agency Notes - FHLMC	55,395,811	10.15%	No Limit
Corporate Notes	-	0.00%	15%
Mutual Funds Other Than LAIF	42,400,153	7.77%	10% Per Fund
Local Agency Investment Fund (LAIF)	49,628,049	9.10%	\$50 M
Mutual Fund - Redevelopment Agency (RDA) 1999 Bond Proceeds	13,165,356	2.41%	No Limit
Mutual Fund - Traffic Mitigation Bond Proceeds	3,510,208	0.64%	No Limit
<b>TOTAL INVESTMENTS</b>	<b>\$ 545,576,450</b>	<b>100.00%</b>	

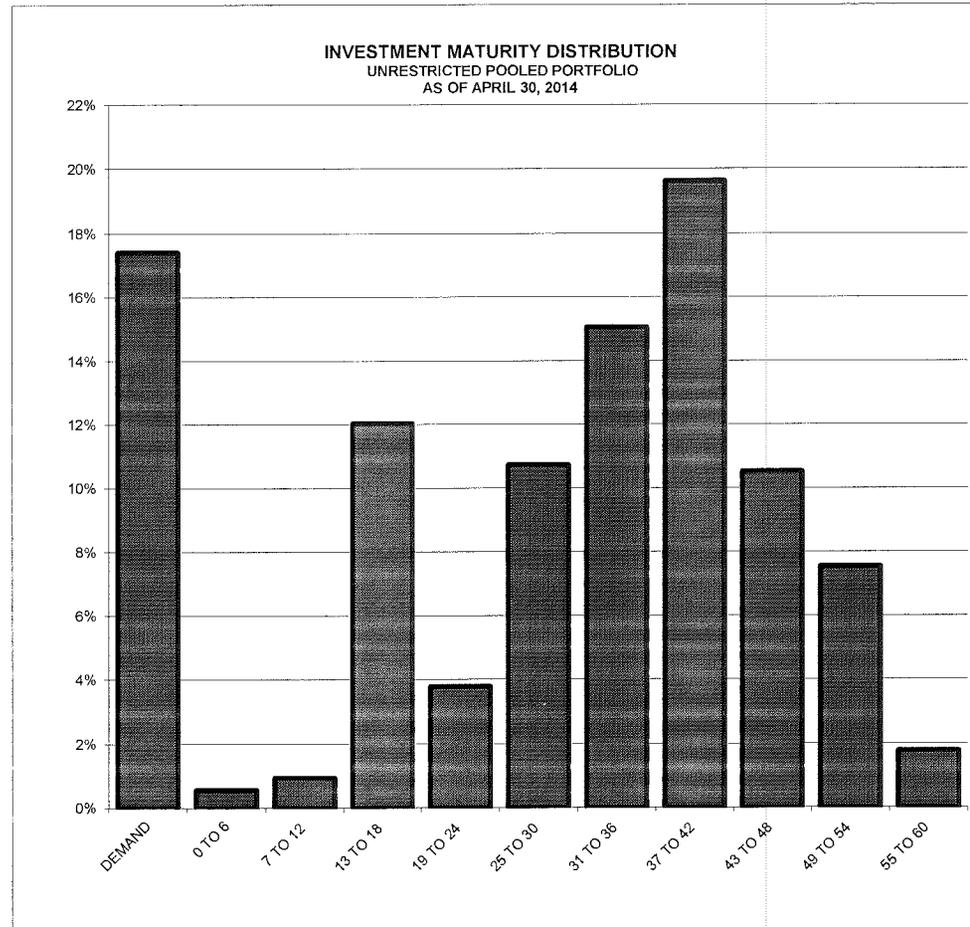


**INVESTMENT MATURITY DISTRIBUTION  
AS OF APRIL 30, 2014  
UNRESTRICTED POOLED PORTFOLIO**

<b>MATURITY (IN MONTHS)</b>	<b>BOOK VALUE</b>	<b>NUMBER OF INVESTMENTS</b>	<b>DISTRIBUTION</b>
DEMAND	\$ 92,028,202 (a)	3	17.40%
0 TO 6	3,033,253	1	0.57%
7 TO 12	5,007,144	1	0.95%
13 TO 18	63,625,060	9	12.03%
19 TO 24	20,005,171	2	3.78%
25 TO 30	56,793,623	6	10.74%
31 TO 36	79,646,999	8	15.06%
37 TO 42	103,798,739	11	19.64%
43 TO 48	55,638,812	6	10.52%
49 TO 54	39,873,883	4	7.54%
55 TO 60	9,450,000	2	1.79%
<b>TOTAL</b>	<b>\$ 528,900,886</b>	<b>53</b>	<b>100.00%</b>

Average Maturity of Unrestricted Pool: 2.34 Years

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



**CITY OF SANTA CLARA**

**List of Securities Brokers and Primary Dealers  
in U.S. Government Securities and Mutual Funds**

Dreyfus Institutional Services

Fidelity Investment Institutional Services Co.

Franklin's Institutional Fiduciary Trust

Gilford Securities, Inc.

Higgins Capital Management

Morgan Keegan & Co., Inc.

All individual securities purchased by the City of Santa Clara from Securities Brokers/Primary Dealers are delivered to the City's safekeeping account with the Bank of New York Securities Safekeeping.

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FINANCE DEPARTMENT  
CITY OF SANTA CLARA  
INVESTMENT INVENTORY WITH MARKET VALUE

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INVESTMENTS OUTSTANDING AS OF 04/30/14  
MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE DATE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN YTM	RATE TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR PRICE	INT SOURCE	UNREALIZED GAIN UNREALIZED LOSS
A 17193	FHLB step-up 03/11/14 03/11/19	3130A0YV6	25	1	.7500		3,650,000.00	3,648,262.60	3,802.08	IDC	-1,737.40
A 17192	FHLB step-up 03/12/14 03/12/19	3130A0Y20	25	1	1.0000		5,800,000.00	5,801,914.00	7,894.44	IDC	1,914.00
SUBTOTAL (Inv Type) 20 FHLB step-up			1.74%(M)		.9034		9,450,000.00	9,450,176.60	11,696.52		1,914.00
					.9034		9,450,000.00	100.0018690000			-1,737.40
A 17058	FHLB MEDIUM TERM NOTES 01/20/10 06/13/14	3133XKTV7	25	1	4.8750		3,000,000.00	3,016,767.00	56,062.50	IDC	-16,486.25
A 17187	FHLB MEDIUM TERM NOTES 01/08/14 08/17/15	313378CN9	25	1	.6000		5,000,000.00	5,022,380.00	6,166.67	IDC	803.21
A 17173	FHLB MEDIUM TERM NOTES 04/24/13 03/18/16	313382K85	25	1	.4500		10,000,000.00	10,003,460.00	5,375.00	IDC	-8,396.47
A 17178	FHLB MEDIUM TERM NOTES 05/14/13 06/24/16	3133834R9	25	1	.3750		10,000,000.00	9,980,510.00	13,229.18	IDC	-881.03
SUBTOTAL (Inv Type) 21 FHLB MEDIUM TERM NOTES			5.16%(M)		.9287		28,000,000.00	28,023,117.00	80,833.35		803.21
					.6255		28,048,077.54	100.0825610000			-25,763.75
A 17190	FHLB COUPON NOTES 01/10/14 06/12/15	313379ER6	25	1	.5000		3,560,000.00	3,574,663.64	6,872.77	IDC	4,090.44
A 17177	FHLB COUPON NOTES 05/09/13 05/09/16	313382V75	25	1	.4500		10,000,000.00	9,993,210.00	21,500.00	IDC	-6,790.00
A 17176	FHLB Coupon Notes 05/14/13 11/14/16	3135G0WY5	25	1	.5500		10,000,000.00	9,958,750.00	25,513.89	IDC	-44,586.33
A 17157	FHLB COUPON NOTES 11/15/12 11/15/17	3133817D1	25	1	.9800		5,660,000.00	5,609,303.38	25,576.91	IDC	-50,696.62
A 17161	FHLB COUPON NOTES 12/28/12 12/28/17	313381LC7	25	1	.9500		10,000,000.00	9,858,870.00	32,458.33	IDC	-141,130.00
A 17183	FHLB COUPON NOTES 06/20/13 06/20/18	313383EP2	25	1	1.2500		10,000,000.00	9,863,710.00	45,486.11	IDC	-91,328.34
SUBTOTAL (Inv Type) 22 FHLB COUPON NOTES			8.99%(M)		.7985		49,220,000.00	48,858,507.02	157,408.01		4,090.44
					.8020		49,190,332.31	99.26555700000			-334,531.29
A 17112	FNMA COUPON NOTES 12/13/11 10/26/15	31398A4M1	25	1	1.6250		10,000,000.00	10,206,980.00	2,256.94	IDC	98,276.82
A 17167	FNMA COUPON NOTE 01/14/13 09/26/16	3135G0S08	25	1	.6000		6,905,000.00	6,887,578.69	4,027.92	IDC	-13,917.70
A 17185	FNMA COUPON NOTE 06/13/13 02/27/17	3135G0XL2	25	1	.6500		10,000,000.00	9,936,400.00	11,555.56	IDC	51,152.77
A 17153	FNMA COUPON NOTES 10/26/12 04/26/17	3136G0X89	25	1	.7500		10,000,000.00	9,917,860.00	1,041.67	IDC	-82,140.00

FINANCE DEPARTMENT  
CITY OF SANTA CLARA  
INVESTMENT INVENTORY WITH MARKET VALUE

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INVESTMENTS OUTSTANDING AS OF 04/30/14  
MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN YTM	RATE TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
A 17182	FNMA COUPON NOTE 06/19/13 06/19/17	3136G1NU9	25	1	1.0000		10,000,000.00	9,982,240.00	36,666.67	
A 17141	FNMA COUPON NOTE 07/11/12 07/11/17	3136G0QM6	25	1	1.1000		10,000,000.00	9,982,140.00	33,611.11	-17,760.00
A 17144	FNMA COUPON NOTE 08/21/12 08/21/17	3135G0NF6	25	1	1.0000		10,000,000.00	9,949,190.00	19,444.44	-24,358.80
			30	000	1.0000		10,000,000.00	99.491900000000	IDC	-50,810.00
SUBTOTAL (Inv Type) 23 FNMA COUPON NOTE			12.31%(M)		.9790		66,905,000.00	66,862,388.69	108,604.31	149,429.59
					.9244		66,901,945.60	99.936311000000		-188,986.50
A 17184	FNMA MEDIUM TERM NOTE 06/12/13 07/05/16	3135G0XP3	25	1	.3750		10,000,000.00	9,979,460.00	12,083.33	54,684.66
A 17156	FNMA MEDIUM TERM NOTE 10/26/12 10/26/17	3135G0PQ0	25	1	.8750		10,000,000.00	9,887,560.00	1,215.28	
A 17180	FNMA MEDIUM TERM NOTE 05/28/13 05/21/18	3135G0WJ8	25	1	.8750		10,000,000.00	9,763,100.00	38,888.89	-88,503.75
			30	000	1.0350		9,930,083.84	97.631000000000	IDC	-166,983.84
SUBTOTAL (Inv Type) 24 FNMA MEDIUM TERM NOTE			5.45%(M)		.7086		30,000,000.00	29,630,120.00	52,187.50	54,684.66
					.8870		29,830,922.93	98.767067000000		-255,487.59
A 17082	FFCB MEDIUM TERM NOTES 03/09/11 02/18/15	31331KCR9	25	1	2.0500		5,000,000.00	5,072,170.00	20,784.72	65,026.31
A 17139	FFCB MEDIUM TERM NOTES 06/13/12 05/01/15	3133EANJ3	25	1	.5000		10,000,000.00	10,037,330.00	25,000.00	41,060.04
A 17191	FFCB MEDIUM TERM NOTES 01/10/14 06/18/15	3133EDC67	25	1	.2500		7,000,000.00	7,001,596.00	6,465.27	5,656.00
A 17169	FFCB MEDIUM TERM NOTES 01/29/13 09/15/15	3133ECBB9	25	1	.4000		10,000,000.00	10,011,180.00	5,111.10	15,465.71
			25	000	.4287		9,995,714.29	100.111800000000	IDC	
SUBTOTAL (Inv Type) 26 FFCB MEDIUM TERM NOTES			5.91%(M)		.6567		32,000,000.00	32,122,276.00	57,361.09	127,208.06
					.6589		31,996,137.38	100.382113000000		
A 17168	FFCB COUPON NOTES 01/18/13 10/15/15	3133ECB86	25	1	.4200		10,000,000.00	10,007,770.00	1,866.67	4,816.20
A 17174	FFCB COUPON NOTES 04/26/13 04/22/16	3133ECM76	25	1	.4000		10,000,000.00	9,984,270.00	1,000.00	
A 17147	FFCB COUPON NOTES 08/16/12 08/15/16	3133EAJ33	25	1	.7300		10,000,000.00	10,000,680.00	15,411.11	14,719.38
A 17150	FFCB COUPON NOTES 09/26/12 09/26/16	3133EAZ76	25	1	.6900		10,000,000.00	9,990,580.00	6,708.33	
A 17151	FFCB COUPON NOTES 09/27/12 12/27/16	3133EA2L1	25	1	.7200		10,000,000.00	9,950,380.00	24,800.00	-9,420.00
A 17163	FFCB COUPON NOTES 01/08/13 12/27/16	3133ECBN3	25	1	.6500		9,790,000.00	9,745,964.58	21,918.72	-47,150.61
			26	000	.6628		9,786,300.88	99.550200000000	IDC	-40,336.30

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FINANCE DEPARTMENT  
CITY OF SANTA CLARA  
INVESTMENT INVENTORY WITH MARKET VALUE

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INVESTMENTS OUTSTANDING AS OF 04/30/14  
MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN RATE YTM TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
A 17160	FFCB COUPON NOTES 12/20/12 03/20/17	3133ECAK0	25	1	.6700	10,000,000.00	9,907,850.00	7,630.56	
			25	000	.7083	9,988,704.06	99.078500000000	IDC	-80,854.06
A 17154	FFCB COUPON NOTES 10/12/12 04/11/17	3133EA4G0	25	1	.7000	10,000,000.00	9,902,450.00	3,888.89	
			25	000	.7396	9,988,329.78	99.024500000000	IDC	-85,879.78
A 17165	FFCB COUPON NOTES 01/10/13 05/01/17	3133EAE38	25	1	.8200	6,350,000.00	6,304,210.15	26,035.00	
			25	000	.8223	6,349,484.57	99.278900000000	IDC	-45,274.42
A 17175	FFCB COUPON NOTES 05/09/13 05/09/17	3133ECP40	25	1	.6400	10,000,000.00	9,830,830.00	30,577.78	
			25	000	.6527	9,995,633.13	98.308300000000	IDC	-164,803.13
A 17152	FFCB COUPON NOTES 10/12/12 07/11/17	3133EA4H8	25	1	.8200	10,000,000.00	9,895,100.00	25,055.56	
			25	000	.8407	9,992,931.56	98.951000000000	IDC	-97,831.56
A 17143	FFCB COUPON NOTES 07/24/12 07/24/17	3133EAZK7	25	1	.9700	10,000,000.00	9,966,110.00	26,136.11	
			25	000	.9700	10,000,000.00	99.661100000000	IDC	-33,890.00
A 17145	FFCB COUPON NOTES 08/07/12 08/07/17	3133EAF86	25	1	.9700	10,000,000.00	9,949,990.00	22,633.33	
			25	000	.9700	10,000,000.00	99.499900000000	IDC	-50,010.00
A 17149	FFCB COUPON NOTES 09/05/12 09/05/17	3133EAR26	25	1	.9700	10,000,000.00	9,932,540.00	15,088.89	
			25	000	.9772	9,997,548.47	99.325400000000	IDC	-65,008.47
A 17159	FFCB COUPON NOTES 12/12/12 12/12/17	3133EC7A6	25	1	.8200	10,000,000.00	9,845,530.00	31,661.11	
			25	000	.8405	9,992,004.38	98.455300000000	IDC	-146,474.38
A 17179	FFCB COUPON NOTES 05/22/13 05/22/18	3133ECQ56	25	1	1.0800	10,000,000.00	9,779,840.00	47,700.00	
			25	000	1.0852	9,997,753.29	97.798400000000	IDC	-217,913.29
A 17181	FFCB COUPON NOTES 06/04/13 06/04/18	3133ECQW7	25	1	1.2500	10,000,000.00	9,796,040.00	51,041.67	
			26	000	1.2707	9,991,007.67	97.960400000000	IDC	-194,967.67
SUBTOTAL (Inv Type) 27 FFCB COUPON NOTES		30.33%(M)			.7829	166,140,000.00	164,790,134.73	359,153.73	19,535.58
					.7986	166,059,457.84	99.187513000000		-1,288,858.69
A 17188	FHLMC MEDIUM TERM NOTES 01/09/14 08/28/15	3134G3ZA1	25	1	.5000	5,040,000.00	5,063,471.28	4,410.00	10,705.11
			25	000	.3301	5,052,766.17	100.465700000000	IDC	
A 17189	FHLMC MEDIUM TERM NOTES 01/07/14 08/28/15	3134G3ZA1	25	1	.5000	2,870,000.00	2,883,365.59	2,511.25	5,257.12
			25	000	.3105	2,878,108.47	100.465700000000	IDC	
A 17194	FHLMC MEDIUM TERM NOTES 03/10/14 09/29/17	3137EADL0	25	1	1.0000	7,500,000.00	7,469,182.50	6,666.67	
			25	000	1.0756	7,480,578.70	99.589100000000	IDC	-11,396.20
SUBTOTAL (Inv Type) 28 FHLMC MEDIUM TERM NOTES		2.84%(M)			.7427	15,410,000.00	15,416,019.37	13,587.92	15,962.23
					.6883	15,411,453.34	100.039061000000		-11,396.20
A 17155	FHLMC COUPON NOTES 10/18/12 11/01/16	3134G3S50	25	1	.6250	10,000,000.00	9,985,110.00	31,250.00	
			25	000	.6333	9,997,550.17	99.851100000000	IDC	-12,440.17
A 17164	FHLMC COUPON NOTES 01/22/13 01/22/18	3134G33Y4	25	1	.9500	10,000,000.00	9,864,950.00	26,125.00	
			25	000	.9808	9,988,006.57	98.649500000000	IDC	-123,056.57
A 17171	FHLMC COUPON NOTES 04/02/13 04/02/18	3134G37A2	25	1	1.1250	10,000,000.00	9,849,010.00	9,062.50	
			25	000	1.1250	10,000,000.00	98.490100000000	IDC	-150,990.00
A 17172	FHLMC COUPON NOTES 04/30/13 04/30/18	3134G43F3	25	1	1.0200	10,000,000.00	9,794,550.00	283.33	
			25	000	1.0231	9,998,800.66	97.945500000000	IDC	-204,250.66
SUBTOTAL (Inv Type) 29 FHLMC COUPON NOTES		7.27%(M)			.9300	40,000,000.00	39,493,620.00	66,720.83	.00
					.9406	39,984,357.40	98.734050000000		-490,737.40

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FINANCE DEPARTMENT  
CITY OF SANTA CLARA  
INVESTMENT INVENTORY WITH MARKET VALUE

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INVESTMENTS OUTSTANDING AS OF 04/30/14  
MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN YTM	RATE TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
A 16667	RDAl999 Bond Proceeds Investmen 10/04/04 06/18/14		20 3	400 000	.0099 .0099		13,165,356.04 13,165,356.04	13,165,356.04* 100.0000000000	-28,008.92 BOOK	0.00
SUBTOTAL (Inv Type) 65 Govt Mutual Fund - Fide					2.42% (M)	.0099 .0099	13,165,356.04 13,165,356.04	13,165,356.04 100.0000000000	-28,008.92	.00
A 16059	STATE OF CA DEMAND DEP 09/30/97 06/18/14		96 96	1 000	.2403 .2403		49,628,048.97 49,628,048.97	49,628,048.97 100.0000000000	100,753.49 USERPR	0.00
SUBTOTAL (Inv Type) 99 LOCAL AGENCY INVESTMENT					9.13% (M)	.2403 .2403	49,628,048.97 49,628,048.97	49,628,048.97 100.0000000000	100,753.49	.00
A 17046	MUTUAL FUNDS-FIDELITY 11/01/08 06/18/14		25 101	1 000	.0099 .0099		40,226,296.50 40,226,296.50	40,226,296.50* 100.0000000000	12,978.02 BOOK	0.00
SUBTOTAL (Inv Type) 305 MUTUAL FUNDS-FIDELITY					7.40% (M)	.0099 .0099	40,226,296.50 40,226,296.50	40,226,296.50 100.0000000000	12,978.02	.00
A 16064	DREYFUS TREASURY CASH MANAGEMEN 10/31/97 06/18/14		20 102	800 000	.0099 .0099		3,510,207.63 3,510,207.63	3,510,207.63 100.0000000000	1,279.43 USERPR	0.00
A 16122	DREYFUS GOVERNMENT FUND 05/15/98 06/18/14		20 102	1 100	.0099 .0099		2,173,856.39 2,173,856.39	2,173,856.39 100.0000000000	2,147.40 USERPR	0.00
SUBTOTAL (Inv Type) 315 MUTUAL FUNDS-DREYFUS					1.05% (M)	.0099 .0099	5,684,064.02 5,684,064.02	5,684,064.02 100.0000000000	3,426.83	.00
GRAND TOTAL						.6831 .6750	545,828,765.53 545,576,449.87	543,350,124.94 99.54589400000	996,702.68	373,627.77 -2,597,498.82

\* MARKET = BOOK LESS PURCHASE INTEREST

Meeting Date:

6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item #

7A-5



**Date:**

June 9, 2014

**To:**

City Manager for Council Action

**From:**

Fire Chief

**Subject:**

Request to Set Public Hearing for July 15, 2014 Regarding the 2014 Weed Abatement Program and Authorize the Publication and Posting of the Notice of Public Hearing

## EXECUTIVE SUMMARY:

The date of July 15, 2014 is set for consideration of the report of weed abatement assessments. A copy of the 2014 Weed Abatement Assessment list will be filed by the County with our City Clerk by July 1, 2014.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

The weed abatement assessment will allow the City to mitigate the hazards associated with dried vegetation. The County provides the abatement services while minimizing the effect on burrowing owls. No disadvantages can be identified.

## ECONOMIC/FISCAL IMPACT:

The County manages the weed abatement program and all fees are collected through the County Assessor's Office. There is no cost to the City other than staff time and expense.

## RECOMMENDATION:

That the Council:

- Set July 15, 2014 as the date for a public hearing for adoption of a resolution confirming the report on the cost of weed abatement and making assessment to pay the related costs and expenses in conjunction with the 2014 Weed Abatement Program.
- Authorize the publication and posting of the Notice of the Public Hearing.



William G. Kelly  
Fire Chief

APPROVED:



Julio J. Fuentes  
City Manager

*Documents Related to this Report:*  
*Notice of the Public Hearing*

## *Notice of Hearing on Report and Assessment for Weed Abatement*

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NOTICE IS HEREBY GIVEN that the County Agricultural Commissioner will file with the City Clerk, City of Santa Clara, a report and assessment on abatement of weeds within the City, copies of which will be posted on the bulletin board outside the City Council Chambers at City Hall; on the bulletin board in the lobby of the City Hall; and at the entrance of the Fire Department, 777 Benton Street, Santa Clara.

NOTICE IS FURTHER GIVEN that on July 15, 2014 at the hour of 7:00 p.m., or soon thereafter, in the Council Chambers of said City Hall, located at 1500 Warburton Avenue, Santa Clara, the report and assessment list shall be presented to the City Council for consideration and confirmation, and that any and all persons interested, having any objections to the report and assessment list, or to any matter contained therein, may appear at that time and place and be heard.

AMERICANS WITH DISABILITIES ACT (ADA) In accordance with the Americans with Disabilities Act of 1990, the City of Santa Clara will ensure that all existing facilities will be made accessible to the maximum extent feasible. Reasonable modifications in policies, procedures, and/or practices will be made as necessary to ensure full and equal access and enjoyment of all programs and activities for all individuals with a disability. Individuals with severe allergies, environmental illness, multiple chemical sensitivity, or related disabilities should contact the City's ADA office (408) 615-3000, to discuss meeting accessibility. In order to allow participation by such individuals, please do not wear scented products to meetings at City facilities.

Date:

Rod Diridon, Jr.  
City Clerk  
City of Santa Clara

Meeting Date: 6/24/14



# AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-6



**Date:** June 4, 2014

**To:** City Manager for Council Action

**From:** Director of Finance/Assistant City Manager

**Subject:** Approve Renewal of Insurance with Navigators Specialty Insurance Company (NIC) from July 1, 2014 to July 1, 2015 for the Convention Center Maintenance District #183 Parking Garage and Common Areas and Authorize Payment of Insurance Premiums to Alliant Insurance Services

## EXECUTIVE SUMMARY:

The City's insurance broker, Alliant Insurance Services, Inc. sought competitive quotes from several insurance companies for placement of commercial general liability and excess liability insurance for the Convention Center Maintenance District #183 parking garage structure and common areas from July 1, 2014 to July 1, 2015. The Convention Center Complex Parking Garage and Common Area insurance is paid by the District, which is funded by assessments from the Convention Center, Hyatt Regency Hotel and TECHMART.

In compliance with the Trade Center Ground Lease Agreement, the insurance with Navigators Specialty Insurance Company (NIC), A.M. Best rating A Excellent, provides \$11 million in liability coverages per occurrence and an annual aggregate of \$12 million in liability coverages where appropriate. The combined renewal premium for general and excess liability for the period of July 1, 2014 to July 1, 2015 totals \$27,616. This is an increase of 2.9% or \$781 compared with the 2013-14 premium of \$26,835.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

Maintaining this insurance ensures compliance with the Trade Center Ground Lease Agreement and allows the Convention Center Maintenance District to share the risk of liability with an insurance company. Without insurance the District would retain 100% of the liability risk.

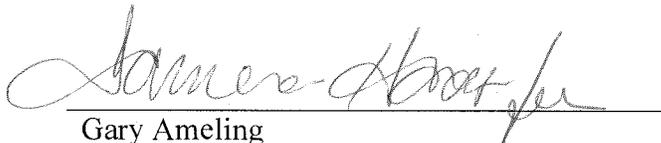
## ECONOMIC/FISCAL IMPACT:

The renewal premium for the District is \$27,616. Sufficient funds are available in the Convention Center Maintenance District Insurance Account (026-2961-87840).

**RECOMMENDATION:**

That the Council:

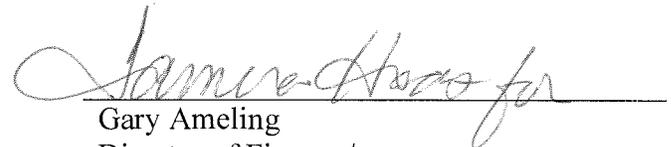
- 1) Approve the renewal of insurance with Navigators Specialty Insurance Company for the period of July 1, 2014 to July 1, 2015 for the Convention Center Maintenance District #183 Parking Garage and Common Areas and authorize payment of insurance premiums to Alliant Insurance Services in the amount of \$27,616; and
- 2) Authorize the City Manager to execute any and all documents necessary to complete the transaction.

  
\_\_\_\_\_  
Gary Ameling  
Director of Finance/  
Assistant City Manager

Certified as to Budget Form:   
026-2961-87840      \$ 27,616

APPROVED:

  
\_\_\_\_\_  
Julio J. Fuentes  
City Manager

  
\_\_\_\_\_  
Gary Ameling  
Director of Finance/  
Assistant City Manager

**MAJORITY VOTE OF COUNCIL**

*Documents Related to this Report: None*

Meeting Date: 6/24/14

# AGENDA REPORT

Agenda Item # 7A-7



City of Santa Clara, California



**Date:** June 12, 2014  
**To:** Mayor for Council Action  
**From:** City Manager  
**Subject:** Departmental Activity Report for April 2014

## EXECUTIVE SUMMARY:

A copy of the Departmental Activity Report for the month of April 2014 can be viewed on the City's website or is available in the City Clerk's Office for review during business hours.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

The Departmental Activity Report includes activity reports for all City Departments. There is no disadvantage.

## ECONOMIC/FISCAL IMPACT:

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

## RECOMMENDATION:

That the Council note and file the Departmental Activity Report for the month of April 2014.

APPROVED:

  
\_\_\_\_\_  
Julio J. Fuentes  
City Manager

## *Documents Related to this Report:*

- 1) *Departmental Activity Report*

# CITY OF SANTA CLARA

## DEPARTMENTAL ACTIVITY REPORT

MONTH OF

APRIL 2014



CITY OF SANTA CLARA

# DEPARTMENTAL ACTIVITY REPORT

## LIST OF DEPARTMENTS

**City Manager**

**City Clerk/City Auditor**

**Performance Measures**

**Recorded Documents**

**Electric Department**

**Monthly Outage Report**

**Finance Department (Purchasing)**

**Performance Measures**

**Municipal Services/License**

**Fire Department**

**Human Resources**

**Employee Activity**

**Performance Measures**

**Training/Safety Program Status**

**Workers Adjustment & Retraining Notification Act**

**Library Department**

**Performance Measures**

**Parks and Recreation Department**

**Cemetery Division/Mission City Memorial Park**

**Planning & Inspection Department**

**Planning Division**

**Building Inspection Division**

**Housing & Community Services Division**

**Police Department (INCLUDING REVISED REPORT FOR THE MONTH OF MARCH)**

**Public Works Department**

**Automotive Services**

**Engineering**

**Building Maintenance**

**Street**

**Water and Sewer Utilities Department**

**Sewer Utility**

**Water Utility**

**Monthly Activity Report  
CITY MANAGER'S OFFICE**

April 2014				Previous year		
Performance Measures/Activities	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Number of citizen contacts responded to by City Manager's Office	15	336	450	25	302	450
Number of contacts assigned out within 5 business days	15	302	---	25	302	---
% contacts assigned out within 5 business days	100%	90%	90%	100%	100%	90%
Number of EOC training meetings	0	9	5	0	2	5
Number of hours of EOC activation	0	7	---	0	0	---
Assist families in purchasing a home through the First Time Homebuyers Program	0	0	25	0	5	25
Prepare and distribute the Annual Report/Calendar	0	1	1	0	1	1
Prepare and distribute monthly utility bill inserts to utility customers	1	10	12	1	10	12
Prepare City Employee newsletter and distribute to all employees, six times per year	1	5	6	1	5	6
Prepare City newspaper (Inside Santa Clara) and distribute three times per year	0	3	3	0	2	3
Prepare and distribute newsreleases as needed	3	26	---	3	39	---
Number of website updates processed	53	276	---	55	315	---
Number of website page views	236,204	2,321,056	---	1,505,862	17,329,715	---
Develop and review City publications	23	45	---	23	293	---
Number of weekly cable channel updates processed	31	411	---	27	317	---
Number of press contacts	87	901	---	91	1,023	---
Number of video newsbriefs produced	1	15	44	1	19	44
Percent of Council meetings taped and broadcast	100%	100%	100%	1	1	1
Respond to legislative inquiries within 4 working days	90%	98%	90%	100%	1	90%
Number of special events, recognition, and dedications held	5	71	---	8	57	---
Number of business outreach contacts	125	341	---	65	571	---
Provide staff support to Council Committees/ Commissions (number of meetings attended)	9	40	---	8	56	---
Update and administer agreements with organizations and intergovernmental agencies	1	7	10	1	7	10

**Performance Measures Reporting**  
**Department: City Clerk's Office**  
**April 2014**

Division/Program/Measure	2013-14			2012-13		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
<b>Council/Administration Support</b>						
1. Percent of Council minutes approved within 4 weeks	100%	100%	90%	100%	100%	90%
Number of Council minutes approved	2	29		3	27	
Number of Council minutes approved within 4 weeks	2	29		3	27	
2. Percent of Council minutes approved without amendment	100%	100%	100%	100%	100%	100%
Number of Council minutes approved without amendment	2	29		3	27	
<b>Public Information/Legislative Records Management</b>						
1. Percent of records declared eligible for destruction are destroyed within 30 days	100%	100%	100%	100%	100%	100%
Number of records destruction requests processed	5	43		9	38	
Number of records declared eligible for destruction are destroyed within 30 days	5	43		9	38	
2. Percent of requests for records/information completed within one business day	100%	100%	100%	100%	100%	100%
Number of requests for records/information from citizens (includes telephone inquiries)	1,540	12,823		1,194	9,736	
Number of requests for records/information from staff	1,079	7,144		408	4,029	
3. Number of documents processed	69	763	1,820	66	737	1,820
<b>Elections/Political Reform Act</b>						
1. Percent of Campaign Disclosure Reports distributed	100%	100%	100%	100%	100%	100%
2. Number of Campaign Disclosure Reports processed	0	0	30	0	128	30
3. Number of Conflict of Interest forms processed	0	223	200	0	26	200
4. Number of elections held	0	0	0	0	1	1

**Performance Measures Reporting**  
**Department: City Clerk's Office**  
**April 2014**

Division/Program/Measure	2013-14			2012-13		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
<b>City Auditor</b>						
1. Number of vendor warrants audited	1,177	11,396	20,000	1,423	12,115	20,000
2. Number of travel reports audited	20	224	750	33	222	750
3. Number of payroll checks processed	2,389	24,747	35,000	2,324	24,499	35,000
<b>Miscellaneous Tasks (not a program)</b>						
UPS deliveries processed	26	253		30	388	
Number of Notary transactions completed	10	131		31	256	
Number of deeds and real property interests accepted and recorded	3	33		0	27	

  
 \_\_\_\_\_  
 Rod Diridon, Jr., City Clerk

## ELECTRIC DEPARTMENT ACTIVITY REPORT

The following report covers the principal activities of the Electric Department during the month of **April 2014**

DESCRIPTION	CURRENT MONTH	YEAR TO DATE
Poles Replaced	0.0	0.0
Transformers Installed	2.0	5.0
Transformers Replaced	4.0	11.0
Distribution Patrol (circuit maps) <span style="float: right;"><b>Total 70 Maps</b></span>	0.0	0.0
Distribution Inspection O/H (circuit maps) <span style="float: right;"><b>Total 19 Maps</b></span>	0.0	0.0
Distribution Inspection U/G (circuit maps) <span style="float: right;"><b>Total 19 Maps</b></span>	0.0	0.0
Switches Replaced/Installed	3.0	6.0
Underground Cable Installed (ft)	5,000.0	22140.0
Underground Cable Replaced (ft)	1,200.0	5200.0
Metering New Services (Residential/Comm/Indust)	7.0	33.0
Total Meter Removals (Residential/Comm/Indus)	8.0	22.0
Street Lights Installed or Replaced (Knock Down & New Installations)	0.0	4.0
Street Lights Repaired/Replaced	58.0	267.0
Traffic Signal Lamps Replaced	2.0	10.0
Unlocks <span style="float: right;">Electric</span>	1.0	2.0
Service & Trouble Calls	147.0	606.0
Trees Trimmed <span style="float: right;">Contractor</span>	608.0	2573.0
Underground Locates	306.0	796.0
Underground Inspections	80.0	195.0
Peak Demands	April 2014	458.90
	April 2013	438.00
Energy Requirements	April 2014	258,049.77
	April 2013	252,070.35

Average Service Availability Index (ASAI)	99.98358
System Average Interruption Frequency Index (SAIFI)	0.03447
Customer Average Interruption Duration Index (CAIDI) (Number of hours per customer)	205.73595

Outages (see attached sheet)
------------------------------

Total Customers this Month		51,088	Days of Month	30
Total Customer Minutes this Month		2,207,001,600		
Outage Totals				
		This Month	This Month Last Year	
<b>Unscheduled Outages</b>				
Long	# Outages	5	7	
	# Customers Out	1,761	4639	
	# Minutes Out	3,934	734	
	# Customer Minutes Out	362,301	390637	
	# Within City System	5		
	# Supply to City Minutes	278,387	127144	
Short	# Outages (Blinks)	0	0	
	# Customers Affected	0	0	
	# Within City System	0	0	
	# Supply to City Minutes	0	0	
<b>Scheduled Outages</b>				
Long	# Outages	0	0	
	# Customers Out	0	0	
	# Minutes Out	0	0	
	# Customer Minutes Out	0	0	
	# Within City System	0	0	
	# Supply to City Minutes	0	0	
Short	# Outages (Blinks)	0	0	
	# Customers Affected	0	0	
	# Within City System	0	0	
	# Supply to City Minutes	0	0	
<b>Totals</b>				
Total Long Outages		5	7	
Total Short Outages (Blinks)		0	0	
Total Customers Out (Long)		1,761	4639	
Total Customers Affected (Short- Blinks)		0	0	
Total Customer Minutes Out		362,301	390637	
Total Outages Within City System		5	7	
Total Outages in Supply to City		0	0	

Number of Outages (by Cause)					
Cause #	Description	Total This Month	This Month Last Year	Rolling AT	% AT
0	Supply to City	0	0	0	0%
1	Overhead Equipment Failure	4	1	26	38%
2	Underground Equipment Failure	0	1	6	9%
3	Weather	0	1	0	0%
4	Birds, Animals, Snakes, etc.	0	1	15	22%
5	Trees	1	2	6	9%
6	Foreign Interference	0	0	3	4%
7	Human	0	0	2	3%
8	Other	0	0	0	0%
9	Unknown	0	1	11	16%
10	Vehicle	0	0	0	0%
	Total	5	7	69	

12 Month Outage Statistics			
Index	As of This Month	As of This Month Last Year	Current Month
ASAI (%)	99.9905	99.9957	99.98358
CAIDI (Long) (min)	107.15	77.39	205.73595
SAIDI (Long) (min)	50.16	22.56	7.09170
SAIFI (Long) (ints/tot cust)	0.47	0.29	0.03447
SAIFI (Short) (ints/tot cust)	0.16	0.26	0.00000

ASAI - Average Service Availability Index  
(customer minutes available/total customer minutes, as a %)

CAIDI - Customer Average Interruption Duration Index  
(average minutes interrupted per interrupted customer)

SAIDI - System Average Interruption Duration Index  
(average minutes interrupted per customer for all customers)

SAIFI (Long) - System Average Interruption Frequency Index  
(# of long interruptions per customer for all customers)

SAIFI (Short) - System Average Interruption Frequency Index  
(# of short interruptions per customer for all customers)

S/U - Scheduled or Unscheduled  
Ints - # of Interruptions  
Long - >1 min; Short - <1 min  
Cause # - see table on page 3

*Jeff Ipsaro*  
Jeff Ipsaro  
Division Manager - Operations

#	Date	S/U	General Information		Cause		Time & Duration				Customers	
			Address/Location	Description	Description	#	Ints	T off	T on	Mins	# Out	Cust Min
1	4/7/2014	U	105-H IRO 953 Scott Blvd	Reset overloaded Xfmr T5928	Reset overloaded Xfmr T5928	1	1	4/7/14 8:30 PM	4/7/14 9:21 PM	51	8	408
2	4/7/2014	U	105-H IRO 953 Scott Blvd	Replaced overloaded Xfmr T5928	Replaced overloaded Xfmr T5928	1	1	4/7/14 9:50 PM	4/8/14 3:06 AM	316	8	2528
3	4/17/2014	U	105-H IRO 880 Las Palmas	Tree branch in secondary wires	Tree branch in secondary wires	5	1	4/17/14 10:35 AM	4/17/14 10:43 AM	8	6	48
4	4/26/2014	U	102-H Circuit tripped. Wood Duck	OH Xfmr T5409 failed	OH Xfmr T5409 failed	1	1	4/26/14 5:59 AM	4/26/14 7:15 AM	76	1,005	76380
5	4/26/2014	U	102-H Circuit tripped. Wood Duck	OH Xfmr T5409 failed	OH Xfmr T5409 failed			4/26/14 5:59 AM	4/26/14 8:07 AM	128	82	10496
6	4/26/2014	U	102-H Circuit tripped. Wood Duck	OH Xfmr T5409 failed	OH Xfmr T5409 failed			4/26/14 5:59 AM	4/26/14 10:07 AM	248	51	12648
7	4/26/2014	U	102-H Circuit tripped. Wood Duck	OH Xfmr T5409 failed	OH Xfmr T5409 failed			4/26/14 5:59 AM	4/26/14 10:19 AM	260	49	12740
8	4/26/2014	U	102-H Circuit tripped. Wood Duck	OH Xfmr T5409 failed	OH Xfmr T5409 failed			4/26/14 5:59 AM	4/26/14 10:27 AM	268	84	22512
9	4/26/2014	U	102-H Circuit tripped. Wood Duck	OH Xfmr T5409 failed	OH Xfmr T5409 failed			4/26/14 5:59 AM	4/26/14 2:27 PM	508	315	160020
10	4/26/2014	U	102-H Circuit tripped. Wood Duck	OH Xfmr T5409 failed	OH Xfmr T5409 failed			4/26/14 5:59 AM	4/26/14 2:38 PM	519	33	17127
11	4/26/2014	U	102-H Circuit tripped. Wood Duck	OH Xfmr T5409 failed	OH Xfmr T5409 failed			4/26/14 5:59 AM	4/26/14 2:40 PM	521	52	27092
12	4/26/2014	U	102-H Circuit tripped. Wood Duck	OH Xfmr T5409 failed	OH Xfmr T5409 failed			4/26/14 5:59 AM	4/26/14 2:50 PM	531	22	11682
13	4/28/2014	U	105-U IRO 2073 Xavier Ct.	Replace leaking Xfmr T3397	Replace leaking Xfmr T3397	1	1	4/28/14 2:50 PM	4/28/14 5:00 PM	130	35	4550
14	4/26/2014	U	105-U IRO 2073 Xavier Ct.	Replace leaking Xfmr T3397	Replace leaking Xfmr T3397			4/28/14 2:50 PM	4/28/14 9:00 PM	370	11	4070

S/U - Scheduled or Unscheduled  
 Ints - # of interruptions  
 Long - >1 min; Short - <1 min  
 Cause # - see table on page 3

*Jeff Ipsaro*  
 Jeff Ipsaro  
 Division Manager - Operations

**Performance Measures Reporting**  
**Department: Finance**  
**April-14**

Division/Program/Measure	2013-2014		2012-2013	
	Current Month	Year to Date	Current Month	Year to Date
<b>Administrative Services/City-Wide Fiscal Planning &amp; Administration</b>				
1. Prepare Operating Budget, Capital Improvement Plan and CAFR documents.	N/A	3	N/A	3
2. Meet with staff at least quarterly to review work plans.	N/A	3	1	4
<b>Administrative Services/Special Projects</b>				
1. Percent of legislative analysis completed within negotiated time frame.	100%	100%	100%	100%
2. Percent of special requests completed within negotiated time frame.	100%	100%	100%	100%
<b>Budget and Treasury/Cash Management</b>				
1. Average weighted yield on unrestricted funds will be at least 100% of the twelve month average yield on two-year US Government Agency securities.	206%	248%	377%	436%
<b>Budget and Treasury/Contract Management</b>				
1. All actions required in contracts will be met by agreed upon due dates.	100%	100%	100%	100%
2. Ensure that quarterly lease payments for the Great America Theme Park site are made when due.	100%	100%	100%	100%
<b>Budget and Treasury/Debt Management</b>				
1. Submit debt schedules to Council no later than January 31 and July 31 of each year.	N/A	100%	N/A	100%
<b>Budget and Treasury/Financial Analysis</b>				
1. Complete special projects by agreed upon due dates.	100%	100%	100%	100%

**Performance Measures Reporting**  
**Department: Finance**  
**April-14**

Division/Program/Measure	2013-2014			2012-2013		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
<b>Budget and Treasury/Budget Development &amp; Analysis</b>						
1. Receive California Society of Municipal Finance Officers (CSMFO) budget awards.	N/A	2	2	N/A	2	2
<b>Accounting/General Accounting</b>						
1. Complete the external audit process and preparation of City's Comprehensive Annual Financial Report with an unqualified audit by December 31.	N/A	100%	100%	N/A	100%	100%
2. Receive Government Financial Officers Association of the United States and Canada (GFOA) excellence in financial reporting award.	N/A	1	1	N/A	1	1
3. Complete the preparation and submission of various State, Local, and Federal Agency reports by due dates.	100%	100%	100%	100%	100%	100%
4. Complete the month-end accounting close process and distribution of department budget status reports by the 15th working day of the following month.	100%	80%	83%	100%	80%	83%
<b>Accounting/Payroll</b>						
1. Process bi-weekly payroll and issuance of employee checks by the due date and time.	100%	100%	100%	100%	100%	100%
2. Complete and file the required monthly/quarterly State and federal tax returns before due date.	100%	100%	100%	100%	100%	100%
3. Issue employee W-2 forms by January 31.	N/A	100%	100%	N/A	100%	100%
4. Transmit the electronic version of W-2 to Social Security Administration by March 31.	N/A	100%	100%	N/A	100%	100%

**Performance Measures Reporting**  
**Department: Finance**  
**April-14**

Division/Program/Measure	2013-2014			2012-2013		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
<b>Accounting/Accounts Payable</b>						
1. Number of invoices processed.	3,162	31,751	40,000	3,821	32,290	30,000
2. Number of vendor warrants issued.	980	11,029	15,000	1,187	11,427	20,000
3. Percent of vendor invoices paid within 7 days of receipt.	100%	96%	95%	100%	96%	95%
4. Number of quick invoice vouchers processed.	1,134	10,901	15,000	1,378	11,346	25,000
5. Number of Payables process improvements.	0	1	2	0	0	1
<b>Accounting/Receivables/Fixed Assets</b>						
1. Percent of time that invoices are mailed within 10 working days of receipt of documentation from City Departments.	100%	100%	100%	100%	100%	100%
<b>Municipal Services/Utility Billing Services</b>						
1. Percent of closed delinquent accounts collected in-house.	95%	82%	80%	85%	69%	80%
2. Amount of late fees assessed.	\$86,906	\$686,967	\$825,000	\$59,151	\$654,527	\$800,000
<b>Municipal Services/Revenue Receipting-Cashiering</b>						
1. Average monthly number of utility accounts paying by automated methods.	31,193	31,276	29,000	33,737	30,790	26,800
2. Average monthly utility payments processed.	51,953	52,583	50,000	57,059	53,144	50,000
3. Percent of cash drawers reconciled.	100%	100%	100%	100%	100%	100%

**Performance Measures Reporting**  
**Department: Finance**  
**April-14**

Division/Program/Measure	2013-2014			2012-2013		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
<b>Municipal Services/Business Certificate</b>						
1. Number of business tax certificates processed annually.	930	10,036	12,000	1,262	10,316	12,000
2. Percent of delinquent tax certificates at fiscal year end.	4.4%	4.1%	5.0%	4.6%	4.5%	5.0%
<b>Municipal Services/Field Service</b>						
1. Percent of monthly utility meters accurately read.	100%	100%	100%	100%	100%	100%
2. Number of service requests processed yearly.	2,596	29,091	42,000	2,999	29,421	42,000
3. Average number of meters read monthly.	80,112	80,027	80,000	79,855	79,786	80,000
4. Number of months where all 200 routes are read and billed.	1	10	12	1	10	12
<b>Municipal Services/Administration</b>						
1. Percent of Accounts Receivables written off as bad debt annually.	0.000%	0.01%	0.40%	0.03%	0.17%	0.40%
2. Number of major UMIS initiatives successfully implemented during the year.	0	4	5	0	4	5
<b>Municipal Services/Call Center/Communication</b>						
1. Percent of customer calls answered within 90 seconds.	39%	36%	40%	47%	42%	40%
2. Average hold time of sequenced calls (m:s).	4:02	4:11	4:00	3:19	3:34	5:00
3. Number of dropped calls to total calls.	13%	15%	15%	10%	11%	25%
4. Average hold time of sequenced calls before drop (m:s).	3:27	3:32	4:00	3:03	3:28	6:00
5. Average number of customer telephone calls taken monthly.	5,256	5,663	6,000	5,678	5,346	7,000
6. Average number of IVR calls received monthly.	10,162	10,819	12,000	10,291	10,093	12,500
7. Average number of outbound calls made by CSR's.	1,429	1,515	1,500	1,402	1,347	2,100

**Performance Measures Reporting**  
**Department: Finance**  
**April-14**

Division/Program/Measure	2013-2014			2012-2013		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
<b>Purchasing/Warehouse</b>						
1. Number of material requisitions.	293	2,891	3,200	337	2,842	3,200
2. Number of inventory items cycle counted.	171	1,438	1,200	331	1,595	1,200
<b>Purchasing/Purchasing</b>						
1. Number of purchase orders.	100	1,106	1,250	109	1056	1,250
2. Number of cost reductions/avoidance.	0	0	5	0	0	5
<b>Purchasing/Mail Services</b>						
1. Number of mail pieces processed.	11,315	123,758	147,000	N/A	N/A	N/A

**CITY OF SANTA CLARA**  
**DEPARTMENT OF FINANCE - BUSINESS TAX & BUSINESS LICENSE**  
**MONTHLY ACTIVITY REPORT**  
**For the month ending April 30, 2014**  
 With Comparative Amounts for the month ended April 30, 2013

	CURRENT FY 2013-2014		PRIOR FY 2012-2013	
	This Month	Fiscal Year To Date	This Month	Fiscal Year To Date
<b>CASH RECEIVED FROM:</b>				
Business License (Tax Certificate)	\$ 70,012	\$ 742,834	\$ 84,401	\$ 726,807
Fire Permits	\$ 145,043	\$ 1,613,772	\$ 161,996	\$ 1,442,239
Rubbish Hauler (3%-16%)	\$ 289,520	\$ 1,145,849	\$ 274,529	\$ 1,094,600
Transient Occupancy Tax (9.5%)	\$ 1,444,245	\$ 12,488,574	\$ 2,154,601	\$ 11,682,048

**FISCAL YEAR STATISTICS FOR BUSINESS LICENSES:**

**NEW BUSINESS INFORMATION:**

No. of Rental Businesses	5	73	6	42
No. of Santa Clara Businesses	117	1,165	123	1,110
No. of Out-of-Town Businesses	72	593	83	575
Total New Businesses	194	1,831	212	1,727

RENEWALS	736	8,205	1,050	8,588
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LICENSES/PERMITS DELETED:	137	1,576	185	1,633
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**FIELD ENFORCEMENTS/DELINQUENCIES:**

Total No. of Delinquent Accounts	578	* n/a	588	* n/a
Total No. of Accounts in Collection	418	* n/a	343	* n/a
No. Delinquent Accounts Paid	45	488	71	734
No. Delinquent Accounts Deleted	50	733	99	770
Total Delinquents as a % of Total Certificates	4.4%	* n/a	4.6%	* n/a

**BREAKDOWN OF CURRENT BUSINESS LICENSES:\*\***

(Tax Certificates)

Number of Hotels/Motels	30	29
Rental Owners	1,463	1,451
Fixed Location in City (Inc Home Bus)	8,457	8,249
Out of City (Includes Contractors)	3,170	3,167
Total Tax Certificates	13,120	12,896

  
 Gary Ameling  
 Director of Finance

cc: City Clerk

\* Fiscal Year To Date amounts in these categories are labeled not applicable (n/a), as the number listed under "This Month" reflects a revolving count.

\*\* As of report run date on 5/7/14

**Transient Occupancy Tax:** The current month is less than the same month from the prior year due to payment timing differences; 6 hotels paid TOT in April 2013, but not in April 2014.

**Santa Clara Fire Department  
Monthly Activity Report  
April 2014**

	<u>This Month</u>	<u>FY 13/14 To Date</u>
<b>Division: Protection</b>		
<b>Program: Administration</b>		
1 Number of hours contributed by the Volunteer/Reserve Division	965	6648
2 Number of Fire responses	8	151
3 Number of emergency Medical responses	395	3766
4 Number of non-emergency Medical responses	142	1384
5 Number of Hazardous Materials responses	5	21
<b>Division: Protection</b>		
<b>Program: Emergency Response</b>		
1 Response time in 90% of all high level emergency medical calls.	5:50	5:48
2 Rseponse time in 90% of all high level emergency fire calls.	5:03	5:04
3 Number of emergency responses	492	4859
4 Number of non-emergency responses	221	2088
5 Percent of total alarms catagorized as false	6.87%	10.1%
<b>Division: Prevention</b>		
<b>Program: Code Enforcement/Public Education</b>		
1 Number of inspections performed by the Fire Prevention Bureau	351	2622
2 Number of inspections performed by the Fire Protection Division	335	2713
3 Number of citizen complaints	0	10
4 Number of community participants in fire and safety training and education programs	300	2230
5 Number of public education meetings		19
6 Number of permit inspections	2	1739
7 Number of new business license inspections	31	627
8 Number of plans reviewed	141	1135
9 Percent of multi-family (R-1) occupancies inspected	16.31%	54.78%

	<u>This Month</u>	<u>FY 13/14 To Date</u>
<b>Division: Prevention</b>		
<b>Program: Investigations</b>		
1 Number of fires investigated	2	20
2 Number of hazardous materials incidents investigated	0	1
<b>Division: Training</b>		
<b>Program: Training</b>		
1 Number of fire prevention training hours	41.50	537.60
2 Number of hazardous materials training hours	181.75	716.68
3 Number of Emergency Medical Services training hours	116.90	1254.09
4 Number of rescue training hours	63.67	811.67
5 All other training hours	528.83	5688.67
<b>Division: Hazardous Materials</b>		
<b>Program: Hazardous Materials Code Enforcement</b>		
1 Number of hazardous materials emergency responses	0	1
2 Number of business inspections	63	325
<b>Division: Incremental EMS Costs</b>		
<b>Program: Paramedic Services</b>		
1 Response time in 90% of all high level emergency medical calls.	5:50	5:48

  
 William G. Kelly  
 Fire Chief



## Interoffice Memorandum

**Date:** May 22, 2014

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**To:** Julio Fuentes, City Manager

**From:** William Kelly, Fire Chief

**Subject:** April 2014 Monthly OES Report

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- 4/3: Development of a job spec for Emergency Services Coordinator – 1.5 hours
- 4/7: Super Bowl emergency response planning – 1.5 hours
- 4/7: Research: Social Media use for risk and crisis communication: Palo Alto Fire Dept. interview – 1.5 hours
- 4/7: Councilmember tour of the Emergency Operations Center - 1 hour
- 4/14: Radiation/Nuclear protection for special events at Levi's Stadium – 1 hour
- 4/16: EOC exercise preparation – 2 hours
- 4/17: EOC exercise for City Staff at the Emergency Operations Center – 3 hours
- 4/24: Meeting of the Santa Clara County Operational Area Council – 2 hours

**City of Santa Clara**  
**Employee Activity Report - April 2014**  
**March 30, 2014 - April 26, 2014**

	Classified	Unclassified	As-Needed	Total
Budgeted Positions	**880.50	125.00		**1005.50
Filled Positions	748.75	102.00		850.75
Available Positions	131.75	23.00		154.75
Regular Appointments	3.00			3.00
As-Needed Appointments (includes Additional Classes)			20.00	20.00
Filled As-Needed Positions			434.00	434.00
Separations - Failed Probation				0.00
Separations - Resignation	1.00	1.00		2.00
Separations - Dismissal				0.00
Separations - As-Needed			5.00	5.00
Rehire				0.00
Retirements - Industrial Disability				0.00
Retirements - Service	2.00			2.00
Retirements - Service Pending Industrial Disability				0.00
Promotions	2.00			2.00
Death				0.00
Transfer - Full-Time to 3/4-time	0.25			0.25
Voluntary Demotion	1.00			1.00
Step/Merit Increases Granted	17.00	1.00	3.00	21.00
Step Increases Denied				0.00
Unemployment Insurance Claims			3.00	3.00
Long Term Disability Claims				0.00
State Disability Claims	3.00			3.00
Industrial Injury/Illness - Supervisor's Report	10.00			10.00
Industrial Injury/Illness - Medical Only	3.00			3.00
Industrial Injury/Illness - Indemnity (Lost Time)	13.00			13.00

\*\* Total includes 1 City Manager Temporary Overfill position.



Francine Hunt  
Human Resources Supervisor

**PERFORMANCE MEASURES REPORTING  
HUMAN RESOURCES - RECORDS BENEFITS  
APRIL 2014**

Records and Benefits		2013-2014		2012-2013	
		Year to Date	Budget Goal	Budget Actual	Budget Goal
<b>Benefits, Records and Payroll</b>					
1.	Percent of employee benefits & compensation transactions processed accurately and timely.	100%	100%	100%	100%
2.	Percent separation and retirement payoff calculations completed according to policy and within the final pay period.	100%	100%	100%	100%
3.	Percent of new hires processed for pay and benefits in time for their first paycheck	100%	100%	100%	100%
Records and Benefits		2013-2014		2012-2013	
		Year to Date	Budget Goal	Budget Actual	Budget Goal
<b>Workers' Compensation</b>					
1.	Percent of Workers' Compensation claims processed within five business days of receipt in Human Resources Department.	100%	100%	100%	100%
2.	Percent of work hours lost as a result of industrial injuries and illnesses.	1.14%	2.0%	1.14%	2.0%
3.	Percent of workforce that is accident free.	86.8%	85%	84.5%	83%
4.	Percent of City-sponsored training classes rated very good or above by attendees.	95%	95%	95%	95%
5.	Percent of City employees attending City sponsored training classes.	104.4%	40%	72.9%	40%

Notes:

\* ANNUALIZED TO DATE

## HUMAN RESOURCES DEPARTMENT

### TRAINING AND SAFETY ACTIVITIES

#### Monthly Report

April 2014

#### TRAINING

1. Topic: Harassment Prevention – Employee (Video)  
Date: April 3, 7, 8, 17, 22, 25, 26, 30, 2014  
Participants: 26  
Duration: 1 hr.
  
2. Topic: For New Employees – City Technology Overview  
Date: April 1, 28, 2014.  
Participants: 3  
Duration: 1 hr.
  
3. Topic: Beginner Series #2: Basic Document and Spreadsheet Editing  
Date: April 1, 2014  
Participants: 3  
Duration: 1.5 hrs.
  
4. Topic: Windows 7 Office 2010 Orientation  
Date: April 4, 2014.  
Participants: 3  
Duration: 1.5 hrs.
  
5. Topic: Outlook Calendar & Scheduling Basics  
Date: April 8, 15, 2014  
Participants: 8  
Duration: 1.5 hrs.
  
6. Topic: Beginner Series #4: Understanding File Management  
Date: April 15, 2014.  
Participants: 4  
Duration: 1.5 hrs.
  
7. Topic: PowerPoint Intermediate part 1 of 2  
Date: April 17, 2014  
Participants: 2  
Duration: 3 hrs.
  
8. Topic: Excel: Drive Your Database  
Date: April 17, 2014.  
Participants: 2  
Duration: 3 hrs.

9. Topic: Creating a Presentation Using the City Standard PowerPoint Template  
Date: April 22, 2014  
Participants: 2  
Duration: 3 hrs.

10. Topic: Excel: Charting Data  
Date: April 22, 2014.  
Participants: 4  
Duration: 1 hr.

11. Topic: Excel: Leverage with Links  
Date: April 22, 2014  
Participants: 3  
Duration: 1 hr.

12. Topic: Beginner Series #3: Outlook Email & Scheduling Basics  
Date: April 28, 2014.  
Participants: 3  
Duration: 1.5 hrs.

13. Topic: Excel: Summarize & Analyze LARGE Amnts. of Data Using Pivot Tables  
Date: April 29, 2014  
Participants: 2  
Duration: 1 hr.

14. Topic: Excel: Clarify Columns & Rows with Smart Formatting  
Date: April 29, 2014.  
Participants: 1  
Duration: 1 hr.

15. Topic: Excel: Formulas for Success  
Date: April 29, 2014  
Participants: 4  
Duration: 3 hrs.

### **SAFETY**

No significant activities for the month on a City-wide basis.

### **ADDITIONAL DEPARTMENTAL TRAINING**

#### **FIRE**

1. Topic: ACLS – Day 1  
Date: April 1, 2, 2014  
Participants: 15  
Duration: 7 hrs.

2. Topic: Swift Water  
Date: April 2, 2014  
Participants: 24  
Duration: 8 hrs.
3. Topic: Rad/Nuc Detection  
Date: April 3, 2014  
Participants: 1  
Duration: 3.5 hrs.
4. Topic: Fire Officer Academy  
Date: April 9, 10, 2014  
Participants: 7  
Duration: 8 hrs.
5. Topic: Levi Stadium Orientation – Blue Group 1  
Date: April 14 – 26, 2014  
Participants: 41  
Duration: 1.5 hrs.
6. Topic: Levi Stadium Orientation – Blue Group 2  
Date: April 14 – 16, 2014  
Participants: 29  
Duration: 1.5 hrs.
7. Topic: Levi Stadium Orientation – Blue Group 3  
Date: April 17, 18, 21, 2014  
Participants: 33  
Duration: 1.5 hrs.
8. Topic: PALS – Day 1  
Date: April 17, 2014  
Participants: 6  
Duration: 7 hrs.
9. Topic: PALS – Day 2  
Date: April 18, 2014  
Participants: 9  
Duration: 7 hrs.
10. Topic: Rad/Nuc Special Events Protection  
Date: April 22, 2014  
Participants: 1  
Duration: 2 hrs.
11. Topic: Hazardous Waste Code  
Date: April 22 – 24, 2014  
Participants: 1  
Duration: 24 hrs.

12. Topic: Haz Mat Refresher – Blue Group 1  
Date: April 22, 2014  
Participants: 11  
Duration: 3 hrs.

13. Topic: Haz Mat Refresher – Blue Group 2  
Date: April 22, 2014  
Participants: 11  
Duration: 3 hrs.

14. Topic: Spring Haz Mat Refresher – Blue Group 1  
Date: April 23, 28, 2014  
Participants: 26  
Duration: 3 hrs.

15. Topic: Spring Haz Mat Refresher – Blue Group 2  
Date: April 23, 28, 2014  
Participants: 21  
Duration: 3 hrs.

15. Topic: Spring Haz Mat Refresher – Blue Group 3  
Date: April 23, 28, 2014  
Participants: 25  
Duration: 3 hrs.

Attached is the current statistics regarding the Worker Adjustment and Retraining Notification (WARN) Act.



Greg Harris  
Human Resources Division Manager/  
Training and Safety Officer

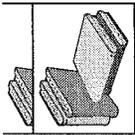
cc: Director of Human Resources



City of Santa Clara  
Library Department Monthly Report  
**April 2014**

Items Borrowed	<u>April-2014</u>	<u>April-2013</u>	<u>Fiscal YTD 2013/14</u>	<u>Fiscal YTD 2012/13</u>
Central Library	187,378	213,495	1,940,763	2,090,767
Mission Branch	2,117	2,277	19,583	21,068
<b>TOTAL</b>	<b>189,495</b>	<b>215,772</b>	<b>1,960,346</b>	<b>2,111,835</b>
<b>Patron Visits</b>				
Central Library	66,967	126,492	676,621	1,173,222
Mission Branch	3,634	2,885	37,525	38,623
<b>TOTAL</b>	<b>70,601</b>	<b>129,377</b>	<b>714,146</b>	<b>1,211,845</b>
<b>Patron Electronic Resources Use</b>				
Central Public ER Use	10,656	11,762	105,450	113,640
<b>Reference Inquiries</b>				
Central Library	12,798	14,296	123,098	140,859
Mission Branch	412	471	4,609	4,377
<b>TOTAL</b>	<b>13,210</b>	<b>14,767</b>	<b>127,707</b>	<b>145,236</b>
<b>Program Attendance</b>				
	<i>Number</i>			
Children: Central Library	24	4,274	22,077	23,545
Mission Branch	2	119	26	558
Adults: Central Library	30	769	898	5,723
Mission Branch	5	10	59	144
Senior Booktalks	1	15	15	122
<b>TOTAL</b>	<b>62</b>	<b>3,788</b>	<b>5,272</b>	<b>28,624</b>
<b>Patron Registration</b>				
Santa Clara	578	600	6,623	7,181
SVLS Libraries	340	394	3,635	4,096
Other Libraries	38	52	473	484
<b>TOTAL</b>	<b>956</b>	<b>1,046</b>	<b>10,731</b>	<b>11,761</b>
<b>Collection</b>				
Items Added	3,018	2,394	29,426	25,209
<b>Hold</b>				
Placed	6,299	4,936	62,870	50,065
Filled	4,962	4,194	50,089	40,702
<b>Volunteer Hours</b>				
Genealogy	156.50	149.00	1,542.50	1,512.47
READ Santa Clara	403.50	401.00	4,276.50	2,931.00
Volunteer Program	277.47	224.97	2,740.77	2,448.09
Foundation and Friends	477.00	555.09	4,890.00	5,128.76
<b>Total</b>	<b>1,314.47</b>	<b>1,330.06</b>	<b>13,449.77</b>	<b>12,020.32</b>

  
Hilary Keith  
City Librarian



**Performance Measures Reporting**  
**Department: Library**  
**2013-2014**  
**Month Ending April 2014**

Division/Program/Measure	2013-2014		2012-2013	
	Year to Date	Budget	Year to Date	Budget
<b>Division: Administration</b>				
<b>Program: Administration</b>				
1. Number of hours Library facilities are open to the public annually.	3,345.00	4,000	3,267.00	4,000
2. Number of patron visits to all Library facilities annually.	714,146	1,400,000	1,211,845	1,400,000
<b>Division: Youth &amp; Extension Services</b>				
<b>Program: Youth Services</b>				
1. Number of programs for children and parents offered.	184	250	191	250
2. Number of reference and reader's advisory questions annually.	33,311	35,000	32,112	35,000
3. Number of participants registered annually in Summer Reading Club.	422	2,800	30	2,800
4. Number of children and adults attending programs.	22,077	30,000	23,430	30,000

Division/Program/Measure	2013-2014		2012-2013	
	Year to Date	Budget	Year to Date	Budget
<b>Program: Young Adult</b>				
1. Number of Young Adult programs offered.	37	20	34	25
2. Number of Young Adult items circulated.	58,605	75,000	62,608	75,000
3. Number of participants annually in the Teen Summer Reading Program.	141	800	18	800
<b>Division: Youth &amp; Extension Services</b>				
<b>Program: Mission Library</b>				
1. Number of items circulated.	19,583	26,000	21,068	26,000
2. Number of programs for children and parents.	16	11	11	11
3. Number of participants registered annually in the Summer Reading Club.	0	200	54	200
4. Number of matched literacy pairs.	65	75	62	75
5. Number of children and adults attending programs.	558	400	278	400

Division/Program/Measure	2013-2014		2012-2013	
	Year to Date	Budget	Year to Date	Budget
<b>Program: Extension Services</b>				
5. Number of homebound patrons served each month.	17	20	18	20
6. Number of programs for adults.	9	11	9	11
7. Number of volunteer hours.	13,488	15,000	10,859	17,000
<b>Division: Adult Services</b>				
<b>Program: Reference</b>				
1. Number of reference and reader's advisory questions answered annually.	93,679	75,000	108,747	55,000
2. Number of programs offered to adults.	184	90	205	65
3. Total attendance at programs offered to adults.	5,723	4,000	6,578	2,500

Division/Program/Measure	2013-2014		2012-2013	
	Year to Date	Budget	Year to Date	Budget
<b>Program: Periodicals</b>				
1 Number of periodicals checked in and processed monthly.	785	7,000	832	750
2 Number of requests for Service resolved by Periodicals staff monthly.	914	6,000	813	400
<b>Division: Adult Services</b>				
<b>Program: Local History</b>				
1 Number of programs presented/sponsored annually	26	20	23	20
2 Number of displays developed annually.	7	5	4	5
3 Research inquiries answered annually.	2,959	3,000	2,926	3000
<b>Division: Adult Services</b>				
<b>Program: Circulation</b>				
1 Number of items circulated annually	1,940,763	2,400,000	2,090,767	2,400,000
2 Number of patrons registered annually	10,731	14,000	11,761	11,761
<b>Division: Collection Services</b>				
<b>Program: Technical Services</b>				
1. Number of items added to the collection each month.	3,018	2,000	2,929	2,000

Division/Program/Measure	2013-2014		2012-2013	
	Year to Date	Budget	Year to Date	Budget
<b>Division: Collection Services</b>				
<b>Program: Collection Management</b>				
1. Books held per capita.	2.93	3.00	2.99	3.00
2. Total items held per capita.	3.32	3.40	3.38	3.40
3. Library materials expenditure per capita.	\$4.15	\$ 3.80	\$3.80	\$ 3.80
<b>Division: Support Services</b>				
<b>Program: Facilities</b>				
1. # of safety inspections made annually	10	12	10	12
2. % of safety issues resolved within 48 hours of report.	98%	99%	98%	99%
<b>Division: Support Services</b>				
<b>Program: Technology</b>				
1. Percent of problem reports responded to within 24 hours of receipt.	100%	100%	100%	100%
2. Number of tickets/requests for services resolved by Technology Staff	1,745	600	1,311	600
3. Number of tickets/requests for services resolved by Technology Aides	14,867	10,000	12,842	10,000
4. Number of Library public computer users	105,450	108,000	113,640	108,000
5. Number of public laptop users	119,500	10,000	38,062	10,000

**Month: April Year: 2014**  
**PARKS AND RECREATION DEPARTMENT**  
**MONTHLY ACTIVITY REPORT**



**1 Participant Attendance Total 42,564** with breakdown as follows:

**A. By Program**

Senior Citizens	16,263	Sports Classes & Leagues	6,370
Pre School	885	Teen Activities	1,291
Culture/Performing Arts	5,640	Therapeutics	409
Special Events	4,765	Instructional Swim	0
Camps	138	Recreational Swim	3,994
<b>Total</b>	<b>42,564</b>	Youth Activities	2,809

**B. By Location (consider special events for each location)**

Community Recreation Center	6,003	Parks	9,260
Senior Center	16,479	Pools	3,994
Parks Buildings	1,890	School Facilities (add special events)	0
Youth Activities Center	3,277	Teen Center	1,339
<b>Total</b>	<b>42,564</b>	Off-Site	322

**2 Non-Directed. Permit or Contract groups attendance total 124,737** with breakdown as follows:

**A. By Activity**

	Groups	Attendance
Community Recreation Center Reservation		12
Senior Center		1,090
Teen Center/YAC		245
Parks- Buildings Reservation		2,677
Parks- Picnic Reservation		1,471
Field Reserv., Adult & Youth Groups		81,182
Swim Pool Reservations		38,060
	<b>Total</b>	<b>124,737</b>

**B. By Location**

Senior Center	1,090	T.C./YAC	245
Community Recreation Center	12	Fields	81,182
Park Buildings	2,677	Pools	38,060
Parks Picnics	1,471		
	<b>Total</b>	<b>124,737</b>	

**3 Monthly Participation totaled 167,301** (Program attendance & non-directed or permit groups)

**4 Revenue Collected for the Month:**

	Year to Date Fiscal			Fiscal Year
	4/1/2014	13/14	3/1/2013	2012/13
6 Swim Pool Admission	1,734.00	27,217.00	\$ 1,800.00	\$ 25,281.00
7 Rec. Classes/Swim Lessons	477,921.00	2,253,332.53	\$ 156,934.71	\$ 1,756,304.78
8 Rentals & Commissions	35,371.00	188,355.47	\$ 12,467.00	\$ 117,166.50
	<b>\$515,026.00</b>	<b>\$2,468,905.00</b>	<b>\$ 171,201.71</b>	<b>\$ 1,898,752.28</b>

**April-14**  
**MONTHLY PROJECT ACTIVITY REPORT**  
**PARKS AND RECREATION DEPARTMENT**  
**PARKS DIVISION, CEMETERY DIVISION, SCG&TC OPERATOR**

<b>Fund 532 Parks &amp; Recreation:</b>	<b>Activity</b>
3001 Miscellaneous Park Improvements	<b>H. Schmidt</b> - Caboose repair complete, awaiting installation at park. <b>Aqnew</b> - Misc. landscape improvements are completed. <b>Live Oak</b> - The strip along the curb has been complete.
3002 Community Recreation Center	
3003 Tennis & Sport Courts	<b>Central Tennis Center</b> - Bid awarded for resurfacing courts, work to commence when weather permits. Lighting upgrade in planning stages for Maywood, CRC, E.Carmichael tennis courts.
3004 Youth Activity Center	Roof replacement bids have been received. Awarding of the bid is underway.
3005 Senior Center	
3006 Teen Center	Projects in the planning stages.
3007 Mission City Cntr for Performing Arts	Maintenance continued by S.C.U.S.D., City pays 33%.
3008 Townsend, Johnson, Washington Sports Field	Continuing field repairs & maintenance. <b>Washington Field</b> - Renovations have been completed.
3009 Tree Inventor & Habitat Restoration	
3010 Park Building Roof, Structure Rehabilitation & Replacement	Not funded for 2013-14.
3140 Ulistac Natural Area	<b>SCVWD</b> Grant work continue removal of non natives, mulch placement.
3170 Central Park Pond Refurbishment	Bids have been received for the project.
3172 International Swim Center Pool	No projects funded 2013-14.
3176 Miscellaneous Swim Pool Improvements Phase VI	<b>International Swim Center</b> - Replacement of defective return valve to racing & training pools. <b>M.Gomez</b> - Additional deck light installation on hold waiting for arrival of light poles.

Other

<b>Fund 562-CDBG Projects:</b>	<b>Activity</b>
5556 Senior Center ADA Improvements	All projects completed, fund depleted (ADA). No additional funding for FY 2013-14
5558 Senior Center Emergency Generator	Project Completed. No additional funding for FY 2013-14.

<b>Fund 840 SOSA</b>	<b>Activity</b>
9532 Golf Course Drainage Restoration	No projects funded for FY 2013-14.

<b>Fund 593 Cemetery</b>	<b>Activity</b>
3625 Burial Improvements	No projects funded for 2013-14.

**THE CITY OF SANTA CLARA**  
**ACTIVITY REPORT FOR THE MONTH OF APRIL, 2014**  
**MISSION CITY MEMORIAL PARK**

FISCAL YEAR COMPARISON  
**SUMMARY TOTALS TO DATE:**

**TOTAL INCOME FROM ALL SOURCES:**

	<b>APRIL, 2014</b>	<b>APRIL, 2013</b>	<b>%</b>	<b>2013-2014</b>	<b>2012-2013</b>	<b>%</b>
<b>FACILITIES</b>						
093/1162/5730						
093/1163/5730	<u>\$18,242.00</u>	<u>\$29,390.00</u>	-36.3%	<u>\$111,187.00</u>	<u>\$129,132.00</u>	-6.4%
<b>LABOR</b>						
093/1162/5740						
093/1163/5740	<u>\$16,524.00</u>	<u>\$24,677.00</u>	-30.2%	<u>\$188,081.00</u>	<u>\$229,446.00</u>	-18.8%
<b>MATERIALS</b>						
093/1162/5760						
093/1163/5760	<u>\$4,441.00</u>	<u>\$21,443.00</u>	-0.6%	<u>\$81,815.00</u>	<u>\$102,777.00</u>	-5.2%
<b>BSR</b>						
TOTALS	<u>\$39,207.00</u>	<u>\$75,510.00</u>	-27.2%	<u>\$381,063.00</u>	<u>\$461,355.00</u>	-12.7%
SALES TAX	<u>\$388.60</u>	<u>\$1,876.31</u>		<u>\$7,159.02</u>	<u>\$8,767.97</u>	
<b>ENDOWMENT CARE</b>						
077/0131/57500						
077/0131/0361	<u>\$4,987.00</u>	<u>\$8,359.00</u>	-17.8%	<u>\$36,884.00</u>	<u>\$41,061.00</u>	-2.6%
TOTAL INCOME	<u>\$44,582.60</u>	<u>\$85,745.31</u>	-25.9%	<u>\$425,106.02</u>	<u>\$511,183.97</u>	-11.7%

**MONTHLY PURCHASES AND BURIAL SUMMARY**

**APRIL FISCAL YEAR 2013-2014**

**APRIL FISCAL YEAR 2012-2013**

INVOICES 32770-32782

INVOICES 32630 - 32645

NICHES PURCHASED	<u>7</u>
CREMATION PLOTS PURCHASED	<u>0</u>
CREMATION BURIAL RIGHTS	<u>0</u>
FULL BODY PLOTS PURCHASED	<u>0</u>
CREMATION BURIAL (GROUND OR NICHE)	<u>1</u>
FULL BODY BURIALS	<u>6</u>
TOTAL BURIALS FOR THE MONTH OF APRIL 2014	<u>7</u>

NICHES PURCHASED	<u>0</u>
CREMATION PLOTS PURCHASED	<u>2</u>
CREMATION BURIAL RIGHTS	<u>5</u>
FULL BODY PLOTS PURCHASED	<u>3</u>
CREMATION BURIAL (GROUND OR NICHE)	<u>5</u>
FULL BODY BURIALS	<u>6</u>
TOTAL BURIALS FOR THE MONTH APRIL 2013	<u>11</u>

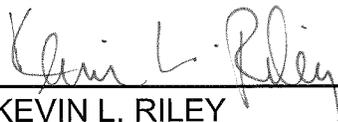
  
 LAWRENCE DEJANVIER  
 CEMETERY OPERATIONS SUPERINTENDENT

# MONTHLY ACTIVITY REPORT

Planning Department

April 1 - 30, 2014

<b>Division/Program/Measure</b>	<b>2013 - 2014</b>		<b>2012 - 2013</b>	
	<b>Current Month</b>	<b>Fiscal Year To Date</b>	<b>This Month Last Year</b>	<b>Fiscal Year To Date</b>
<b>Planning Commission Agenda Items</b>				
Variances & Modifications	1	4	0	0
Use Permits (includes Conditional and Special)	1	14	3	19
Zoning & Rezoning	3	16	1	14
Tent. Map, Ten. Parcel Map & Lot Line Adj.	2	6	0	1
ARC Referrals & Review	0	1	0	1
General Plan Amendment	0	4	0	0
CEQA Determination - EIR, Mitigated Neg Dec.	2	10	2	11
Others including Appeals	5	21	1	14
<b>Total</b>	<b>14</b>	<b>76</b>	<b>7</b>	<b>60</b>
<b>Historical &amp; Landmark Commission Agenda Items</b>				
Projects reviewed	2	23	2	6
<b>Applications Filed</b>				
Variances	1	5	1	4
Permits - Special & Use	5	44	7	51
Zoning - Regular	0	12	3	24
Zoning Administrator Action (Including Modification)	13	112	19	132
Lot Line Adjustment	0	5	2	6
Tentative Map, Tentative Parcel Map, Subdivision Map	1	11	1	19
Historical & Landmarks including Mills Act	0	5	2	6
General Plan Amendments	0	4	2	4
Residential Additions (story) - No Fee	0	1	0	0
Residential Addition (story) - With Fee	0	9	0	13
Residential Regular Projects- No Fee	8	78	6	92
Residential Regular Projects - With Fee	6	24	2	21
Non-Residential - No Fee	4	17	0	43
Non-Residential - With Fee	6	38	3	32
Mixed Use & New Building	1	21	1	11
Landscape - Non Residential	3	29	3	33
Signs	11	182	11	160
Temporary Signs	1	13	2	8
Others including Appeals	4	44	3	46
<b>Total</b>	<b>64</b>	<b>654</b>	<b>68</b>	<b>705</b>
<b>Code Enforcement</b>				
New Complaints	25	247	28	248
Complaints Resolved	14	162	25	186
<b>Fees Collected</b>				
Unadjusted Fees Collected	\$ 45,199.00	\$ 475,495.50	\$ 78,353.00	\$ 526,546.50
Add/Deduct: Adjustments & Refunds				
<b>Net Fees Collected</b>	<b>\$ 45,199.00</b>	<b>\$ 520,694.50</b>	<b>\$ 78,353.00</b>	<b>\$ 604,899.50</b>



**KEVIN L. RILEY**  
Director of Planning and Inspection

**City of Santa Clara**  
 Monthly Activity Report  
 Department of Planning and Inspection  
 Building Inspection Division

April, 2014

DESCRIPTION	THIS MONTH	FY YR TO DATE	LAST YEAR			
<b>1. PERMITS ISSUED:</b>						
Building	158	1598	206			
Electrical	151	1572	187			
Plumbing	120	1176	117			
Mechanical	103	1070	117			
Total Number of Permits	532	5416	627			
<b>2. NUMBER OF INSPECTIONS:</b>						
Building	1043	12770	1072			
Electrical	521	6336	605			
Plumbing/Mechanical	719	7559	714			
Housing	0	0	0			
Total Number of Inspections	2283	26665	2391			
Total Daily Average	109	132	114			
<b>3 SERVICE REQUESTS, COMPLAINTS, CN'S</b>						
Service Requests/Complaints	13	199	28			
Correction Notices Issued	19	224	15			
Correction Notices Resolved	15	191	25			
Correction Notices Unresolved	200	n/a	149			
Citations Issued	14	138	10			
<b>4. REVENUE GENERATED FEES:</b>						
Building Permits	\$ 448,815.01	\$ 2,164,536.36	\$ 268,835.88			
Plan Check	\$ 386,979.58	\$ 3,126,268.91	\$ 182,252.10			
Electrical Permits	\$ 24,726.16	\$ 252,876.40	\$ 33,271.25			
Plumbing Permits	\$ 15,896.61	\$ 185,699.78	\$ 25,454.57			
Mechanical Permits	\$ 12,895.43	\$ 191,158.41	\$ 30,426.28			
Miscellaneous	\$ 19,739.74	\$ 208,584.27	\$ 22,565.18			
Total Fees	\$ 909,052.53	\$ 6,129,124.13	\$ 562,805.26			
Total last year to date		\$ 4,681,694.05				
<b>5. NATURE OF BLDG PERMITS ISSUED:</b>						
	NO	VALUATION	UNITS	SQFT	PLAN CHECK	PERMIT FEES
Single Family	1	\$120,000.00			\$ 1,066.95	\$1,123.10
Multi-Family	0					
Duplex	0					
Apartments	0					
Commercial	3	\$56,528,800.00		367,866	\$ 74,495.27	\$ 210,614.18
Industrial	0					
Public	0					
<b>Alteration &amp; Additions</b>						
Residential	51	\$2,040,291.00		6,183	\$ 17,923.61	\$22,982.25
Commercial/Industrial	38	\$18,136,218.00			\$ 88,994.67	\$95,942.68
Miscellaneous	58	\$1,702,554.00			\$ 14,681.64	\$20,244.91
Public	1	\$1,600.00				
Total		\$78,529,463.00				
Total FY to Date		\$387,009,175.62				

  
 \_\_\_\_\_  
 Sheila Lee, Building Official

5/19/2014

**PERFORMANCE MEASURES**  
**BUILDING INSPECTION DIVISION**  
 April, 2014 - FY 2013/14

Permit Services	Adopted	Actual	% Actual/Adopted
1. Percent of express plan checks performed within two working days.	95%	100.0%	105.3%
2. Percent of short cycle plan checks performed within ten business days.	90%	75.0%	83.3%
3. Percent of regular cycle plan checks performed within 30 calendar days.	85%	92.3%	108.6%
4. Percentage of service provided to all Permit Center customers within 20 minutes of their arrival.	90%	77.0%	85.6%
<b>Inspection</b>			
1. Percent of code complaints responded to within two working days.	90%	93%	103.2%
2. Percent of inspections completed within next working day.	95%	98%	102.8%
<b>Housing Inspection</b>			
1. Percent of multi-family rental housing complexes inspected per month.	1.67%	0.0%	0.0%
2. Percent of housing code complaints responded to within two business days.	90%	n/a	N/A

CITY OF SANTA CLARA  
DEPARTMENT OF PLANNING & INSPECTION

HOUSING & COMMUNITY SERVICES DIVISION  
ACTIVITY REPORT FOR APRIL 2014

Program: Federal & State Grant Administration

*Mission: Meet the expectations of city residents in delivering needed community services while meeting program administration requirements stipulated by the U.S. Department of Housing and Urban Development.*

Measures:	<u>Budgeted</u>	<u>Current Month</u>	<u>FYTD</u>
1. Obtain approval by HUD of the City's annual Consolidated Plan.	100%	0%	100%
2. Obtain approval by HUD of the City's Consolidated Annual Performance and Evaluation Report.	100%	100%	100%

Program: Neighborhood Conservation & Improvement Program

*Mission: Improve the local housing stock for the protection of residents and the enhancement of the City.*

Measures:	<u>Budgeted</u>	<u>Current Month</u>	<u>FYTD</u>
1. Complete minor and substantial rehabilitation of up to 50 owner-occupied houses.	50	1	24

Program: Housing & Community Development Projects

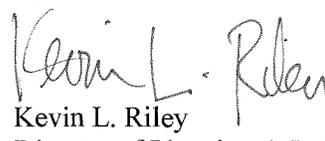
*Mission: Implement in a timely manner budgeted projects and programs that are identified as meeting particular community needs, primarily for low and moderate income people.*

Measures:	<u>Budgeted</u>	<u>Current Month</u>	<u>FYTD</u>
1. Monitor the performance of all Public Service Agencies contracting with the City and Agency for compliance to contractual obligations.	10	0	0
2. Annually monitor for compliance all affordable housing contracts.	44	1	32



Eloiza Murillo-Garcia  
Housing & Community Services  
Acting Division Manager

Approval:



Kevin L. Riley  
Director of Planning & Inspection

**SANTA CLARA POLICE DEPARTMENT**  
**MONTHLY ACTIVITY REPORT**

<b>APRIL 2014 (by Calendar Year)</b>	<b>Current Month</b>	<b>Previous Month</b>	<b>This Year to Date</b>	<b>Prev. Year to Date</b>
<b>Homicide</b>	0	0	0	0
<b>Rape</b>	6	2	12	3
<b>Robbery</b>	3	13	24	18
<b>Felony Assaults</b>	4	2	11	36
<b>Burglary</b>	62	45	213	155
<b>Larceny - Thefts</b>	220	183	804	634
(Of above that were from vehicle)	<132>	<95>	<432>	<279>
<b>Auto Theft</b>	22	42	162	123
Local Recovered	27	40	252	122
Recovered for Others	9	12	83	76
<b>Traffic Collisions</b>				
Fatalities	0	1	1	0
Injuries	16	23	76	104
Prop. Damage	66	85	278	266
<b>Total</b>	<b>82</b>	<b>109</b>	<b>355</b>	<b>370</b>
<b>Traffic Violations</b>				
Moving	371	425	1,487	3,016
Parking	574	529	2,368	3,239
Miscellaneous	0	0	0	0
<b>Total</b>	<b>945</b>	<b>954</b>	<b>3,289</b>	<b>6,255</b>
<b>Arrests</b>				
Adult	442	419	1,621	1,420
Juvenile	13	25	80	93
<b>Total</b>	<b>455</b>	<b>444</b>	<b>1,701</b>	<b>1,513</b>
<b>Warrants</b>				
Received	191	183	661	583
Cleared	136	125	481	471
<b>Reserve Police Hours</b>	<b>1,040</b>	<b>842</b>	<b>3,695</b>	<b>3,310</b>

<b>APRIL 2014 (by Fiscal Year)</b>	<b>Current Month</b>	<b>Previous Month</b>	<b>This Fiscal Year to Date</b>	<b>Prev. Fiscal Year to Date</b>
<b>Financial Report</b>				
Alarm Permits (4820)	\$ 754.50	\$ 804.00	\$ 9,020.00	\$ 14,989.00
Vehicle Release Fee (7396)	\$ 2,140.00	\$ 2,078.00	\$ 21,926.50	\$ 22,282.90
CA Vehicle Code (7461)	\$ 12,730.41	\$ 10,439.57	\$ 143,525.19	\$ 143,952.67
Misdemeanor Fines (7463)	\$ 465.33	*\$ 20,923.56	\$ 25,182.19	\$ 10,056.91
City Traffic School Fines (7470)	\$ 5,754.44	\$ 8,383.12	\$ 90,906.43	\$ 74,707.23
Parking Enforcement (7472)	\$ 20,315.15	\$ 39,113.48	\$ 252,240.78	**\$ 247,680.97
DUI Billing (7475)	\$ 3,626.52	\$ 1,482.06	\$ 17,006.46	\$ 15,011.84
<b>Total Monies Received</b>	<b>\$ 45,786.35</b>	<b>\$ 62,466.06</b>	<b>\$ 559,807.55</b>	<b>\$ 528,681.52</b>

\*Misdemeanor Fines include \$20,628.14 fees collected for November 2013.

\*\*Parking Enforcement total adjusted to remove \$115,242.24 from last FY per Capt. Kazem.

Prepared by Caroline Aquino

**REVISED**

**SANTA CLARA POLICE DEPARTMENT  
MONTHLY ACTIVITY REPORT**

<b>MARCH 2014 (by Calendar Year)</b>	<b>Current Month</b>	<b>Previous Month</b>	<b>This Year to Date</b>	<b>Prev. Year to Date</b>
<b>Homicide</b>	0	0	0	0
<b>Rape</b>	2	3	6	1
<b>Robbery</b>	13	4	21	16
<b>Felony Assaults</b>	2	1	7	29
<b>Burglary</b>	45	42	151	105
<b>Larceny - Thefts</b>	183	198	584	499
(Of above that were from vehicle)	<95>	<94>	<300>	<224>
<b>Auto Theft</b>	42	48	140	93
Local Recovered	40	140	225	93
Recovered for Others	12	26	74	61
<b>Traffic Collisions</b>				
Fatalities	1	0	1	0
Injuries	23	19	60	76
Prop. Damage	85	65	212	190
<b>Total</b>	<b>109</b>	<b>84</b>	<b>273</b>	<b>266</b>
<b>Traffic Violations</b>				
Moving	425	Not available	1,116	2,070
Parking	529	566	1,794	2,413
Miscellaneous	0	0	0	0
<b>Total</b>	<b>954</b>	<b>566</b>	<b>2,344</b>	<b>4,483</b>
<b>Arrests</b>				
Adult	419	380	1,179	1,074
Juvenile	25	21	67	82
<b>Total</b>	<b>444</b>	<b>401</b>	<b>1,246</b>	<b>1,156</b>
<b>Warrants</b>				
Received	183	121	470	430
Cleared	125	105	345	362
<b>Reserve Police Hours</b>	842	894	2,655	2,407

<b>MARCH 2014 (by Fiscal Year)</b>	<b>Current Month</b>	<b>Previous Month</b>	<b>This Fiscal Year to Date</b>	<b>Prev. Fiscal Year to Date</b>
<b>Financial Report</b>				
Alarm Permits (4820)	\$ 804.00	\$ 949.50	\$ 8,265.50	\$ 13,719.50
Vehicle Release Fee (7396)	\$ 2,078.00	\$ 2,033.00	\$ 19,786.50	\$ 20,305.40
CA Vehicle Code (7461)	\$ 10,439.57	\$ 11,957.24	\$ 130,794.78	\$ 129,376.75
Misdemeanor Fines (7463)	**\$ 20,923.56	\$ 246.66	\$ 24,716.86	\$ 9,544.60
City Traffic School Fines (7470)	\$ 8,383.12	\$ 7,006.35	\$ 85,151.99	\$ 69,365.92
Parking Enforcement (7472)	\$ 39,113.48	\$ 26,632.61	\$ 231,925.63	*\$ 236,121.83
DUI Billing (7475)	\$ 1,482.06	\$ 730.38	\$ 13,379.94	\$ 11,699.27
<b>Total Monies Received</b>	<b>\$ 62,466.06</b>	<b>\$ 49,555.74</b>	<b>\$ 514,021.20</b>	<b>\$ 490,133.27</b>

\*Parking Enforcement total adjusted to remove \$115,242.24 from last FY per Capt. Kazem.

\*\*Misdemeanor Fines include \$20,628.14 fees collected for November 2013.

Prepared by Caroline Aquino  
Revised on 5/31/14.

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**Automotive Services  
Monthly Activity Report  
Fiscal Year 2013-14**

Report date: 05/27/2014

<u>Equipment Summary</u>	<u>April</u> 2014	<u>Yr to Date</u> FY 13-14	<u>Budgeted</u> FY 13-14
1. Purchased qty of repl units:	3	73	73 *
2. Purchased (co) qty of units:	1	3	4 *
3. Purchased qty of upgrades:	0	0	0
4. Emergency Unsched Purchase:	0	2 <sup>wreck</sup>	0
5. % of total units purchased:	5%	99%	
6. Total Dollars Budgeted: (1. - 6. :minus deferrals)*			5,074,233
7. Cost of units purchased:			
\$ Budgeted	1,181,919 *	4,334,159 *	
\$ Actual Cost	626,600 *	3,823,313 *	
8. % of dollars allocated:			
% Budget	23%	85%	
% Actual Purchased	12%	75%	
Appropriations (8804) rplcmnts:	100		3,712,500
Excellerated (8804) rplcmnts:	<b>15 excellerated rplcmnt</b>		<b>766,733</b>
Capital outlay/upgrades:	4 *		595,000
Less equipment <u>deferred</u> :	-42 *		0 *
Emergency Unsched Purchase:	2 wrecks etc		0
Balance of total purchases:	<u>79</u>		<u>5,074,233</u>

<u>Maintenance Summary</u>	<u>April</u>	<u>Yr to Date</u>
1. Qty of PM appointments:	104	901
2. Unscheduled repairs:	208	1616
3. Total Repairs/PM written:	312	2517
4. Avg Qty repairs/PM per day:	14	12
Total work days this month:	22	
Total work days to date:	207	

  
Sue Cucuzza  
Auto Services Coordinator

**Automotive Services Department  
Sustainable "Green Fleet" Commitment  
Monthly Activity Report - Fiscal Year 2013-14**

**Month: April 2014**

In October 2005, the City Council approved a goal of 75% of all non-public safety sedans to be ultra-low or zero-emission vehicles by the end of the fiscal year 2007/08. Successfully Completed fiscal year 2006/07.

In May 2007, the City Council joined Sustainable Silicon Valley and committed among other items to increase the fuel efficiency of our fleet with the goal of not increasing total fleet fuel usage. Council reaffirmed this goal as part of its Principles and Priorities for 2009/10. On track.

The California Air Resources Board (CARB) approved a regulation to reduce toxic diesel particulate matter emissions from diesel fueled public agency and utility fleet vehicles beginning in 2007. Compliant September 30th, 2013.

Sustainable Green Fleet Progress						
Type Vehicle (Sedans)	Base Year End FY 2006-07			April 2014		
	Non-Public Safety	Public Safety	Total	Non-Public Safety	Public Safety	Total
All Electric	4	1	5	4	1	5
Hybrids (gas/elec)	47	17	64	47	20	67
Alternate Fuel (capable)	0	0	0	0	39	39
Subtotal	86%	16%	41%	91%	56%	68%
qty	51	18	69	51	60	111
Other (gas only)	14%	84%	59%	9%	44%	32%
qty	8	93	101	5	47	52
Total	100%	100%	100%	100%	100%	100%
qty	59	111	170	56	107	163

Comment: Future City purchased police patrol cars off State contract, will be alternate fuel capable vehicles.

Fleet Fuel Usage Unleaded only	Base Year FY 2006/07	Last Year Monthly Usage	Current Monthly Usage	Current Total Usage YTD	Current Total FY (% Base Year)
Annual Gallons	219029	23193	16058	165912	76%

CARB Diesel Emission Retrofit/Replacement				
Number of Diesel Vehicles (that require retrofit) By calendar year	Summary of Retrofits	Units sold in Calif.	Retrofits Completed	Total Fleet Retrofits/Sold Completed to date (by Cal Year)
cal year 2007 : 13 20% of applicable Fleet (63)	Compliant	3	13	13 Retros / 3 sold in calif
cal year 2008 : --	Compliant	1	0	1 sold in Calif
cal year 2009 : 26 60% of applicable Fleet (63)	Compliant	1	29	29 Retros / 1 sold in Calif
cal year 2010 : --	Compliant	1	0	1 sold in Calif
cal year 2011 : bal of Fleet: 15 100% of applicable Fleet (63)	Compliant	1	14	14 Retros / 1 sold in Calif balance zero to upgrade
cal year 2012 : bal of Fleet: 5 of New applicable count of (68)	Qty:5 2007's to be installed 2013, units found in fleet in late 2012.	0	0	Temp test done, parts on order. To be completed by Dec 2013
cal year 2013 : bal of Fleet: 5 of New applicable count of (68)	Qty:5 2007's with 1: 2004 and 4: 2006 engines. Units found in fleet in 2012.	0	5	100% COMPLIANT with 61 retros, 7 sells

Prepared by Sue Cucuzza  
Automotive Services Coordinator



# PERFORMANCE MEASURES REPORTING

## ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC

### MARCH 2014

Division: Support Services		Number: 001/4411	
Program: Division Administration			
Performance Measures	MARCH Actuals	YTD Actuals	2013-2014 Budget
1. Percentage of Agenda Reports completed on time.	82%	93%	95%
2. Percentage of Agenda Reports completed satisfactorily.	100%	83%	95%
3. Percent of City Manager assignment requests responded within time requested.	-	90%	95%
4. Percentage of customers surveyed that are very satisfied.	-	#DIV/0!	95%

Division: Support Services		Number: 001/4412	
Program: Development Support			
Performance Measures	MARCH Actuals	YTD Actuals	2013-2014 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

Division: Support Services		Number: 001/4413	
Program: Capital Improvement Projects			
Performance Measures	MARCH Actuals	YTD Actuals	2013-2014 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A



# PERFORMANCE MEASURES REPORTING

## ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC

### MARCH 2014

<b>Division: Building Maintenance</b>		<b>Number: 001/2222</b>
<b>Program: Maintenance / Repair</b>		
Performance Measures	MARCH Actuals	YTD Actuals
1. Percent of all requests for service responded to within four business days.	-	100%
		2013-2014 Budget 100%

<b>Division: Building Maintenance</b>		<b>Number: 001/2223</b>
<b>Program: Janitorial</b>		
Performance Measures	MARCH Actuals	YTD Actuals
1. Respond to all service requests within two hours.	-	100%
2. Clean all restrooms in all major buildings daily.	-	100%
		2013-2014 Budget 100%



# PERFORMANCE MEASURES REPORTING

## ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC

### MARCH 2014

<b>Division: Design</b>		<b>Number: 001/4441</b>		
<b>Program: Division Administration</b>				
Performance Measures	MARCH Actuals	YTD Actuals		
1. This Program has no reportable performance measures.		N/A		
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">2013-2014 Budget</td> <td style="text-align: center;">N/A</td> </tr> </table>	2013-2014 Budget	N/A
2013-2014 Budget	N/A			

<b>Division: Design</b>		<b>Number: 001/4442</b>		
<b>Program: Development Support</b>				
Performance Measures	MARCH Actuals	YTD Actuals		
1. This Program has no reportable performance measures.		N/A		
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">2013-2014 Budget</td> <td style="text-align: center;">N/A</td> </tr> </table>	2013-2014 Budget	N/A
2013-2014 Budget	N/A			

<b>Division: Design</b>		<b>Number: 001/4443</b>				
<b>Program: Capital Improvement Projects</b>						
Performance Measures	MARCH Actuals	YTD Actuals				
1. Percent of Capital Improvement Projects designed within budget.		100%				
2. Percent of Capital Improvement Projects designed within approved schedule.		100%				
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">2013-2014 Budget</td> <td style="text-align: center;">80%</td> </tr> <tr> <td style="text-align: center;"></td> <td style="text-align: center;">80%</td> </tr> </table>	2013-2014 Budget	80%		80%
2013-2014 Budget	80%					
	80%					



# PERFORMANCE MEASURES REPORTING ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC MARCH 2014

<b>Division: Field Services</b>			
<b>Program: Division Administration</b>			
			Number: 001/4461
Performance Measures	MARCH Actuals	YTD Actuals	2013-2014 Budget
1. Percentage of complaints responded to within one business day.	-	75%	90%
2. Number of construction activity complaints.	-	12	25

<b>Division: Field Services</b>			
<b>Program: Development Support</b>			
			Number: 001/4462
Performance Measures	MARCH Actuals	YTD Actuals	2013-2014 Budget
1. Percent of inspection requests responded to within one business day.	-	100%	90%

<b>Division: Field Services</b>			
<b>Program: Capital Improvement Projects Inspection</b>			
			Number: 001/4463
Performance Measures	MARCH Actuals	YTD Actuals	2013-2014 Budget
1. Percent of Capital Improvement Projects that reached substantial completion within the construction contract time.	-	#DIV/0!	75%
2. Percentage of Capital Improvement Projects completed within approved budget.	-	#DIV/0!	100%
3. Percentage of customers rating services as satisfactory.	-	#DIV/0!	100%
4. Percentage of Capital Improvement Projects completed with Change Orders under 5% of construction cost.	-	#DIV/0!	90%



# PERFORMANCE MEASURES REPORTING

## ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC

### MARCH 2014

<b>Division: Land &amp; Property Development</b> <b>Program: Division Administration</b>		<b>Number: 001/4451</b>			
<b>Performance Measures</b> 1. This Program has no reportable performance measures.	<b>MARCH</b> Actuals N/A	<b>YTD</b> Actuals N/A			
		<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">2013-2014</td> </tr> <tr> <td style="text-align: center;">Budget</td> </tr> <tr> <td style="text-align: center;">N/A</td> </tr> </table>	2013-2014	Budget	N/A
2013-2014					
Budget					
N/A					

<b>Division: Land &amp; Property Development</b> <b>Program: Development Support &amp; Review</b>		<b>Number: 001/4452</b>							
<b>Performance Measures</b> 1. Percent of subdivision maps first submittals reviewed within 15 business days.  2. Percent of subdivision maps subsequent submittals reviewed within 10 business days.  3. Percent of Title documents drafted within 10 business days.  4. Percent of private development plans reviewed on first review within 20 business days.  5. Percent of private development plans reviewed on subsequent reviews within 15 business days.	<b>MARCH</b> Actuals 50%  0%  75%  0%  40%	<b>YTD</b> Actuals 38%  42%  87%  48%  70%							
		<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">2013-2014</td> </tr> <tr> <td style="text-align: center;">Budget</td> </tr> <tr> <td style="text-align: center;">95%</td> </tr> </table>	2013-2014	Budget	95%	95%	95%	95%	95%
2013-2014									
Budget									
95%									
95%									
95%									
95%									
95%									



# PERFORMANCE MEASURES REPORTING

## ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC

### MARCH 2014

Division: Traffic		Number: 001/4431	
Program: Division Administration			
Performance Measures	MARCH Actuals	YTD Actuals	2013-2014 Budget
1. Number of grants applied for or being processed.	0	1	12
2. Number of special transportation permits issued.	55	409	350
3. Number of citizen/customer requested studies completed.	13	128	30

Division: Traffic		Number: 001/4432	
Program: Development Support			
Performance Measures	MARCH Actuals	YTD Actuals	2013-2014 Budget
1. Number of preliminary site and development plans for Project Clearance and Subdivision Committee reviewed.	8	96	200
2. Number of encroachment permits, Capital Improvement Projects, and traffic control plans reviewed within agreed time frame.	25	164	145

Division: Traffic		Number: 001/4433	
Program: Capital Improvement Projects			
Performance Measures	MARCH Actuals	YTD Actuals	2013-2014 Budget
1. Number of traffic projects under design.	1	4	12
2. Number of projects under construction requiring Traffic division support.	0	0	12

Division: Traffic		Number: 001/4434	
Program: Traffic Signal Management			
Performance Measures	MARCH Actuals	YTD Actuals	2013-2014 Budget
1. Number of timing, coordination, detection, equipment, or other signal management requests responded to.	22	197	150



# PERFORMANCE MEASURES REPORTING

## ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC

### MARCH 2014

Division: Traffic  
Program: Traffic Striping and Signing

Number: 001/4435

2013-2014
Budget
150

	MARCH	YTD
Performance Measures		
Actuals	4	Actuals
		55

1. Number of work orders created for Street Department action.

STREET AND AUTOMOTIVE SERVICES DEPARTMENT  
MONTHLY ACTIVITY REPORT - April 2014

			THIS MONTH	THIS FY TO DATE	LAST FY TO DATE
14.	Inertial Barriers	(ea)	0	0	0
<b>D. SPECIAL DEPARTMENTAL ACTIVITIES</b>					
1.	Clean-Up Campaign - Hours	(hr)	1,827	2,085	1,623
2.	Clean-Up Campaign - Debris Collected	(cy)	0	0	33,270
3.	Crack Sealing (Contract)	(lf)	0	0	0
4.	Fog Sealing (Contract)	(sy)	0	0	0
5.	Leaf Vac Program - Debris Collected	(cy)	0	2,699	1,892
6.	Christmas Tree Collection Program	(hr)	0	67	517
<b>E. PARKWAYS &amp; BOULEVARDS MAINTENANCE</b>					
1.	Trees Planted	(ea)	28	129	110
2.	Trees Sprayed/Trees Injected	(ea)	0	3	1,045
3.	Root Pruning	(ea)	1	23	17
4.	Bracing & Cabling	(ea)	2	42	31
4.1.	Immediate Calls for H/B and B/D	(ea)	10	158	183
5.	Trees & Stumps Removed	(ea)	19	133	101
6.	Citizen Generated Tree Trim Requests	(ea)	37	650	760
6.1.	Miscellaneous Generated Service Requests	(ea)	92	526	543
7.	Trees Trimmed - City Crews	(ea)	34	561	603
7.1.	Trees Trimmed - Contract	(ea)	105	800	643
7.2.	Total Trees Trimmed	(ea)	139	1,361	1,246
8.	Backlog of Citizen Trim Requests - In-House				
8.1.	Current Month	(ea)	28		641
8.2.	More than 30 days	(ea)	15		526
8.3.	More than 60 days	(ea)	147		1,318
8.4.	Total Backlog	(ea)	190		2,485
9.	Backlog of Citizen Trim Requests - Contracted				
9.1.	Current Month	(ea)	20		185
9.2.	More than 30 days	(ea)	15		160
9.3.	More than 60 days	(ea)	52		515
9.4.	Total Backlog	(ea)	87		862
10.	Miscellaneous Trash Pickup	(gal)	450	3720	1,931
10.1	VTA Trash Pickup	(gal)	325	3475	2,547
<b>F. SOLID WASTE</b>					
1.	Clean Green Collection				
1.1.	Cubic Yards	(cy)	5,425	43,437	45,177
1.2.	Tons	(ton)	1,085	8,688	9,035
2.	Complaints Responded To:				
2.1.	Clean Green	(ea)	0	3	0
2.2.	Garbage	(ea)	2	8	4
3.	Street Sweeping				
3.1.	Miles Cleaned	(mi)	2,887	25,235	24,460
3.2.	Man-Hrs per Curb-Mile	(hr/mi)	0.09	1.16	1.17
4.	Illegal Sign/Graffiti Abatement				
4.1.	Illegal Signs Removed	(ea)	270	3,827	4,353
4.2.	Graffiti Loc. (Pri/Pub/Gar Bins) Reported	(ea)	996	10,267	2,056
4.3.	Graffiti Notices Issued	(ea)	1	44	192
4.4.	Private Property Graffiti City Clean Up	(ea)	8	1,605	1,655
5.	No. of Violations				
5.1.	For Containers Stored on Street	(ea)	5	93	N/A
5.2.	For Containers with Lids Open	(ea)	0	3	N/A
5.3.	For Overfilled Containers	(ea)	1	5	N/A
5.4.	For Accumulation of Refuse	(ea)	4	13	N/A

\* Partial street area not included.

Prepared by: *Debra Cowan*

Approved by: *[Signature]*

STREET AND AUTOMOTIVE SERVICES DEPARTMENT  
MONTHLY ACTIVITY REPORT - April 2014

			THIS MONTH	THIS FY TO DATE	LAST FY TO DATE
<b>A. STREET MAINTENANCE</b>					
1.	Deeplift AC R&R (In-House)	(ton)	9	2,009	841
2.	AC Restorations (Permits) (In-House)	(ton)	13	366	595
3.	Miscellaneous AC Repair (In-House)	(ton)	0	169	164
3.1.	Total AC Placed (In-House)	(ton)	0	2,515	1,600
4.	Crack Sealing (In-House)	(lf)	44,520	85,798	39,375
5.	Area of Streets Prepared for Slurry (In-House)*	(sy)	5,644	5,644	0
6.	Area of Streets Prepared for Fog Seal (In-House)*	(sy)	0	0	0
7.	Deeplift AC R&R (Contract)	(ton)	0	291	0
8.	AC Restorations (Permits) (Contract)	(ton)	0	0	0
9.	AC Overlay (Contract)	(ton)	0	0	0
10.	Slurry/Cape Seal (Contract)*	(sy)	0	0	0
11.	Miscellaneous AC Repair (Contract)	(ton)	0	0	0
11.1.	Total AC Placed (Contract)	(ton)	0	0	0
12.	Miscellaneous Activities	(hr)	389	8,836	11,502
<b>SIDEWALK MAINTENANCE</b>					
13.	Sidewalk R&R (In-House)	(sf)	0	0	2,413
14.	Curb & Gutter R&R (In-House)	(lf)	0	0	155
15.	Sidewalk Grinding	(hr)	15	128	314
16.	Sidewalk R&R (Contract)	(sf)	2,830	13,144	9,576
17.	Curb & Gutter R&R (Contract)	(lf)	251	1,148	2,178
18.	Valley Gutter (Contract)	(sf)	0	0	0
19.	Wheelchair Ramp (Contract)	(ea)	0	0	1
20.	Median Curbs (Contract)	(lf)	0	0	0
21.	Miscellaneous Activities	(hr)	0	0	0
22.	Illegally Dumped Materials	(gal)	0	26,800	7,305
<b>B. STORM DRAIN SYSTEM MAINTENANCE</b>					
1.	Catch Basins Cleaned	(ea)	196	2,544	3,316
2.	Main & Lateral Flushing	(ft)	460	10,855	13,418
2.1.	Main & Lateral Flushing	(cy)	1	68	18
3.	Illicit/Illegal Discharge Incidents	(ea)	9	86	19
4.	Illicit/Illegal Discharge Incidents	(hr)	11	274	95
5.	Other Non-Point Source Activities	(hr)	12	113	9
6.	Pump Stn. Mtce./Wet Well/Trash Rack Cleaning	(hr)	32	662	1,108
6.1.	Pump Stn. Mtce./Wet Well/Trash Rack Cleaning	(cy)	6	90	96
7.	Pump Station/Outfall Monitoring	(hr)	49	1,285	1,010
8.	Creek Clean-Up/Trash Abatement	(hr)	0	34	59
9.	Construction Site Inspections	(ea)	11	108	89
10.	Construction Site Inspections	(hr)	15	159	188
11.	Ind/Com Facility Inspections	(ea)	143	944	122
12.	Ind/Com Facility Inspections	(hr)	37	569	142
13.	Public Information Participation	(hr)	3	21	57
14.	Miscellaneous Activities	(hr)	212	2,462	2,088
<b>C. TRAFFIC STRIPING &amp; SIGNAGE MAINTENANCE</b>					
1.	Striping Installed	(mi)	0.1	66.2	87.6
2.	Curbs Painted	(lf)	190	19,344	20,081
3.	Vandalism	(hr)	8	71	64
4.	Services for Other Departments	(hr)	0	877	1,356
5.	Pavement Marking (messages & crosswalks)	(sf)	0	6,346	6,294
6.	Sign Fabrication	(ea)	110	868	782
7.	Sign Maintenance	(hr)	92	1,227	1,495
8.	Signs Installed, Upgraded or Repaired	(ea)	150	1,557	1,934
9.	Metal Beam Guardrails	(lf)	0	297	971
10.	Miscellaneous Activities	(hr)	145	1,893	2,193
11.	Striping Installed (Contract)	(mi)	0.0	0.0	0.0
12.	Pavement Marking (Contract)	(sf)	0	0	0
13.	Pavement Markers (Contract)	(ea)	0	0	0

**CITY OF SANTA CLARA SEWER DEPARTMENT  
MONTHLY ACTIVITY REPORT APRIL 2014**

<u>ACTIVITY</u>	<u>WORK UNIT</u>	<u>THIS MONTH</u>	<u>FISCAL YEAR</u>
TOTAL Service Requests	Number	110	1,719
Cleanout Installations	Number	4	24
Lateral Stoppages	Number	96	1,222
Main Stoppages	Number	5	31
Misc. Requests/Complaints	Number	3	411
Roach Customer Complaints	Number	2	10
Lateral/Main Repairs	Number	0	4
Sewer Construction	Feet	0	0
Jet Cleanings	Feet	0	113,691
Roach Control (Manholes)	Number	2	4
Lateral Installations	Number	4	23
TV Inspections, Laterals	Each	1	43
TV Inspections, Main Lines	Feet	0	11
Root Foaming, Main Line	Feet	0	0
Root Foaming, Lateral	Number	0	0
Pump Calls, Storm & Sewer	Number	2	45

**SEWAGE PUMP STATIONS DATA**

**NORTHSIDE**

**RABELLO**

Total pumped (MG) during April	0.0	0.0
Total pumped (MG) since July 1, 2013	809	1611
Average daily flow for the month (MGD)	0.0	0.0

**SAN JOSE OUTFALL**

**MONTH**

**F.Y.**

28 days			
Flow Total (MG)	Line A (West)	39.87	1024 West
	Line B (East)	101.35	1502 East
Combined flow Lines A & B (MG)		141	2526
Average Daily Flow (MGD)	Line A	1.4	West
	Line B	3.6	East
Total average flow		5.0 mgd	



Christopher L. de Groot  
Director Water & Sewer Utilities

Division/Program/Measure	2013-2014			2012-2013		
	Apr-14	Year To Date	Budget	This Month Last Year	Year To Date	Budget
<b>Sewer System Administration</b>						
094/1511						
1. Prepare annual Sewer Revenue Program (as required for Federal program and WPCP cost distribution) by due dates each year.	0	2	2	0	0	2
2. Prepare monthly status reports and TPAC agenda reports.	1	10	12	1	10	12
<b>Sewer System Maintenance</b>						
094/1512						
1. Number of feet of mainline jetted.	0	113,693	350,000	14,303	229,556	350,000
2. Percentage of sanitary sewer overflows reported to the State CIQWS database within the time frame required by regulations	100%	100%	100%	NA	100%	100%
3. Number of reportable sewer spills	1	6	<3	0	4	<3
<b>Sewer Operations</b>						
094/1514						
1. Number of pump and metering stations inspected.	3	199	396	33	330	396
2. Provide all preventative and routine maintenance as specified in operations and maintenance manuals.	100%	100%	100%	100%	100%	100%
<b>San Jose/Santa Clara WPCP</b>						
094/1515						
1. Support Treatment Plant Advisory Committee (TPAC) members to represent the City in matters relating to the WPCP at monthly meetings.	1	10	12	1	10	12
2. Provide sufficient funding for all WPCP approved projects.	NA	75%	100%	25%	75%	100%
<b>Sewer/Storm Pump Maintenance</b>						
094/1516						
1. Number of storm pump stations inspected.	34	309	408	34	340	408
2. Provide all preventative and routine maintenance as specified in operations and maintenance manuals.	100%	100%	100%	100%	100%	100%
3. Coordinate annual load test for generators.	0	2	10	0	3	10



Christopher L. de Groot  
 Director of Water & Sewer Utilities



Division/Program/Measure	2013-2014			2012-2013		
	Apr-14	Year To Date	Budget	This Month Last Year	Year To Date	Budget
<b>Water Engineering/Design Engineering</b> 092/1411						
1. Number of plans reviewed.	45	368	220	28	243	220
2. Complete review of plans by the required due dates.	89%	83%	90%	89%	95%	90%
<b>Water Engineering/ Water Quality</b> 092/1412						
1. Create and publish the annual Consumer Confidence Report in accordance with the California Safe Drinking Water Act requirement.	0	0	1	0	0	1
2. Number of water quality samples processed.	342	3,133	3,000	337	3,147	3,000
<b>Water Engineering/Water Resources</b> 092/1413						
1. Promote water conservation at public events.	4	6	4	1	3	5
<b>Water System Maintenance</b> 092/1422						
1. Maintain an industrial standard for unaccounted water of 5% or less.	<5%	< 5%	< 5%	< 5%	< 5%	< 5%
2. Number of responses to customer service requests.	128	1,275	1,600	119	1,104	1,600
3. Respond to customer service requests within 30 minutes of receipt of calls (excluding scheduled appointments and after hours call back requests).	90%	91%	80%	90%	90%	80%
4. Number of backflow prevention devices tested.	210	2,368	2,000	159	2,191	2,000
5. Number of meters changed for routine, repair and testing.	69	969	800	115	667	800
6. Number of main break repairs/broken valve replacements performed.	6	81	95	5	60	95

Division/Program/Measure	2013-2014			2012-2013		
	Apr-14	Year To Date	Budget	This Month Last Year	Year To Date	Budget
<b>Water System Construction</b>						
092/1423						
1. Number of lineal feet of water mains installed.	0	5,479	7,500	540	3,002	5,000
2. Number of new service installations.	9	100	50	7	91	50
3. Number of underground utility locates performed.	417	3,149	2,000	326	2,871	2,000
<b>Water System Operations</b>						
092/1424						
1. Perform routine maintenance on City fire hydrants.	96	600	750	117	807	750
2. Number of production meters read and recorded.	64	640	800	64	640	800
3. Number of mainline water valves tested and exercised.	214	1,552	800	164	1,056	800
<b>Solar System Maintenance</b>						
092/1532						
1. Number of responses to customer service requests.	40	163	300	50	221	300
2. Number of systems provided with semi-annual winterization service. twice each year.	0	121	110	54	121	50
3. Number of removal and reinstallation requests.	2	22	12	6	51	12
4. Percent of service requests responded to within one business day.	95%	92%	75%	95%	93%	75%
<b>Recycled Water System Maintenance, City</b>						
097/1522						
1. Number of recycled water meters greater than 2" tested annually.	2	2	18	0	0	18
<b>South Bay Water Recycling System Maintenance</b>						
097/1525						
1. Provide all O & M services as required in Agreement for Services.	100%	100%	100%	100%	100%	100%

Meeting Date: 6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-8



**Date:** June 4, 2014

**To:** City Manager for Council Action

**From:** Director of Finance/Assistant City Manager

**Subject:** Approve Renewal of Earthquake and Flood Insurance from July 1, 2014 to July 1, 2015 for the Grizzly Hydroelectric Plant and Authorize Payment of Insurance Premium to Alliant Insurance Services

## EXECUTIVE SUMMARY:

The City's insurance broker, Alliant Insurance Services, Inc. sought competitive quotes from several insurance companies for placement of insurance as agreed to in the terms of the Grizzly Development and Mokelumne Settlement Agreement. The City of Santa Clara is required to maintain insurance on the Grizzly Hydroelectric Plant. Submitted here is a request of \$74,510 to renew the required earthquake and flood (also known as Difference in Conditions or DIC) insurance from July 1, 2014 to July 1, 2015. The policy provides \$20 million in liability coverage per occurrence and \$15 million for Building Ordinance Demolition and Increased Cost of Construction. The policy is carried by the Empire Indemnity Insurance Company, rated A+ Excellent, Financial Size Category XV by A.M. Best Company.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

The advantage of purchasing a Difference in Conditions (DIC) insurance coverage is to protect the City's investment in the Power Plant and its components, especially from the potentially catastrophic loss due to earthquake or flood. The renewal amount of \$74,510 is a decrease of \$4,170 from the 2013-14 premium of \$78,680, or 5.6%. The total insured value of the plant has increased by 0.6%, from \$81.9 million to \$82.4 million. The account rate decreased by 5.6%, thus reducing the premium despite the slight increase in insured values.

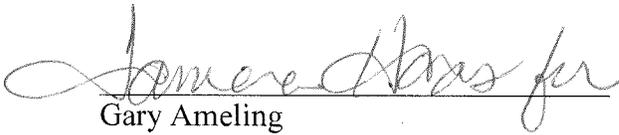
## ECONOMIC/FISCAL IMPACT:

Funds of \$74,510 are available in the Special Liability Fund Contractual Services (082-0141-87840).

**RECOMMENDATION:**

That the Council:

- 1) Approve the renewal of the Earthquake and Flood Insurance for the period of July 1, 2014 to July 1, 2015 for the Grizzly Hydroelectric Plant and authorize payment of the insurance premium to Alliant Insurance Services, Inc. in the amount of \$74,510; and
- 2) Authorize the City Manager to execute any and all documents necessary to complete the transaction.



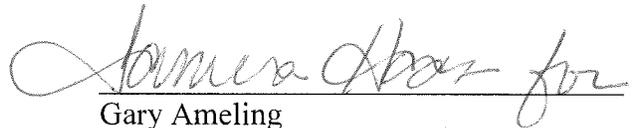
Gary Ameling  
Director of Finance/  
Assistant City Manager

APPROVED:



Julio J. Fuentes  
City Manager

Certified as to Budget Form:   
082-0141-87840      \$74,510



Gary Ameling  
Director of Finance/  
Assistant City Manager

MAJORITY VOTE OF COUNCIL

***Documents Related to this Report:***

- 1) *Grizzly DIC Summary*

Grizzly DIC Summary

City of Santa Clara/Grizzly Hydroelectric  
DIC - Earthquake and Flood  
Renewal Comparison

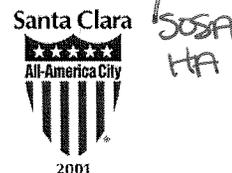
Term	2013-14	2014-15	Increase in \$	Increase in %
Limit	\$ 20,000,000	\$ 20,000,000		0%
Deductible	7.5%	7.5%		
Values	\$ 81,937,287	\$ 82,425,663	\$ 488,376	0.6%
Account Rate	0.093	0.087		-5.6%
Premium	\$ 78,680	\$ 74,510	\$ (4,170)	5.6%

Meeting Date: 6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-9/SA



**Date:** June 4, 2014

**To:** City Manager for Council Action  
Contract Administrator for Sports and Open Space Authority Information  
Executive Director for Housing Authority Information  
Executive Officer for Successor Agency Information

**From:** Director of Finance/Assistant City Manager  
Director of Finance for Sports and Open Space Authority  
Housing Authority Treasurer

**Subject:** Approve Renewal of City's Insurance for the Period July 1, 2014 – July 1, 2015, and Authorize Payment of Insurance Premiums to Alliant Insurance Services

## EXECUTIVE SUMMARY:

The City's insurance broker, Alliant Insurance Services, Inc. sought competitive quotes from several insurance companies for renewal for the following three policies:

### Master Property Insurance and Excess Boiler & Machinery Insurance-

The City's Master Property Insurance includes the Golf Course, Convention Center, Convention Center Maintenance District, the Grizzly Hydro Plant and Donald Von Raesfeld Power Plant in the Public Entity Property Insurance Program (PEPIP). The policy is being renewed for the period July 1, 2014 – July 1, 2015 through Alliant Insurance Services, the City's insurance broker. The coverage limit is for \$1 billion per occurrence based on a Total Insurable Value (TIV) of \$1.109 billion. The annual premium, including Surplus Lines Taxes and Fees, is \$594,996, a decrease of \$8,546 or approximately 1.4% from last year.

The primary \$2.5 million layer will continue to be placed with Lexington (Best Rated A XV), and Lexington will also continue to provide the majority of capacity in the \$22.5 million excess \$2.5 million layer, with Lloyd's of London (Best Rated A XV) as its quota-share partner. Excess limits will be placed with London, Bermudian, European and U.S. Domestic markets (Best Rated minimum of A- VII) up to a limit of \$1 billion.

The Excess Boiler and Machinery Policy for the City includes Electric (except the Donald Von Raesfeld Plant which has a separate policy), Golf Course, Convention Center, Convention Center Maintenance District and the Grizzly Hydro Plant. The policy is being renewed for July 1, 2014 - July 1, 2015. The annual premium is \$24,420, an increase of \$78 or approximately 0.3% above last year.

Total annualized premiums for these two policies are \$619,416 for fiscal year 2014-15 compared to \$627,884 for fiscal year 2013-14, a decrease of \$8,468 or approximately 1.3%. The decrease is primarily due to:

- 5.17% decrease in insurance rates, from \$0.0590 per \$100 valuation to \$0.0559 per \$100 valuation
- 4.11% increase in the total insurable value from \$1.065 billion to \$1.109 billion.

Boiler and Machinery Insurance for the Donald Von Raesfeld (DVR) Power Plant-

In conjunction with the commercial operation of the Donald Von Raesfeld Power Plant (the "Power Plant"), the City retains a boiler and machinery insurance policy for the Plant. The current insurance expires on July 1, 2014. The boiler and machinery coverage provides a limit for property damage of \$100 million and a sub limit for business interruption of \$11,804,141. The premium is \$217,838 for the coverage from July 1, 2014 to July 1, 2015 on a Total Insurable Value (TIV) of \$204.5 million for replacement cost and business interruption.

City Excess Liability Insurance-

The policy is being renewed for the period of July 1, 2014 to July 1, 2015 with the Alliant National Municipal Liability Program (ANML). The excess liability insurance has an aggregate and per occurrence coverage of \$20 million with the City's self insured retention limit (deductible) being \$5 million. The coverage is provided by Starr Indemnity Insurance Company, rated A, Excellent by the A.M. Best Company and Arch Specialty Insurance Company, rated A+, Superior by the A.M. Best Company for \$10 million each for a total of \$20 million. The annual premium is \$168,710, an increase of \$4,900 or approximately 3% compared to last year.

The full insurance proposals are available for review in the Finance Department.

**ADVANTAGES AND DISADVANTAGES OF ISSUE:**

Master Property Insurance and Excess Boiler & Machinery Insurance-

The coverage for PEPPIP remains at \$1 billion per occurrence, the same as last year's policy. The coverage for the Excess Boiler and Machinery is \$100 million, also the same as last year's policy. It is prudent to have insurance since, without insurance, the City retains full risk if damage occurs to City property or its boilers and machinery. In addition, insurance is required per the terms of the Grizzly Development and Mokelumne Settlement Agreement for commercial operation of that Plant. The City would not be able to operate the Plant without the required insurance.

Boiler and Machinery Insurance for the Donald Von Raesfeld (DVR) Power Plant-

The advantage of purchasing boiler and machinery insurance coverage is to protect the City's investment in the Power Plant and its components, especially from the risk of loss due to mechanical or accidental breakdown. The policy provides business interruption protection for a period of time so that lost generation capacity will be covered while the Plant is not operational. The deductible amount for this policy is \$500,000 for the gas turbines, \$250,000 for property damage and a 30-day waiting period for business interruption. The recommended insurance carrier, Zurich American Insurance Company, has A.M Best Guide Rating of A+, Superior.

City Excess Liability Insurance-

One advantage of insuring the City for liability is that for a charge of \$168,710 a year, the City has protection against large liability claims, which can amount to millions of dollars. Another advantage is that it is a reasonable alternative to fully self-insuring given the size of the premium. There are no disadvantages.

**ECONOMIC/FISCAL IMPACT:**

**Master Property Insurance and Excess Boiler & Machinery Insurance-**

The total cost for the City's Master Property Insurance and Boiler & Machinery Policy (including the City, Golf Course, Convention Center, Convention Center Maintenance District, Tasman Drive Parking Structure, and Grizzly Hydro Plant) is \$619,416. This figure also includes property but not boiler and machinery insurance for the Donald Von Raesfeld power plant which is under a separate policy.

Funds are available as follows: \$525,547 in Special Liability Insurance (082-0142-87840) for the City (including Electric); \$63,236 in the Convention Center Insurance Account, \$17,517 in the Convention Center Parking Structure (026-2961-87840); \$5,603 in the Convention Center Maintenance District Insurance Account (026-2961-87840); and \$7,513 in Golf Course Insurance Account (811-8013-87840) for SOSA.

**Boiler and Machinery Insurance for the Donald Von Raesfeld (DVR) Power Plant-**

The fiscal impact is the payment of the annual premium of \$217,838, a decrease of \$12,615 or 5.5% from last year's \$230,453. The renewal rate decreased slightly and the premium decrease is attributed to the decrease of 0.4% in the total insured value. Funds required to pay this premium are available in the General Liability Internal Service Fund Insurance Premiums account (082-0141-87840).

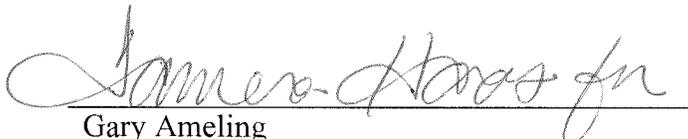
**City Excess Liability Insurance-**

The policy premium is a total of \$168,710 for coverage from July 1, 2014 to July 1, 2015. Funds are available in the Special Liability Fund Contractual Services (082-0141-87840).

**RECOMMENDATION:**

That the Council:

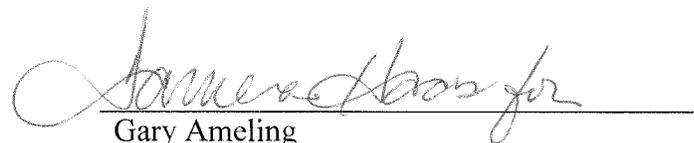
- 1) Approve the renewal of the City's Master Property Insurance and Excess Boiler & Machinery Insurance for the period July 1, 2014 – July 1, 2015 and authorize payment of insurance premium to Alliant Insurance Services in the amount of \$619,416;
- 2) Approve the renewal of Boiler and Machinery Insurance for the Donald Von Raesfeld (DVR) Power Plant for the period July 1, 2014 – July 1, 2015 and authorize payment of insurance premiums to Alliant Insurance Services in the amount of \$217,838;
- 3) Approve the renewal of the Excess Liability Insurance for the period July 1, 2014 to July 1, 2015 and authorize payment of insurance premium to Alliant Insurance Services in the amount of \$168,710; and
- 4) Authorize the City Manager to execute any and all documents necessary to complete the transactions.

  
\_\_\_\_\_  
Gary Ameling  
Director of Finance/Assistant City Manager  
Director of Finance for Sports and Open  
Space Authority  
Housing Authority Treasurer

Certified as to Budget Form:   
082-0142-87840 \$525,547  
860-8014-87840 \$ 63,236  
026-2961-87840 \$ 23,120  
811-8013-87840 \$ 7,513  
082-0141-87840 \$386,548

APPROVED:

  
\_\_\_\_\_  
Julio J. Fuentes  
City Manager  
Contract Administrator for Sports and Open  
Space Authority  
Executive Director for Housing Authority  
Executive Officer for Successor Agency

  
\_\_\_\_\_  
Gary Ameling  
Director of Finance/Assistant City Manager  
Director of Finance for Sports and Open  
Space Authority  
Housing Authority Treasurer  
**MAJORITY VOTE OF COUNCIL**

*Documents Related to this Report:*

- 1) *Executive Summary for PEP and B&M*
- 2) *Executive Summary for DVR B&M*
- 3) *Executive Summary for Excess Liability*

**Executive Summary for PEPiP and B&M**

**Attachment 1**

	<u>2013-14</u>	<u>2014-15</u>	<u>Y-T-Y change</u> <u>(\$)</u>	<u>Y-T-Y change</u> <u>(%)</u>
<u>Insurance Premium</u>				
PEPiP	\$603,542	\$594,996	-\$8,546	-1.4%
B&M	\$24,342	\$24,420	\$78	0.3%
<b><u>Total Insurance Cost</u></b>	<b><u>\$627,884</u></b>	<b><u>\$619,416</u></b>	<b><u>-\$8,468</u></b>	<b><u>-1.3%</u></b>

Total Insurable Value ( TIV \$ in M)	\$1,065,175,954	\$1,108,939,334	\$43,763,380	4.11%
Account rate (per \$100)	\$0.0590	\$0.0559	-\$0.003	-5.17%

**Executive Summary for DVR B&M**

**Attachment 2**

	<u>2013-14</u>	<u>2014-15</u>	<u>Y-T-Y change</u> <u>(\$)</u>	<u>Y-T-Y change</u> <u>(%)</u>
Total Insurance Premium	\$230,453	\$217,838	(\$12,615)	-5.5%
Total Insurable Value (\$ in M)	\$205,312,561	\$204,571,427	(\$741,134)	-0.4%
Total Insurable Value ( TIV \$ in M)	\$205,312,561	\$204,571,427	-\$741,134	-0.36%
Account rate (per \$100)	\$0.00113	\$0.10649	\$0.10536	9323.89%

**Executive Summary for Excess Liability**

**Attachment 3**

	<u>2013-14</u>	<u>2014-15</u>	<u>Y-T-Y</u> <u>change (\$)</u>	<u>Y-T-Y</u> <u>change (%)</u>
Total Insurance Premium	\$163,810	\$168,710	\$4,900	3.0%

Meeting Date: 6/24/14

# AGENDA REPORT

Agenda Item # 7B-1/5A  
SA

City of Santa Clara, California



**Date:** June 24, 2014

**To:** City Manager for Council Action  
Executive Director for Stadium Authority Action

**From:** City Attorney  
General Counsel

**Subject:** Approval of a Municipal Law Enforcement Services Agreement with the City of Sunnyvale Regarding Special Law Enforcement Units for Levi's Stadium Events

**EXECUTIVE SUMMARY:**

This Agreement is very similar to the agreement you recently approved for special law enforcement services provided by the Santa Clara County Sheriff for events at Levi's Stadium. The Agreement permits the City to call for Sunnyvale personnel within a specified time prior to events, to pay negotiated pay and equipment rates for those personnel, and to ensure that those personnel remain Sunnyvale employees while providing law enforcement services. Mutual indemnification provisions are in place for potential injuries and third party suits that may arise related to services provided by Sunnyvale. A copy of the indemnity agreement can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

**ADVANTAGES AND DISADVANTAGES OF ISSUE:**

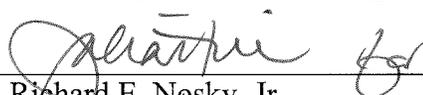
The advantages of this Agreement are that the duties and responsibilities of the City and the City of Sunnyvale are more clearly set forth in the event of disputes or third party lawsuits.

**ECONOMIC/FISCAL IMPACT:**

Certain costs for the City and/or Stadium Authority, such as insurance premiums and worker's compensation benefits, will increase, but those will not impact the General Fund as they will be reimbursed as public safety cost per the Stadium Lease Agreement.

**RECOMMENDATION:**

That the Council and Stadium Authority approve and authorize the City Manager/Executive Director to execute the Indemnity Agreement by and between the City of Santa Clara, Santa Clara Stadium Authority and the City of Sunnyvale Regarding Special Law Enforcement Units for Levi's Stadium Events.

  
 \_\_\_\_\_  
 Richard E. Nosky, Jr.  
 City Attorney/General Counsel

  
 \_\_\_\_\_  
 Michael Sellers  
 Police Chief

APPROVED:

  
 \_\_\_\_\_  
 Julio J. Fuentes  
 City Manager/Executive Director

***Documents Related to this Report:***

- 1. Indemnity Agreement***

**MUNICIPAL LAW ENFORCEMENT SERVICES AGREEMENT**  
**by and between the**  
**SANTA CLARA STADIUM AUTHORITY, THE CITY OF SANTA CLARA,**  
**and**  
**CITY OF SUNNYVALE**

**PREAMBLE**

This agreement for the performance of municipal law enforcement services (“Agreement”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, (“Effective Date”) by and between the City of Sunnyvale, a chartered municipal corporation, located at 456 W. Olive, Sunnyvale, California 94086 (“Agency”), the Santa Clara Stadium Authority, a Joint Powers Authority, with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 (“Authority”), and the City of Santa Clara, a chartered municipal corporation, located at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”). Authority, City and Agency may be referred to individually as a “Party” or collectively as the “Parties” to this Agreement.”

**RECITALS**

- A. Authority and City are desirous of contracting with Agency for the performance of the law enforcement functions described herein.
- B. Agency is agreeable to rendering such law enforcement services pursuant to the terms and conditions set forth in this Agreement.
- C. Pursuant to the authority set forth in Government Code sections 54981 and 55632, Authority and City seek additional law enforcement services, and Agency agrees to provide additional law enforcement services, for periodic events at the Santa Clara Stadium site.

The Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. SERVICES TO BE PROVIDED.**

- A. Agency agrees, as available, to provide supplemental special detail law enforcement services for events taking place at the Stadium site and surrounding areas during the term of this Agreement. The classification and approximate numbers of personnel provided by Agency will be determined and mutually agreed upon, in writing, between Agency, Authority and the Santa Clara Chief of Police prior to each event. The Parties shall establish and agree to the number of hours necessary for Agency employees to perform the requested services. City herein provides consent, pursuant to Penal Code section 830.1(a)(2), for any Agency peace officer providing services hereunder to exercise full peace officer authority within the City’s jurisdiction.

- B. Except as otherwise specifically set forth, such services shall only encompass duties and functions of the type coming within the jurisdiction of, and customarily rendered by, Agency under its Charter and/or municipal codes, and the statutes of the State of California, and under the Charter and municipal codes of the City of Santa Clara.
- C. For special detail officers, the request for services shall be a written request from the Santa Clara Police Chief or his/her designee. The request shall contain specific dates of service, hours of operation, number of personnel requested, and classification of personnel requested. For the purpose of performing said services, Agency shall furnish and supply, as available, all necessary labor, supervision, personnel, helicopters, tactical vehicles, equipment, fuel, and supplies necessary to provide the services to be rendered hereunder. The Authority and/or City acknowledges that additional equipment charges for special equipment such as helicopters, tactical vehicles, equipment, fuel, and supplies may be appropriate depending upon the services requested, and may be charged by Agency as above and beyond the authorized pay rate for personnel. Notwithstanding the foregoing, the Authority and/or City may provide additional resources for Agency to utilize in performance of the services. The request shall be signed by a representative of the Authority and/or City who is duly authorized to enter into such agreements for supplemental law enforcement services. The request shall be submitted via email to the Agency specified contact.
- D. The City hereby grants to Agency and its personnel responding to requests for services herein the right to transmit and broadcast communications to the Santa Clara Police Department's units via the Santa Clara Police Department's designated dispatch frequency and/or any other law enforcement frequency for which the City of Santa Clara is licensed by the FCC.
- E. Mutual aid agreements pursuant to the California Emergency Plan (Government Code §§ 8550 et seq.) and the Master Mutual Aid Agreement: If any mutual aid agreement(s) currently in place are triggered during any performance of services under this Agreement, the mutual aid agreement(s) shall govern all necessary personnel and/or tactics.

## **2. ADMINISTRATION OF PERSONNEL.**

- A. In the event of a dispute between the Parties to this Agreement as to the extent of the duties and functions to be rendered hereunder, or the minimum level or manner of performance of such service, the City shall be consulted and a mutual determination thereof shall be made by both Agency and the City in consultation with the City of Santa Clara's Chief of Police.
- B. The rendition of the services performed by Agency, the discipline of its officers, and other matters incident to the performance of such services and the control of personnel so employed shall remain with Agency.

- C. With regard to sections A. and B., if there remains a disagreement as to the minimum level of services or tactics for a particular event, the Parties agree that the Santa Clara Chief of Police shall have final and conclusive determination of levels of service or tactics provided by Agency's officers.
- D. All Authority and/or City employees who work in conjunction with Agency pursuant to this Agreement shall remain Authority and/or City employees, are not Agency employees, and have no claim or right to any Agency employment benefits or policies. Similarly, all Agency employees who work in conjunction with Authority and/or City pursuant to this Agreement shall remain Agency employees, are not Authority or City employees, and have no claim or right to any Authority or City employment benefits or policies.
- E. Neither Authority or City shall be called upon to assume any liability for the direct payment of any Agency salaries, wages, or other compensation to any Agency personnel performing services hereunder for said Authority and/or City. Except as herein otherwise specified, neither Authority or City shall be liable for compensation or indemnity to any Agency employee or agent for injury or sickness arising out of his/her status as a contract agent of the Authority and/or City.

**3. COMPENSATION AND PAYMENT.**

- A. The Authority shall pay Agency for the services it provides under the terms of this Agreement at the rates established by the Agency, as they may be amended from time to time. The rates listed below may be periodically adjusted by the Authority effective January 1 of each year to a mutually-agreed upon rate. In such case, the annual rate adjustment shall be attached to this Agreement as Exhibit A to reflect the change in rates each fiscal year. The Parties specifically agree that such adjustment and change in Exhibit A each year is a valid amendment to this Agreement, and that no formal Amendment form need be used for such annual rate adjustment. The Parties will separately execute Exhibit A each year, or whenever there is a change in Exhibit A rates.
- B. For and in consideration of Agency providing supplementary law enforcement services for the Authority and/or City under this Agreement, the Authority agrees to pay Agency for said services at the hourly rates as indicated in Exhibit A.

The rates in Exhibit A are developed by the Agency. These rates are designed to reimburse Agency's costs in the compensation of employees, the administration of workers' compensation benefits, and the Agency's overhead attributable to providing the services identified in this Agreement, and as they may be amended from time to time.

**4. PAYMENT PROCEDURES.**

- A. On a monthly basis, Agency shall submit a summarized invoice which covers all services performed during said month, to the Authority and the Authority shall

pay Agency for all undisputed amounts within thirty (30) days after date of said invoice.

- B. If such payment is not delivered to Agency within thirty (30) days after the date of the invoice, Agency is entitled to recover interest thereon. Said interest shall be at a rate of five percent (5%) per annum or any portion thereof, calculated from the date payment was due.
- C. For all disputed amounts, Authority shall provide Agency with written notice of the dispute including the invoice date, amount, and reasons for dispute within ten (10) days after receipt of the invoice. The Parties shall memorialize the resolution of the dispute in writing. For any disputed amounts, interest shall accrue at the rate stated in subsection B, above, if payment is not received within thirty (30) days after the dispute resolution is memorialized.

**5. CANCELLATION OF PERSONNEL.**

- A. The Authority shall not be charged for cancellations made more than 24 hours prior to the scheduled event/assignment.
- B. The Authority agrees that if cancellation is made within 24 hours prior to the scheduled event/assignment and the assigned Agency officer cannot be notified of such cancellation, Authority shall reimburse Agency a minimum of four (4) hours of compensation for each assigned officer pursuant to the rates identified herein.
- C. Agency agrees to make all reasonable efforts to notify its assigned officer(s) of the cancellation.

**6. TERM OF AGREEMENT.**

- A. The term of this Agreement shall commence upon execution by the Parties and shall terminate June 30, 2016, unless terminated sooner or extended in whole or in part as provided for herein.

**7. TERMINATION.**

- A. Either Party may terminate this Agreement with or without cause by giving not less than sixty (60) days advance written notice to the other Party.
- B. Notwithstanding the foregoing, Agency may terminate the Agreement on only twenty (20) days advance notice, or less in the event of exigent circumstances, if Agency concludes that there are insufficient personnel to provide the agreed upon services and still perform other Agency duties as required by law.
- C. In the event of a termination, each Party shall fully discharge all obligations owed to the other Party accruing prior to the date of such termination, and, except as

otherwise provided herein, each Party shall be released from all obligations, which would otherwise accrue subsequent to the date of termination.

**8. FAIR EMPLOYMENT.**

While in the performance of services under this Agreement, Agency and its employees and agents shall not discriminate against any other employee or agent because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

**9. HOLD HARMLESS/INDEMNIFICATION.**

- A. For purposes of indemnification, each Party shall be responsible for the acts of its participating employee and shall incur any liabilities arising out of the service and activities of those employees.
- B. Any Agency employee who performs duties under this Agreement shall be deemed to be continuing under the general employment of his or her respective jurisdiction and shall have the same powers, duties, privileges, responsibilities, and immunities as are conferred upon such employee by law in his or her own jurisdiction. Pursuant to Insurance Code Section 11663, the general employer shall be responsible for the entire cost of any worker's compensation payable on account of injury occurring in the course of and arising out of general and special employments.
- C. Pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, employees, and agents, harmless from any damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with any work performed or authority delegated to such party under this Agreement. No party, nor any officer, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, employees or agents, under or in connection with any work performed or authority delegated to such other parties under this Agreement.

**10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING.**

A Party shall not assign its rights and/or subcontract, or otherwise delegate, its duties under this Agreement, either in whole or in part, without the prior written consent of the other Party, and any attempted assignment or delegation without such consent shall be null and void.

**11. INTEGRATED DOCUMENT.**

This Agreement represents the entire agreement between Authority, City and Agency. No other understanding, agreements, or conversations with any representative of either Party prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon either Party.

**12. SEVERABILITY AND WAIVER.**

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect. Agency agrees that waiver by Authority and/or City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

**13. NOTICES.**

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

Santa Clara Stadium Authority  
Attention: Executive Director  
1500 Warburton Ave.  
Santa Clara, CA 95050  
or by facsimile at (408) 241-6771

And to City as follows:

City of Santa Clara  
Attn: Chief of Police  
601 El Camino Real  
Santa Clara, CA 95050  
or by facsimile at (408) 248-0276

And to Agency addressed as follows:

City of Sunnyvale  
Attn: City Manager  
456 W. Olive Ave.  
Sunnyvale, CA 94086  
or by facsimile at (408) 730-7699

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

**14. LAW GOVERNING CONTRACT AND VENUE.**

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara.

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[Signatures on next pages.]

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:

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

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

“CITY”

**SANTA CLARA STADIUM AUTHORITY  
a Joint Powers Authority**

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
Authority Counsel

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
Secretary

\_\_\_\_\_  
JULIO J. FUENTES  
Executive Director  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

“AUTHORITY”

**CITY OF SUNNYVALE**

APPROVED AS TO FORM:

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JOAN BORGER  
City Attorney

ATTEST:

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Clerk

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ROBERT WALKER  
Interim City Manager  
456 W. Olive Ave.  
Sunnyvale, CA 94086  
Telephone: (408) 730-7480  
Fax: (408) 730-7699

“AGENCY”

I:\49ers\Stadium Authority\Law Enforcement Security Agreements\Municipal Law Enforcement Services Agreement (Sunnyvale) 5-28-14.doc

**MUNICIPAL LAW ENFORCEMENT SERVICES AGREEMENT**  
**by and between the**  
**SANTA CLARA STADIUM AUTHORITY, THE CITY OF SANTA CLARA,**  
**and**  
**CITY OF SUNNYVALE**

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**EXHIBIT A**

The rates listed below are effective as of May 29, 2014:

**Community Service Officer:** \$56.15 per hour

**Public Safety Officer:** \$95.18 per hour

**Lieutenant:** \$111.03 per hour

Meeting Date: 6/24/14

# AGENDA REPORT

Agenda Item # 7B-2

City of Santa Clara, California



**Date:** June 10, 2014  
**To:** City Manager for Council Action  
**From:** Director of Electric Utility  
**Subject:** Approval of Call No. 14-1 for Professional Services with NexLevel Information Technology, Inc. for Advanced Metering Infrastructure and Utility Communication Infrastructure Implementation Support Services

## EXECUTIVE SUMMARY:

The City is continuing the process of upgrading its electric and water meters and systems to accommodate customer, utility and regulatory needs. This process continues to require extensive program planning and management in order to coordinate multiple dependent implementation projects, coordinate business process change, and administer test and acceptance of new technology. NexLevel IT was chosen originally by the Director of Finance to provide support for the successful billing system implementation and subsequent system enhancements, provide a Call Center assessment and improvement plan, and assist with capital project planning and budget analysis for Municipal Services.

Based on NexLevel's proven abilities, integrity, and successes, and deep special knowledge of City's billing-related IT systems, the Electric Utility executed a new Call Agreement in 2012 to bring their highly specialized skill set to help staff establish and manage an implementation plan for the Advanced Metering Infrastructure and Utility Communication Infrastructure Implementation project (AMI/UCI). Those services to-date covered by previous Calls have included project RFP development, execution and fulfillment for two new multi-million dollar systems, contract negotiation support, and more recently high-level project planning and management as the lead project management organization for six distinct city and vendor teams on a complex and critical information technology system set.

The AMI/UCI Implementation Plan is in the final system integration and deployment phase and staff proposes to enter into our third and final Call No. 14-1 for Professional Services with NexLevel Information Technology, Inc., under their existing Call Agreement, to help manage this project to its conclusion. A copy of Call No. 14-1 can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

Entering into Call No. 14-1 with NexLevel will help support staff in planning and managing the implementation program for the AMI /UCI Project. Completion of this project will enhance the City's ability to obtain electric and water use data vital to meeting regulatory requirements and providing short and long-term benefits to all internal and external stakeholders.

## ECONOMIC/FISCAL IMPACT

Call No. 14-1 shall not exceed \$770,825.00. Sufficient funds are available in the Electric Department Capital Project Implementation of Advance Metering Infrastructure (AMI) account, 591-1313-80500-2111-[F]39700.

**RECOMMENDATION**

That Council approve, and authorize the City Manager to execute, Call No. 14-1 for Professional Services with NexLevel Information Technology, Inc., in an amount not-to-exceed \$770,825.00, for Advanced Metering Infrastructure and Utility Communication Infrastructure Implementation Support Services.

  
\_\_\_\_\_  
John C. Roukema  
Director of Electric Utility

Certified as to Availability of Funds:   
591-1313-80500-2111 \$770,825.00

APPROVED:

  
\_\_\_\_\_  
Julio J. Fuentes  
City Manager

  
\_\_\_\_\_  
for Gary Ameling  
Director of Finance/Assistant City Manager

MAJORITY VOTE OF COUNCIL

***Documents Related to this Report:***

- 1) *Call No. 14-1 for Professional Services with NexLevel Information Technology, Inc.*

**CALL NO. 14-1  
FOR PROFESSIONAL SERVICES  
TO BE PROVIDED TO THE  
CITY OF SANTA CLARA, CALIFORNIA  
BY NEXLEVEL INFORMATION TECHNOLOGY, INC.**

The Parties to this Call No. 14-1 ("Call") agree that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, this Call is made pursuant to the terms of a Call Agreement between the Parties entitled, "Call Agreement by and between the City of Santa Clara, California and NexLevel Information Technology, Inc.," dated June 26, 2012, the terms of which are incorporated by this reference. This Call describes the Services to be provided to the City of Santa Clara, California ("City") by NexLevel Information Technology, Inc. ("Contractor"), which are more fully described in Contractor's proposal to City entitled "AMI/UCI Implementation Support Services" dated April 2, 2014 ("Proposal"), attached to this Call as Exhibit A and incorporated by this reference. The Services to be performed under this Call shall be completed within the time period beginning on July 1, 2014 and ending on June 30, 2015. The attached Proposal contains a complete description of the Services, and performance dates for the completion of such Services, to be performed by the Contractor under this Call. In no event shall the amount paid to the Contractor for the Services provided to City by the Contractor under this Call, including all fees or pre-approved costs and/or expenses, exceed seven hundred seventy thousand eight hundred twenty five dollars (\$770,825.00), subject to budgetary appropriations.

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

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

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

"CITY"

**NEXLEVEL INFORMATION TECHNOLOGY, INC.  
a California corporation**

By: \_\_\_\_\_  
TERRY HACKELMAN  
Title: Managing Principal  
Address: 6829 Fair Oaks Blvd., Suite 100  
Carmichael, CA 95608  
Telephone: (916) 692-2000 Ext. 201  
Fax: (916) 692-2022  
"CONTRACTOR"



*"Taking Information  
Technology to the Next Level"*

## **Statement of Work: AMI / UCI Implementation Support Services**

*Prepared for:  
City of Santa Clara  
Silicon Valley Power*

*Prepared by  
NexLevel IT, Inc.*

*April 2, 2014*

## Introduction

Silicon Valley Power (SVP) and the City of Santa Clara (City) are seeking to implement an Advanced Metering Infrastructure (AMI) and a Utility Communication Infrastructure (UCI) including a Meter Data Management System (MDMS). The City will implement communications applications and infrastructure to support automated metering and other applications that provide remote control and data collection capabilities over the network between City distribution facilities and the customer locations. Additionally, there will be a requirement to implement a management and control infrastructure that will house, administer and act upon the data collected via the network. The City is also planning to replace all electric and certain water utility meters throughout the City. The services proposed in this statement of work (SOW) are focused on supporting a successful implementation and include project management, business transition management, and test management.

The City and NexLevel Information Technology, Inc. (NexLevel) have been engaged in an effort to evaluate, select, and procure technologies and products that support AMI/UCI. NexLevel has assisted the City in the development of a strategic plan document and a set of functional requirements. NexLevel has assisted the City with the selection and procurement of a Meter Data Management System (MDMS) which is currently being implemented. The MDMS will provide a data repository and provisioning capability that will allow for the full leverage and return on the AMI/UCI investment. NexLevel has also assisted the City with the selection and procurement of the AMI/UCI meters, network and control systems infrastructure. The AMI/UCI is also being implemented. NexLevel has provided project management and implementation oversight support services for the entirety of the implementation effort that continues as of the current date.

The City has recognized the need implementation support in the following areas that make up the SOW;

- The City has determined that it is necessary to institute a program management office (PMO) in order to properly plan and manage the multiple dependent projects required to implement the AMI/UCI. To accomplish this, the City has requested that NexLevel assist in establishing and managing the PMO, and oversee the implementation of the AMI/UCI.
- As a part of implementing these new technologies, the City has recognized that a wide range of business changes can be expected both as a part of completing the project, and as a part of changed business processes required to operate the system in a sustained manner. The City has requested that NexLevel provide business transition support services to identify and document business process changes in this regard. Additionally, the City has asked NexLevel to provide professional planning and coordination services in order to manage meter replacement activities.
- For the AMI/UCI Program, there are multiple aspects of technology to be deployed with complex levels of dependent interaction. Each component of this technology must be fully tested both individually and in conjunction. The City has requested that NexLevel provide test management services to document, oversee, and report on test results through the implementation.

## Scope of Work

### NexLevel Responsibilities

The NexLevel Team will work collaboratively with the City and provide consulting services to perform program and project management functions. NexLevel will provide the following services for a term of 12 months.

- AMI/UCI Program / Project Management
  - AMI/UCI Program / Project Management will be resourced by a NexLevel Principal Consultant as a senior project manager who will work with the project sponsor to oversee all project management functions associated with this highly complex and costly initiative.
  - Best practices will be utilized for project management in order to plan and track project deliverables and tasks. Program and project management will include the following deliverables which will be tailored and managed over the lifecycle of the program. Deliverables will be tailored to support the management of specific projects, as well as the program overall. NexLevel staff will work with vendors hired to deliver specific functional components of the AMI/UCI system and will plan and managed project management artifacts as appropriate.
  - NexLevel will facilitate project team and stakeholder communications, as well as function as the primary interface with vendors and consultants on behalf of the City. NexLevel will plan and facilitate project and program related meetings as required.
  - NexLevel will support the project sponsor with research and strategic planning in identifying, procuring, and evaluating additional smart grid system components.
  
- Business Transition Management Services
  - Business Transition Support Services will be resourced by a full time NexLevel Senior Analyst who will utilize best practices expertise in business process development and documentation to facilitate and ensure business readiness required to accomplish the program objectives, across the City.
  - Provide business transition consulting services in order to assist the City in managing change brought about by the introduction of new technologies and business requirements. NexLevel will support the formation and facilitation of a cross functional City taskforce to assess, define, and manage the required changes. These services will include the following deliverables:
    - Cross functional business impact analysis
    - Business process map
    - Business process documentation
    - Business process and organizational transition plans
    - Identification of organizational staffing needs to support program related technology

- Identification of system integration needs to meet program and business transition objectives.

- Test Management Services

- Test Management Services will be resourced by a full time NexLevel Senior Consultant who will utilize best practices to develop, document, and manage test activities across all project technologies during implementation.
- Provide test administration for technology, software and systems to be implemented under the AMI/UCI program. Test administration will include test plan development in conjunction plans and procedures provided by project managers, vendors and subject matter experts, along with the tracking and reporting of test activities. These services will include the following deliverables:
  - Program and project Test Plans
  - Operational and Test execution procedures
  - Test execution and tracking oversight and documentation
  - Test result and remediation reporting

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## City Responsibilities

To ensure that this project is a success, NexLevel will require the following support from the City:

- Provide a single point-of-contact for NexLevel
- Provide workspace or meeting space for consultants while NexLevel is onsite
- Purchase and installation of all hardware and software identified for pilot or implementation as approved by the project team and stakeholders.
- Vendor management escalation and direction setting as needed
- Provide assistance in scheduling and ensuring availability of City stakeholders and department level subject matter experts and project resources to support project planning and project tasks.
- Provide a collaborative and expert work team to meet City information technology implementation requirements.
- Access to City information systems as mutually deemed necessary by City and NexLevel project management
- Timely review and approval of documents

NexLevel understands that this project will be supported by City staff that has ongoing, daily work responsibilities that must be managed. NexLevel will make all efforts to make efficient use of staff so as to minimize the disruption to their daily tasks.

## Timeline

Based upon current City plans and budgetary constraints, NexLevel expects that the AMI/UCI Implementation Program will be active through the end of 2015. This scope of work covers program and project management services as required for a term of 12 months beginning in July, 2014 and continuing through June, 2015, according to the following estimated level of effort.

## Level of Effort

It is important that the City understand and plan for the required level of effort (LOE) to develop an effective AMI/UCI plan. The LOE to implement such a plan can be significant as it requires careful collaboration between City staff, NexLevel consultants, and City stakeholders. It is expected that there will be a transition and reduction in the LOE required as the project progresses. NexLevel will work closely with the City to manage the LOE and reduce as necessary, commensurate with project deliverables. Actual LOE and costs shall not exceed the LOE and costs outlined in this SOW. The following bullets identify the role of each group, as well as a high-level description of what tasks are generally performed by that role.

- City Staff and City Stakeholders - Responsible for providing business process expertise, utility expertise, technology requirements and strategic requirements. Also responsible for project related tasks that will be agreed upon as appropriate. These roles must be performed by department-level staff with the subject matter expertise and knowledge of City business functions. City staff and City Stakeholders will work in a collaborative

fashion with the NexLevel Consultants to define strategic, technological and project level requirements. Where City staff are identified to lead project work, project management expertise will be required.

- NexLevel Consultants – Responsible for leading and facilitating project planning discussions, decisions, and activities. Also responsible for oversight structure, activities, and deliverables. Responsible for bringing subject matter expertise and best practices to business transition support and test management. NexLevel will utilize best practices to facilitate and document AMI/UIC program and project plans.

The following table provides the estimated LOE for the NexLevel Consultants. We did not provide an estimated LOE for City staff as it is impossible to make such projections without knowing the knowledge, skills, and capabilities of City resources. The estimates below were developed based on the experience from past project management efforts, as well as information that was gathered during prior work on the project and in planning discussions. The actual LOE can be significantly impacted by City staff and work efforts. For example, during the project the City may be able to perform certain tasks and thereby reduce the NexLevel effort. NexLevel will work closely with City staff to fully leverage City efforts and manage the NexLevel LOE as described in the following table:

Item	Principal Consultant	Senior Consultant	Senior Analyst	Total Hours
<u>Project Management Office (PMO)</u>	1,500			1,500
<u>Business Transition Management</u>			1,900	1,900
<u>Test Management</u>		1,900		1,900
<b>Total Estimated Level of Effort (LOE)</b>	<b>1,500</b>	<b>1,900</b>	<b>1,900</b>	<b>5,300</b>

Generally, the effort shown is expected to be 3/4 time for a Principal Consultant for one year. The effort for a Senior Consultant and Senior Analyst is expected to be full time for nine months followed by half time for three months. All effort will commence on the effective date and continue for the stated timeframes.

## Pricing

NexLevel shall complete this project on a time and material basis. Because of several unknown factors, namely a detailed understanding of all factors involved in the implementation support completed thus far, it is difficult to provide a fixed cost for the project. To assist the City in budgeting for the project, NexLevel shall provide a cost estimate that is based on past experience. NexLevel shall work closely with the City on a task-by-task basis through the life of this project. This shall allow the City to assume tasks that they have the resources to complete and allow both parties to ensure project gets completed under the original cost estimate.

## Project Reporting

NexLevel will diligently track and report the level of effort expended on the project. NexLevel will regularly review this information with the City to ensure project is meeting requirements and expectations. If NexLevel believes the completion of the project shall exceed original estimate, we shall notify the City of our revised estimate and provide supporting documentation for the revised estimate. At that time, the City can determine the appropriate course of action, whether to complete tasks internally or revise the NexLevel approved hours.

## Not to Exceed Cost for Consulting Services

NexLevel estimates the project cost as indicated in below. **NexLevel understands that its' level of effort and cost cannot exceed the amount identified in the following tables without prior written approval from the City.** NexLevel will only bill the City for actual hours worked. The following table describes the hourly rates for resources identified in this statement of work, as well as the hourly rates for other resources that may be provided by NexLevel at the City's specific request. From time to time, NexLevel may assign a Managing Consultant to perform certain tasks in place of a Principal Consultant, and will invoice for such tasks at the Managing Consultant rate.

Resource	Rate
Principal Consultant	\$166.35
Managing Consultant	\$138.70
Senior Consultant	\$122.00
Senior Analyst	\$105.00
Analyst	\$83.15



Statement of Work: AMI / UCI  
Implementation Support Services

Based upon the estimated level of effort and the stated rates, NexLevel estimates the project costs as outlined in the following table. **The total cost will not exceed the amount stated:**

Activity	Resource	LOE (hours)	Hourly Rate	Extended Price
Project Management	Principal Consultant	1,500	\$166.35	\$249,525.00
Test Management	Senior Consultant	1,900	\$122.00	\$231,800.00
Business Transition Management	Senior Analyst	1,900	\$105.00	\$199,500.00
Travel Expense				\$90,000.00
<b>Total Not to Exceed Price</b>		<b>5,300</b>		<b>\$770,825.00</b>

### Invoicing

NexLevel will invoice the City at the end of each month for the level of effort expended the previous month. A detailed project status report will accompany the invoice. The project status report will identify time spent by day by consultant (including a short description of the tasks performed during each time period). In addition, the project status report will discuss the status of the project according to an agreed upon project schedule, as well as identify any issues or constraints that are adversely impacting the project schedule.

### Travel Costs

If the City deems travel is necessary to complete this project, NexLevel will bill actual travel expenses supported by necessary documentation. NexLevel will adhere to City travel guidelines in order to minimize any travel costs. Travel costs for a three day on site visit by NexLevel staff average \$740.00 per person. NexLevel estimates a travel expense budget of \$90,000.

Meeting Date: 6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-3



**Date:** June 10, 2014  
**To:** City Manager for Council Action  
**From:** John C. Roukema, Director of Electric Utility  
**Subject:** Approval of a Call Agreement with Castrovilla Inc., dba Blue Earth Energy Management Services and Call Number No. 14-1 for the Keep Your Cool Direct Install Third Party Energy Efficiency Program

## **EXECUTIVE SUMMARY:**

In accordance with Public Utilities Code (PUC) Section 385 covering Public Benefits Charge, and 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. As a part of that program portfolio, Silicon Valley Power periodically issues an RFP for third party energy efficiency programs to supplement its ongoing programs. The most recent RFP was issued in December, 2013, and as a result of that RFP the Keep Your Cool Direct Install Program has been selected. Staff proposes to enter into a Call Agreement and Call No. 14-1 for Professional Services with Castrovilla Inc., dba Blue Earth Energy Management Services to deliver a program of energy efficiency measures that reduce the energy consumption of commercial customers with refrigeration equipment. The program is designed to provide a tiered incentive package to offset the costs of energy efficient equipment up to 100%, depending on the number of efficiency measures installed, yet still fall well within the cost effectiveness goals for SVP. Castrovilla will be responsible for direct marketing to eligible customers, recruitment into the program, and installation of energy efficient refrigeration equipment such as strip curtains, door closers, EC motors, ECM fan controls, LED case lighting, and others as outlined in the Scope of Work. The projected annual energy savings is expected to be up to 484,000 kWh. A copy of the Call Agreement and Call No. 14-1 can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

## **ADVANTAGES AND DISADVANTAGES OF ISSUE:**

This program, already offered in multiple markets across California, has proven to be an effective way to motivate businesses and help them install energy efficiency refrigeration measures at low or no cost to the customer. Significant savings can still be found in the area of refrigeration; therefore customers who participate in this program will use energy more efficiently. Finally, this program helps to achieve the requirement that by state law the City of Santa Clara must spend 2.85% of electric revenues on energy efficiency, renewable energy, low income, and electric research projects.

## **ECONOMIC/FISCAL IMPACT:**

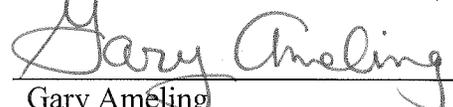
The total cost of Call No. 14-1 will not exceed \$217,733.00 during Fiscal Year 2014/2015. Sufficient funds have been budgeted for FY 2014-15 in the Electric Department Contractual Services/Not Classified account 191-1312-87870-[F]94100.

**RECOMMENDATION:**

That Council approve, and authorize the City Manager to execute, a Call Agreement with Castrovilla Inc. dba Blue Earth Energy Management Services and Call No. 14-1 for Professional Services, in an amount not to exceed \$217,733.00, for the Keep Your Cool Direct Install Program third party energy efficiency program.

  
\_\_\_\_\_  
John C. Roukema  
Director of Electric Utility

Certified as to Budget Form:   
191-1312-87870 \$ 217,733.00

  
\_\_\_\_\_  
Gary Ameling  
Director of Finance/Assistant City Manager

APPROVED:

  
\_\_\_\_\_  
Julio J. Fuentes  
City Manager

MAJORITY VOTE OF COUNCIL

***Documents Related to this Report:***

- 1) *Call Agreement with Castrovilla Inc. dba Blue Earth Energy Management Services*
- 2) *Call 14-1 for Professional Services with Castrovilla Inc. dba Blue Earth Energy Management Services*

**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
CASTROVILLA INC. DBA BLUE EARTH ENERGY MANAGEMENT SERVICES  
for Third Party Energy Efficiency Program Services**

**PREAMBLE**

This call agreement (“Agreement”) is made and entered into in the City of Santa Clara, California, on this \_\_\_\_ day of \_\_\_\_\_ 2014 (“Effective Date”), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”) and Castrovilla Inc. dba Blue Earth Energy Management Services, a California corporation, with its principal place of business located at 253 Polaris Avenue, Mountain View, California 94043 (“Contractor”). City and Contractor may be referred to herein individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

Whereas:

- A. Contractor agrees to provide certain professional services to City on an on-call basis;
- B. Contractor has the ability and desire to provide the quality and type of professional services which meet the objectives and requirements of City as set forth in this Agreement; and,
- C. The Parties have specified in this Agreement the terms and conditions under which such services will be provided to and paid for by the City.

In consideration for the mutual promises contained in this Agreement, the Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. SCOPE OF SERVICES**

- 1.1 To the extent possible, the professional services to be provided under this Agreement shall be performed in the City of Santa Clara and the services shall be described in detail by the Contractor and submitted in a written proposal to the City (“Services”). The Contractor’s final proposal will be included as an exhibit entitled, “Scope of Services” attached to a subsequent agreement between the Parties referred to in this Agreement as a “Call” or a “Call for Services.” Each Call will incorporate the terms of this Agreement by reference and must be signed by both Parties. Contractor agrees to provide professional services to the City as specified in each respective Call, to the extent funds have been authorized by the City.

- 1.2 No Services shall be performed or paid for under this Agreement except as specifically set forth and required in a written Call. No compensation may be sought under this Agreement for work performed prior to the issuance of a Call or for work to be performed or paid for under another contract. No compensation shall be paid in excess of the maximum dollar amount indicated in each respective Call for Services.
- 1.3 The Parties acknowledge that on the Effective Date of this Agreement, they are unaware of the details of all of the services which may be needed by City or provided by Contractor during the term of this Agreement. The Parties intend to specify the details and value of such Services in a subsequent Call, if any. This Agreement does not require that any Call(s) be signed. The Parties intend to provide the details of the contractual relationship between the Parties in this Agreement, so that by incorporating the terms of this Agreement in the Call(s), the Call may be brief and address the specific Services to be provided, the details of the time when the Services are to be provided and the schedule and amount the Contractor is to be paid for such Services.

## 2. PAYMENT

- 2.1 **Not to Exceed Maximum Amount.** The total amount billed to, and paid by, City for Services provided and authorized expenses incurred under a Call shall not exceed the maximum dollar amount specified in the Call. Contractor shall complete all Services contained within the scope of a Call regardless of whether the not to exceed amount has been reached, at no extra charge to the City. However, Contractor shall not perform any Services outside the scope of the Call without prior written authorization when the amount billed for under a Call exceeds the maximum dollar authorized amounts in the Call.
- 2.2 **Monthly Invoices.** Unless provided otherwise in a particular Call, payment to Contractor shall be in accordance with the procedures in this paragraph 2.2 and in paragraph 2.3. On a monthly basis, Contractor shall prepare an invoice which includes an itemization of all time spent based on the percent of Services complete, as well as any Authorized Expenses incurred (i.e., Out-of-Pocket Costs, Sub-contracted Services and/or Extraordinary Expenses).
- 2.2.1 If a particular Call directs that an invoice be presented in a format of a time sheet rather than as a percentage of Services completed, the itemization on each monthly invoice shall set forth the amount of time (recorded in quarter hours), the name of the employee performing the task and a description of each task performed. After setting forth the time spent on a daily basis, the itemization will provide a summary, at its end, of the total hours spent by each employee for the month, the hourly rate charged for that employee, and the total value of the service rendered by that employee for the month. The amount billed for Services shall then be determined by adding the value for the Services rendered by each employee for that particular month.

- 2.2.2 All monthly invoices shall also include a written itemization of the Authorized Expenses incurred, if any, with a detail listing the cost and source of such expenses and when they were incurred.
- 2.2.3 Contractor shall maintain documentation of such time and costs for City inspection for a period of three (3) years from the date of termination of this Agreement.
- 2.2.4 Within thirty (30) days of receipt of an itemized written invoice from the Contractor, City shall pay Contractor the amount billed for Services performed and authorized costs incurred under the Call during that billing period.
- 2.3 **Authorized Expenses.** The amount billed for Services shall be determined as set forth in paragraph 2.2 above plus the following amounts, if allowed under the Call:
- 2.3.1 **“Out-of-Pocket Costs”.** Contractor’s Out-of-Pocket Costs are those expenditures made by Contractor, other than employees’ salaries and payment for Services of retained specialists, which are directly chargeable to the Services performed and which would not otherwise have been incurred by Contractor. Unless otherwise provided, the Out-of-Pocket Costs must be approved in writing in advance by City and may be billed to the City and reimbursed to the Contractor only as specifically authorized and set forth in each respective Call. Authorized Out-of-Pocket Costs shall be billed without additional markup or administrative charge;
- 2.3.2 **Per Diem.** A Call will state whether or not it includes an estimate for anticipated travel expenses. If the Call does not include an estimate for anticipated travel, then the provisions of this paragraph shall apply. A Party’s travel expenses include airfare, rental car, or mileage, lodging and meals. The Party who is receiving the services pursuant to a particular Call, is the Reimbursing Party. Prior to incurring any charge for travel, the Party planning to travel (“Traveling Party”) shall (1) confirm that the Reimbursing Party is available for meetings on the proposed dates and (2) provide (either verbally or by facsimile) a price quote to the Reimbursing Party for the anticipated airfare prior to the charge being incurred, the Reimbursing Party shall either verbally or by facsimile confirm that the airfare may be incurred; in the event that the Reimbursing Party verbally confirms that the airfare may be incurred, the Traveling Party *shall* confirm in writing (prior to incurring the charge) that the Reimbursing Party has agreed to the charge. All travel expenses shall be reimbursed at cost, with no mark-up. Hotel rooms shall not exceed a cost of \$125 per night unless otherwise agreed by Reimbursing Party. Airfare and car rentals shall be reimbursed at economy class, unless economy class is unavailable through no fault of the booking party. Mileage, if applicable, shall be reimbursed in accordance with the current IRS guidelines for mileage reimbursement. Reasonable attempts shall be made to

make plane reservations in advance in order to take advantage of lower fares. In the event that travel plans must be canceled or re-scheduled due to the fault of the Reimbursing Party, then the Reimbursing Party shall pay for any costs associated therewith; if the travel is canceled or re-scheduled due to the fault of the Traveling Party, then the Traveling Party shall bear the expense. Invoices for travel expenses shall be supported by receipts, and shall be reimbursed in accordance with paragraph 2.2.1. Meals, if reimbursed, shall not exceed fifty dollars (\$50) per day.

2.3.3 **Any authorized “Sub-contracted Services” incurred by Contractor.** Authorized Sub-contracted Services are services provided by a retained specialist or sub-contractor and may be billed to City only if specifically described and authorized in a Call. (Retained specialists and sub-contractors shall include individuals or organizations offering qualified special services to City who are particularly skilled in one or more fields and who may be occasionally employed by the Contractor to fill the need for special or unusual services. Unless otherwise provided, the cost of furnishing such special services must be approved in writing in advance by City and the costs billed to City and reimbursed to the Contractor shall be only the actual charges of the retained specialist or sub-contractor, without additional markup or administrative charge); and/or,

2.3.4 **Any other authorized “Extraordinary Expenses” incurred, if any, as set forth in the Call.** Authorized Extraordinary Expenses shall be billed without additional markup or administrative charge.

2.4 **Retainer or Flat Fee for Services.** The Parties to this Agreement may, from time to time, determine that payment for a certain Scope of Services set forth in a Call pursuant to this Agreement should be made to Contractor on a retainer or flat fee for Services basis (“Stipulated Fee”). If the Parties so agree, then the provisions of this paragraph and the provisions of paragraph 2.2.1 shall apply, unless the Call provides otherwise. The Call shall set forth the maximum monthly or annual fee agreed to by the Parties as it relates to any Agency Fee or to any Out-of-Pocket Costs, and Contractor shall not exceed the amount(s) agreed to without written approval of City. The maximum Agency Fee agreed upon by the Parties is deemed to fully compensate Contractor for all work necessary for Contractor to complete the Scope of Work set forth in a Call.

### 3. **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 three (3) years from the date of final payment under this Agreement, to audit Contractor’s books and records for the purpose of verifying any and all charges made by Contractor in connection with Contractor’s compensation under Calls made pursuant to this Agreement, including termination of Contractor’s Services. 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 expense not so recorded shall be disallowed to Contractor.

#### **4. PROSECUTION OF WORK**

Contractor shall perform the Services required under this Agreement and the Call(s) made pursuant to it in an efficient and expeditious manner. Contractor shall commence work on the Effective Date specified in the applicable Call. Contractor is responsible for any delays caused by Contractor, its agents or subcontractors, or caused by factors directly or indirectly under its control. No extension of time for performance shall be given for such delays.

#### **5. QUALIFICATIONS OF CONTRACTOR; STANDARD OF WORKMANSHIP**

Contractor represents that it has sufficient qualified personnel to furnish the Services described under this Agreement and that the Services will be furnished in accordance with generally accepted professional standards and practices in the industry.

The work furnished to the City pursuant to any of the Calls under this Agreement shall be of a quality acceptable to the City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct. The minimum standard of appearance, organization and content of the documents shall be that used by the City for similar projects.

#### **6. SUSPENSION OR TERMINATION**

City may suspend or terminate this Agreement or any or all work covered under any Call under this Agreement at any time upon thirty (30) days' prior written notice. Contractor may terminate this Agreement as set forth in paragraph 6.4. Said termination or suspension shall be effective as of the thirtieth day after the date of the notice ("Effective Date of Termination"). This Agreement, and any portion of the Scope of Services described in any Call including but not limited to any specific task, project, study, advertisement or campaign, may be terminated by the City upon written notice delivered personally or by registered mail or equivalent mail or delivery service which provides for an office signature of receipt. With regard to termination of any portion of the Scope or any specific task, termination will be effective immediately, unless economic or practical considerations result in the Parties mutually agreeing to a specific termination date.

- 6.1 If such termination is due to the fault of Contractor, and if City agrees to make payment for all work and Services satisfactorily rendered up to the Effective Date of Termination, payment will be made within thirty (30) days of receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City may deduct from such payment the amount of actual damage, if any, sustained by City by virtue of the failure to perform the Services or for breach of this Agreement by Contractor.

- 6.2 If such termination is not due to the fault of Contractor, then City agrees to make payment for all work and Services rendered up to the Effective Date of Termination within thirty (30) days from receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City shall reimburse Contractor for any costs, expenses or service charges incurred by Contractor as a result of canceling previously authorized outsourced services.
- 6.3 Upon termination of this Agreement, Contractor shall transfer, assign and make available to City or City's representative, all property and materials in Contractor's possession belonging to and paid for by City.
- 6.4 Contractor may suspend or terminate this Agreement upon completion of work on all outstanding Call(s). Contractor may terminate work under a particular Call if the City is in default of the terms of this Agreement or any Call.

**7. AVAILABILITY OF FUNDS**

City represents that adequate funds will be available to make payments for Services received as required by each Call.

**8. CONTRACTOR IS AN INDEPENDENT CONTRACTOR**

In performing work under this Agreement, Contractor is not an agent or employee of City, but is an independent contractor for professional Services with full rights to manage its employees subject to the requirements of the law. All persons employed by Contractor in connection with this Agreement will be employees of Contractor and not employees of City in any respect.

**9. AMENDMENTS**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

**10. HOLD HARMLESS/INDEMNIFICATION**

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissioners, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost and/or expense or damage ("Claim"), including all costs and reasonable attorney's fees in providing a defense to any such Claim which arises from Contractor's acts, errors or omissions with respect to, or in any way connected with, the prosecution of the work performed by Contractor pursuant to this Agreement.

## **11. 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 be three (3) years, beginning on the Effective Date and terminating three years later. However, this Agreement shall be deemed extended for such time as is necessary for Contractor to complete work on any Call which is issued prior to the termination date of this Agreement, but is still in progress on the termination date of this Agreement. Any incomplete Call(s) which have been issued pursuant to the terms of a previous agreement between the Parties is/are hereby reaffirmed and each such Call shall remain in full force and effect under this Agreement, subject to the terms of such Call.

## **12. INSURANCE REQUIREMENTS**

During the term of this Agreement, and for any period following the termination date as set forth in this Agreement, Contractor shall purchase and maintain in full force and effect the following insurance policies:

- 12.1 commercial general liability (including bodily injury and property damage);
- 12.2 business automobile liability insurance;
- 12.3 worker's compensation employer's liability; and
- 12.4 if applicable, professional liability insurance.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts and with the required endorsements, certificates of insurance and coverage verifications as defined in Exhibit C, attached and incorporated by this reference. Contractor shall make its best effort to secure, and thereafter maintain in effect, such insurance policies. In the event that any required insurance policy expires or is terminated for any reason, Contractor agrees to replace the policy prior to any lapse in coverage. In the event any policy required under this Agreement is allowed to lapse, City may, in its sole discretion, elect to purchase the required insurance policy and the cost of such policy shall be charged to Contractor or withheld from the payments due to Contractor from City under this Agreement.

CONTRACTOR AGREES THAT, PRIOR TO EXECUTION OF THIS AGREEMENT, CONTRACTOR SHALL PROVIDE ITS INSURANCE BROKER WITH A COPY OF THIS PAGE OF THE AGREEMENT AS WELL AS WITH A COMPLETE COPY OF EXHIBIT C, AND WILL OBTAIN ASSURANCE FROM ITS CARRIER THAT ITS INSURANCE CARRIER WILL PROVIDE: (1) THE EXACT COVERAGES IN THE REQUIRED DOLLAR AMOUNTS STATED THEREIN, (2) AN ENDORSEMENT NAMING THE CITY OF SANTA CLARA, ITS COUNCIL, EMPLOYEES AND OFFICERS AS ADDITIONAL INSURED ON THE CGL AND BAL, AND (3) AN ACCORD EXPLICITLY STATING THAT "THE CITY OF SANTA CLARA, ITS

COUNCIL, EMPLOYEES, AND OFFICERS ARE HEREBY ADDED AS ADDITIONAL INSUREDS IN RESPECT TO ALL LIABILITIES ARISING OUT OF CONTRACTOR'S PERFORMANCE OF WORK UNDER THIS AGREEMENT" AS REQUIRED BY PARAGRAPH 2 OF EXHIBIT C.

**13. OWNERSHIP OF DATA AND INFORMATION**

City shall own any written reports or other items deemed deliverables by the respective Call, as well as any documents, data or other information supplied by City to Contractor during the course of this Agreement. Contractor shall deliver said data and information to City whenever requested to do so, but in any event within thirty (30) calendar days of the completion of the task. All material, including information developed on computer(s), which shall include, but not be limited to, data, artwork, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, advertisements, pamphlets, mailers and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City whether or not used, so long as that material has been paid for by the City. City shall not be limited in any way or at any time in its use of said material. City acknowledges that it shall not own any of Contractor's proprietary, confidential or trade secret information, such as formulas, patterns, compilations, programs, devices, methods, techniques or processes through which Contractor derives independent economic value because the foregoing item[s] is not generally known to the public and is the subject of reasonable efforts to maintain its secrecy.

**14. CONFIDENTIALITY OF DATA AND MATERIAL**

14.1 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. Such data information or reports may be viewed by or distributed to third parties only after prior written approval of City. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

14.2 Contractor shall take reasonable efforts to safeguard any and all City property entrusted to Contractor's custody or control; however, Contractor shall not be liable to City for any loss, damage, or destruction of any such property unless Contractor's actions constitute negligence or reckless disregard of City's property.

14.3 A Party disclosing information to the other which it considers to be Confidential Information, shall clearly label that information "Confidential" before disclosing it to the other Party. Confidential Information means information which is of a non-public, proprietary or confidential nature belonging to the Disclosing Party, including

without limitation, all reports and analyses, technical and economic data, studies, forecasts, trade secrets, research or business strategies, financial or contractual information, gas or coal reserve information, rates, loads, energy requirements, certain sales market information, research, developmental, engineering, manufacturing, technical, marketing, sales, financial, operating, performance, cost, business and process information or data, know-how, and computer programming or other written or oral information. Confidential Information may be in any form whatsoever, including without limitation writings, recordings, electronic or oral data, computer programs, logic diagrams, component specifications, drawings or other media. Only that information disclosed by a Party and clearly designated in writing as Confidential Information prior to its disclosure shall be deemed to be Confidential Information. Verbal information that is intended to be treated as Confidential Information shall be described in writing and identified as Confidential Information.

- 14.4 Contractor acknowledges that City is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. City acknowledges that Contractor may submit information to City that Contractor considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Contractor acknowledges that City may submit to Contractor information that City considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). 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 as practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end 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, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.
- 14.5 The Receiving Party may cooperate with the Disclosing Party in any efforts to prevent release of the Confidential Information; however, the Receiving Party shall not be required to expend any monies in excess of the cost of notifying the Disclosing Party by telephone, facsimile and/or mail of the pendency of a demand for the Confidential Information. So long as the Receiving Party complies with the provisions of notification set forth in this Agreement, the Receiving Party shall not be liable for, and Customer and City hereby release each other from, any liability for any damages arising from any requirement under the law that the Receiving Party release Confidential Information to a Requestor, and such release includes the

officers, commissioners, employees, agents, council members, and directors, as those terms may apply to each Party hereto, without limitation.

14.6 The Receiving Party may, at its sole expense, institute, or intervene in any proceeding, in order to protect the Confidential Information from disclosure, and if the Disclosing Party requests and agrees in writing to indemnify the Receiving Party from any expense or liability for expenses, the Receiving Party may cooperate actively in any such action or proceeding; provided, however, that the Receiving Party shall have no duty to the Disclosing Party to actively cooperate, notwithstanding an offer by the Receiving Party to provide a complete indemnity.

**15. CORRECTION OF WORK**

The performance of Services by Contractor shall not relieve Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to City.

**16. NOTICES**

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

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050,  
or by facsimile at (408) 244-2990

and to Contractor addressed as follows:

Castroville Inc. dba Blue Earth Energy Management Services  
253 Polaris Ave  
Mountain View, California 94043  
or by facsimile at (650) 904-4518

**17. CHANGES**

City may, from time to time, request changes in the "Scope of Services" to be performed pursuant to a Call issued under this Agreement. Such changes, including any increase or decrease in the amount of Contractor's compensation, which are mutually agreed upon by and between City and Contractor, shall be incorporated in written amendments to the Call, or included in a subsequent Call.

**18. CONTRACT FOR ADMINISTRATIVE SERVICES**

To the extent that this Agreement is a contract authorizing Calls to be made for Administrative Services, the City Council entered into such Agreement upon the recommendation of the City Manager pursuant to Section 1108 of City's Charter. The policy decision with respect to the Services to be provided under this Agreement was made exclusively by the City Council.

19. **SUB-CONTRACTING AND ASSIGNMENT**

Except as specifically provided in this Agreement, the City intends that the work described in each Call must be performed by the Contractor and not by a subcontractor or agent of the Contractor. Contractor shall not assign any interest in this Agreement, or any Call issued pursuant to this Agreement, and shall not transfer any interest in same (whether by assignment or novation) without prior written approval of City. Inclusion of a subcontractor in a proposal attached to a Call, once signed by the City, constitutes written approval.

However, claims for money due to or to become due to Contractor from City under this Agreement may be assigned to a bank, trust company or other financial institution, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to City. In case of the death of one or more members of Contractor's firm, the surviving member or members shall complete the Services covered by this Agreement or any incomplete Call. Any such assignment shall not relieve Contractor from any of its obligations or liability under the terms of this Agreement.

20. **OTHER AGREEMENTS**

This Agreement shall not prevent either Party from entering into similar agreements with others.

21. **TOTALITY OF AGREEMENT**

This Agreement embodies the entire Agreement between City and Contractor and all the terms and conditions agreed upon by the Parties to this Agreement. No other understanding, agreements, conversations, oral or otherwise, with any officer, agent, or employee of the City prior to the execution of this Agreement, regarding the subject matter of this Agreement shall affect or modify any of the forms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding on either Party to this Agreement.

22. **SERVICE WARRANTY**

Contractor warrants that Services provided hereunder shall conform with the generally accepted professional practices and standards appropriate to the nature of the Services rendered, that the personnel furnishing said Services shall be qualified to perform the Services assigned to them and that the recommendations, guidance and performance of such personnel shall meet the standard of care normally practiced by engineers or contractors performing the same or similar Services. Contractor shall be required to correct, at no expense to City, all deficiencies in the performance of the contract service that results from Contractor's failure to observe and adhere to the above warranty and which are detected within one (1) year from the date of completion of the Services. Work performed under this warranty shall also be warranted for a one (1) year period from the date of completion of such work. Contractor shall be required to reimburse City for all misexpenditure of funds resulting from Contractor's deficient performance of its Services.

## 23. DISPUTE RESOLUTION

Any documented dispute between the Parties which arises during the performance of this Agreement and which the Parties cannot then resolve, shall be subject to the following administrative remedy prior to any litigation occurring between the Parties.

- 23.1 **Internal Resolution.** Both Parties shall attempt to resolve any controversy claim, problem or dispute arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. In the event that any problem or dispute is not resolved, by the project managers of each Party, either Party may upon written notice to the other request that the matter be referred to senior management officials within each respective organization with express authority to resolve the problem or issue. Such representatives shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within ten (10) business days of such written notice. If the parties cannot reach a mutually agreeable resolution, then the dispute or issue shall be submitted to mediation within thirty (30) calendar days of the written request of one Party after the service of that request on the other Party.
- 23.2 **Notice.** A Party with claims arising under this Agreement shall, within thirty (30) days of knowledge of said claim, begin the process of exhausting all administrative remedies, as well as any other administrative remedies required by law. If the final decision or outcome of any administrative proceeding is unacceptable to a Party, then within thirty (30) days of the date of that final decision, the dissatisfied Party shall give written notice (certified mail-return receipt requested) to the other Party of the issues it deems outstanding that must be submitted to mediation (Request for Mediation).
- 23.3 **Mediation.** Any controversies between City and Contractor regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, except those for which the appropriate remedy should be injunctive relief shall be mediated within sixty (60) days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available.
- 23.4 **Mediator.** Within twenty (20) days or less of the written Request for Mediation, the Parties shall agree on one mediator. If they cannot agree on one mediator within such twenty-day period each Party shall list the names of three (3) potential mediators affiliated with the Judicial Arbitration and Mediation Service ("JAMS") and shall supply them to the Party demanding the mediation. The Party demanding the mediation shall merge the names of all the potential mediators into a single list, not indicating which Party submitted the name. On that same date as all names are received by the demanding Party, the Parties shall jointly sign a letter directed to the San Jose office of JAMS, requesting that JAMS appoint a mediator from the enclosed list. If a Party refuses or fails to submit three (3) names within the three day period to the Party preparing the letter, then the letter shall be sent on the fifth day without input from the Party failing to submit names. 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.

- 23.5 **Costs.** The costs of mediation shall be borne by the Parties equally.
- 23.6 **Discovery.** If, during any dispute between the Parties, a demand is made by Contractor for documents under the Public Records Act, the City shall have reciprocal rights to demand documents from Contractor.
- 23.7 **Condition Precedent to Filing Suit.** Except as provided in Article 23.3, mediation under this section is a condition precedent to a Party filing an action in any court, unless that Party has made demand for mediation and the other Party has failed or refused to engage in mediation. In the event of litigation arising out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.
- 23.8 **Work Through Disputes.** If the City and the Contractor are unable to reach agreement on disputed work, the Contractor shall nevertheless proceed with the disputed work, and Payment therefore shall be as subsequently determined pursuant to this Article.

24. **CAPTIONS**

The captions of the various paragraphs of this Agreement are for convenience or record only, and shall not be considered or referred to in resolving questions or interpretations.

25. **APPLICABLE LAW**

Any dispute regarding this Agreement, including without limitation, its validity, interpretation, performance, enforcement and damages shall be determined in accordance with the laws of the State of California without regard to California's choice of law principles.

26. **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.

27. **NO PLEDGING OF CITY'S CREDIT**

Under no circumstances shall Contractor have the authority or power to pledge the credit of the City of Santa Clara, or to incur any obligation in the name of the City without City's prior written agreement or confirmation. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor or its subcontractors under this Agreement. Contractor agrees to obtain City's approval of all expenditures in connection with any materials to be purchased, projects to be performed, advertising to be placed, work

to be “outsourced” or other items or Services which will or might be charged to the City. Such approval, if verbal, shall be confirmed by the City in a written letter sent via facsimile and U.S. mail to Contractor in accordance with the terms of this Agreement.

**28. USE OF CITY NAME OR LOGO**

Contractor shall not use City of Santa Clara’s or Silicon Valley Power’s name, insignia, trademark, logo or distribute exploitative publicity pertaining to the Services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of City.

**29. MONITORING AND EVALUATION OF SERVICES**

City may monitor the Services performed under this Agreement to determine whether Contractor’s operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accordance with applicable City, county, state and federal requirements. If, in the course of monitoring and evaluation, City believes it has discovered any practice, actions, procedure or policy of Contractor which deviates from the terms of this Agreement, City may notify Contractor in writing and Contractor agrees to respond in writing to City within seven (7) calendar days regarding such action, procedure or policy. However, if any action of Contractor constitutes a breach of this Agreement, City may notify contractor in writing that the Agreement has been terminated pursuant to the provisions set forth in this Agreement.

**30. 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 state or federal law.

**31. SEVERABILITY CLAUSE**

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

**32. WAIVER**

Waiver by a Party of any one or more of the conditions of performance under this Agreement shall not be construed as a subsequent waiver(s) of that condition or of any other condition of performance under this Agreement. No delay in exercising, partial exercise, or complete failure to exercise any right, power, or privilege under this Agreement shall operate as a waiver.

33. **CONFLICT OF INTEREST**

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

34. **CONSTRUCTION AND INTERPRETATION OF AGREEMENT**

This Agreement, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the Parties. Accordingly, each of the Parties expressly acknowledges and agrees that this Agreement shall not be deemed to have been authored by, prepared by, or drafted by, any particular party, and that the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or in the resolution of disputes.

35. **COMPLIANCE WITH ETHICAL STANDARDS**

As a condition precedent to entering into this Agreement, Contractor shall:

- 35.1. Read Exhibit A, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA" incorporated by this reference; and,

(Continued on Page 16 of 16)

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35.2. Execute the affidavit included in Exhibit B, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS" incorporated by this reference.

The Parties acknowledge and accept the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives. It is the intent of City and Contractor that this Agreement shall become operative on the Effective Date first set forth in the Preamble, above.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

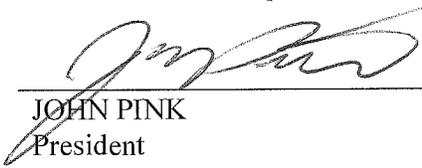
ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

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

"CITY"

**CASTROVILLA INC.  
DBA BLUE EARTH ENERGY MANAGEMENT SERVICES  
a California corporation**

By:   
\_\_\_\_\_  
JOHN PINK  
Title: President  
Address: 253 Polaris Ave.  
Mt. View, CA 94043  
Telephone: (650) 968-1811  
Fax: (650) 904-4518

"CONTRACTOR"

**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
CASTROVILLA INC. DBA BLUE EARTH ENERGY MANAGEMENT SERVICES**

**EXHIBIT A**

**ETHICAL STANDARDS FOR CONTRACTORS  
SEEKING TO ENTER INTO AN AGREEMENT WITH  
THE CITY OF SANTA CLARA, CALIFORNIA**

**Termination of Agreement for Certain Acts**

- A. City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor<sup>1</sup> does any of the following:
    - a. Is convicted<sup>2</sup> of operating a business in violation of any Federal, State or local law or regulation;
    - b. Is convicted of a crime punishable as a felony involving dishonesty<sup>3</sup>;
    - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or sub-contract;
    - 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 City Contractor or sub-contractor; 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 the Contractor can be imputed to the Contractor when the conduct occurred in connection with the

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<sup>1</sup> For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

<sup>2</sup> For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

<sup>3</sup> As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

- B. City may also terminate this Agreement in the event any one or more of the following occurs:
1. If City determines that Contractor no longer has the financial capability<sup>4</sup> or business experience<sup>5</sup> to perform the terms of, or operate under, this Agreement; or
  2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with city, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- 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 City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

---

<sup>4</sup> 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.

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

**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
CASTROVILLA INC.  
DBA BLUE EARTH ENERGY MANAGEMENT SERVICES**

**EXHIBIT B**

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS  
[CITY OF SANTA CLARA]**

I, John Pink, being first duly sworn, depose and say that I am the President of Castrovilla, Inc. dba Blue Earth Energy Management Services and I hereby state that I have read and understand the language, entitled "*ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA*" (herein "Ethical Standards") set forth in Exhibit A. I have 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 inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit A [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 Exhibit A 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.

CASTROVILLA INC.  
DBA BLUE EARTH ENERGY MANAGEMENT SERVICES  
a California corporation

By: \_\_\_\_\_

JOHN PINK  
President

**NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED**

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
CASTROVILLA INC. DBA BLUE EARTH ENERGY MANAGEMENT SERVICES**

**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 purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
  - \$1,000,000 Each Occurrence
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

**B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

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

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In

the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

#### E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

#### F. EVIDENCE OF COVERAGE

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



# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Santa Clara

On May 20, 2014 before me, Nick DeVillers Notary Public  
(Here insert name and title of the officer)

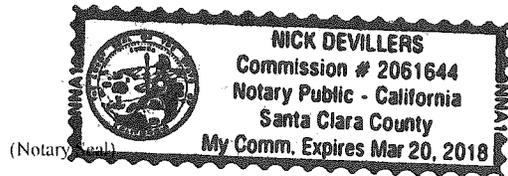
personally appeared John Pink

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.

Nick DeVillers  
 Signature of Notary Public



## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

Affidavit of Compliance with  
(Title or description of attached document)

Ethical Standards  
(Title or description of attached document continued)

Number of Pages 1 Document Date \_\_\_\_\_

\_\_\_\_\_  
(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer \_\_\_\_\_  
(Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

*Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they~~, is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CALL NO. 14-1  
FOR PROFESSIONAL SERVICES  
TO BE PROVIDED TO THE  
CITY OF SANTA CLARA, CALIFORNIA  
BY CASTROVILLA INC. DBA BLUE EARTH ENERGY MANAGEMENT SERVICES

The Parties to this Call No. 14-1 ("Call") agree that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014 this Call is made pursuant to the terms of a Call Agreement between the Parties entitled, "Call Agreement by and between the City of Santa Clara, California and Castrovilla Inc. dba Blue Earth Energy Management Services," of the same date, the terms of which are incorporated by this reference. This Call describes the Services to be provided to the City of Santa Clara, California ("City") by Castrovilla Inc. dba Blue Earth Energy Management Services ("Contractor"), which are more fully described in Contractor's proposal to City entitled "Keep Your Cool SVP 2014" dated May 1, 2014 ("Proposal"), attached to this Call as Exhibit A and incorporated by this reference. The Services to be performed under this Call shall be completed within the time period beginning on July 1, 2014 and ending on June 30, 2015. The attached Proposal contains a complete description of the Services, and performance dates for the completion of such Services, to be performed by the Contractor under this Call. In no event shall the amount paid to the Contractor for the Services provided to City by the Contractor under this Call, including all fees or pre-approved costs and/or expenses, exceed two hundred seventeen thousand seven hundred thirty three dollars (\$217,733.00), subject to budgetary appropriations.

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

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

ATTEST:

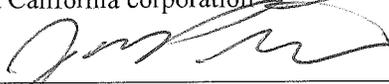
\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

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

"CITY"

**CASTROVILLA INC.  
DBA BLUE EARTH ENERGY MANAGEMENT SERVICES  
a California corporation**

By: \_\_\_\_\_

  
\_\_\_\_\_  
JOHN PINK  
President  
253 Polaris Ave.  
Mt. View, CA 94043  
Telephone: (650) 968-1811  
Fax: (650) 904-4518

"CONTRACTOR"

# Keep Your Cool SVP 2014

**Submitted by**



**May 1st, 2014**

**Castroville, Inc  
253 Polaris Ave,  
Mountain View, CA 94043**

## Scope of Work

### Proposal Summary

Castroville, Inc. dba Blue Earth Energy Management Services proposes to administer, manage, and implement *Keep Your Cool SVP*, an efficiency program targeting business with commercial refrigeration load. Blue Earth has previously or is currently implementing the *Keep Your Cool* program for over 20 publicly owned utilities throughout Northern and Southern California. In addition, the company has served as an approved vendor/trade ally for numerous PG&E third-party programs and local government partnerships. Since 2005 the company has completed well over 10,000 retrofits resulting in over 100GWh of reported first year savings.

### Highlights

*Keep Your Cool SVP* aims to deliver approximately 484,000 kWh of net annual savings at a projected utility cost of \$217,733. For full project highlights, see below.

Budget		Projected Program Results		Projected Program Statistics	
Utility	Santa Clara	% of Technical (kWh) Poten	3.52%	Weighted Avg TRC	2.62
Actual Utility Budget	\$217,733	# Projects/Sites	45	Levelized Cost (\$/kWh)	\$0.049
Climate Zone	4	Gross Annual kWh Savings	598,621	Net Annual Utility Cost (\$/kWh)	\$0.449
Projected Utility Costs	\$217,733	Net Annual kWh Savings	484,514	Net Lifetime Utility Cost (\$/kWh)	\$0.039
Balance of Utility Budget	(\$0)	Gross kW Savings	70.42	Weighted Avg EUL	11.47
Maximum Incentive per Site		Net kW Savings	56.13	NTG	0.81

### Key Features

*Keep Your Cool SVP* offers a full suite of measures that encourage business owners and facility managers to retrofit their existing refrigeration systems to optimize the overall efficiency of their small businesses and commercial kitchens. Each measure is highly cost-effective on its own merits, but provides the greatest return when installed alongside the others. For a full list of measures, see below.

Measure (units)	Maximum Cost per Unit	Total kWh (Technical) Potential	Maximum Utility Direct Cost per Unit	Maximum Customer Co-Pay Cost per Unit	Projected Gross Annual kWh Savings (Economic Potential)	Maximum Utility Direct Costs	Projected Net Annual kWh Savings
Strip Curtains (sq. ft.)	\$9.87	1,011,167	\$8.88	\$0.99	43,162	\$2,626.06	33,234
Door Closers (ea.)	\$132.91	97,456	\$119.62	\$13.29	2,496	\$376.97	1,922
EC Motors (ea.)	\$235.09	2,594,513	\$211.58	\$23.51	66,004	\$11,254.29	52,804
ECM Fan Controls (ea.)	\$951.88	710,915	\$856.69	\$95.19	17,437	\$6,004.45	16,740
Fan Coil Unit Motors (ea.)	\$230.00	1,491,768	\$207.00	\$23.00	253,004	\$77,042.75	202,403
LED Case Lights (fixture)	\$235.00	2,302,560	\$211.50	\$23.50	97,629	\$26,472.36	78,103
Horizontal LED Case Lights (Inr. Ft)	\$52.41	780,300	\$47.17	\$5.24	33,826	\$17,381.43	23,678
LED Canopy Lights (fixture)	\$495.00	444,489	\$445.50	\$49.50	37,693	\$12,920.21	30,154
ASH Controls (door)	\$170.02	601,592	\$153.02	\$17.00	14,756	\$4,060.99	14,166
Floating Head Pressure Controls (hp)	\$559.60	1,329,696	\$503.64	\$55.96	32,615	\$22,760.30	31,310
Subtotal Incentive Costs						\$180,899.80	484,514

### Distinguishing Points

*Keep Your Cool SVP 2014 Program* Scope of Work  
 Castroville, Inc dba Blue Earth Energy Management Services

*Keep Your Cool* (KYC) successfully reduces commercial refrigeration energy and power for several reasons.

- 1) *Keep Your Cool* is implemented by a refrigeration contractor specializing in the efficiency of commercial refrigeration systems. Frequently commercial refrigeration measures have been offered as add-ons to commercial lighting programs or have been offered by electrical contractors not trained in the special challenges encountered in refrigerated and frozen spaces. While experts in lighting or electrical circuits, representatives without specific refrigeration background do not typically possess detailed knowledge for identifying, quoting and presenting refrigeration projects to businesses.
  
- 2) *Keep Your Cool* does not promote our own product or a single manufacturer's solution. We believe in identifying the best solution for every site. While our measure list consists of generally straight-forward, highly cost-effective retrofits using the best available materials and equipment, our audits may uncover deeper opportunities, including:
  - a) Replacement or consolidation of condensing units
  - b) Replacement of evaporators
  - c) Elimination or consolidation of unnecessary load (such as the overuse of stand-alone merchandising coolers)
  - d) Opportunities for advanced refrigeration controls
  - e) Opportunities to educate and train small business owners on how they can keep their systems running at peak efficiency

Key Contacts

<b>Name</b>	<b>Role</b>	<b>Phone</b>	<b>Email</b>
John Pink	Program/Project Manager	650-968-1811	<a href="mailto:jrpink@blueearthems.com">jrpink@blueearthems.com</a>
Jennifer Hery	Project Coordinator	650-968-1805 ext. 1004	<a href="mailto:jhery@blueearthems.com">jhery@blueearthems.com</a>
Chip Schmelz	Operations Manager	650-968-1830	<a href="mailto:cschmelz@blueearthems.com">cschmelz@blueearthems.com</a>

## Work Plan / Proposal

### I. Program Development

The KYC team will coordinate with SVP to create an Implementation Plan which will lay out the timelines and formats for all program deliverables. The Implementation Plan will also include final versions of all program documents, including collateral materials and program forms. All collateral materials created for the program will be incorporated into the www.KeepYourCool.org website.

Collateral materials shall include, but not be limited to:

- KYC One Page Program Overview
- KYC Fact Sheets for each program measure

Program forms shall include, but not be limited to:

- *Site Access Agreement*: This form grants permission to KYC program staff and installers to access the premises and establishes terms and conditions of the program.
- *Audit Form*: This form is used by the KYC Auditor to enter data required for all other operations. This includes the spreadsheet used to calculate energy savings and costs.
- *Audit Report*: This summary report is generated from information entered into the Audit Form.
- *Program Agreement*: This is the contract signed by the customer and Castrovilla establishing the scope of work for the project.
- *Pre-Installation Checklist*: This form is used by the installer to document the pre-installation conditions.
- *Change Order*: This documents any changes to the project work scope.
- *Post-Installation Checklist*: This form is used by the installer to document the post-installation conditions.
- *Post Inspection Form*: This form is used by an independent third-party to document results of post-installation verification visits.
- *Project Completion Form*: This form is signed by the customer and the installer upon successful completion of project.
- *Thank You Letter*: This letter is sent to the customer to summarize their participation in the program and provide contact information for any follow-up questions/issues that may arise.

It is anticipated that the aforementioned program development activities will be completed in approximately 2 to 4 weeks, as most of the collateral materials and forms already exist and are being utilized in delivering this program to other utilities.

### II. Program Delivery

Program Delivery will launch upon the completion of program development activities.

Delivery will consist of the following primary components:

## 1) Participant Recruitment

The KYC program will utilize the same successful recruitment strategy utilized in many other instances of the program. The KYC team will work with SVP to engage in comprehensive marketing and recruitment of potential customers, including the use of a utility-generated customer list, targeted mailings, cold calls, website material, and on-site energy audits.

Effective recruitment of program participants begins with the coordination of effort between KYC and SVP. A utility-endorsed letter will be sent to non-residential accounts that include a commercial refrigeration load. SVP account representatives may also elect to make personal contact with customer accounts.

Following the initial SVP contact, a postcard campaign can be launched to market KYC and fully subscribe the program. Postcards are very effective at generating interest. KYC pays for first class postage so that returns from the initial mailing also provide change of address data which is used to further refine the mailing list. In addition to encouraging the customer to call the program's toll-free number (or their utility) the postcard advertises the KeepYourCool.org website, where they can get information on all aspects of the program.

Leads generated by direct mail efforts will be followed up by site visits from program field representatives (Auditors). KYC Auditors are fully trained in all aspects of the program, from identifying and clearly explaining energy saving opportunities through contract and financing details. KYC Auditors present the program in a professional manner on behalf of the local utility. If SVP chooses, their representative may accompany the KYC Auditor to add further program credibility.

In addition to following up on direct mail efforts, KYC Auditors can also systematically cold call prospects while they are in SVP service territory. When a decision maker is not available during the cold call, KYC Auditors may leave behind a program folder which includes a one page overview of the program and specification sheets for the different technologies that may be suitable for their location.

Making sure that every customer has multiple interactions with the program is the key to avoiding lost opportunities. Past experience indicates that it can take some time before skeptical customers decide to participate. In these cases, Auditors may make numerous callbacks in an effort to develop a relationship with the customer.

Once a customer has expressed interest in participating in the program, KYC Auditors work directly with the customer to obtain a Site Access Agreement which establishes the terms and conditions for the program. During the initial KYC site visit, a KYC Auditor will perform an assessment of all existing refrigeration equipment and evaluate the site for retrofit opportunities. Each piece of equipment will be labeled with a unique serial number, and any work performed on that equipment will include a reference to that serial number. When necessary, digital photographs will be taken to document the specifications and/or the condition of the existing equipment, and whether or not it is a candidate for retrofit.

The KYC Auditor will record their findings in the Audit Form and prepare an Audit Report for

the customer. The Audit Report will detail all recommended energy efficiency measures, as well as the energy and monetary savings calculations. The KYC Auditor will provide a hard copy of the audit report to the customer, along with a program folder which contains a one page overview of the KYC program and KYC measure fact sheets for the refrigeration upgrades that have been recommended.

The KYC Auditor will submit the audit report and documentation to KYC administration.

Some customers will make a decision at this time, but others will want to consider the program further or consult with partners/superiors.

KYC Auditors will follow up with customers who require extra time, have additional questions or must meet specific requirements for their business (e.g. corporate approval) on a weekly basis until the customer makes a decision regarding participation. KYC auditors will keep customers up to date on changes in the program so they do not miss their opportunity to participate.

A monthly KYC Project Tracking Report will be provided to SVP. The report will include the name and address of all sites audited since the previous report, status of project (customer not interested, customer enrollment pending or customer enrollment confirmed), measure recommendations and installed cost of each measure, and potential annual and lifetime savings at each location.

## **2) Project Logistics**

Once the KYC Auditor has submitted a completed Audit Report, Site Access Agreement and Program Agreement, the KYC administrative team will take responsibility for coordinating the project installations. At this point, customers have become program Participants, and the KYC Auditor's role shifts to coordinating installation times and responding to pre-installation issues or concerns related to the project.

The project will be entered into the accounting system in order to produce a preliminary estimate of inventory required for the project. The KYC administration team will track stock levels available across all projects to ensure that purchase orders are created in a timely fashion so there are no interruptions in production due to material shortages. Also, the estimated funds needed for the project will be reserved and tracked against the contractual budget to guard against oversubscribing SVP service territory.

Meanwhile, the KYC Operations Manager will review the project. If any aspect of the Audit Report is incomplete or ambiguous, the Operations Manager will work with the KYC Auditor to clarify. Once satisfied, the KYC Operations Manager will approve the work order for pre-installation inspection.

The pre-installation inspection is intended to verify that the work order matches the site specifics and identify any additional requirements for install. For example, during pre-inspection, the installer may note if extra long ladders or a lift is required and was not accounted for on the work order. If a discrepancy is discovered during the pre-installation inspection, the installer may write a Change Order for the project. If the Change Order increases the project expense or in any way adversely affects the expected value of the project, the Participant will be notified and asked to sign the Change Order.

Once the Pre-Installation Checklist is returned and any changes are made to the work order, the project will be approved for production. Lastly, materials will be prepared for the project and all items required for the installation will be assembled.

### **3) Retrofit Installations**

All installation work will be performed by Castrovilla's own technicians working under the name Blue Earth Energy Management Services. Like auditors, KYC installation technicians undergo a thorough training process, but with a greater emphasis on fieldwork over classroom training. Installation crews always include at least one senior qualified and experienced technician. Only after all senior team members agree that a new technician is qualified to work independently will a trainee technician be permitted to work without supervision. Technicians are trained to adhere to manufacturer's installation specifications and, when applicable, *Small Commercial Mass Market Installation Standards*.

Furthermore, technicians are trained to deal with unexpected situations encountered at the time of installation, such as a wiring issue, in order to be armed with the knowledge to do what is reasonably possible to make the retrofit work. All KYC technicians are required to carry cell phones in order to quickly resolve potential problems on-site and to address any last minute customer concerns.

Blue Earth Energy Management Services operates under contractor's license numbers 925918 and 516015 which include certifications for Refrigeration, Electrical and HVAC trades, among others. Additionally, manufacturers and suppliers of KYC products have trained and/or certified KYC technicians where such services are offered.

Measures will, on average, be installed within two weeks of audit. Occasionally, uncommon equipment configurations can have longer than average manufacturing/procurement timelines and may delay completion of measure installation. A good example of this are larger EC Motors found in refrigerated warehouses. Lead times for these projects can be 8 weeks or more.

Previous experience has shown that program participants from the food service industry have strict requirements for when service providers can work in their facilities. The KYC program is careful to work around these requirements.

Once the measure installations are complete, the KYC technician will perform a post-installation inspection. The results will be reviewed with an on-site representative of the Participant, after which the Participant will be asked to sign the Project Completion Form.

The monthly Project Tracking Report will include the name and address of all projects completed since the previous report, total project cost, total project rebates, and calculated project savings (kWh and kW).

### **4) Reporting and Invoicing**

Reporting and Invoicing formats and schedules will be established and documented in the implementation plan finalized before program launch so as to adhere to all of SVP's requirements.

## 5) Technical Support

Participants will have unlimited access to ongoing technical support after project completion in order to address issues with their refrigeration or lighting equipment performance. KYC maintains a Service Technician Line that is available to Participants during normal business hours and a call answering service for issue that occur during non-business hours. The answering service forwards messages to the on call service technician for 24 x 7 coverage.

Measures installed under the KYC program have a minimum 1 year warranty from date of installation (parts and labor).

### Proposed Innovations

Blue Earth is proposing to utilize a bundled measure approach to encourage participants to install more than a single measure. To encourage this, incentives would increase based on the number of measures the customer elected to install.

Single Measure:	70% of calculated rebate (100% if only one measure exists)
Two Measures:	85% of calculated rebate (100% if only two measures exist)
Three or More:	100% of calculated rebate

For example, if a customer chose to install a strip curtain only, which has a maximum rebate of 90% of the installed cost, and there were other measures available that they turned down, they would be eligible for 70% of the 90% incentive. If they chose to include fan motors, they would get 85% of the available rebate. If they also included a fan controller, they would get 100% of the eligible rebate for those measures. In cases where the customer does not have an opportunity for multiple measures, the bundling schedule is accelerated to account for their existing opportunity and not penalize them for already being efficient (e.g they already have strip curtains in place or already have LED lighting).

Presently the maximum incentive for all measures is set to 90% of the measure price, so there would always be at least a 10% co-pay for all customers, even if they install 3 or more measures.

### Project Staffing

#### Team's Experience

The team members at Castrovilla have been designing, enhancing and delivering the *Keep Your Cool* program on a continuous basis since 2007. In 2009 this team delivered a program design as part of the CEC's ARRA funded State Energy Program. Although that bid was not taken up as part of the SEP, *Keep Your Cool California* (on which this program is based) scored either 1<sup>st</sup> or 2<sup>nd</sup> in the categories of cost effectiveness, greenhouse gas reduction and leveraged funding out of 70 submitted proposals (18 POU's, were partners in that proposal).

Listed below are the implementations of *Keep Your Cool* over the past several years. In each case the scope of the program has been to deliver a turn-key commercial refrigeration direct install program. Responsibilities include market research, program design, development of both print and online marketing materials and plans, community outreach, installation and reporting. Each implementation is tailored to each utility's goals and requirements with an

eye towards current and future savings opportunities.

For all of the projects below, the Program/Project Manager (John Pink), Operations Manager (Chip Schmelz), Accounting (Janney Zhen) have remained the same. Melanie Ivanova began handling marketing in 2008 and Jennifer Hery joined us a Project Coordinator in 2011. The field estimators have also been with the program since the beginning.

	Total invoices	Program Started	Length of Program (months)
Alameda	\$121,185.94	11/13/2008	25
Biggs	\$4,742.78	6/24/2009	0
Gridley	\$24,207.90	6/24/2009	12
Healdsburg	\$47,201.12	6/11/2009	12
LMUD	\$43,165.05	6/19/2009	16
Lodi	\$65,098.10	1/9/2009	23
Lompoc	\$25,774.50	3/3/2009	0
Plumas-Sierra REC	\$10,503.51	10/23/2010	2
Redding	\$93,854.13	5/11/2009	13
Santa Clara	\$293,349.61	8/27/2007	36
Shasta Lake	\$25,107.22	5/11/2009	13
Turlock	\$140,341.39	12/18/2008	21
Truckee	\$100,897.74	6/8/2009	18
Ukiah	\$30,563.97	5/28/2009	5

### Quality Assurance & Customer Satisfaction

A successful retrofit begins with an accurate audit. KYC Auditors have experience inspecting thousands of locations, but ongoing training is mandatory. Auditor training includes principals of refrigeration and foundations of all available measures and technologies, including working demonstrations. The course culminates in written and verbal exams to test comprehension and identify areas for review.

Step two towards successful implementation is timely and accurate processing of the field data. KYC Auditors submit project forms and digital photographs via an online portal to Castrovilla’s scheduling system. Once submitted, KYC administration creates an estimate of the job cost and applies that to the SVP budget. Meanwhile, the KYC Operations Manager reviews the project documentation and photographs. Once all, if any, clarifications have been resolved with the auditor and/or customer, the project is approved for production. At this time materials are manufactured or otherwise procured for the project. A tentative install date is chosen and the customer is contacted to confirm the appointment. Once all approvals are in place, a KYC technician is scheduled to perform the installation work.

Step three is preparing and testing the equipment prior to installation. The following measure standards and testing methods are applied in the KYC program during both pre-inspection and post-inspection:

a) Strip Curtains

Strip curtains should be transparent, hang straight (not twisted) and overlap approximately 30%. Strips should cover the entire opening, reach but not touch the floor or threshold

and not interfere with the opening or closing of the door or the door closer.

b) Auto Door Closers

1. Door closers on glass reach-in doors of walk-in coolers and freezers should close the door after the door has been opened wide enough to remove product. The door should close but not slam.
2. Door closers on main walk-in cooler and freezer doors should close the door when the door is within one inch of closing. Door closers should not be installed if existing latches interfere with the closer operation or if the door cannot swing closed easily. If the door must be actively forced shut the closer should not be installed.
3. For all closers, the door must meet the jamb/frame evenly around its perimeter.

c) EC Motors:

To assure that a motor targeted for replacement is not already an energy-efficient EC motor, the following techniques are applied:

1. Each motor is tested by turning it off, letting it stop completely and observing on restart. An EC motor programmed to turn clockwise will usually turn counter-clockwise a few degrees before starting clockwise as part of normal ECM startup, whereas less efficient motors will simply spin immediately and continually in the specified direction.
2. If the motors cannot be turned off, there are several techniques for viewing the label on the motor housing. Technicians can:
  - Use a lighting source synchronized with the a/c power source (this can be a plug-in trouble light) to “freeze” the fan blade in place so you see the motor label.
  - Use a thin, bright beam (e.g. laser pointer) to illuminate the label behind the spinning fan blade
  - Use a digital camera with a flash to take a picture of the motor housing

The same techniques are used to verify replaced EC motors on post-inspections.

Technicians will inventory and track every retrofit through a sticker placed on the front of every new EC Motors.

d) Evaporator Fan Controllers:

These controllers slow down motors when the evaporators are running. To verify proper installation and operation of the controllers, technicians will:

1. Observe the motors. If they are running at slow speed (around 500 RPMs, very noticeable different from standard 1,500 RPMs) the controller is functioning normally in place. Current thermostat setting is noted, and then the thermostat is turned to a colder temperature. The fans should speed up when the solenoid opens to allow refrigerant to flow to the evaporator. The thermostat is then returned to its original setting.
2. Take note of the thermostat setting if the motors are at high speed, then turn it to a warmer temperature. When the box “reaches temp” the fans should slow down. Once confirmed, thermostat is returned to its original setting.
3. Alternatively, wait for the compressor to cycle and allow the controller to modify speed without intervention. This may take the most time.

Technicians will inventory and track every retrofit through a sticker on the front of every unit retrofit with a motor controller.

e) Anti-Sweat Heater Controls

These controllers adjust the heat of a glass door frame in relation to the humidity of the external air to keep condensation from building on the frame. To assure proper functioning of the controls, technicians will:

1. Observe glass display doors. Locate a humidity sensor that should be plainly visible near the outside edge of one door on each case. Use a non-contact voltage detector (voltage “pen”) to determine if the circuit in the door frame has current. If it does not (voltage pen is green), trigger the controller by blowing humid air on the sensor (warm breath is usually sufficient). The presence of humidity should cause the door frame heater to turn on and the voltage detector to turn red, beep or both.
2. A second method is to locate the controller, either in the raceway under the display case doors, or above and behind the glass doors of a walk-in. The controller has indicator lights which show the current status of the unit.

f) LED Case Lighting

To verify proper installation of LED Case lights, Technicians will:

1. Observe the lights behind each mullion (vertical portion of frame between doors). Lamps should not be fluorescent. Individual LED illuminators should be identifiable. Mullions between two glass doors should be “center” bars (light presenting to both sides of the mullion). Each end of a case should have end lights which shine one direction, toward product.
2. Assure lights should disperse light evenly across each door, and adjust direction as needed.
3. Locate sensor(s) above case if an occupancy sensor is specified. Sensor(s) operate on line of site and will be cleared of obstruction (by signage, boxes, etc.). Observe sensor operation. Stand out of the line of site of each sensor. Depending on the sensor’s time setting, the lights should dim to 20% of original output (noticeably dimmer). Lights should dim smoothly. Approach sensor and lights should return to 100% output. Lights should brighten smoothly.

Customer Satisfaction

Assuring Customer Satisfaction is the ultimate step in Quality Assurance of a successful retrofit project. Prior to beginning any installation work, the KYC technician completes the pre-installation condition checklist which is reviewed with the on-site contact so that any questions are answered and clarifications are made. To avoid installation-related damage claims, the on-site contact is asked to sign and date the checklist to indicate their approval of the pre-existing conditions.

Once a project is completed, the KYC technician completes the post-installation condition checklist which is also reviewed with the on-site contact, while also providing education on the measures installed, a review of any maintenance or operational items, and answers to any questions about the installation or optimal functioning of new equipment. The on-site contact is asked to sign and date the checklist to indicate their approval of the post-installation conditions, as well as indicate that the equipment features have been demonstrated/explained to them or that they declined the opportunity to receive the demonstration/explanation.

Thorough and meticulously documented communication assures the customer is fully informed at every step of the project, and that any questions, issues, or concerns are resolved in an optimal fashion.

The Participant is asked to sign the Project Completion Form upon successful completion of the project, certifying that the work was done according to the proposed KYC Program Agreement. This step assures Castrovilla has fulfilled its obligation by completing installations and any repairs to the Participant's full satisfaction.

In the event that a Participant is not satisfied with the installation and chooses not to sign the Project Completion Form, the installer must first work to rectify all concerns. If immediate resolution is not possible, the installer must first seek guidance from their direct superior and/or the KYC Operations Manager. If a resolution still cannot be achieved, Castrovilla will consult with SVP.

### Program Costs

The program cost structure is based on the actual cost of the installed measures plus an administrative percentage to cover marketing, outreach and administrative overhead. Based on the market assessment, SVP's budget and the costs of the different measures the following is the targeted cost breakdown by measure for Keep Your Cool SVP:

Measure (units)	Maximum Cost per Unit	Total kWh (Technical) Potential	Maximum Utility Direct Cost per Unit	Customer Co-Pay Cost per Unit	Projected Gross Annual kWh Savings (Economic Potential)	Maximum Utility Direct Costs
Strip Curtains (sq. ft.)	\$9.87	1,011,167	\$8.88	\$0.99	43,162	\$2,626.06
Door Closers (ea.)	\$132.91	97,456	\$119.62	\$13.29	2,496	\$376.97
EC Motors (ea.)	\$235.09	2,594,513	\$211.58	\$23.51	66,004	\$11,254.29
ECM Fan Controls (ea.)	\$951.88	710,915	\$856.69	\$95.19	17,437	\$6,004.45
Fan Coil Unit Motors (ea.)	\$230.00	1,491,768	\$207.00	\$23.00	253,004	\$77,042.75
LED Case Lights (fixture)	\$235.00	2,302,560	\$211.50	\$23.50	97,629	\$26,472.36
Horizontal LED Case Lights (Inr. Ft)	\$52.41	780,300	\$47.17	\$5.24	33,826	\$17,381.43
LED Canopy Lights (fixture)	\$495.00	444,489	\$445.50	\$49.50	37,693	\$12,920.21
ASH Controls (door)	\$170.02	601,592	\$153.02	\$17.00	14,756	\$4,060.99
Floating Head Pressure Controls (hp)	\$559.60	1,329,696	\$503.64	\$55.96	32,615	\$22,760.30
<b>Subtotal Incentive Costs</b>						<b>\$180,899.80</b>

Overhead costs associated with outreach, printing and postage, program administration,

reporting, etc. are invoiced on a per measure, per item basis as well and is set at 10% of the measure cost plus \$370 per project, which represents the fully loaded cost of administrative and management costs associated with each site that participates. For Keep Your Cool SVP the final estimated overhead percentage works out to 16.9%.

### Overhead Costs

Measure (units)	Variable Overhead Cost per Unit	Variable Overhead Cost per kWh	Projected kWh Savings	Total Overhead Costs
Gaskets (Inr. Ft.)				
Strip Curtains (sq. ft.)	\$0.99	\$0.01	43,162	\$291.78
Door Closers (ea.)	\$13.29	\$0.02	2,496	\$41.89
EC Motors (ea.)	\$23.51	\$0.02	66,004	\$1,250.48
ECM Fan Controls (ea.)	\$95.19	\$0.04	17,437	\$667.16
Fan Coil Unit Motors (ea.)	\$23.00	\$0.03	253,004	\$8,560.31
LED Case Lights (fixture)	\$23.50	\$0.03	97,629	\$2,941.37
Horizontal LED Case Lights (Inr ft.)	\$5.24	\$0.06	33,826	\$1,931.27
LED Canopy Lights (fixture)	\$49.50	\$0.04	37,693	\$1,435.58
ASH Controls (door)	\$17.00	\$0.03	14,756	\$451.22
Floating Head Pressure Controls	\$55.96	\$0.08	32,615	\$2,528.92
<b>Fixed overhead costs</b>				<b>\$16,733.22</b>
<b>Subtotal Overhead Costs</b>				<b>\$36,833.20</b>

Total Resource Cost Test (TRC) measures the cost and benefits of an efficiency measure as a resource option based on the total cost of the measure to the utility's service territory, including both participant and utility costs. The weighted average TRC for Keep Your Cool SVP comes in at 2.62, with an average effective useful life of the anticipated measure mix of over 11 years.

Measure (units)	Maximum Utility Direct Cost per Unit	Maximum Overhead Cost per Unit	Maximum total Utility Cost per Unit	Levelized Cost per kWh	EE/E3 TRC per Unit
Gaskets (Inr. Ft.)					
Strip Curtains (sq. ft.)	\$8.88	\$1.67	\$10.55	\$0.025	4.58
Door Closers (ea.)	\$119.62	\$22.48	\$142.10	\$0.034	3.01
EC Motors (ea.)	\$211.58	\$39.77	\$251.35	\$0.037	2.83
ECM Fan Controls (ea.)	\$856.69	\$161.03	\$1,017.72	\$0.062	1.68
Fan Coil Unit Motors (ea.)	\$207.00	\$38.91	\$245.91	\$0.040	2.89
LED Case Lights (fixture)	\$211.50	\$39.75	\$251.25	\$0.075	1.57
Horizontal LED Case Lights (Inr ft.)	\$47.17	\$8.87	\$56.04	\$0.074	1.85
LED Canopy Lights (fixture)	\$445.50	\$83.74	\$529.24	\$0.057	2.24
ASH Controls (door)	\$153.02	\$28.76	\$181.78	\$0.036	4.79
Floating Head Pressure Controls	\$503.64	\$94.67	\$598.31	\$0.077	1.51

Levelized Cost calculations are often used to represent, on a consistent basis, the cost of energy saved by an efficiency program that includes various measures with different useful lives. Unlike the TRC test, the calculation only includes utility costs; therefore, the program levelized cost will vary depending on the measure portfolio and utility funding levels. The KYC Program levelized cost is estimated to be **\$0.049/kWh**.

Estimated Savings by Item

When available and applicable, savings for all measures are based on SVP's Technical Resource Manual. Most measures do have values provided by the TRM, and those have been used in the budget analysis spreadsheet that accompanies this Scope of Work, but final savings will be calculated based on actual basecase and savings values determined from actual hours of operation and other relevant factors. Blue Earth will coordinate with SVP to finalize the reportable savings for each measure included in the Program.

Billing / Payment Terms

Blue Earth will invoice SVP monthly for work completed. Invoices will include a summary of all measures installed. A final summary report of the entire Program will be provided to SVP within thirty days of completion of work in the field.

Blue Earth's payment terms are Net 30 days. In the event that SVP discovers an invoice discrepancy, we ask to be notified within 5 days of receipt of the invoice. Blue Earth will then correct any discrepancies and submit a revised invoice within 5 days of receiving notification from SVP.

Measure Savings

Measure savings values were taken from the appropriate Technical Reference Manual work paper when available. Other values came from best available data.

Measure	Unit	kWh	kW
Strip Curtains (sq. ft.)	Square foot	146	0.011
Door Closers (ea.)			
Auto-closer for main cooler door	closer	981	0.143
Auto-closer for main freezer door	closer	2,365	0.363
EC Motors (ea.)			
EC motor for walk-in evaporator fan - 16W	motor	408	0.047
EC motor for walk-in evaporator fan - 1/15 hp and 1/20 hp	motor	1,054	0.121
EC motor for walk-in evaporator fan - 1/5 hp	motor	1,409	0.161
EC motor for walk-in evaporator fan - 1/3 hp	motor	1,994	0.228
EC motor for walk-in evaporator fan - 1/2 hp	motor	2,558	0.292
EC motor for walk-in evaporator fan - 3/4 hp	motor	2,782	0.318
ECM Fan Controls (ea.)			
EC motor with fan cycling control, WI cooler, 16W motor	motor	620	0.071
EC motor with fan cycling control, WI cooler, 1/15HP & 1/20HP motor	motor	1,379	0.157
EC motor with fan cycling control, WI cooler, 1/5HP motor	motor	2,329	0.266
EC motor with fan cycling control, WI cooler, 1/3HP motor	motor	3,518	0.402
EC motor with fan cycling control, WI cooler, 1/2HP motor	motor	4,841	0.553
EC motor with fan cycling control, WI cooler, 3/4HP motor	motor	6,226	0.711
Fan Coil Unit Motors (ea.)			
Fan Coil Unit Motors (ea.)	motor	679	0.091
LED Case Lights (fixture)			
LED refrigerator display case lighting, 5 ft., center & end mount, replacing single lamp fixture	Fixture	299	0.044
LED refrigerator display case lighting, 5 ft., center & end mount, replacing multi-lamp lamp fixture	Fixture	649	0.089
LED refrigerator display case lighting, 6 ft., center & end mount, replacing single lamp fixture	Fixture	720	0.100
LED refrigerator display case lighting, 6 ft., center & end mount, replacing multi-lamp lamp fixture	Fixture	1,304	0.175
LED refrigerator display case lighting, all other lengths, horizontal and vertical mount, replacing single and multi-lamp fixture	Linear feet of fixture	74	0.011
LED refrigerator display case lighting, 5 ft., center & end mount, replacing single lamp fixture - with occupancy sensor	Fixture	340	0.044
LED refrigerator display case lighting, 5 ft., center & end mount, replacing multi-lamp lamp fixture - with occupancy sensor	Fixture	690	0.089
LED refrigerator display case lighting, 6 ft., center & end mount, replacing single lamp fixture - with occupancy sensor	Fixture	780	0.100
LED refrigerator display case lighting, 6 ft., center & end mount, replacing multi-lamp lamp fixture - with occupancy sensor	Fixture	1,364	0.176
LED refrigerator display case lighting, all other lengths, horizontal and vertical mount, replacing single and multi-lamp fixture - with occupancy sensor	Linear feet of fixture	78	0.011
LED Canopy Lights (fixture)			
LED Canopy Lights (fixture)		1,299	0.302
ASH Controls (door)			
Anti-sweat heater controls, LT	Linear foot of case	556	0.001
Anti-sweat heater controls, MT	Linear foot of case	374	0.044
Floating Head Pressure Controls (hp)	Compressor Horsepower	721	0.000

Meeting Date: 6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # MB-4



**Date:** June 17, 2014  
**To:** City Manager for Council Action  
**From:** Director of Electric Utility  
**Subject:** Approval of Amendment No. 4 to the Master Agreement with Elster Solutions, LLC to Provide a New System License Agreement and System Maintenance Agreement for Elster's EnergyAxis Management System Software

## EXECUTIVE SUMMARY:

In FY08-09, a Capital Improvement Project and five-year plan was approved for the purpose of defining, procuring and implementing an Advanced Metering Infrastructure (AMI), under the SVP MeterConnect program. Under this plan, Council approved the acquisition of an AMI System through Elster Solutions, LLC which includes the EnergyAxis head-end software.

On April 24, 2012, Council approved Amendment No. 1 to the Master Agreement with Elster Solutions, LLC to provide system configuration, process development, and testing necessary to establish a reliable, repeatable methodology for the mass deployment of electric meters. The Amendment also included the automation of installation related data exchanges between City systems, development of communication with affected electric utility customers, and the replacement of 100 meters using installation vendor services. On October 16, 2012 Council approved Amendment No. 2 to purchase one-fourth of the electric meters and on November 19, 2013 Council approved Amendment No. 3 to provide field and administrative services required for the installation of the meters previously purchased. Staff recommends entering into Amendment No. 4 to the Master Agreement with Elster Solutions, LLC to update the terms and benefits for the System Maintenance Agreement (SMA) and Software License Agreement (SLA) to better support the Elster EnergyAxis software product. A copy of Amendment No. 4 to the Master Agreement with Elster Solutions can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of Amendment No. 4 allows the City to take advantage of Elster's recently updated EnergyAxis software license and system support processes that upgrade from processor based fees to system based fees, extends the coverage term for major system lease support, and incorporates third party software upgrades in the base EnergyAxis system without adding future upgrade fees.

## ECONOMIC/FISCAL IMPACT:

The initial not-to-exceed amount for the Master Agreement with Elster Solutions, LLC was \$2,389,397.17. Amendment No. 1 and Amendment No. 2 to the Master Agreement increased this amount by \$4,262,961.90, to a not-to-exceed amount to \$6,652,359.07. Amendment No. 3, in an amount not to exceed \$794,893.33, increased the total not-to-exceed amount to \$7,447,252.40. This requested Amendment No. 4 to the Master Agreement for the Software Maintenance Agreement annual support fee is \$42,920.80, which increases the total not-to-exceed amount to \$7,490,173.20. Sufficient funds are available in the Electric Department's Implementation of Advanced Metering Infrastructure (AMI) Inventory Control Account (I.C.A.) 591-1313-80500-2111-9864-39700.

**RECOMMENDATION:**

That Council approve, and authorize the City Manager to execute, Amendment No. 4 to the Master Agreement with Elster Solutions, LLC, in an amount not to exceed \$42,920.80, for a total amount not to exceed \$7,490,173.20, to provide a new System License Agreement and System Maintenance Agreement for Elster's EnergyAxis Management System Software.

*for* Paul O'Fst  
John C. Roukema  
Director of Electric Utility

Certified as to Availability of Funds: *OK-LF*  
Account No. 591-1313-80300-2111 \$42,920.80

APPROVED:  
Julio J. Fuentes  
Julio J. Fuentes  
City Manager

*for* Angel Kratoch  
Gary Ameling  
Director of Finance/Assistant City Manager

**MAJORITY VOTE OF COUNCIL**

***Documents Related to this Report:***

- 1) Amendment No. 4 to the Master Agreement with Elster Solutions, LLC***

**AMENDMENT FOUR  
TO THE  
ENERGYAXIS MANAGEMENT SYSTEM CONTRACT  
BETWEEN  
ELSTER SOLUTIONS, LLC  
AND  
CITY OF SANTA CLARA**

**THIS AMENDMENT FOUR** to that certain EnergyAxis Management System Contract between Elster Solutions, LLC, and the City of Santa Clara, CA is effective this \_\_\_ day of \_\_\_\_\_, 2014 (“Effective Date”).

**WHEREAS**, Elster Solutions, LLC a Delaware limited liability company with its principal place of business at 208 S. Rogers Lane, Raleigh, NC 27610, USA (“Elster” or “Licensor”) and the City of Santa Clara, a municipality organized under the laws of the State of California, having its principal place of business at 1500 Warburton Avenue, Santa Clara, CA 95050, USA (“Santa Clara”, “City” or “Licensee”), collectively the “Parties” and individually a “Party”, entered into an EnergyAxis Management System Contract (“Contract”) together with a Software License Agreement, Exhibit B, and System Maintenance Agreement, Exhibit C, (the “Agreements”) on December 7, 2010, for delivery of system hardware, software and services in support of the successful implementation and deployment of Elster’s EnergyAxis Advanced Metering Infrastructure (AMI) system for the City; and

**WHEREAS**, Elster has updated its EnergyAxis software license and system support processes, moving from processor-based fees to system-based fees while extending coverage for major system release support and upgrading base system third party software without added upgrade fees (the “New Licensing Model”); and

**WHEREAS**, the Parties have agreed to replace the City’s existing Software License and System Maintenance Agreements with new Agreements to afford the City an opportunity to take advantage of Elster’s New Licensing Model, and

**WHEREAS**, the Parties have further agreed to change the City’s support level from 24x7 support to 9x5 support.

**NOW THEREFORE**, in consideration of the foregoing recitals, the covenants and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1) **Exhibit B, Software License Agreement, effective December 7, 2010, is hereby deleted in its entirety and replaced with revised Exhibit B, System License Agreement (“SLA”) attached hereto.**

The SLA license fee structure is described in Appendix B-2. License fees are due and payable in accordance with SLA Section 8, License Fees and Payment, and Appendix B-4, System License Fees Summary.

- 2) **Exhibit C, System Maintenance Agreement, effective December 7, 2010, is hereby deleted in its entirety and replaced with revised Exhibit C, System Maintenance Agreement (“SMA”) attached hereto.**

The SMA maintenance fee structure is described in Appendix C-1. Annual maintenance fees are due and payable in accordance with SMA Section 4, Fees, and Appendix C-4, System Maintenance Fees Summary.

- 3) **Exhibit C, Selected Support Level Table, and all other Agreement references to 24 x 7 support are hereby changed to 9 x 5 support.**

**ALL REMAINING AND SURVIVING TERMS OF THE CONTRACT ARE UNCHANGED AND REMAIN IN FULL FORCE AND EFFECT.**

IN WITNESS WHEREOF the Parties have authorized their representatives to execute this Amendment effective as of the "Effective Date" first written above.

**CITY OF SANTA CLARA, CA**

**ELSTER SOLUTIONS, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Julio J. Fuentes

Printed Name: Robert Aenes

Title: City Manager

Title: VP contracts and proposals

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

Date: 6/2/2014

## EXHIBIT B

### ENERGYAXIS MANAGEMENT SYSTEM (EA\_MS)

#### SYSTEM LICENSE AGREEMENT

This System License Agreement (this "Agreement") is made and entered into effective this \_\_ day of \_\_\_\_\_, 2014 ("Effective Date") by and between Elster Solutions, LLC, a Delaware limited liability company, with offices at 208 S. Rogers Lane, Raleigh, NC 27610, USA, ("Elster" or "Licensor"), and City of Santa Clara California, a chartered California municipal corporation, with offices at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City" or "Licensee").

In consideration of their mutual promises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### 1 DEFINITIONS

<b>Authorized User</b>	The number of operators authorized to use the Software, as more particularly described in Appendices C-1 and C-2 attached hereto and incorporated herein by this reference.
<b>Release(s)</b>	Modification or enhancement to the Software that provides additional value and utility, or adds functions, together with all corresponding Documentation, and typically identified by a change in the first or second decimal of the application version number (i.e., 2.2.0.0 to 2.3.0.0).
<b>Documentation</b>	All printed or electronic documentation which Licensor customarily provides or makes available to the Licensee with the Software, including the Specifications and all Updates and Releases of such Documentation, all in the English language.
<b>Integrated System</b>	The commercially available product, which may be hardware, software, or a combination thereof, into which the Software has been integrated in accordance with the license granted to the Licensee hereunder.
<b>Network Device</b>	An individual appliance, component or peripheral from which Licensee collects and analyzes data using the Software.
<b>Route Manager</b>	The Software required to install and configure EA_Water and EA_Gas modules, create marriage files, setup and maintain data collection routes
<b>Software</b>	The binary code version of all software applications, updates, and releases furnished by Elster for a Client's AMI System, including media, user manuals, or other instructional materials and documentation, and any modified, updated or enhanced versions of such applications
<b>Specifications</b>	The functionality, operating characteristics and performance criteria of the Software as set out in the Documentation.

**Third Party Software** Computer software and any documentation distributed by Licensor under this Agreement, but owned or licensed by other parties (other than Licensor affiliates), and either embedded in the Licensor's Software or distributed separately by Licensor. Third Party Software and related documentation may include source code as well as binary code, all of which shall be governed by the terms hereof and the applicable license agreement between such Third Party Software Licensor and Elster.

**Update(s)** Any change, addition or correction to the Software, including the Documentation that primarily includes bug fixes and maintenance modifications that improve or upgrade functions, add new functions, or improves performance by changes in software design, and are typically identified by a change in the third or fourth decimal of the application version number (i.e., 2.0.2.0 to 2.0.0.2).

**Use** To load, execute, employ, utilize, store or display the Software.

## 2 TERM

The term of this Agreement is one (1) year beginning on the Effective Date with automatic renewals for successive one (1) year periods unless terminated earlier by either Party in accordance with the provisions set forth herein.

## 3 LICENSE GRANT

Licensor hereby grants to Licensee a nonexclusive, nontransferable license for EnergyAxis 8.0, subject to the terms and conditions set forth in this Agreement, to Use the Software (in binary code only), Third Party Software and the applicable Documentation during the term of this Agreement.

As a provider of electricity, water or gas or any combination thereof to the general public, the software license granted herein authorizes the Licensee use of the Software for reading and managing devices owned by the Licensee, provided such devices are within the Licensee's existing network. The software license does not support Licensee's current or planned expansion to other utilities.

Licensee is authorized as follows:

- a) To Use the Software and Third Party Software, in binary code only, solely in connection with Licensee's business purposes as set forth above and for internal business operations;
- b) To make one copy of the Software and Third Party Software for backup purposes only as long as that copy is not running on a server;
- c) To run a non-production backup of the Software and Third Party Software for purposes of testing or as a backup for the operational system subject to payment of the incremental license fee in Appendix B-2.

Licensor further grants to Licensee a nonexclusive, nontransferable license, subject to the terms and conditions of this Agreement and the restrictions on use of Third Party Software stated herein, to operate the EA\_MS Software and Third Party Software in a virtual environment. Under this arrangement the Licensee is responsible for notifying the Licensor in writing within ten (10) days of each new application of the Software, and the Licensee will incur additional license fees for each new application in accordance with the fee schedule and terms set forth in this Agreement and attached appendices.

Licensee's use of the Software and Third Party Software is limited to use in connection with the maximum number of Authorized Users and Network Devices contracted through the Agreement. Licensee may increase the number of servers or computers upon written request and payment of additional fees. Agents, consultants, and contractors of Licensee may be authorized to Use the Software and Third Party Software subject, in all cases, to the terms of this Agreement, Licensee acknowledges and agrees that Licensee shall be fully responsible and liable for the compliance of any agents, consultants and contractors with this Agreement, including the confidentiality and intellectual property ownership provisions hereof.

Licensee shall Use the Software on the Integrated System only. Use of any Third Party Software is limited to the Licensee legal entity signing this Agreement.

Licensee may not Use the Software (including any Third Party Software) except as expressly provided for in this Agreement, nor cause or permit reverse engineering, disassembly, or decompilation of the Software or any Third Party Software.

Third Party Software and technology are necessary components of the Software and subject to restricted third party licenses. Unless separately licensed by the applicable third party to Licensee, Third Party Software can only be configured, installed and used by the Licensee in conjunction with the authorized use of the Software, and with execution of this Agreement is licensed to the Licensee only for such purpose.

Licensee shall not navigate the underlying data schema, nor configure, use or install embedded Third Party Software separately or independently of the Software.

Trademarks, trade names or logos included or embedded in the Software and Third Party Software shall remain with the Software and Third Party Software and may not be removed or altered by Licensee.

Additional third party technology included with the Third Party Software is included solely for use with the application package and under the terms of any third party license agreement included with the application package. If no such third party license agreement is included, all third party technology included in the application package with the Third Party Software shall be licensed under the terms of this Agreement, including any additional license terms applicable to the Third Party Software.

The license granted in Section 3 above shall be effective as of the "Effective Date" first written above, and shall continue in effect unless terminated in accordance with Section 15 of this Agreement.

Licensee shall procure the Integrated System required to operate the Software, as specified in Appendix B-1, either from Licensor or a third party.

#### **4 OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

Licensee hereby acknowledges and agrees that the Software, the applicable Documentation and all patents, copyrights, trade secrets and trademarks related thereto are the exclusive property and Confidential Information of Licensor or its affiliates and their Third Party Software licensors and that Licensor or its affiliates and their respective Third Party Software licensors, as applicable, own all rights, title and interest, including, without limitation, all worldwide patent, copyright, trade secret and trademark rights and all goodwill associated therewith, in and to the Software and Third Party Software.

Except for the license granted by Licensor to Licensee pursuant to Section 3 of this Agreement, Licensee shall acquire no right, title or interest of any kind or nature whatsoever in or to the Software or any Third Party Software or any patent, copyright, trade secret or trademark of Licensor, Licensor's affiliates or Licensor's licensors.

The Software is protected under United States and international copyright, trade secret and other intellectual property laws. Without limiting the generality of the foregoing, the parties acknowledge and agree that the source code, binary code and all visual, printed and other outputs of the Software are trade

secrets of Licensor and its affiliates and licensors. Except as otherwise expressly permitted under this Agreement, Licensee may not copy, translate, modify, display, patch, alter or otherwise change or make derivative works of the Software, Third Party Software, the applicable Documentation or any individual part thereof. Licensee shall not alter or remove any copyright notice or any propriety legend contained in or located on any part of the Software, Third Party Software, or the applicable Documentation and shall reproduce and maintain all such copyright notices or proprietary legends in and on any copy of the Software, Third Party Software, or Documentation that Licensee makes as permitted by this Agreement.

## **5 RESTRICTIONS ON USE, TRANSFER AND PROVISION OF SERVICES**

Licensee shall not derive or attempt to derive the source code or structure of all or any portion of the Software or Third Party Software by reverse engineering (except as required by law for interoperability), disassembly, decompilation or any other means. Licensee shall not give, sell, rent, lease, pledge, encumber, hypothecate, timeshare, provide subscription services for, sublicense, disclose, publish, assign, market, transfer or distribute any portion of the Software, Third Party Software or the applicable Documentation or other rights to any third party, including but not limited to Licensee's subsidiaries and affiliates. Licensee shall not publish the results of any benchmark tests run on the Software or Third Party Software and shall treat such results as Confidential Information of Licensor.

## **6 CONFIDENTIALITY**

Each Party (the "Receiving Party") shall maintain in strict confidence any and all proprietary and confidential information about the business, operations or customers of the other Party or any of their affiliates which it acquires in any form from the other Party (the "Disclosing Party"), including without limitation the terms of this Agreement, or any other information disclosed by the Disclosing Party and identified by Disclosing Party as confidential ("Confidential Information"). The Receiving Party will not disclose such Confidential Information with any third parties without the Disclosing Party's prior written consent. The Receiving Party further agrees to use its best efforts and to take all reasonable precautions to maintain strict confidentiality with respect to the Confidential Information and to prevent disclosure thereof to persons other than its employees, accountants, affiliates, attorneys, bankers, consultants, insurance advisors and carriers, and agents who need access to such information to carry out a Party's obligations under this Agreement, and the Receiving Party shall be liable for the compliance by such third parties with the confidentiality obligations hereof.

The Receiving Party shall not use, or permit the use of, the Confidential Information for any purpose other than performing this Agreement and exercising the rights granted under this Agreement. The Receiving Party acknowledges that the rights of the Disclosing Party in the Confidential Information are unique, and accordingly the Disclosing Party shall, in addition to such other remedies as may be available to it at law or in equity, have the right to enforce its rights hereunder by an action for injunctive relief and specific performance to the full extent permitted by law. Upon termination of this Agreement and the written request of the Disclosing Party, the Receiving Party shall return or destroy all copies of all Confidential Information to the Disclosing Party. To the extent it would be unreasonably costly or cumbersome, neither Party shall be required to delete intangible copies of Confidential Information that are made as part of such Party's routine systems back-up procedures.

Notwithstanding the foregoing, Licensor shall be entitled to disclose to a third party licensor of any Third Party Software (a) the fact of this Agreement (including the identity of Licensee) and (b) audit results with respect to Licensee's compliance with the Third Party Software terms of this Agreement. The provisions of this Article shall survive any termination of this Agreement or of any license granted hereunder.

## **7 DELIVERY**

Licensor shall deliver one copy of the Software.

## 8 LICENSE FEES AND PAYMENT

Licensee shall pay Licensor the System License Fees set forth in Appendix B-4 upon execution of this Agreement and completion of EA\_MS installation and training at the site. Licensee shall pay Licensor interest on any late payments at the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by law.

License fees do not include shipping charges, or any sales, use, withholding, excise or other taxes now or hereafter imposed on the production, storage, transportation, import, export, licensing or use of the products or services provided under this Agreement. Such expenses and taxes shall be paid by Licensee. Licensee shall indemnify Licensor for any such expenses or taxes which Licensor is required to pay.

This System License Agreement defines the understandings, obligations and responsibilities of the parties, and will function in place of a separate purchase order for the same.

## 9 SOFTWARE WARRANTY

Licensor warrants that the media on which the Software is recorded is free from defects in materials and workmanship. Licensor warrants that the Software will perform substantially in accordance with the Documentation during the Warranty Period (as defined below). Third Party Software is provided as-is, and without warranty of any kind.

The Warranty Period is limited to 90 days from the date of Software delivery (the "Warranty Period"). If within the Warranty Period, it's discovered that the Software does not conform to the foregoing warranty and written notice of such nonconformity is promptly provided to Licensor, Licensor will provide an exclusive remedy as follows:

- a) With respect to any defect in the media, Licensor will replace such media.
- b) With respect to any portion of the Software that does not perform in accordance with the Documentation, Licensor will, at its option, repair or replace the Software.
- c) With respect to any descriptive error in the Documentation, Licensor will correct such error by providing addenda or substitute pages.
- d) The foregoing remedies shall constitute Licensee's exclusive remedies and Licensor's sole liability for any failure of the Software to conform to any warranty.

Any Software nonconformities reported to the Licensor by the Licensee within the Warranty Period are subject to the remedies defined herein. Application of such remedies will not extend the Software warranty beyond the stated 90 day Warranty Period. Nonconformities reported following expiration of the warranty will be subject to remedies available through a separate System Maintenance Agreement executed between the parties.

Except as specifically set forth herein, Licensor and its Licensors make no representations, warranties or conditions (express, implied, statutory or otherwise), other than as expressly set forth in this Agreement. Licensor and its Licensors disclaim all other warranties, including, without limitation, any implied warranties of merchantability, accuracy, performance, effort, fitness for a particular purpose under the laws of any jurisdiction. Licensor and its Licensors make no warranty against interference with Licensee's enjoyment of the Software. Licensor and its Licensors do not warrant that Licensee's use of the Software will be uninterrupted or error-free, that the Software will interoperate with third-party Software not provided by or through Licensor except as set forth in the Documentation. Licensor and its respective licensors of Third Party Software do not warrant as to any results that may be obtained by Licensee's use of the Software or Third Party Software. Third Party Software licensors shall not be required to perform any obligations or incur any liability except as specifically stated herein. Licensor and its Licensors do not warrant that every feature or error in the Software will be corrected, or that the Software will meet Licensee's requirements.

## **10 INFRINGEMENT REMEDY**

Licensor shall, at its expense, defend any suit which may be brought against Licensee by a third party claiming that the Software infringes upon such third party's United States patent or copyright, and Licensor shall pay all judgments and costs recovered against Licensee in any such suit and shall reimburse Licensee for costs or expenses incurred by Licensee in the defense of any such suit, provided that Licensee gives Licensor prompt notice of such suit no later than ten (10) days after Licensee receives notice of such suit, or sooner if required by applicable law; reasonable assistance in the defense thereof; and full opportunity to control all aspects of the defense thereof, including settlement. In the event the Software is held to be infringing, and the use of the Software is enjoined, Licensor shall, at its option, procure for Licensee the right to continue using the Software; replace it with non-infringing software; modify it so it becomes non-infringing; or remove the Software or the infringing portion thereof and refund the license fees applicable thereto.

Licensor's obligations under this Section do not apply with respect to a claim of infringement if and to the extent such claim arises out of: (i) compliance with Licensee's specifications, (ii) the use by Licensee or any of its customers of any third-party software or equipment that infringes any patent, copyright, trademark or trade secret of any third party, (iii) any modification or alteration of the Software (other than by or on behalf of Licensor), (iv) use of a version of the Software that has been superseded or (v) use of the Software after notice of the claimed infringement has been received by Licensee. The foregoing states the exclusive remedy of Licensee and the sole liability of Licensor for infringement.

## **11 LIMITATION OF LIABILITY**

The Licensor's total liability relating to this Agreement, the Software or to the license granted hereunder, shall not exceed the license fees paid by Licensee to Licensor under this Agreement. Licensor and its Licensors (including Licensors of Third Party Software) will not be liable in any event for loss or inaccuracy of data, loss of use of systems, cost of replacement software or systems, loss of profits, loss of revenue or any other indirect, special, incidental or consequential damages, whether or not foreseeable and even if Licensor has been advised of the possibility of such damages. In no event shall Licensor be liable for any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) arising from any improper installation or improper use by Licensee, its customers, end users or anyone other than Licensor of the software or any goods supplied by Licensor, or arising from any failure by Licensee, its customers, end users or anyone other than Licensor to follow their own safety procedures in connection with the installation or use of the software or any other goods supplied by Licensor.

## **12 FORCE MAJEURE**

Neither party shall be liable for loss, damage, or delay nor be in default for failure to perform (other than payment obligations) due to causes beyond its reasonable control, including but not limited to acts of God, acts of war or terrorism, fire, flood, strike, labor disputes, acts or omissions of any governmental authority or of the other party, compliance with government regulations, embargos, fuel or energy shortage, delays in transportation, inability to obtain necessary labor, materials, or services from usual sources, or from defects or delays in performance of a party's suppliers or subcontractors due to such causes. In the event of a delay by either party due to the foregoing, the date of delivery or time for completion shall be extended by a period of time reasonably necessary to overcome the delay.

## **13 AUDIT**

Licensor and its licensors shall have the right, upon notice to Licensee, to enter onto Licensee's premises to perform an audit to ensure that Licensee is in compliance with this Agreement. Licensee shall keep, and shall allow Licensor to access, accurate records of each computer on which the Software, portions of the Software, and/or any Third Party Software are installed, the locations of such computers, the number

of Network Devices for which the Software is used and the number of Authorized Users using the Software. Licensor shall have the right to disclose the results of any audits to its respective licensors.

#### **14 ASSIGNMENT**

Neither this Agreement nor any interest under this Agreement shall be assigned by Licensee without the prior written consent of Elster, except that either Party may assign this Agreement without prior consent in connection with a sale of controlling interest in the capital stock or other equity interest of such Party, a sale of all or substantially all of the assets of such Party, or pursuant to a merger or consolidation. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

#### **15 TERMINATION**

Either party may upon written notice to the other party, terminate this Agreement and any license granted hereunder at any time and for any reason, including nonpayment or other material breach that is not cured within thirty (30) days following written notice thereof.

Within ten (10) days after the date of termination, Licensee will cease use of the Software and Third Party Software and return, or at Elster's direction, destroy all originals and copies, in whole or in part and in any form, of any Software or other Elster furnished documentation in the Licensee's possession, and will certify to the foregoing to Elster in writing.

#### **16 GOVERNMENT REGULATIONS**

The Software and Third Party Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure of the Software, Third Party Software or Documentation by any department or agency of the federal government is subject to restriction as set forth in subparagraph (b)(3) of the Right in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. For purposes thereof, "Contractor" is Elster Solutions, LLC, 208 S. Rogers Lane, Raleigh, NC 27610.

Licensee shall not export or transmit the Software, Third Party Software, or any part thereof, directly or indirectly, to any restricted countries or in any manner that would violate the Export Administration Act of 1979, as amended, or any other United States laws and regulations as shall from time to time govern the license and delivery of technology abroad by persons subject to United States law.

#### **17 NOTICES**

Any notice required or permitted hereunder shall be in writing and shall be deemed to have been delivered on the date evidenced by receipt obtained upon transmission by fax, upon delivery by commercial delivery service, or upon delivery by certified or registered mail to a party's address or facsimile number shown below:

If to Licensee

City of Santa Clara  
Silicon Valley Power  
Director of Electric Utility  
1500 Warburton Avenue  
Santa Clara, CA 95050

If to Elster

Elster Solutions, LLC  
208 S Rogers Lane  
Raleigh, NC 27610  
ATTN: Contracts Department  
ContractsDept@us.elster.com

Either Party may at any time change its respective address or point of contact by sending written notice of the change to the other Party.

**18 MISCELLANEOUS**

This Agreement, including the Appendices attached hereto, contains the entire understanding of the parties with respect to the matters contained herein. This Agreement may not be modified except by writing, executed by authorized representatives of Licensor and Licensee.

The headings and captions contained herein shall not be considered to be a part hereof for purposes of interpretation or application hereof, but are for convenience only.

Either party's failure to exercise any right under this Agreement shall not constitute a waiver of any other terms or conditions of this Agreement with respect to any other or subsequent breach, nor a waiver by such party of its right at any time thereafter to require exact and strict compliance with the terms hereof.

Third Party Software providers are third party beneficiaries to this Agreement with respect to provisions applicable to Third Party Software. Licensee will be bound by the terms and conditions of use of any Third Party Software provider.

The provisions of Sections 1, 3, 4, 5, 6, 9, 10, 11, 13, 14, 16, and 17 shall survive the cancellation, termination or expiration of this Agreement.

If any provision of this Agreement is held to be illegal, invalid or unenforceable in any respect, the remaining provisions of this Agreement shall remain in full force and effect to the maximum extent possible.

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the choice of law or conflicts of law rules of any jurisdiction. The parties agree that the Uniform Computer Information Transactions Act shall not apply to the terms or interpretation of this Agreement. The parties further agree that all causes of action against either party under this Agreement shall be brought solely and exclusively in the State Courts of the State of California, or the U.S. District Court of California.

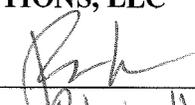
Licensee acknowledges that this Agreement constitutes a legal agreement that obligates certain payments as noted herein. Should Licensee's business processes require that one or more purchase orders be issued to provide for payments obligated by this Agreement, Licensee acknowledges that such purchase orders will be issued.

**INTENDING TO BE LEGALLY BOUND, THE PARTIES HAVE AUTHORIZED THEIR REPRESENTATIVES TO EXECUTE THIS AGREEMENT AS OF THE "EFFECTIVE DATE" FIRST WRITTEN ABOVE.**

**CITY OF SANTA CLARA**

By \_\_\_\_\_  
Printed name Julio J. Fuentes  
Title City Manager  
Date \_\_\_\_\_

**ELSTER SOLUTIONS, LLC**

By   
Printed name Robert Aeno  
Title VP contracts and proposals  
Date 6/2/2014

## APPENDIX B-1

### SOFTWARE / LICENSE TERMS

The EnergyAxis system is an Integrated System and a comprehensive smart grid solution which includes network management software, network communications technology (excluding WAN), field network devices, field management tools and value-added smart grid applications and consumer devices.

It is the Licensee's responsibility to acquire and maintain the Integrated System. Licensor will specify the third party software and versions thereof (operating system, software products, etc.) required for each Software release. Specific hardware requirements must be agreed to with Licensor based on the size of the AMI network deployment.

The EnergyAxis system configuration depends on the size and needs of the Licensee

The EnergyAxis system uses an embedded database. The Licensee is not granted direct access to the database except per the documented public interfaces specified in the Documentation.

Future changes in the Software or the Third-Party Software or running of other Third-Party Software Programs not tested or provided by Licensor may impact system performance for an Integrated System.

The potential number of authorized users is unlimited with each instance of the EA\_MS Software subject to the Elster fee schedule.

Required system configurations for various EnergyAxis system tiers are available at the EnergyAxis Community website at <http://energyaxis.ipbhost.com> under Downloads > Elster Solution Updates > Hardware Recommendations - EnergyAxis Management System

Licensor nor any provider of Third Party Software embedded in the Software will be liable for any damages, whether direct, indirect, incidental, or consequential arising from Licensee's use of the Software.

Third Party Software providers are third party beneficiaries to this Agreement with respect to provisions applicable to Third Party Software. Licensee will be bound by the terms and conditions of use of any Third Party Software provider

## APPENDIX B-2

### SYSTEM LICENSE STRUCTURE

#### 1 LICENSE FEE STRUCTURE

License fees are determined in part by the EnergyAxis system tier. The base license fee includes the cost of firmware, middleware, database, EA\_MS troubleshooting tools and other third party application software built into the EA\_MS application. License allows Licensee to install EA\_MS application in a virtual environment if desired at no additional license fee. Virtual environment maintenance fees may apply. Consult the EnergyAxis System Maintenance Agreement.

Customer requested additions to the standard configuration, optional modules, and add on services are available for additional fees. Overall fee structure and corresponding fees are detailed in Appendix B-3. The licensee's specific application and associated fees are defined in Appendix B-4.

##### 1.1 Standard Configuration

Includes the EnergyAxis EA\_MS software with support for the following AMI / AMR measurement, sensing, or control devices:

- a) EnergyAxis residential electric endpoints
- b) EnergyAxis commercial or industrial electric endpoints
- c) EnergyAxis Gatekeeper devices that act as concentrators within the EnergyAxis networks
- d) EnergyAxis repeater devices
- e) EnergyAxis AGI nodes

##### 1.2 EnergyAxis License Tiers

Three license tiers are available based on the size of deployment.

- a) **Premier**  
The total number of AMI / AMR measurement sensing or control devices shall not exceed 200,000. Licensor recommends that Licensee at a minimum purchase and configure a backup system and a test system. The test system will enable integration testing without compromising the integrity of the production system.
- b) **Advanced**  
The total number of AMI / AMR measurement, sensing, or control devices shall not exceed 1,000,000. Base licensee fee for this tier includes 1 production, 1 backup and 1 test system.
- c) **Enterprise**  
The total number of AMI / AMR measurement, sensing, or control devices exceed 1,000,000. Base license fee for this tier includes 1 production, 1 backup and 3 test systems

A onetime license fee applies to all AMI / AMR measurement, sensing, or control devices in each operational EA\_MS System beyond 20,000 based on bundle pricing in Appendix B-3. Per device license fees do not apply to non-operational Backup or Test systems. Backup and Test license fees are included in the listed license fees for each tier for the contracted number of AMI / AMR measurement, sensing, or control devices. Subsequent purchases of device licenses are available in 2,500 device bundles in the Premier tier and 10,000 device bundles in Advanced/Enterprise tiers.

#### 2 ADDITIONAL FEES

##### 2.1 Water Support

A onetime license fee applies for configuration of water functionality for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems. This fee includes site license for one instance of Route Manager. If Elster is required to install multiple

instances of Route Manager, additional license, installation service and support fees will apply. An upgrade fee for Water support applies when upgrading to a higher license tier.

## **2.2 Gas Support**

A onetime license fee applies for configuration of gas functionality for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems. This fee includes site license for one instance of Route Manager. If Elster is required to install multiple instances of Route Manager, additional license, installation service and support fees will apply. An upgrade fee for Gas support applies when upgrading to a higher license tier.

## **2.3 Third Party Meter Support**

A onetime license fee applies for configuration of approved third party meters for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems

## **2.4 Backup or Test System License Fee**

Additional backup and test systems desired by the Licensee will incur incremental license fees, and the Licensor requires each back up or test system to be an identical replica of the production system. An upgrade fee for each backup/test system applies when upgrading to a higher license tier.

## **2.5 Optional Functionality**

The base license fee covers usage of the system for acquisition of metering data and two way metering operations such as on demand reads, service connects, disconnects to residential electric meters. Additional fees apply for optional modules and add on- services listed below.

- a) Home Area Network (HAN): A onetime license fee applies for configuration of HAN functionality for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems.
- b) Home Area Network / Demand Response Per Device Fee: A onetime fee applies to home area network / demand response devices in each operational EA\_MS system based on the sliding scale in Appendix B-3. The per device fee includes any Licensor-manufactured or third party device approved by Licensor for use in a Home Area Network / Demand Response scenario within the EnergyAxis network. The per device fee does not apply to non-operational Backup or Test systems.
- c) Distribution System / Distribution Automation: A onetime fee applies for configuration of distribution system / distribution automation functionality for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems.
- d) Distribution System / Distribution Automation Per Device Fee: A onetime fee applies to distribution system / distribution automation devices in each operational EA\_MS system based on the sliding scale in Appendix B-3. The per device fee includes any Licensor-manufactured or third party device approved by Licensor for use in a distribution system / distribution automation scenario within the EnergyAxis networks. The per device fee does not apply to non-operational Backup or Test systems.
- e) Standalone Devices / Direct Wide Area Network (WAN) connection: A onetime fee applies for configuration of standalone devices / direct WAN connection for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems.
- f) Optional Features and Interfaces: Licensor reserves the right to commercialize new features, endpoints and interfaces as optional add-ons to the base system features. Additional license fees may apply unless the feature or interface was part of the contractual scope jointly agreed between Licensor and the Licensee.

- g) AxisDetect: EnergyAxis provides application components that provide new features as an optional add-on to the base system. A onetime fee applies for configuration and activation of the AxisDetect application. AxisDetect presents the geospatial topology of an AMI network and provides graphical network management functions to client end-users. An upgrade fee applies when Licensee moves across tiers. License fees include GoogleMaps license.
- h) Secure Tunnel Server: The IP Axis Link Secure Tunnel Server is a software application which provides communication services used by distribution automation applications (i.e. SCADA) to manage distribution automation field devices.
- i) VM support

## 2.6 Upgrades

An additional license fee applies to an upgrade to a higher tier, which is mandatory when the total number of AMI / AMR measurement, sensing, or control devices exceeds the limit associated with the current tier.

## 2.7 Additional System Expansions and Optional Project Implementation Services

System expansions and project implementation services to deploy the EnergyAxis system can be provided on time and material (T&M) basis. Current rates and additional terms that apply are listed in Appendix C-2 of the System Maintenance Agreement.

### Notes:

- a) All software license fees are in US Dollars.
- b) Licensor reserves the right to periodically audit the user's EA\_MS System to determine the current number and types of meters or control points deployed for the purposes of billing an additional per point license fees. No refund is allowed for a reduced number of points determined by a given audit.
- c) Licensor does not limit the number of users of its EA\_MS software. If Licensor provides the server hardware, the Licensee is limited by the defaults set by the OS vendor. If Licensee provides the hardware or desires system accessibility for more users, the Licensee is responsible for obtaining the Microsoft server license or license expansion, including any additional fees for the desired number of CALs (Client access licenses).
- d) The Licensor provides as a software option, a pre-installed virtual machine image (VM) of the EnergyAxis Management System (EA\_MS) application. If the Licensee selects this option, then the Licensor will not be responsible for any of the licensing costs, the support services and/or the maintenance services associated with the vendor host operating system contained in the virtual machine image(s) provided by the Licensor. In addition, the Licensor will not be responsible for any of the licensing costs, the support services, and/or the maintenance services associated with Licensee's virtual machine hosting platform.
- e) Licensor reserves the right to modify fees and/or terms associated with GoogleMaps if Google modifies similar fees and/or terms conveyed to Licensor.

**APPENDIX B-3**

**PREMIER CONFIGURATION LIST LICENSE FEE SUMMARY**

<b>License Fees</b>	<b>Qty</b>	<b>List Price</b>
<b>Base System</b>		
Base License Fee: EnergyAxis Premier Includes 20,000 AMI/AMR devices and site license for one instance of EA Inspector Manager and EA Inspector. Additional license fees will apply for AMI/AMR devices exceeding 20,000		\$75,000
Incremental AMI/AMR device license fees (per 2,500 device bundle)		\$5,500
Backup or Test System License Fee	each	\$27,000
Axis Detect License fee		\$15,000
Stand-alone device / Direct Wide Area Network (WAN) connection		\$5,000
Third Party Meter Inclusion (per meter type)		\$5,000
<b>Water</b>		
Water Module Includes site license for one instance of Route Manager		\$10,000
Site license for additional instance of Route Manager	each	\$2,400
<b>Gas</b>		
Gas Module Includes site license for one instance of Route Manager		\$10,000
Site license for additional instance of Route Manager	each	\$2,400
<b>DR/HAN</b>		
Home Area Network (HAN) Base License		\$10,000
DR/HAN Per device fee (qty 1 – 500,000)		\$1.00
DR/HAN Per device fee (qty 500,000+)		\$0.75
<b>DA</b>		
Distribution Automation (DA) Base License		\$10,000
DA Per device fee (qty 1 – 50,000)		\$2.00
DA Per device fee (qty 50,000+)		\$1.50
<b>Secure Tunnel Server (License depends on # of IP Axis Link Gateways)</b>		
0-50 IP Axis Link Gateways	each	\$25,000
51-200 IP Axis Link Gateways	each	\$35,000
201-500 IP Axis Link Gateways	each	\$50,000

**APPENDIX B-4**

**SYSTEM LICENSE FEES SUMMARY**

This appendix summarizes the software, endpoints, additional modules and functionality Licensor provides to the Licensee at the time of the original purchase; and/or as amended to reflect any changes to the License configuration after the initial purchase.

**EnergyAxis Premiere License and Maintenance Fee Calculation**

<b>EnergyAxis System License Fees</b>	<b>Qty</b>	<b>List Price</b>	<b>Total</b>	<b>Discount Price</b>	<b>Ext. Price</b>
<b>Base System</b>					
EnergyAxis Premier	1	\$75,000.00	\$75,000.00	\$35,000.00	\$35,000.00
Additional Backup / Test System	2	\$27,000.00	\$54,000.00	\$15,000.00	\$30,000.00
Virtualization	1	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
Incremental AMI/AMR endpoint license fees (per 2,500 unit bundle)	1	\$5,500.00	\$5,500.00	\$906.00	\$906.00
Axis Detect		\$15,000.00	\$0.00	\$15,000.00	\$0.00
Direct Wide Area Network (WAN) connection support	1	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
Third Party Meter Support		\$5,000.00	\$0.00	\$5,000.00	\$0.00
<b>Water</b>					
Water Module Support (includes Site License for Route Manager)	1	\$10,000.00	\$10,000.00	\$6,000.00	\$6,000.00
<b>Gas</b>					
Gas Module Support (includes Site License for Route Manager)		\$10,000.00	\$0.00	\$10,000.00	\$0.00
<b>Demand Response (DR) / Home Area Network (HAN)</b>					
Base License Fee: Home Area Network (HAN) Support	1	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00
DR Element / Device Fee (1 - 500,000)		\$1.00	\$0.00	\$0.75	\$0.00
DR Element / Device Fee (500,000+)		\$0.75	\$0.00	\$0.75	\$0.00
<b>Distribution Automation (DA)</b>					
Base License Fee: Distribution Automation (DA) Support	1	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00
DA Element / Device Fee (1 - 50,000)		\$2.00	\$0.00	\$1.50	\$0.00
DA Element / Device Fee (50,000+)		\$1.50	\$0.00	\$1.50	\$0.00
Secure Tunnel Server Gateways (0 - 50)		\$25,000.00	\$0.00	\$25,000.00	\$0.00
Secure Tunnel Server Gateways (51 - 200)		\$35,000.00	\$0.00	\$35,000.00	\$0.00
Secure Tunnel Server Gateways (200+)		\$50,000.00	\$0.00	\$50,000.00	\$0.00
<b>Custom SW Development / Modules / Interfaces / Stand Alone</b>					
Route Manager	1	\$0.00	\$0.00	\$1,100.00	\$1,100.00
EA Inspector Manager	1	\$0.00	\$0.00	\$1,100.00	\$1,100.00
<b>Subtotal - AMI Software License Fees (SLA)</b>			<b>\$179,500.00</b>		<b>\$99,106.00</b>
<i>Credit for previously paid license fees</i>					<i>(\$99,106.00)</i>
<b>Total - AMI Software License Fees (SLA)</b>					<b>\$0.00</b>

<b>EnergyAxis System Maintenance Fees</b>	<b>Qty</b>	<b>List Price</b>	<b>Total</b>
<b>Base System</b>			
Standard Support: 9x5	20%	1	\$35,900.00
Standard Support: 12x7	27%		\$48,465.00
Standard Support: 24x7	34%		\$61,030.00
Optional On-Call Emergency Support	5%		\$8,975.00
Equipment Maintenance Fee: EA Inspector / EA Installer Handheld		6	\$895.00
Annual Increase Provision	4%	1	\$41,270.00
<b>Total - EnergyAxis System Maintenance (SMA)</b>			<b>\$42,920.80</b>

## EXHIBIT C

### ENERGYAXIS® MANAGEMENT SYSTEM (EA\_MS)

#### SYSTEM MAINTENANCE AGREEMENT

THIS SYSTEM MAINTENANCE AGREEMENT (this “Agreement”) is made and entered into effective this \_\_\_ day of \_\_\_\_\_, 2014 (“Effective Date”) by and between Elster Solutions, LLC, a Delaware limited liability company, with offices at 208 S. Rogers Lane, Raleigh, NC 27610, USA, (“Elster” or “Licensor”), and City of Santa Clara California, a chartered California municipal corporation, with offices at 1500 Warburton Avenue, Santa Clara, CA 95050 (“City” or “Licensee”).

Licensor will provide system maintenance services (“System Maintenance Services”) for the Program licensed to Licensee pursuant to that certain EnergyAxis Management System License Agreement (the “System License Agreement”) executed between the parties and described herein and in Appendix I of the System License Agreement. Capitalized terms in this System Maintenance Agreement not otherwise defined shall have the meaning set forth in the System License Agreement. The terms and conditions of the System License Agreement shall govern Licensee’s use of the Program.

#### 1 DEFINITIONS

- Casual Consulting** Includes telephone and email system support that does not require access to the production, test or backup system, and is limited to information readily accessible to tech support personnel, such as operation manuals and similar documentation including:
- a) General support regarding proper utilization of the applicable Program
  - b) Assistance with Licensor’s user documentation and technical manuals provided with the Program
  - c) Guidance on the Program’s intended, normal use
- Technical Support** Includes support that may require more experienced technical support personnel, system analysis, and access to the production, test or backup system including:
- a) Technical assistance specific to the operation of the Program
  - b) Diagnosis and troubleshooting
  - c) Attempted replication of errors reported by Licensee. Licensor shall use commercially reasonable efforts to resolve replicated errors by providing: (1) a reasonable work-around; (2) a change to the Program code; or (3) an action plan for resolving the error.
  - d) Remote installation of the applicable Program and Software/Firmware Upgrades
  - e) Over the Air (OTA) upgrades of EnergyAxis network devices, meters and nodes, or upgradeable devices.
- Error** For purposes of this System Maintenance Agreement, an “error” shall mean either:

- a) a material nonconformity to the then-current applicable specifications; or
- b) a defect which materially impairs use.

## 2 TERM AND RENEWAL

The term of this System Maintenance Agreement shall begin on the Effective Date and shall continue until December 31st of the then current calendar year (the "Initial Term"). Thereafter, this System Maintenance Agreement shall automatically renew for successive one-year terms (each a "Renewal Term") unless the Agreement is terminated by either party by written notice to the other party sixty (60) days prior to the end of the then-current term with such termination to be effective upon completion of such term.

To ensure that the Agreement meets the needs and expectations of Licensor and Licensee, the parties agree in good faith to review this Agreement not less than annually and if warranted and mutually agreed upon, to make adjustments in the Agreement, including prices, to be consistent with evolving industry practices and the needs of the parties.

If for any reason this Agreement should lapse, the Licensee may reinstate lapsed support and maintenance upon payment of 150% of the support and maintenance fees in arrears, and all costs invoiced by Licensor on a time and materials basis for updating Licensee's Program to the then-current version.

## 3 SUPPORT SERVICES

System Maintenance Services shall consist of the following:

### 3.1 Software Updates

Software Updates include:

- a) **Major Release** – Software Upgrade that includes significant functional changes. Major Releases are identified by a change in the whole number of the Application version number (i.e., 2.0.0.0 to 3.0.0.0). Software upgrade fees will apply to Major Releases.
- b) **Minor Release** – Software Update that includes small functional changes. Minor releases are identified by a change in the first decimal of the Application version number (i.e., 2.2.0.0 to 2.3.0.0). Minor releases occur as needed to meet individual product market needs.
- c) **Maintenance Release** - Software Update that includes fixes for known issues or operational problems which cause the application not to perform as designed. Maintenance Upgrades are typically identified by a change in the second decimal of the Application version number (i.e., 2.2.2.0 to 2.2.3.0). Maintenance Upgrades are released as needed, typically 3 to 6 months apart.
- d) **Patch** – Software Patches include fixes for a known issue or operational problem which cause the application not to perform as designed. Patches are identified by a change in the third decimal of the Application version number (i.e., 2.2.2.2 to 2.2.2.3). Patches are released as needed. Patches target only portions of the software files, and do not require a full software upgrade.

Software Updates include distribution of one (1) copy of any corresponding standard documentation updates on CD or DVD.

Updates apply to the program and modules originally licensed.

Licensor will specify any Third Party Software that Licensee is required to have for each Software Upgrade.

To the extent Software Updates contain new Third Party Software, Licensee agrees to comply with all license terms associated with such software. Licensor shall notify Licensee of new Third Party Software when Software Updates are distributed, and Licensee's installation and use of Software

Updates shall be deemed Licensee's acceptance of Third Party Software license terms, and Licensee's agreement to be bound by such license terms. To the extent Third Party Software license terms are inconsistent with the terms of this System License Agreement, Third Party Software license terms shall control with respect to the Third Party Software.

### 3.2 Firmware Updates

Firmware updates include gatekeeper and endpoint node updates (REX, A3 NIC, water module, gas module, etc.) for application firmware and/or radio firmware, and will be applied by Elster as required. Firmware Updates are categorized as:

- a) **Firmware Functional Upgrades** - Firmware Functional Upgrades include significant functional changes. Functional upgrades are typically identified by a change in the first number of the firmware version number (e.g., 2.0 to 3.0). Firmware Functional Upgrades may incur an upgrade fee and/or hardware change as determined by Elster
- b) **Firmware Maintenance Updates** - Firmware Maintenance Updates are primarily bug fixes. Minor functionality changes may also be included. Maintenance Updates are typically identified by a change in the second decimal of the firmware version number (e.g., 2.0 to 2.1).

### 3.3 System Support

System support is available for the latest commercially released version of the Program (N), and for the previous commercially released version of the program (N-1). With each new release of the Program, the version purchased by the Licensee will age by (-1).

Versions N and N-1 are fully supported. Version N-2 signifies the Program has reached end of life, and system support will be limited to Severity 1 issues defined in Appendix C-3 while allowing Licensee time to complete Program upgrades. Version N-3 signifies the Program has reached end of life support, and thus no longer supported by the Licensor. Licensee must upgrade its Program to continue system support.

The parties may amend this System Maintenance Agreement to add additional Modules licensed by Licensee, subject to additional System Maintenance Fees and terms. Licensor reserves the right to commercialize uniquely new features, endpoints and interfaces as optional add-ons to its base system features. Additional system maintenance fees may apply unless the feature or interface is part of a contractual scope jointly agreed to by the parties.

Support and maintenance of third-party software, such as the computer operating system, must be obtained from the supplier and is the responsibility of the Licensee. Licensor will provide support for embedded software within the EA\_MS Program, subject to third-party support terms to which Elster is party.

Licensor offers the following levels of Support.

- a) **9 × 5 Support**  
Includes Casual Consulting and Technical Support Monday through Friday from 8:00 AM to 5:00 PM, Eastern Standard Time or Eastern Daylight time as applicable, except for Licensor holidays.
- b) **12 × 7 Support**  
Includes Casual Consulting and Technical Support seven days a week from 8:00 AM to 8:00 PM, Eastern Standard Time or Eastern Daylight time as applicable, including Licensor holidays. Alternate hours are available for an additional fee.
- c) **24 × 7 Support**  
Includes Casual Consulting and Technical Support from 8:00 AM to 8:00 PM, and technical support 8:00 PM – 8:00 AM Eastern Standard Time or Eastern Daylight time as applicable, including Licensor holidays.

d) **Emergency On-Call Support**

Available for a Severity 1 issues, as defined in Appendix C-3, that occur outside of contracted support hours for customers on 9×5 or 12×7 support plans. Emergency support excludes upgrades and other requests made solely for the business convenience of the Licensee.

Emergency on call support is available 7 days a week, including Licensor holidays.

Emergency calls are directed to a Licensor support representative. If the support representative is unavailable to accept the call, callers will be directed to voice mail, and Licensor's support representative will return the call within one (1) hour of receipt. Returned calls will be charged per fees described in Appendix C-1.

Alternate hours are available for an additional fee. Unanticipated office closures due to conditions of force majeure or other unforeseen events that affect the Licensor's availability schedule will be communicated to the Licensee as soon as reasonably possible.

Licensor shall use commercially reasonable efforts to resolve replicated errors by providing: (1) reasonable work arounds; (2) a change to the Program code; or (3) an action plan for resolving the error. Case resolution and response times will depend on the severity of the issue as defined in Appendix C-3.

### 3.4 Selected Support Level

Licensee must indicate the support level selected for the Initial Term of the System Maintenance Agreement by placing an "X" in the appropriate box of the "Selected Support Level" table which follows the signature block of this Agreement. To change support levels, Licensee must request such change in writing no later than October 1st of the then-current year. Licensor will approve or reject the request in writing no later than December 1st. If approved, Licensor will invoice Licensee for the new level of support, payable by December 31st of the then current year, and all approved changes will be effective as of January 1st of the next calendar year. Any change in support levels will be added as an amendment to the Selected Support Level table and to Appendix C-4.

### 3.5 Support Contact Information

Casual Consulting and Technical Support are available via:

a) **Toll-Free Number with Customer Specific PIN**

The EnergyAxis Software Support line, 866-554-9007 or +919-250-5717, is available 24 hours a day 7 days a week. If a call is received during Licensee's support hours and a support engineer is not available to take the call, the call will be routed to a voice mailbox. The next available support engineer will return voice messages. Calls received outside of Licensee support hours will be automatically routed to a voice mailbox. Messages received outside support hours will be returned the following support day.

b) **Email**

Email may be sent to [EnergyAxis.Support@us.elster.com](mailto:EnergyAxis.Support@us.elster.com). Emails sent to this address are automatically routed to support engineers who will respond during Licensee's support hours. Emails received outside of Licensee support hours will be returned the following support day.

c) **Web Portal**

The Elster Support System (ESS) User Portal (<http://ElsterSupport.com>) can be accessed using individual login IDs provided by Technical Support. The User Portal is available 24 hours a day, 7 days a week.

### 3.6 On-Site Support Services

Prior to furnishing on-site support, the Licensee must present the Licensor with a written request for on-site support services, and the terms and nature of the services to be provided must be defined in a written Scope of Work signed by the parties

System Support as detailed in Section 3.3 does not include On-Site Support. For purposes of this Agreement, "On Site Support" shall occur when:

- a) Licensor is requested by Licensee to arrive at a Licensee location to provide support and/or consultation services;
- b) Licensor is contacted outside of contracted support hours and must, following written approval from the Licensee, travel to another location (including Licensor's site) to complete the required services; and
- c) Licensor is contacted during normal contracted support hours and must, following written approval from the Licensee, travel to a separate location to complete the required services.

Any travel to Licensee's site requires prior approval of Licensor management. Any On-Site Support provided at the request or approval of Licensee shall be billed on an hourly basis at the then-current labor rates reflected in Appendix C-2, plus reasonable travel and living expenses including a 10% administrative fee. For travel outside the continental United States, travel time to site is also charged on an hourly basis per rates in Appendix C-2. On-Site Support services will be provided under Licensor's then-current standard service terms.

### **3.7 Other Available Services**

The following services are not provided under this System Maintenance Agreement but are available for an additional fee:

- a) Distribution or maintenance of Program Modules not listed in Appendix B-1 of the System License Agreement
- b) Interpretation of Program results
- c) Supply of typical or representative data
- d) Assistance with computer hardware and peripheral questions not related to Program use
- e) Data debugging and/or correcting
- f) Services necessitated as a result of any cause other than ordinary and proper use of the Program by Licensee, including but not limited to neglect, abuse, unauthorized maintenance, or electrical, fire, water, or other damage
- g) Services resulting from the failure of Licensee to provide a suitable environment for the Program or associated equipment
- h) Services relating to problems caused by modifications in any version of the Program not made or authorized by Licensor
- i) Services resulting from the combination of the Program with other programming or equipment, and to the extent such combination has not been approved in writing by Licensor.
- j) Services relating to problems caused by communications facilities and infrastructure (telephone, etc.)

### **3.8 Resolution of Helpdesk Issues**

Licensor's Technical Support will contact Licensee to ensure that a problem or issue has been resolved to Licensee's satisfaction before closing the problem report. In instances where Licensor has resolved the problem to Licensor's satisfaction but has been unable to confirm that the supplied solution is satisfactory to Licensee, Licensor will assume such solution to have been satisfactory and close the case after thirty (30) working days unless Licensee notifies Licensor to the contrary.

## **4 FEES**

System Maintenance Fees are calculated based on the calendar year. The annual System Maintenance Fee calculation guidelines are set forth in Appendix C-1, attached hereto. To facilitate easy lookup, Appendix C-4 summarizes the then-current applicable maintenance fees incorporating maintenance fees for the original purchase of the program and all amendments due to incremental modules or services purchased

thereof. Upon the Effective Date of this Agreement or on a date as specified in an associated system contract, Licensee shall pay the then-current annual System Maintenance Fee, pro-rated based on the number of months remaining in the calendar year from the Effective Date of this Agreement. Thereafter, annual System Maintenance Fees will be invoiced in October of each year, with payment for the next year's System Maintenance due no later than December 31 of the current year. On Site Support services and any other Additional Services will be billed at the end of the month in which the services are provided. Fees for Modules licensed separately by Licensee shall be charged at purchase. Except as specifically set forth in this System Maintenance Agreement, all invoices are due net thirty (30) days from the date of invoice. Licensor will assess a late payment charge on any amount which remains unpaid after the due date, computed at the rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law on the unpaid amount for each month that such amount remains unpaid. This late payment charge shall be in addition to any other remedies Licensor may have at law or in equity. All System Maintenance Fees are in US dollars.

## **5 TERMINATION**

Either party may upon written notice to the other party, terminate this Agreement and any license granted hereunder at any time and for any reason, including nonpayment or other material breach that is not cured within thirty (30) days following written notice thereof.

Within ten (10) days after the date of termination, Licensee will cease use of the Software and Third Party Software and return, or at Elster's direction, destroy all originals and copies, in whole or in part and in any form, of any Software or other Elster furnished documentation in the Licensee's possession, and will certify to the foregoing to Elster in writing

## **6 LIMITATION OF LIABILITY**

The maximum liability of Licensor for any damages sustained by the Licensee under this System Maintenance Agreement shall in no circumstance exceed the amount of the annual maintenance fee payable by the Licensee to the Licensor for the then-current year. Neither Licensor nor its licensors of Third Party Software shall in any event be liable to Licensee for loss of revenue, profit, anticipated profit or indirect, incidental, special or consequential damages, including but not limited to, any losses to Licensee resulting from lost computer time or the destruction or damage of records, or any claims or demands made against the Licensee by a third party.

## **7 WARRANTY DISCLAIMER**

Except as expressly provided herein, the Licensor does not make any representations or warranties under this System Maintenance Agreement whatsoever whether statutory, expressed or implied, including but not limited to warranties of merchantability and fitness for a particular purpose, and any warranties arising from course of dealing or usage of trade. No action, regardless of form, arising out of the transactions under this System Maintenance Agreement may be brought by Licensee more than two (2) years after the cause of action has accrued.

## **8 LICENSEE OBLIGATIONS**

During the term of this System Maintenance Agreement, Licensee shall:

- a) Obtain, install and maintain, and provide at no cost to Licensor, direct FTP and fast VPN access (access via Citrix, WebEx, VNC, etc. not acceptable) to all meters, gatekeepers, and every production, backup and test Management System servers under support to allow Licensor to perform System Maintenance for the Program from Licensor's facilities in North Carolina. Reasonable allowance will be made to adhere to Licensee's corporate security administration and monitoring policies. However, during periods when Licensor has access to

the Management System servers, access will be at the administrator level. Reasonable allowances will be made to ensure that Licensee has monitoring abilities for all activities performed on Licensee's systems. No actions will be taken on any Licensee system without Licensee's permission.

- b) Allow Licensor to install as part of its standard support a Troubleshooting Tool with daily access to Licensee's secure FTP site to transfer data, thus enabling Licensor's support personnel to perform maintenance on the Licensee system effectively. Without use of the Troubleshooting Tool response and resolution times may be affected.
- c) Ensure that only personnel properly trained in the operation and use of the Program and its associated equipment call Licensor for direct phone support and that such personnel have sufficient access and computer time when using such service in order to implement the corrections suggested by Licensor.
- d) Allow Licensor to install all Software Upgrades within 60 days of delivery of same; provided, however, that Licensee may delay a Software Upgrade in the event of force majeure or in the event of delays beyond the control of Licensee or Licensor in corollary upgrades to third-party software or equipment. Licensee shall install or allow the install of the Software Upgrade immediately upon the cessation of the cause of delay. Reasonable delays will be accommodated to avoid impacts on Licensee's business operations, resource availability and/or IT policy compliance.
- e) Perform and install all diagnostic activities and routines recommended by Licensor before requesting On-Site Support.
- f) Ensure that all installed Elster Products (meters, gatekeepers, IP AxisLink, etc.) that have Longitude and Latitude attributes contain the correct geographic coordinates. Troubleshooting will not be performed by Elster for devices that do not have corresponding geographic information in the Energy Axis Management System.
- g) Ensure a proper Program environment is maintained and that Licensee's personnel who have access to the Program are properly trained in the operation and usage of the Program and the associated equipment.
- h) Provide adequate safeguards for the protection of Licensee's data and files while System Maintenance is being performed on the Program.
- i) Issue any purchase orders that might be required by Licensee's business processes to honor the payments obligated by this Agreement.
- j) Maintain the Management System servers consistent with industry standards on end of life planning for server systems. Licensor's general recommendation is that Licensees plan for server replacements on a 3 year cycle to consider hardware and OS obsolescence and to provide latest generation servers to support new features provided in Program releases provided as a part of this Agreement.
- k) Maintain the Supported System and the operating system software defined in Appendix B-1 of the System License Agreement. Licensor will specify the third party software and version thereof required for each Software Upgrade or release.
- l) Licensee shall monitor overall system performance such as disk space, CPU, memory usage, etc
- m) Prevent the unauthorized use or copy of binary data used in virtual deployments of EA\_MS systems..

## 9 DATA BACKUP

Licensee shall be solely responsible to ensure that all of its files and data are adequately duplicated or documented, and Licensor shall in no way be responsible for Licensee's failure to do so, nor for the costs or expenses of reconstructing data which are lost, destroyed or otherwise damaged or rendered useless

during the course of or as the result of the performance of any services under this System Maintenance Agreement.

## **10 CONFIDENTIALITY**

Each Party (the "Receiving Party") shall maintain in strict confidence any and all proprietary and confidential information about the business, operations or customers of the other Party or any of their affiliates which it acquires in any form from the other Party (the "Disclosing Party"), including without limitation the terms of this Agreement, or any other information disclosed by the Disclosing Party and identified by Disclosing Party as confidential ("Confidential Information"). The Receiving Party will not disclose such Confidential Information with any third parties without the Disclosing Party's prior written consent. The Receiving Party further agrees to use its best efforts and to take all reasonable precautions to maintain strict confidentiality with respect to the Confidential Information and to prevent disclosure thereof to persons other than its employees, accountants, affiliates, attorneys, bankers, consultants, insurance advisors and carriers, and agents who need access to such information to carry out a Party's obligations under this Agreement, and the Receiving Party shall be liable for the compliance by such third parties with the confidentiality obligations hereof.

The Receiving Party shall not use, or permit the use of, the Confidential Information for any purpose other than performing this Agreement and exercising the rights granted under this Agreement. The Receiving Party acknowledges that the rights of the Disclosing Party in the Confidential Information are unique, and accordingly the Disclosing Party shall, in addition to such other remedies as may be available to it at law or in equity, have the right to enforce its rights hereunder by an action for injunctive relief and specific performance to the full extent permitted by law. Upon termination of this Agreement and the written request of the Disclosing Party, the Receiving Party shall return or destroy all copies of all Confidential Information to the Disclosing Party. To the extent it would be unreasonably costly or cumbersome, neither Party shall be required to delete intangible copies of Confidential Information that are made as part of such Party's routine systems back-up procedures.

Notwithstanding the foregoing, Licensor shall be entitled to disclose to a third party licensor of any Third Party Software (a) the fact of this Agreement (including the identity of Licensee) and (b) audit results with respect to Licensee's compliance with the Third Party Software terms of this Agreement. The provisions of this Article shall survive any termination of this Agreement or of any license granted hereunder.

## **11 FORCE MAJEURE**

Neither party shall be liable for loss, damage, or delay nor be in default for failure to perform (other than payment obligations) due to causes beyond its reasonable control, including but not limited to acts of God, acts of war or terrorism, fire, flood, strike, labor disputes, acts or omissions of any governmental authority or of the other party, compliance with government regulations, embargos, fuel or energy shortage, delays in transportation, inability to obtain necessary labor, materials, or services from usual sources, or from defects or delays in performance of a party's suppliers or subcontractors due to such causes. In the event of a delay by either party due to the foregoing, the date of delivery or time for completion shall be extended by a period of time reasonably necessary to overcome the delay.

## **12 ASSIGNMENT**

Neither this Agreement nor any interest under this Agreement shall be assigned by Client without the prior written consent of Elster, except that either Party may assign this Agreement without prior consent in connection with a sale of controlling interest in the capital stock or other equity interest of such Party, a sale of all or substantially all of the assets of such Party, or pursuant to a merger or consolidation. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

### 13 NOTICES

Any notice required or permitted hereunder shall be in writing and shall be deemed to have been delivered on the date evidenced by receipt obtained upon transmission by fax, upon delivery by commercial delivery service, or upon delivery by certified or registered mail to a party's address or facsimile number shown below:

#### If to Licensee

City of Santa Clara  
Silicon Valley Power  
Director of Electric Utility  
1500 Warburton Avenue  
Santa Clara, CA 95050

#### If to Elster

Elster Solutions, LLC  
208 S Rogers Lane  
Raleigh, NC 27610  
ATTN: Contracts Department  
ContractsDept@us.elster.com

Either Party may at any time change its respective address or point of contact by sending written notice of the change to the other Party.

### 14 AMENDMENT AND ENFORCEMENT

This System Maintenance Agreement, including the Appendices attached hereto, contain the entire understanding of the parties with respect to the matters herein. This System Maintenance Agreement may not be modified except by writing, executed by authorized representatives of Licensor and Licensee. If any provision hereof is or becomes, at any time or for any reason, unenforceable or invalid, no other provision hereof shall be affected, and the remaining provisions shall continue with the same effect as if such unenforceable or invalid provision shall not have been inserted herein. If Licensee issues a purchase order or other document that purports to define System Maintenance other than as set forth in this System Maintenance Agreement, it is agreed that the terms and conditions of any such purchase order shall have no application or effect, and that the provisions of this System Maintenance Agreement shall continue to control matters related to the provision of System Maintenance. Either party's failure to exercise any right under this System Maintenance Agreement shall not constitute a waiver of any other terms or conditions of this System Maintenance Agreement with respect to any other or subsequent breach, nor a waiver by such party of its right at any time thereafter to require exact and strict compliance with the terms hereof.

### 15 HEADINGS

The headings and captions herein shall not be considered for purposes of interpretation or application, and are furnished for convenience only.

### 16 SURVIVAL

The provisions of Sections 1, 2, 6, 7, 9, 12, and 13 shall survive the cancellation, expiration or termination of this Agreement.

### 17 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the choice of law or conflicts of law rules of any jurisdiction. The Parties agree that all causes of action against either Party under this Agreement shall be brought solely and exclusively in the State Courts of the State of California, or the U.S. District Court for California.

INTENDING TO BE LEGALLY BOUND, THE PARTIES HAVE AUTHORIZED THEIR REPRESENTATIVES TO EXECUTE THIS AGREEMENT AS OF THE "EFFECTIVE DATE" FIRST WRITTEN ABOVE.

CITY OF SANTA CLARA

ELSTER SOLUTIONS, LLC

By \_\_\_\_\_  
Printed name Julio J. Fuentes  
Title City Manager  
Date \_\_\_\_\_

By [Signature]  
Printed name Robert Hines  
Title VP contracts and proposals  
Date 6/2/2014

**SELECTED SUPPORT LEVEL**

<b>Support Level</b>	<b>Description</b>	<b>Support Level Selected (Place an "X" in the appropriate box)</b>
9 × 5	Customer Support Mon-Fri, from 8 AM to 5 PM Eastern Time except designated Licensor holidays*	X
12 × 7	Customer Support 7 days a week, from 8 AM to 8 PM Eastern Time*	
24 × 7	Customer Support 24 hours a day, 365 days a year*	
Optional Emergency on-call	Customer Support from 8 PM to 8 AM Eastern time for customers on 9x5 or 12x7 support for Severity 1 issues	

\* Reference Support Level Services table below for list of services available

**SUPPORT LEVEL SERVICES**

	9x5, 12x7 and 24x7 8 AM to 5 PM Mon-Fri	12x7 and 24x7 8 AM to 8 PM 7 days/week	24x7 8 PM to 8 AM 7 days/week
Severity 1 issues	✓	✓	✓
System upgrades/patches	✓	✓	Not supported during overnight hours
Gatekeeper upgrades	✓	✓	
Severity 2 issues	✓	Not supported during extended hours	
Severity 3 issues	✓		
Meter upgrades	✓		
Managed services	✓		
Casual consulting	✓		
Status updates	✓		
Integration support	✓		

All times Eastern

## APPENDIX C-1

### YEARLY SYSTEM MAINTENANCE AGREEMENT FEES

#### 1 SYSTEM MAINTENANCE FEE FOR EACH OPERATIONAL SYSTEM

The system maintenance fee is structured based on the level of support desired by the Licensee, total system size and optional services purchased by the Licensee. The table below describes the structure for system maintenance fees for the EnergyAxis Management System.

The percent of license fees is determined by the desired support level. Total list license fee includes licenses for all programs, system, modules, endpoints, interfaces and custom integrations purchased by the Licensee as defined in the latest amendment to the Licensor System License Agreement or customer statement of work.

Support Level	Support Fees	Optional Emergency On-call Support
9 × 5	20% of SLA List Fees	5% of SLA List Fees per annum in addition to Standard Support, and per call fee of \$1000 for first hour, \$500/hr for each subsequent hour or part thereof
12 × 7	27% of SLA List Fees	
24 × 7	34% of SLA List Fees	

A support level of 12 × 7 or 24 × 7 is mandatory for Advanced and 24 X 7 for Enterprise tier Licensees, as defined in the EnergyAxis System License Agreement.

It is highly recommended that customers with DA support have 24 X 7 SMA support.

#### 2 FUTURE MODULES AND APPLICATIONS

Additional System Maintenance fees for new modules or applications will be determined at time of purchase.

#### 3 ANNUAL INCREASE PROVISION

Licensor reserves the right to increase the annual SMA fee at the time of annual renewal each year after the 1st complete calendar year by the greater of 4% or the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U) for All Urban Consumers, All Items, U.S. City Average. The CPI-U adjustment rate will be determined by comparing the percentage difference between the CPI-U in effect for the base twelve month average (October through September); and each (October through September) 12 month average thereafter. The percentage difference between the two CPI-U issues will be the adjustment rate.

#### 4 OPTIONAL SYSTEM RETRAINING

Licensee with a current System Maintenance Agreement can purchase optional system retraining for 1 week under the following fee structure. Training requests will be accepted subject to Licensor's resource availability.

- a) Training at Licensor's Facility in Raleigh, NC: \$10,000 plus \$250 per set of printed materials (limited to a maximum of nine students in one training session)
- b) Training at Licensee's Facility: \$15,000 plus travel and living and \$250 per additional set of printed materials (limited to a maximum of nine students in one training session).

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## **5 MAINTENANCE FEE FOR SYSTEMS INTEGRATION/BILLING CONVERSION PROGRAM SUPPORT**

An annual fee will be charged for maintenance of Licensor developed interfaces and systems integration, to maintain compatibility with future releases of Energy Axis Management system and customer enterprise system(s). These fees are determined at the time the integration is scoped and quoted, but are a minimum of 20% of initial development cost to Licensee.

## **6 DATABASE REFRESH ON NON-PRODUCTION SERVERS**

Database refresh on test and backup systems requested by the Licensee are not part of the routine upgrade process, thus an additional maintenance fee will apply. The effort will be scoped based on the size of the database (usually 4 - 6 hrs for an Advanced system), at the then current fee for a Support Engineer as defined in Appendix C-2. For Advanced and Enterprise tier support, one database refresh during upgrade of a production or test system, and one during production cut-over is included.

## **7 PRICING NOTES**

System maintenance must be purchased for ALL of the Licensee's Management Systems (operational, backup and test) and the levels of coverage for all the Systems must be the same.

SMA support for any of Licensee's systems is only available if the all of the applicable license fees have been paid (including any incremental backup and/or system Software License fees), the system(s) installed and all of the Licensee's systems are under an active and paid SMA.

If Elster is responsible for Tier 1 support of third party WAN or MDM solutions, additional SMA fees will apply.

**APPENDIX C-2  
EA\_MS Server System Maintenance Agreement  
Professional Services Request Form**

<b>To:</b>	<b>ATTN:</b>	<b>Date:</b>
Elster Solutions, LLC 208 S Rogers Lane Raleigh, NC 27610	Systems Support Manager Fax: (919) 250 5439	

**Work requested by customer:** (Attach additional page(s) if more space is required)

**Rates: The rates quoted below apply to work initiated in calendar year 2014 and completed within one (1) year. Rates are for labor only and DO NOT include travel and living expenses.**

Professional service roles	Hourly rate	Service Description
Program Manager	\$220	Project Management Office for large scale and turn key projects, including projects involving multiple vendors
Project Manager	\$180	Assemble the project team, develop and execute the project schedule, report weekly status, and acquire the appropriate resources necessary to resolve issues
Business Process Specialist	\$250	Technical expertise for business process analysis re-engineering and integration scoping for Enterprise AMI integration
Integration Developer	\$180	Develop software to integrate Enterprise business applications
IT architect	\$170	Technical expertise to ensure that the network elements, metering end points and hardware interfaces of the AMI system deployed function as intended to meet the specified AMI system requirements and configuration of network to meet Licensee's Enterprise IT Requirements
Field Service Engineer	\$170	Field installation coordination and field trouble shooting
Database Administrator	\$170	Assistance with database management, optimization and migration
Support Engineer	\$160	Assistance with maintenance services outside the scope
Logistics Coordinator	\$145	Coordination of equipment and material delivery logistics
Test Engineer	\$140	Definition and execution of system acceptance test of Licensor approved system configuration

Unless otherwise stated herein, Service prices are based on normal business hours (8 a.m. to 5 p.m. Monday through Friday). "Time" is on-the-job plus travel time to and from the job site from the regularly assigned office location. "Time" starts and ends at the person's regularly assigned office location unless otherwise agreed upon prior to the start of work. Overtime, Saturday hours will be billed at one and one half (1 ½) times the hourly rate; Sunday will be billed at two (2) times the hourly rate and holiday hours recognized by Licensor will be billed at three (3) times the hourly rate. Minimum billable time per person will be four (4) hours.

<b>Send Invoices To:</b>	<b>Customer Authorized Representative</b>
<b>Company:</b> _____	
<b>Address:</b> _____	
<b>City, State ZIP:</b> _____	Printed Name
<b>ATTN:</b> _____	
<b>Telephone No.:</b> _____	
	Signature
	Date

<b>Request Received by Elster</b>	<b>Enter Time Tracking System Task Name</b>
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All services and products delivered under this request are governed exclusively by Elster Solutions, LLC General Terms and Conditions.

## APPENDIX C-3

### SEVERITY OF CUSTOMER CASES AND RESOLUTION TIMES

When customers open a case in the Elster Support System (ESS) User Portal, they can specify a priority of the problem. This will guide the support team about the actions to take when the case is assigned to a support analyst. Priorities will determine the urgency with which a support engineer needs to start investigating the problem.

#### 1 SEVERITY 1 ISSUES

System is not functioning, unavailable, or unusable, or billing data is lost. Defects are critical in nature, do not allow the system to fully operate or impact data integrity, do not have workarounds and demand immediate action. Data integrity is defined as 10% or more of the actively communicating meters not read or processed. Examples include:

- a) EA\_MS hangs
- b) Can't login to GUI
- c) Billing schedule fails to run or meter read success rate is unacceptable (below 90%), and WAN is properly functioning.
- d) Integration application fails (if provided by Licensor)
- e) Database needs to be recovered from a backup copy (system fail over)

In addition to opening a case, the customer shall report Severity 1 issues via the EnergyAxis support line (866-554-9007) using the customer specific PIN.

#### 2 SEVERITY 2 ISSUES

Loss of some functionality (not included in Severity 1) or partial loss of data. Defects do not stop system operation, do not preclude users from performing their tasks, and/or may partially impact data integrity (i.e. less than Severity 1). There may be a work around, but implementing the work around is unacceptably time consuming and will adversely affect Licensee's ability to conduct normal system production activities. Examples include:

- a) Non-billing schedule is running with low performance
- b) GIS application does not work
- c) Marriage File import fails
- d) CIS import fails
- e) Sudden change in number of orphaned nodes
- f) Partial data loss (Cannot read a EA\_Gatekeeper or a meter - excluding WAN issues)
- g) Data is corrupt
- h) Application has limited capability

Severity 2 cases shall be reported using the ESS User Portal. Additional telephone and/or email notification to Licensor Support is advisable but not required.

#### 3 SEVERITY 3 ISSUES

Defects do not impact effective system operation, or have minimal effect on the system or licensee's business process. An appropriate workaround is available. Unless expressly agreed, defects will generally be resolved in Licensor's next maintenance release. Examples include:

- a) Request missing marriage file
- b) Explain feature functionality (like daily DR, HHF)
- c) Request software upgrades

- d) Request firmware upgrades
- e) Request any other Elster Managed Services

Severity 3 cases shall be reported using the ESS User Portal

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#### **4 RESPONSE TIME / RESOLUTION**

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The priority of a case governs the expected response time for resolution. Resolution times are as follows:

##### **4.1 Severity 1**

- a) Response time  
Licensor will acknowledge the customer call reporting such problems by phone or email within one hour of notification within contracted support hours. If the problem is reported outside of the contracted support hours, Licensor will acknowledge the call the following business day.
- b) Problem resolution  
Licensor will make commercially reasonable best efforts to start investigating the problem immediately after acknowledgement and attempts to fix the problem or provide a work around solutions as soon as reasonably possible.

##### **4.2 Severity 2**

- a) Response time  
Licensor will acknowledge such notice within six hours of notification within contracted support hours. If the problem is reported outside of the contracted support hours, Licensor will acknowledge the call the following business day.
- b) Problem resolution  
Licensor will make commercially reasonable effort to start investigation the problem within a business day of acknowledgement, and will provide a solution in the form of workaround or documentation clarification, as soon as reasonably possible.

##### **4.3 Severity 3**

- a) Response time  
Licensor will acknowledge such notice within one business day.
- b) Problem resolution  
Licensor will work on the case as time permits. Implementation of the solution may be in the form of a workaround or documentation clarification. Generally, fixes for non-critical errors are addressed in a future scheduled EA\_MS release.

**APPENDIX C-4**

**SYSTEM MAINTENANCE FEES SUMMARY**

This appendix summarizes the system maintenance fees derived from the system license fees in Appendix B-4 of the System License Agreement at the time of the original purchase, and will be amended as necessary to reflect any changes to the License or maintenance configuration after the initial purchase.

**EnergyAxis Premiere License and Maintenance Fee Calculation**

<b>EnergyAxis System License Fees</b>	<b>Qty</b>	<b>List Price</b>	<b>Total</b>	<b>Discount Price</b>	<b>Ext. Price</b>
<b>Base System</b>					
EnergyAxis Premier	1	\$75,000.00	\$75,000.00	\$35,000.00	\$35,000.00
Additional Backup / Test System	2	\$27,000.00	\$54,000.00	\$15,000.00	\$30,000.00
Virtualization	1	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
Incremental AMI/AMR endpoint license fees (per 2,500 unit bundle)	1	\$5,500.00	\$5,500.00	\$906.00	\$906.00
Axis Detect		\$15,000.00	\$0.00	\$15,000.00	\$0.00
Direct Wide Area Network (WAN) connection support	1	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
Third Party Meter Support		\$5,000.00	\$0.00	\$5,000.00	\$0.00
<b>Water</b>					
Water Module Support (includes Site License for Route Manager)	1	\$10,000.00	\$10,000.00	\$6,000.00	\$6,000.00
<b>Gas</b>					
Gas Module Support (includes Site License for Route Manager)		\$10,000.00	\$0.00	\$10,000.00	\$0.00
<b>Demand Response (DR) / Home Area Network (HAN)</b>					
Base License Fee: Home Area Network (HAN) Support	1	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00
DR Element / Device Fee (1 - 500,000)		\$1.00	\$0.00	\$0.75	\$0.00
DR Element / Device Fee (500,000+)		\$0.75	\$0.00	\$0.75	\$0.00
<b>Distribution Automation (DA)</b>					
Base License Fee: Distribution Automation (DA) Support	1	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00
DA Element / Device Fee (1 - 50,000)		\$2.00	\$0.00	\$1.50	\$0.00
DA Element / Device Fee (50,000+)		\$1.50	\$0.00	\$1.50	\$0.00
Secure Tunnel Server Gateways (0 - 50)		\$25,000.00	\$0.00	\$25,000.00	\$0.00
Secure Tunnel Server Gateways (51 - 200)		\$35,000.00	\$0.00	\$35,000.00	\$0.00
Secure Tunnel Server Gateways (200+)		\$50,000.00	\$0.00	\$50,000.00	\$0.00
<b>Custom SW Development / Modules / Interfaces / Stand Alone</b>					
Route Manager	1	\$0.00	\$0.00	\$1,100.00	\$1,100.00
EA_Inspector Manager	1	\$0.00	\$0.00	\$1,100.00	\$1,100.00
<b>Subtotal - AMI Software License Fees (SLA)</b>			<b>\$179,500.00</b>		<b>\$99,106.00</b>
<i>Credit for previously paid license fees</i>					<i>(\$99,106.00)</i>
<b>Total - AMI Software License Fees (SLA)</b>					<b>\$0.00</b>

<b>EnergyAxis System Maintenance Fees</b>	<b>Qty</b>	<b>List Price</b>	<b>Total</b>		
<b>Base System</b>					
Standard Support: 9x5	1	\$35,900.00	\$35,900.00		
Standard Support: 12x7	27%	\$48,465.00	\$0.00		
Standard Support: 24x7	34%	\$61,030.00	\$0.00		
Optional On-Call Emergency Support	5%	\$8,975.00	\$0.00		
Equipment Maintenance Fee: EA_Inspector / EA_Installer Handheld	6	\$895.00	\$5,370.00		
Annual Increase Provision	4%	1	\$41,270.00	\$1,650.80	
<b>Total - EnergyAxis System Maintenance (SMA)</b>			<b>\$42,920.80</b>		

Meeting Date: 6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # MB-4



**Date:** June 17, 2014  
**To:** City Manager for Council Action  
**From:** Director of Electric Utility  
**Subject:** Approval of Amendment No. 4 to the Master Agreement with Elster Solutions, LLC to Provide a New System License Agreement and System Maintenance Agreement for Elster's EnergyAxis Management System Software

## EXECUTIVE SUMMARY:

In FY08-09, a Capital Improvement Project and five-year plan was approved for the purpose of defining, procuring and implementing an Advanced Metering Infrastructure (AMI), under the SVP MeterConnect program. Under this plan, Council approved the acquisition of an AMI System through Elster Solutions, LLC which includes the EnergyAxis head-end software.

On April 24, 2012, Council approved Amendment No. 1 to the Master Agreement with Elster Solutions, LLC to provide system configuration, process development, and testing necessary to establish a reliable, repeatable methodology for the mass deployment of electric meters. The Amendment also included the automation of installation related data exchanges between City systems, development of communication with affected electric utility customers, and the replacement of 100 meters using installation vendor services. On October 16, 2012 Council approved Amendment No. 2 to purchase one-fourth of the electric meters and on November 19, 2013 Council approved Amendment No. 3 to provide field and administrative services required for the installation of the meters previously purchased. Staff recommends entering into Amendment No. 4 to the Master Agreement with Elster Solutions, LLC to update the terms and benefits for the System Maintenance Agreement (SMA) and Software License Agreement (SLA) to better support the Elster EnergyAxis software product. A copy of Amendment No. 4 to the Master Agreement with Elster Solutions can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of Amendment No. 4 allows the City to take advantage of Elster's recently updated EnergyAxis software license and system support processes that upgrade from processor based fees to system based fees, extends the coverage term for major system lease support, and incorporates third party software upgrades in the base EnergyAxis system without adding future upgrade fees.

## ECONOMIC/FISCAL IMPACT:

The initial not-to-exceed amount for the Master Agreement with Elster Solutions, LLC was \$2,389,397.17. Amendment No. 1 and Amendment No. 2 to the Master Agreement increased this amount by \$4,262,961.90, to a not-to-exceed amount to \$6,652,359.07. Amendment No. 3, in an amount not to exceed \$794,893.33, increased the total not-to-exceed amount to \$7,447,252.40. This requested Amendment No. 4 to the Master Agreement for the Software Maintenance Agreement annual support fee is \$42,920.80, which increases the total not-to-exceed amount to \$7,490,173.20. Sufficient funds are available in the Electric Department's Implementation of Advanced Metering Infrastructure (AMI) Inventory Control Account (I.C.A.) 591-1313-80500-2111-9864-39700.

**RECOMMENDATION:**

That Council approve, and authorize the City Manager to execute, Amendment No. 4 to the Master Agreement with Elster Solutions, LLC, in an amount not to exceed \$42,920.80, for a total amount not to exceed \$7,490,173.20, to provide a new System License Agreement and System Maintenance Agreement for Elster's EnergyAxis Management System Software.

*for* Paul O'Fith  
John C. Roukema  
Director of Electric Utility

Certified as to Availability of Funds: *OK-LF*  
Account No. 591-1313-80300-2111 \$42,920.80

APPROVED:  
Julio J. Fuentes  
Julio J. Fuentes  
City Manager

*for* Angel Kratoch  
Gary Ameling  
Director of Finance/Assistant City Manager

**MAJORITY VOTE OF COUNCIL**

***Documents Related to this Report:***

- 1) Amendment No. 4 to the Master Agreement with Elster Solutions, LLC***

**AMENDMENT FOUR  
TO THE  
ENERGYAXIS MANAGEMENT SYSTEM CONTRACT  
BETWEEN  
ELSTER SOLUTIONS, LLC  
AND  
CITY OF SANTA CLARA**

**THIS AMENDMENT FOUR** to that certain EnergyAxis Management System Contract between Elster Solutions, LLC, and the City of Santa Clara, CA is effective this \_\_\_ day of \_\_\_\_\_, 2014 (“Effective Date”).

**WHEREAS**, Elster Solutions, LLC a Delaware limited liability company with its principal place of business at 208 S. Rogers Lane, Raleigh, NC 27610, USA (“Elster” or “Licensor”) and the City of Santa Clara, a municipality organized under the laws of the State of California, having its principal place of business at 1500 Warburton Avenue, Santa Clara, CA 95050, USA (“Santa Clara”, “City” or “Licensee”), collectively the “Parties” and individually a “Party”, entered into an EnergyAxis Management System Contract (“Contract”) together with a Software License Agreement, Exhibit B, and System Maintenance Agreement, Exhibit C, (the “Agreements”) on December 7, 2010, for delivery of system hardware, software and services in support of the successful implementation and deployment of Elster’s EnergyAxis Advanced Metering Infrastructure (AMI) system for the City; and

**WHEREAS**, Elster has updated its EnergyAxis software license and system support processes, moving from processor-based fees to system-based fees while extending coverage for major system release support and upgrading base system third party software without added upgrade fees (the “New Licensing Model”); and

**WHEREAS**, the Parties have agreed to replace the City’s existing Software License and System Maintenance Agreements with new Agreements to afford the City an opportunity to take advantage of Elster’s New Licensing Model, and

**WHEREAS**, the Parties have further agreed to change the City’s support level from 24x7 support to 9x5 support.

**NOW THEREFORE**, in consideration of the foregoing recitals, the covenants and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1) **Exhibit B, Software License Agreement, effective December 7, 2010, is hereby deleted in its entirety and replaced with revised Exhibit B, System License Agreement (“SLA”) attached hereto.**

The SLA license fee structure is described in Appendix B-2. License fees are due and payable in accordance with SLA Section 8, License Fees and Payment, and Appendix B-4, System License Fees Summary.

- 2) **Exhibit C, System Maintenance Agreement, effective December 7, 2010, is hereby deleted in its entirety and replaced with revised Exhibit C, System Maintenance Agreement (“SMA”) attached hereto.**

The SMA maintenance fee structure is described in Appendix C-1. Annual maintenance fees are due and payable in accordance with SMA Section 4, Fees, and Appendix C-4, System Maintenance Fees Summary.

- 3) **Exhibit C, Selected Support Level Table, and all other Agreement references to 24 x 7 support are hereby changed to 9 x 5 support.**

**ALL REMAINING AND SURVIVING TERMS OF THE CONTRACT ARE UNCHANGED AND REMAIN IN FULL FORCE AND EFFECT.**

IN WITNESS WHEREOF the Parties have authorized their representatives to execute this Amendment effective as of the "Effective Date" first written above.

**CITY OF SANTA CLARA, CA**

**ELSTER SOLUTIONS, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Julio J. Fuentes

Printed Name: Robert Aenes

Title: City Manager

Title: VP contracts and proposals

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

Date: 6/2/2014

## EXHIBIT B

### ENERGYAXIS MANAGEMENT SYSTEM (EA\_MS)

#### SYSTEM LICENSE AGREEMENT

This System License Agreement (this "Agreement") is made and entered into effective this \_\_ day of \_\_\_\_\_, 2014 ("Effective Date") by and between Elster Solutions, LLC, a Delaware limited liability company, with offices at 208 S. Rogers Lane, Raleigh, NC 27610, USA, ("Elster" or "Licensor"), and City of Santa Clara California, a chartered California municipal corporation, with offices at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City" or "Licensee").

In consideration of their mutual promises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### 1 DEFINITIONS

<b>Authorized User</b>	The number of operators authorized to use the Software, as more particularly described in Appendices C-1 and C-2 attached hereto and incorporated herein by this reference.
<b>Release(s)</b>	Modification or enhancement to the Software that provides additional value and utility, or adds functions, together with all corresponding Documentation, and typically identified by a change in the first or second decimal of the application version number (i.e., 2.2.0.0 to 2.3.0.0).
<b>Documentation</b>	All printed or electronic documentation which Licensor customarily provides or makes available to the Licensee with the Software, including the Specifications and all Updates and Releases of such Documentation, all in the English language.
<b>Integrated System</b>	The commercially available product, which may be hardware, software, or a combination thereof, into which the Software has been integrated in accordance with the license granted to the Licensee hereunder.
<b>Network Device</b>	An individual appliance, component or peripheral from which Licensee collects and analyzes data using the Software.
<b>Route Manager</b>	The Software required to install and configure EA_Water and EA_Gas modules, create marriage files, setup and maintain data collection routes
<b>Software</b>	The binary code version of all software applications, updates, and releases furnished by Elster for a Client's AMI System, including media, user manuals, or other instructional materials and documentation, and any modified, updated or enhanced versions of such applications
<b>Specifications</b>	The functionality, operating characteristics and performance criteria of the Software as set out in the Documentation.

**Third Party Software** Computer software and any documentation distributed by Licensor under this Agreement, but owned or licensed by other parties (other than Licensor affiliates), and either embedded in the Licensor's Software or distributed separately by Licensor. Third Party Software and related documentation may include source code as well as binary code, all of which shall be governed by the terms hereof and the applicable license agreement between such Third Party Software Licensor and Elster.

**Update(s)** Any change, addition or correction to the Software, including the Documentation that primarily includes bug fixes and maintenance modifications that improve or upgrade functions, add new functions, or improves performance by changes in software design, and are typically identified by a change in the third or fourth decimal of the application version number (i.e., 2.0.2.0 to 2.0.0.2).

**Use** To load, execute, employ, utilize, store or display the Software.

## **2 TERM**

The term of this Agreement is one (1) year beginning on the Effective Date with automatic renewals for successive one (1) year periods unless terminated earlier by either Party in accordance with the provisions set forth herein.

## **3 LICENSE GRANT**

Licensor hereby grants to Licensee a nonexclusive, nontransferable license for EnergyAxis 8.0, subject to the terms and conditions set forth in this Agreement, to Use the Software (in binary code only), Third Party Software and the applicable Documentation during the term of this Agreement.

As a provider of electricity, water or gas or any combination thereof to the general public, the software license granted herein authorizes the Licensee use of the Software for reading and managing devices owned by the Licensee, provided such devices are within the Licensee's existing network. The software license does not support Licensee's current or planned expansion to other utilities.

Licensee is authorized as follows:

- a) To Use the Software and Third Party Software, in binary code only, solely in connection with Licensee's business purposes as set forth above and for internal business operations;
- b) To make one copy of the Software and Third Party Software for backup purposes only as long as that copy is not running on a server;
- c) To run a non-production backup of the Software and Third Party Software for purposes of testing or as a backup for the operational system subject to payment of the incremental license fee in Appendix B-2.

Licensor further grants to Licensee a nonexclusive, nontransferable license, subject to the terms and conditions of this Agreement and the restrictions on use of Third Party Software stated herein, to operate the EA\_MS Software and Third Party Software in a virtual environment. Under this arrangement the Licensee is responsible for notifying the Licensor in writing within ten (10) days of each new application of the Software, and the Licensee will incur additional license fees for each new application in accordance with the fee schedule and terms set forth in this Agreement and attached appendices.

Licensee's use of the Software and Third Party Software is limited to use in connection with the maximum number of Authorized Users and Network Devices contracted through the Agreement. Licensee may increase the number of servers or computers upon written request and payment of additional fees. Agents, consultants, and contractors of Licensee may be authorized to Use the Software and Third Party Software subject, in all cases, to the terms of this Agreement, Licensee acknowledges and agrees that Licensee shall be fully responsible and liable for the compliance of any agents, consultants and contractors with this Agreement, including the confidentiality and intellectual property ownership provisions hereof.

Licensee shall Use the Software on the Integrated System only. Use of any Third Party Software is limited to the Licensee legal entity signing this Agreement.

Licensee may not Use the Software (including any Third Party Software) except as expressly provided for in this Agreement, nor cause or permit reverse engineering, disassembly, or decompilation of the Software or any Third Party Software.

Third Party Software and technology are necessary components of the Software and subject to restricted third party licenses. Unless separately licensed by the applicable third party to Licensee, Third Party Software can only be configured, installed and used by the Licensee in conjunction with the authorized use of the Software, and with execution of this Agreement is licensed to the Licensee only for such purpose.

Licensee shall not navigate the underlying data schema, nor configure, use or install embedded Third Party Software separately or independently of the Software.

Trademarks, trade names or logos included or embedded in the Software and Third Party Software shall remain with the Software and Third Party Software and may not be removed or altered by Licensee.

Additional third party technology included with the Third Party Software is included solely for use with the application package and under the terms of any third party license agreement included with the application package. If no such third party license agreement is included, all third party technology included in the application package with the Third Party Software shall be licensed under the terms of this Agreement, including any additional license terms applicable to the Third Party Software.

The license granted in Section 3 above shall be effective as of the "Effective Date" first written above, and shall continue in effect unless terminated in accordance with Section 15 of this Agreement.

Licensee shall procure the Integrated System required to operate the Software, as specified in Appendix B-1, either from Licensor or a third party.

#### **4 OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

Licensee hereby acknowledges and agrees that the Software, the applicable Documentation and all patents, copyrights, trade secrets and trademarks related thereto are the exclusive property and Confidential Information of Licensor or its affiliates and their Third Party Software licensors and that Licensor or its affiliates and their respective Third Party Software licensors, as applicable, own all rights, title and interest, including, without limitation, all worldwide patent, copyright, trade secret and trademark rights and all goodwill associated therewith, in and to the Software and Third Party Software.

Except for the license granted by Licensor to Licensee pursuant to Section 3 of this Agreement, Licensee shall acquire no right, title or interest of any kind or nature whatsoever in or to the Software or any Third Party Software or any patent, copyright, trade secret or trademark of Licensor, Licensor's affiliates or Licensor's licensors.

The Software is protected under United States and international copyright, trade secret and other intellectual property laws. Without limiting the generality of the foregoing, the parties acknowledge and agree that the source code, binary code and all visual, printed and other outputs of the Software are trade

secrets of Licensor and its affiliates and licensors. Except as otherwise expressly permitted under this Agreement, Licensee may not copy, translate, modify, display, patch, alter or otherwise change or make derivative works of the Software, Third Party Software, the applicable Documentation or any individual part thereof. Licensee shall not alter or remove any copyright notice or any propriety legend contained in or located on any part of the Software, Third Party Software, or the applicable Documentation and shall reproduce and maintain all such copyright notices or proprietary legends in and on any copy of the Software, Third Party Software, or Documentation that Licensee makes as permitted by this Agreement.

## **5 RESTRICTIONS ON USE, TRANSFER AND PROVISION OF SERVICES**

Licensee shall not derive or attempt to derive the source code or structure of all or any portion of the Software or Third Party Software by reverse engineering (except as required by law for interoperability), disassembly, decompilation or any other means. Licensee shall not give, sell, rent, lease, pledge, encumber, hypothecate, timeshare, provide subscription services for, sublicense, disclose, publish, assign, market, transfer or distribute any portion of the Software, Third Party Software or the applicable Documentation or other rights to any third party, including but not limited to Licensee's subsidiaries and affiliates. Licensee shall not publish the results of any benchmark tests run on the Software or Third Party Software and shall treat such results as Confidential Information of Licensor.

## **6 CONFIDENTIALITY**

Each Party (the "Receiving Party") shall maintain in strict confidence any and all proprietary and confidential information about the business, operations or customers of the other Party or any of their affiliates which it acquires in any form from the other Party (the "Disclosing Party"), including without limitation the terms of this Agreement, or any other information disclosed by the Disclosing Party and identified by Disclosing Party as confidential ("Confidential Information"). The Receiving Party will not disclose such Confidential Information with any third parties without the Disclosing Party's prior written consent. The Receiving Party further agrees to use its best efforts and to take all reasonable precautions to maintain strict confidentiality with respect to the Confidential Information and to prevent disclosure thereof to persons other than its employees, accountants, affiliates, attorneys, bankers, consultants, insurance advisors and carriers, and agents who need access to such information to carry out a Party's obligations under this Agreement, and the Receiving Party shall be liable for the compliance by such third parties with the confidentiality obligations hereof.

The Receiving Party shall not use, or permit the use of, the Confidential Information for any purpose other than performing this Agreement and exercising the rights granted under this Agreement. The Receiving Party acknowledges that the rights of the Disclosing Party in the Confidential Information are unique, and accordingly the Disclosing Party shall, in addition to such other remedies as may be available to it at law or in equity, have the right to enforce its rights hereunder by an action for injunctive relief and specific performance to the full extent permitted by law. Upon termination of this Agreement and the written request of the Disclosing Party, the Receiving Party shall return or destroy all copies of all Confidential Information to the Disclosing Party. To the extent it would be unreasonably costly or cumbersome, neither Party shall be required to delete intangible copies of Confidential Information that are made as part of such Party's routine systems back-up procedures.

Notwithstanding the foregoing, Licensor shall be entitled to disclose to a third party licensor of any Third Party Software (a) the fact of this Agreement (including the identity of Licensee) and (b) audit results with respect to Licensee's compliance with the Third Party Software terms of this Agreement. The provisions of this Article shall survive any termination of this Agreement or of any license granted hereunder.

## **7 DELIVERY**

Licensor shall deliver one copy of the Software.

## 8 LICENSE FEES AND PAYMENT

Licensee shall pay Licensor the System License Fees set forth in Appendix B-4 upon execution of this Agreement and completion of EA\_MS installation and training at the site. Licensee shall pay Licensor interest on any late payments at the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by law.

License fees do not include shipping charges, or any sales, use, withholding, excise or other taxes now or hereafter imposed on the production, storage, transportation, import, export, licensing or use of the products or services provided under this Agreement. Such expenses and taxes shall be paid by Licensee. Licensee shall indemnify Licensor for any such expenses or taxes which Licensor is required to pay.

This System License Agreement defines the understandings, obligations and responsibilities of the parties, and will function in place of a separate purchase order for the same.

## 9 SOFTWARE WARRANTY

Licensor warrants that the media on which the Software is recorded is free from defects in materials and workmanship. Licensor warrants that the Software will perform substantially in accordance with the Documentation during the Warranty Period (as defined below). Third Party Software is provided as-is, and without warranty of any kind.

The Warranty Period is limited to 90 days from the date of Software delivery (the "Warranty Period"). If within the Warranty Period, it's discovered that the Software does not conform to the foregoing warranty and written notice of such nonconformity is promptly provided to Licensor, Licensor will provide an exclusive remedy as follows:

- a) With respect to any defect in the media, Licensor will replace such media.
- b) With respect to any portion of the Software that does not perform in accordance with the Documentation, Licensor will, at its option, repair or replace the Software.
- c) With respect to any descriptive error in the Documentation, Licensor will correct such error by providing addenda or substitute pages.
- d) The foregoing remedies shall constitute Licensee's exclusive remedies and Licensor's sole liability for any failure of the Software to conform to any warranty.

Any Software nonconformities reported to the Licensor by the Licensee within the Warranty Period are subject to the remedies defined herein. Application of such remedies will not extend the Software warranty beyond the stated 90 day Warranty Period. Nonconformities reported following expiration of the warranty will be subject to remedies available through a separate System Maintenance Agreement executed between the parties.

Except as specifically set forth herein, Licensor and its Licensors make no representations, warranties or conditions (express, implied, statutory or otherwise), other than as expressly set forth in this Agreement. Licensor and its Licensors disclaim all other warranties, including, without limitation, any implied warranties of merchantability, accuracy, performance, effort, fitness for a particular purpose under the laws of any jurisdiction. Licensor and its Licensors make no warranty against interference with Licensee's enjoyment of the Software. Licensor and its Licensors do not warrant that Licensee's use of the Software will be uninterrupted or error-free, that the Software will interoperate with third-party Software not provided by or through Licensor except as set forth in the Documentation. Licensor and its respective licensors of Third Party Software do not warrant as to any results that may be obtained by Licensee's use of the Software or Third Party Software. Third Party Software licensors shall not be required to perform any obligations or incur any liability except as specifically stated herein. Licensor and its Licensors do not warrant that every feature or error in the Software will be corrected, or that the Software will meet Licensee's requirements.

## **10 INFRINGEMENT REMEDY**

Licensor shall, at its expense, defend any suit which may be brought against Licensee by a third party claiming that the Software infringes upon such third party's United States patent or copyright, and Licensor shall pay all judgments and costs recovered against Licensee in any such suit and shall reimburse Licensee for costs or expenses incurred by Licensee in the defense of any such suit, provided that Licensee gives Licensor prompt notice of such suit no later than ten (10) days after Licensee receives notice of such suit, or sooner if required by applicable law; reasonable assistance in the defense thereof; and full opportunity to control all aspects of the defense thereof, including settlement. In the event the Software is held to be infringing, and the use of the Software is enjoined, Licensor shall, at its option, procure for Licensee the right to continue using the Software; replace it with non-infringing software; modify it so it becomes non-infringing; or remove the Software or the infringing portion thereof and refund the license fees applicable thereto.

Licensor's obligations under this Section do not apply with respect to a claim of infringement if and to the extent such claim arises out of: (i) compliance with Licensee's specifications, (ii) the use by Licensee or any of its customers of any third-party software or equipment that infringes any patent, copyright, trademark or trade secret of any third party, (iii) any modification or alteration of the Software (other than by or on behalf of Licensor), (iv) use of a version of the Software that has been superseded or (v) use of the Software after notice of the claimed infringement has been received by Licensee. The foregoing states the exclusive remedy of Licensee and the sole liability of Licensor for infringement.

## **11 LIMITATION OF LIABILITY**

The Licensor's total liability relating to this Agreement, the Software or to the license granted hereunder, shall not exceed the license fees paid by Licensee to Licensor under this Agreement. Licensor and its Licensors (including Licensors of Third Party Software) will not be liable in any event for loss or inaccuracy of data, loss of use of systems, cost of replacement software or systems, loss of profits, loss of revenue or any other indirect, special, incidental or consequential damages, whether or not foreseeable and even if Licensor has been advised of the possibility of such damages. In no event shall Licensor be liable for any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) arising from any improper installation or improper use by Licensee, its customers, end users or anyone other than Licensor of the software or any goods supplied by Licensor, or arising from any failure by Licensee, its customers, end users or anyone other than Licensor to follow their own safety procedures in connection with the installation or use of the software or any other goods supplied by Licensor.

## **12 FORCE MAJEURE**

Neither party shall be liable for loss, damage, or delay nor be in default for failure to perform (other than payment obligations) due to causes beyond its reasonable control, including but not limited to acts of God, acts of war or terrorism, fire, flood, strike, labor disputes, acts or omissions of any governmental authority or of the other party, compliance with government regulations, embargos, fuel or energy shortage, delays in transportation, inability to obtain necessary labor, materials, or services from usual sources, or from defects or delays in performance of a party's suppliers or subcontractors due to such causes. In the event of a delay by either party due to the foregoing, the date of delivery or time for completion shall be extended by a period of time reasonably necessary to overcome the delay.

## **13 AUDIT**

Licensor and its licensors shall have the right, upon notice to Licensee, to enter onto Licensee's premises to perform an audit to ensure that Licensee is in compliance with this Agreement. Licensee shall keep, and shall allow Licensor to access, accurate records of each computer on which the Software, portions of the Software, and/or any Third Party Software are installed, the locations of such computers, the number

of Network Devices for which the Software is used and the number of Authorized Users using the Software. Licensor shall have the right to disclose the results of any audits to its respective licensors.

#### **14 ASSIGNMENT**

Neither this Agreement nor any interest under this Agreement shall be assigned by Licensee without the prior written consent of Elster, except that either Party may assign this Agreement without prior consent in connection with a sale of controlling interest in the capital stock or other equity interest of such Party, a sale of all or substantially all of the assets of such Party, or pursuant to a merger or consolidation. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

#### **15 TERMINATION**

Either party may upon written notice to the other party, terminate this Agreement and any license granted hereunder at any time and for any reason, including nonpayment or other material breach that is not cured within thirty (30) days following written notice thereof.

Within ten (10) days after the date of termination, Licensee will cease use of the Software and Third Party Software and return, or at Elster's direction, destroy all originals and copies, in whole or in part and in any form, of any Software or other Elster furnished documentation in the Licensee's possession, and will certify to the foregoing to Elster in writing.

#### **16 GOVERNMENT REGULATIONS**

The Software and Third Party Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure of the Software, Third Party Software or Documentation by any department or agency of the federal government is subject to restriction as set forth in subparagraph (b)(3) of the Right in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. For purposes thereof, "Contractor" is Elster Solutions, LLC, 208 S. Rogers Lane, Raleigh, NC 27610.

Licensee shall not export or transmit the Software, Third Party Software, or any part thereof, directly or indirectly, to any restricted countries or in any manner that would violate the Export Administration Act of 1979, as amended, or any other United States laws and regulations as shall from time to time govern the license and delivery of technology abroad by persons subject to United States law.

#### **17 NOTICES**

Any notice required or permitted hereunder shall be in writing and shall be deemed to have been delivered on the date evidenced by receipt obtained upon transmission by fax, upon delivery by commercial delivery service, or upon delivery by certified or registered mail to a party's address or facsimile number shown below:

If to Licensee

City of Santa Clara  
Silicon Valley Power  
Director of Electric Utility  
1500 Warburton Avenue  
Santa Clara, CA 95050

If to Elster

Elster Solutions, LLC  
208 S Rogers Lane  
Raleigh, NC 27610  
ATTN: Contracts Department  
ContractsDept@us.elster.com

Either Party may at any time change its respective address or point of contact by sending written notice of the change to the other Party.

**18 MISCELLANEOUS**

This Agreement, including the Appendices attached hereto, contains the entire understanding of the parties with respect to the matters contained herein. This Agreement may not be modified except by writing, executed by authorized representatives of Licensor and Licensee.

The headings and captions contained herein shall not be considered to be a part hereof for purposes of interpretation or application hereof, but are for convenience only.

Either party's failure to exercise any right under this Agreement shall not constitute a waiver of any other terms or conditions of this Agreement with respect to any other or subsequent breach, nor a waiver by such party of its right at any time thereafter to require exact and strict compliance with the terms hereof.

Third Party Software providers are third party beneficiaries to this Agreement with respect to provisions applicable to Third Party Software. Licensee will be bound by the terms and conditions of use of any Third Party Software provider.

The provisions of Sections 1, 3, 4, 5, 6, 9, 10, 11, 13, 14, 16, and 17 shall survive the cancellation, termination or expiration of this Agreement.

If any provision of this Agreement is held to be illegal, invalid or unenforceable in any respect, the remaining provisions of this Agreement shall remain in full force and effect to the maximum extent possible.

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the choice of law or conflicts of law rules of any jurisdiction. The parties agree that the Uniform Computer Information Transactions Act shall not apply to the terms or interpretation of this Agreement. The parties further agree that all causes of action against either party under this Agreement shall be brought solely and exclusively in the State Courts of the State of California, or the U.S. District Court of California.

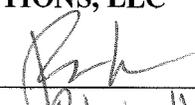
Licensee acknowledges that this Agreement constitutes a legal agreement that obligates certain payments as noted herein. Should Licensee's business processes require that one or more purchase orders be issued to provide for payments obligated by this Agreement, Licensee acknowledges that such purchase orders will be issued.

**INTENDING TO BE LEGALLY BOUND, THE PARTIES HAVE AUTHORIZED THEIR REPRESENTATIVES TO EXECUTE THIS AGREEMENT AS OF THE "EFFECTIVE DATE" FIRST WRITTEN ABOVE.**

**CITY OF SANTA CLARA**

By \_\_\_\_\_  
Printed name Julio J. Fuentes  
Title City Manager  
Date \_\_\_\_\_

**ELSTER SOLUTIONS, LLC**

By   
Printed name Robert Aeno  
Title VP contracts and proposals  
Date 6/2/2014

## APPENDIX B-1

### SOFTWARE / LICENSE TERMS

The EnergyAxis system is an Integrated System and a comprehensive smart grid solution which includes network management software, network communications technology (excluding WAN), field network devices, field management tools and value-added smart grid applications and consumer devices.

It is the Licensee's responsibility to acquire and maintain the Integrated System. Licensor will specify the third party software and versions thereof (operating system, software products, etc.) required for each Software release. Specific hardware requirements must be agreed to with Licensor based on the size of the AMI network deployment.

The EnergyAxis system configuration depends on the size and needs of the Licensee

The EnergyAxis system uses an embedded database. The Licensee is not granted direct access to the database except per the documented public interfaces specified in the Documentation.

Future changes in the Software or the Third-Party Software or running of other Third-Party Software Programs not tested or provided by Licensor may impact system performance for an Integrated System.

The potential number of authorized users is unlimited with each instance of the EA\_MS Software subject to the Elster fee schedule.

Required system configurations for various EnergyAxis system tiers are available at the EnergyAxis Community website at <http://energyaxis.ipbhost.com> under Downloads > Elster Solution Updates > Hardware Recommendations - EnergyAxis Management System

Licensor nor any provider of Third Party Software embedded in the Software will be liable for any damages, whether direct, indirect, incidental, or consequential arising from Licensee's use of the Software.

Third Party Software providers are third party beneficiaries to this Agreement with respect to provisions applicable to Third Party Software. Licensee will be bound by the terms and conditions of use of any Third Party Software provider

## APPENDIX B-2

### SYSTEM LICENSE STRUCTURE

#### 1 LICENSE FEE STRUCTURE

License fees are determined in part by the EnergyAxis system tier. The base license fee includes the cost of firmware, middleware, database, EA\_MS troubleshooting tools and other third party application software built into the EA\_MS application. License allows Licensee to install EA\_MS application in a virtual environment if desired at no additional license fee. Virtual environment maintenance fees may apply. Consult the EnergyAxis System Maintenance Agreement.

Customer requested additions to the standard configuration, optional modules, and add on services are available for additional fees. Overall fee structure and corresponding fees are detailed in Appendix B-3. The licensee's specific application and associated fees are defined in Appendix B-4.

##### 1.1 Standard Configuration

Includes the EnergyAxis EA\_MS software with support for the following AMI / AMR measurement, sensing, or control devices:

- a) EnergyAxis residential electric endpoints
- b) EnergyAxis commercial or industrial electric endpoints
- c) EnergyAxis Gatekeeper devices that act as concentrators within the EnergyAxis networks
- d) EnergyAxis repeater devices
- e) EnergyAxis AGI nodes

##### 1.2 EnergyAxis License Tiers

Three license tiers are available based on the size of deployment.

- a) **Premier**  
The total number of AMI / AMR measurement sensing or control devices shall not exceed 200,000. Licensor recommends that Licensee at a minimum purchase and configure a backup system and a test system. The test system will enable integration testing without compromising the integrity of the production system.
- b) **Advanced**  
The total number of AMI / AMR measurement, sensing, or control devices shall not exceed 1,000,000. Base licensee fee for this tier includes 1 production, 1 backup and 1 test system.
- c) **Enterprise**  
The total number of AMI / AMR measurement, sensing, or control devices exceed 1,000,000. Base license fee for this tier includes 1 production, 1 backup and 3 test systems

A onetime license fee applies to all AMI / AMR measurement, sensing, or control devices in each operational EA\_MS System beyond 20,000 based on bundle pricing in Appendix B-3. Per device license fees do not apply to non-operational Backup or Test systems. Backup and Test license fees are included in the listed license fees for each tier for the contracted number of AMI / AMR measurement, sensing, or control devices. Subsequent purchases of device licenses are available in 2,500 device bundles in the Premier tier and 10,000 device bundles in Advanced/Enterprise tiers.

#### 2 ADDITIONAL FEES

##### 2.1 Water Support

A onetime license fee applies for configuration of water functionality for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems. This fee includes site license for one instance of Route Manager. If Elster is required to install multiple

instances of Route Manager, additional license, installation service and support fees will apply. An upgrade fee for Water support applies when upgrading to a higher license tier.

## **2.2 Gas Support**

A onetime license fee applies for configuration of gas functionality for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems. This fee includes site license for one instance of Route Manager. If Elster is required to install multiple instances of Route Manager, additional license, installation service and support fees will apply. An upgrade fee for Gas support applies when upgrading to a higher license tier.

## **2.3 Third Party Meter Support**

A onetime license fee applies for configuration of approved third party meters for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems

## **2.4 Backup or Test System License Fee**

Additional backup and test systems desired by the Licensee will incur incremental license fees, and the Licensor requires each back up or test system to be an identical replica of the production system. An upgrade fee for each backup/test system applies when upgrading to a higher license tier.

## **2.5 Optional Functionality**

The base license fee covers usage of the system for acquisition of metering data and two way metering operations such as on demand reads, service connects, disconnects to residential electric meters. Additional fees apply for optional modules and add on- services listed below.

- a) Home Area Network (HAN): A onetime license fee applies for configuration of HAN functionality for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems.
- b) Home Area Network / Demand Response Per Device Fee: A onetime fee applies to home area network / demand response devices in each operational EA\_MS system based on the sliding scale in Appendix B-3. The per device fee includes any Licensor-manufactured or third party device approved by Licensor for use in a Home Area Network / Demand Response scenario within the EnergyAxis network. The per device fee does not apply to non-operational Backup or Test systems.
- c) Distribution System / Distribution Automation: A onetime fee applies for configuration of distribution system / distribution automation functionality for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems.
- d) Distribution System / Distribution Automation Per Device Fee: A onetime fee applies to distribution system / distribution automation devices in each operational EA\_MS system based on the sliding scale in Appendix B-3. The per device fee includes any Licensor-manufactured or third party device approved by Licensor for use in a distribution system / distribution automation scenario within the EnergyAxis networks. The per device fee does not apply to non-operational Backup or Test systems.
- e) Standalone Devices / Direct Wide Area Network (WAN) connection: A onetime fee applies for configuration of standalone devices / direct WAN connection for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems.
- f) Optional Features and Interfaces: Licensor reserves the right to commercialize new features, endpoints and interfaces as optional add-ons to the base system features. Additional license fees may apply unless the feature or interface was part of the contractual scope jointly agreed between Licensor and the Licensee.

- g) AxisDetect: EnergyAxis provides application components that provide new features as an optional add-on to the base system. A onetime fee applies for configuration and activation of the AxisDetect application. AxisDetect presents the geospatial topology of an AMI network and provides graphical network management functions to client end-users. An upgrade fee applies when Licensee moves across tiers. License fees include GoogleMaps license.
- h) Secure Tunnel Server: The IP Axis Link Secure Tunnel Server is a software application which provides communication services used by distribution automation applications (i.e. SCADA) to manage distribution automation field devices.
- i) VM support

## 2.6 Upgrades

An additional license fee applies to an upgrade to a higher tier, which is mandatory when the total number of AMI / AMR measurement, sensing, or control devices exceeds the limit associated with the current tier.

## 2.7 Additional System Expansions and Optional Project Implementation Services

System expansions and project implementation services to deploy the EnergyAxis system can be provided on time and material (T&M) basis. Current rates and additional terms that apply are listed in Appendix C-2 of the System Maintenance Agreement.

### Notes:

- a) All software license fees are in US Dollars.
- b) Licensor reserves the right to periodically audit the user's EA\_MS System to determine the current number and types of meters or control points deployed for the purposes of billing an additional per point license fees. No refund is allowed for a reduced number of points determined by a given audit.
- c) Licensor does not limit the number of users of its EA\_MS software. If Licensor provides the server hardware, the Licensee is limited by the defaults set by the OS vendor. If Licensee provides the hardware or desires system accessibility for more users, the Licensee is responsible for obtaining the Microsoft server license or license expansion, including any additional fees for the desired number of CALs (Client access licenses).
- d) The Licensor provides as a software option, a pre-installed virtual machine image (VM) of the EnergyAxis Management System (EA\_MS) application. If the Licensee selects this option, then the Licensor will not be responsible for any of the licensing costs, the support services and/or the maintenance services associated with the vendor host operating system contained in the virtual machine image(s) provided by the Licensor. In addition, the Licensor will not be responsible for any of the licensing costs, the support services, and/or the maintenance services associated with Licensee's virtual machine hosting platform.
- e) Licensor reserves the right to modify fees and/or terms associated with GoogleMaps if Google modifies similar fees and/or terms conveyed to Licensor.

**APPENDIX B-3**

**PREMIER CONFIGURATION LIST LICENSE FEE SUMMARY**

<b>License Fees</b>	<b>Qty</b>	<b>List Price</b>
<b>Base System</b>		
Base License Fee: EnergyAxis Premier Includes 20,000 AMI/AMR devices and site license for one instance of EA Inspector Manager and EA Inspector. Additional license fees will apply for AMI/AMR devices exceeding 20,000		\$75,000
Incremental AMI/AMR device license fees (per 2,500 device bundle)		\$5,500
Backup or Test System License Fee	each	\$27,000
Axis Detect License fee		\$15,000
Stand-alone device / Direct Wide Area Network (WAN) connection		\$5,000
Third Party Meter Inclusion (per meter type)		\$5,000
<b>Water</b>		
Water Module Includes site license for one instance of Route Manager		\$10,000
Site license for additional instance of Route Manager	each	\$2,400
<b>Gas</b>		
Gas Module Includes site license for one instance of Route Manager		\$10,000
Site license for additional instance of Route Manager	each	\$2,400
<b>DR/HAN</b>		
Home Area Network (HAN) Base License		\$10,000
DR/HAN Per device fee (qty 1 – 500,000)		\$1.00
DR/HAN Per device fee (qty 500,000+)		\$0.75
<b>DA</b>		
Distribution Automation (DA) Base License		\$10,000
DA Per device fee (qty 1 – 50,000)		\$2.00
DA Per device fee (qty 50,000+)		\$1.50
<b>Secure Tunnel Server (License depends on # of IP Axis Link Gateways)</b>		
0-50 IP Axis Link Gateways	each	\$25,000
51-200 IP Axis Link Gateways	each	\$35,000
201-500 IP Axis Link Gateways	each	\$50,000

**APPENDIX B-4**

**SYSTEM LICENSE FEES SUMMARY**

This appendix summarizes the software, endpoints, additional modules and functionality Licensor provides to the Licensee at the time of the original purchase; and/or as amended to reflect any changes to the License configuration after the initial purchase.

**EnergyAxis Premiere License and Maintenance Fee Calculation**

<b>EnergyAxis System License Fees</b>	<b>Qty</b>	<b>List Price</b>	<b>Total</b>	<b>Discount Price</b>	<b>Ext. Price</b>
<b>Base System</b>					
EnergyAxis Premier	1	\$75,000.00	\$75,000.00	\$35,000.00	\$35,000.00
Additional Backup / Test System	2	\$27,000.00	\$54,000.00	\$15,000.00	\$30,000.00
Virtualization	1	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
Incremental AMI/AMR endpoint license fees (per 2,500 unit bundle)	1	\$5,500.00	\$5,500.00	\$906.00	\$906.00
Axis Detect		\$15,000.00	\$0.00	\$15,000.00	\$0.00
Direct Wide Area Network (WAN) connection support	1	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
Third Party Meter Support		\$5,000.00	\$0.00	\$5,000.00	\$0.00
<b>Water</b>					
Water Module Support (includes Site License for Route Manager)	1	\$10,000.00	\$10,000.00	\$6,000.00	\$6,000.00
<b>Gas</b>					
Gas Module Support (includes Site License for Route Manager)		\$10,000.00	\$0.00	\$10,000.00	\$0.00
<b>Demand Response (DR) / Home Area Network (HAN)</b>					
Base License Fee: Home Area Network (HAN) Support	1	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00
DR Element / Device Fee (1 - 500,000)		\$1.00	\$0.00	\$0.75	\$0.00
DR Element / Device Fee (500,000+)		\$0.75	\$0.00	\$0.75	\$0.00
<b>Distribution Automation (DA)</b>					
Base License Fee: Distribution Automation (DA) Support	1	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00
DA Element / Device Fee (1 - 50,000)		\$2.00	\$0.00	\$1.50	\$0.00
DA Element / Device Fee (50,000+)		\$1.50	\$0.00	\$1.50	\$0.00
Secure Tunnel Server Gateways (0 - 50)		\$25,000.00	\$0.00	\$25,000.00	\$0.00
Secure Tunnel Server Gateways (51 - 200)		\$35,000.00	\$0.00	\$35,000.00	\$0.00
Secure Tunnel Server Gateways (200+)		\$50,000.00	\$0.00	\$50,000.00	\$0.00
<b>Custom SW Development / Modules / Interfaces / Stand Alone</b>					
Route Manager	1	\$0.00	\$0.00	\$1,100.00	\$1,100.00
EA_Inspector Manager	1	\$0.00	\$0.00	\$1,100.00	\$1,100.00
<b>Subtotal - AMI Software License Fees (SLA)</b>			<b>\$179,500.00</b>		<b>\$99,106.00</b>
<i>Credit for previously paid license fees</i>					<i>(\$99,106.00)</i>
<b>Total - AMI Software License Fees (SLA)</b>					<b>\$0.00</b>

<b>EnergyAxis System Maintenance Fees</b>	<b>Qty</b>	<b>List Price</b>	<b>Total</b>		
<b>Base System</b>					
Standard Support: 9x5	20%	1	\$35,900.00	\$35,900.00	
Standard Support: 12x7	27%		\$48,465.00	\$0.00	
Standard Support: 24x7	34%		\$61,030.00	\$0.00	
Optional On-Call Emergency Support	5%		\$8,975.00	\$0.00	
Equipment Maintenance Fee: EA_Inspector / EA_Installer Handheld		6	\$895.00	\$5,370.00	
Annual Increase Provision	4%	1	\$41,270.00	\$1,650.80	
<b>Total - EnergyAxis System Maintenance (SMA)</b>				<b>\$42,920.80</b>	

## EXHIBIT C

### ENERGYAXIS® MANAGEMENT SYSTEM (EA\_MS)

#### SYSTEM MAINTENANCE AGREEMENT

THIS SYSTEM MAINTENANCE AGREEMENT (this “Agreement”) is made and entered into effective this \_\_\_ day of \_\_\_\_\_, 2014 (“Effective Date”) by and between Elster Solutions, LLC, a Delaware limited liability company, with offices at 208 S. Rogers Lane, Raleigh, NC 27610, USA, (“Elster” or “Licensor”), and City of Santa Clara California, a chartered California municipal corporation, with offices at 1500 Warburton Avenue, Santa Clara, CA 95050 (“City” or “Licensee”).

Licensor will provide system maintenance services (“System Maintenance Services”) for the Program licensed to Licensee pursuant to that certain EnergyAxis Management System License Agreement (the “System License Agreement”) executed between the parties and described herein and in Appendix I of the System License Agreement. Capitalized terms in this System Maintenance Agreement not otherwise defined shall have the meaning set forth in the System License Agreement. The terms and conditions of the System License Agreement shall govern Licensee’s use of the Program.

#### 1 DEFINITIONS

- Casual Consulting** Includes telephone and email system support that does not require access to the production, test or backup system, and is limited to information readily accessible to tech support personnel, such as operation manuals and similar documentation including:
- a) General support regarding proper utilization of the applicable Program
  - b) Assistance with Licensor’s user documentation and technical manuals provided with the Program
  - c) Guidance on the Program’s intended, normal use
- Technical Support** Includes support that may require more experienced technical support personnel, system analysis, and access to the production, test or backup system including:
- a) Technical assistance specific to the operation of the Program
  - b) Diagnosis and troubleshooting
  - c) Attempted replication of errors reported by Licensee. Licensor shall use commercially reasonable efforts to resolve replicated errors by providing: (1) a reasonable work-around; (2) a change to the Program code; or (3) an action plan for resolving the error.
  - d) Remote installation of the applicable Program and Software/Firmware Upgrades
  - e) Over the Air (OTA) upgrades of EnergyAxis network devices, meters and nodes, or upgradeable devices.
- Error** For purposes of this System Maintenance Agreement, an “error” shall mean either:

- a) a material nonconformity to the then-current applicable specifications; or
- b) a defect which materially impairs use.

## 2 TERM AND RENEWAL

The term of this System Maintenance Agreement shall begin on the Effective Date and shall continue until December 31st of the then current calendar year (the "Initial Term"). Thereafter, this System Maintenance Agreement shall automatically renew for successive one-year terms (each a "Renewal Term") unless the Agreement is terminated by either party by written notice to the other party sixty (60) days prior to the end of the then-current term with such termination to be effective upon completion of such term.

To ensure that the Agreement meets the needs and expectations of Licensor and Licensee, the parties agree in good faith to review this Agreement not less than annually and if warranted and mutually agreed upon, to make adjustments in the Agreement, including prices, to be consistent with evolving industry practices and the needs of the parties.

If for any reason this Agreement should lapse, the Licensee may reinstate lapsed support and maintenance upon payment of 150% of the support and maintenance fees in arrears, and all costs invoiced by Licensor on a time and materials basis for updating Licensee's Program to the then-current version.

## 3 SUPPORT SERVICES

System Maintenance Services shall consist of the following:

### 3.1 Software Updates

Software Updates include:

- a) **Major Release** – Software Upgrade that includes significant functional changes. Major Releases are identified by a change in the whole number of the Application version number (i.e., 2.0.0.0 to 3.0.0.0). Software upgrade fees will apply to Major Releases.
- b) **Minor Release** – Software Update that includes small functional changes. Minor releases are identified by a change in the first decimal of the Application version number (i.e., 2.2.0.0 to 2.3.0.0). Minor releases occur as needed to meet individual product market needs.
- c) **Maintenance Release** - Software Update that includes fixes for known issues or operational problems which cause the application not to perform as designed. Maintenance Upgrades are typically identified by a change in the second decimal of the Application version number (i.e., 2.2.2.0 to 2.2.3.0). Maintenance Upgrades are released as needed, typically 3 to 6 months apart.
- d) **Patch** – Software Patches include fixes for a known issue or operational problem which cause the application not to perform as designed. Patches are identified by a change in the third decimal of the Application version number (i.e., 2.2.2.2 to 2.2.2.3). Patches are released as needed. Patches target only portions of the software files, and do not require a full software upgrade.

Software Updates include distribution of one (1) copy of any corresponding standard documentation updates on CD or DVD.

Updates apply to the program and modules originally licensed.

Licensor will specify any Third Party Software that Licensee is required to have for each Software Upgrade.

To the extent Software Updates contain new Third Party Software, Licensee agrees to comply with all license terms associated with such software. Licensor shall notify Licensee of new Third Party Software when Software Updates are distributed, and Licensee's installation and use of Software

Updates shall be deemed Licensee's acceptance of Third Party Software license terms, and Licensee's agreement to be bound by such license terms. To the extent Third Party Software license terms are inconsistent with the terms of this System License Agreement, Third Party Software license terms shall control with respect to the Third Party Software.

### 3.2 Firmware Updates

Firmware updates include gatekeeper and endpoint node updates (REX, A3 NIC, water module, gas module, etc.) for application firmware and/or radio firmware, and will be applied by Elster as required. Firmware Updates are categorized as:

- a) **Firmware Functional Upgrades** - Firmware Functional Upgrades include significant functional changes. Functional upgrades are typically identified by a change in the first number of the firmware version number (e.g., 2.0 to 3.0). Firmware Functional Upgrades may incur an upgrade fee and/or hardware change as determined by Elster
- b) **Firmware Maintenance Updates** - Firmware Maintenance Updates are primarily bug fixes. Minor functionality changes may also be included. Maintenance Updates are typically identified by a change in the second decimal of the firmware version number (e.g., 2.0 to 2.1).

### 3.3 System Support

System support is available for the latest commercially released version of the Program (N), and for the previous commercially released version of the program (N-1). With each new release of the Program, the version purchased by the Licensee will age by (-1).

Versions N and N-1 are fully supported. Version N-2 signifies the Program has reached end of life, and system support will be limited to Severity 1 issues defined in Appendix C-3 while allowing Licensee time to complete Program upgrades. Version N-3 signifies the Program has reached end of life support, and thus no longer supported by the Licensor. Licensee must upgrade its Program to continue system support.

The parties may amend this System Maintenance Agreement to add additional Modules licensed by Licensee, subject to additional System Maintenance Fees and terms. Licensor reserves the right to commercialize uniquely new features, endpoints and interfaces as optional add-ons to its base system features. Additional system maintenance fees may apply unless the feature or interface is part of a contractual scope jointly agreed to by the parties.

Support and maintenance of third-party software, such as the computer operating system, must be obtained from the supplier and is the responsibility of the Licensee. Licensor will provide support for embedded software within the EA\_MS Program, subject to third-party support terms to which Elster is party.

Licensor offers the following levels of Support.

- a) **9 × 5 Support**  
Includes Casual Consulting and Technical Support Monday through Friday from 8:00 AM to 5:00 PM, Eastern Standard Time or Eastern Daylight time as applicable, except for Licensor holidays.
- b) **12 × 7 Support**  
Includes Casual Consulting and Technical Support seven days a week from 8:00 AM to 8:00 PM, Eastern Standard Time or Eastern Daylight time as applicable, including Licensor holidays. Alternate hours are available for an additional fee.
- c) **24 × 7 Support**  
Includes Casual Consulting and Technical Support from 8:00 AM to 8:00 PM, and technical support 8:00 PM – 8:00 AM Eastern Standard Time or Eastern Daylight time as applicable, including Licensor holidays.

d) **Emergency On-Call Support**

Available for a Severity 1 issues, as defined in Appendix C-3, that occur outside of contracted support hours for customers on 9×5 or 12×7 support plans. Emergency support excludes upgrades and other requests made solely for the business convenience of the Licensee.

Emergency on call support is available 7 days a week, including Licensor holidays.

Emergency calls are directed to a Licensor support representative. If the support representative is unavailable to accept the call, callers will be directed to voice mail, and Licensor's support representative will return the call within one (1) hour of receipt. Returned calls will be charged per fees described in Appendix C-1.

Alternate hours are available for an additional fee. Unanticipated office closures due to conditions of force majeure or other unforeseen events that affect the Licensor's availability schedule will be communicated to the Licensee as soon as reasonably possible.

Licensor shall use commercially reasonable efforts to resolve replicated errors by providing: (1) reasonable work arounds; (2) a change to the Program code; or (3) an action plan for resolving the error. Case resolution and response times will depend on the severity of the issue as defined in Appendix C-3.

### 3.4 Selected Support Level

Licensee must indicate the support level selected for the Initial Term of the System Maintenance Agreement by placing an "X" in the appropriate box of the "Selected Support Level" table which follows the signature block of this Agreement. To change support levels, Licensee must request such change in writing no later than October 1st of the then-current year. Licensor will approve or reject the request in writing no later than December 1st. If approved, Licensor will invoice Licensee for the new level of support, payable by December 31st of the then current year, and all approved changes will be effective as of January 1st of the next calendar year. Any change in support levels will be added as an amendment to the Selected Support Level table and to Appendix C-4.

### 3.5 Support Contact Information

Casual Consulting and Technical Support are available via:

a) **Toll-Free Number with Customer Specific PIN**

The EnergyAxis Software Support line, 866-554-9007 or +919-250-5717, is available 24 hours a day 7 days a week. If a call is received during Licensee's support hours and a support engineer is not available to take the call, the call will be routed to a voice mailbox. The next available support engineer will return voice messages. Calls received outside of Licensee support hours will be automatically routed to a voice mailbox. Messages received outside support hours will be returned the following support day.

b) **Email**

Email may be sent to [EnergyAxis.Support@us.elster.com](mailto:EnergyAxis.Support@us.elster.com). Emails sent to this address are automatically routed to support engineers who will respond during Licensee's support hours. Emails received outside of Licensee support hours will be returned the following support day.

c) **Web Portal**

The Elster Support System (ESS) User Portal (<http://ElsterSupport.com>) can be accessed using individual login IDs provided by Technical Support. The User Portal is available 24 hours a day, 7 days a week.

### 3.6 On-Site Support Services

Prior to furnishing on-site support, the Licensee must present the Licensor with a written request for on-site support services, and the terms and nature of the services to be provided must be defined in a written Scope of Work signed by the parties

System Support as detailed in Section 3.3 does not include On-Site Support. For purposes of this Agreement, "On Site Support" shall occur when:

- a) Licensor is requested by Licensee to arrive at a Licensee location to provide support and/or consultation services;
- b) Licensor is contacted outside of contracted support hours and must, following written approval from the Licensee, travel to another location (including Licensor's site) to complete the required services; and
- c) Licensor is contacted during normal contracted support hours and must, following written approval from the Licensee, travel to a separate location to complete the required services.

Any travel to Licensee's site requires prior approval of Licensor management. Any On-Site Support provided at the request or approval of Licensee shall be billed on an hourly basis at the then-current labor rates reflected in Appendix C-2, plus reasonable travel and living expenses including a 10% administrative fee. For travel outside the continental United States, travel time to site is also charged on an hourly basis per rates in Appendix C-2. On-Site Support services will be provided under Licensor's then-current standard service terms.

### **3.7 Other Available Services**

The following services are not provided under this System Maintenance Agreement but are available for an additional fee:

- a) Distribution or maintenance of Program Modules not listed in Appendix B-1 of the System License Agreement
- b) Interpretation of Program results
- c) Supply of typical or representative data
- d) Assistance with computer hardware and peripheral questions not related to Program use
- e) Data debugging and/or correcting
- f) Services necessitated as a result of any cause other than ordinary and proper use of the Program by Licensee, including but not limited to neglect, abuse, unauthorized maintenance, or electrical, fire, water, or other damage
- g) Services resulting from the failure of Licensee to provide a suitable environment for the Program or associated equipment
- h) Services relating to problems caused by modifications in any version of the Program not made or authorized by Licensor
- i) Services resulting from the combination of the Program with other programming or equipment, and to the extent such combination has not been approved in writing by Licensor.
- j) Services relating to problems caused by communications facilities and infrastructure (telephone, etc.)

### **3.8 Resolution of Helpdesk Issues**

Licensor's Technical Support will contact Licensee to ensure that a problem or issue has been resolved to Licensee's satisfaction before closing the problem report. In instances where Licensor has resolved the problem to Licensor's satisfaction but has been unable to confirm that the supplied solution is satisfactory to Licensee, Licensor will assume such solution to have been satisfactory and close the case after thirty (30) working days unless Licensee notifies Licensor to the contrary.

## **4 FEES**

System Maintenance Fees are calculated based on the calendar year. The annual System Maintenance Fee calculation guidelines are set forth in Appendix C-1, attached hereto. To facilitate easy lookup, Appendix C-4 summarizes the then-current applicable maintenance fees incorporating maintenance fees for the original purchase of the program and all amendments due to incremental modules or services purchased

thereof. Upon the Effective Date of this Agreement or on a date as specified in an associated system contract, Licensee shall pay the then-current annual System Maintenance Fee, pro-rated based on the number of months remaining in the calendar year from the Effective Date of this Agreement. Thereafter, annual System Maintenance Fees will be invoiced in October of each year, with payment for the next year's System Maintenance due no later than December 31 of the current year. On Site Support services and any other Additional Services will be billed at the end of the month in which the services are provided. Fees for Modules licensed separately by Licensee shall be charged at purchase. Except as specifically set forth in this System Maintenance Agreement, all invoices are due net thirty (30) days from the date of invoice. Licensor will assess a late payment charge on any amount which remains unpaid after the due date, computed at the rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law on the unpaid amount for each month that such amount remains unpaid. This late payment charge shall be in addition to any other remedies Licensor may have at law or in equity. All System Maintenance Fees are in US dollars.

## **5 TERMINATION**

Either party may upon written notice to the other party, terminate this Agreement and any license granted hereunder at any time and for any reason, including nonpayment or other material breach that is not cured within thirty (30) days following written notice thereof.

Within ten (10) days after the date of termination, Licensee will cease use of the Software and Third Party Software and return, or at Elster's direction, destroy all originals and copies, in whole or in part and in any form, of any Software or other Elster furnished documentation in the Licensee's possession, and will certify to the foregoing to Elster in writing

## **6 LIMITATION OF LIABILITY**

The maximum liability of Licensor for any damages sustained by the Licensee under this System Maintenance Agreement shall in no circumstance exceed the amount of the annual maintenance fee payable by the Licensee to the Licensor for the then-current year. Neither Licensor nor its licensors of Third Party Software shall in any event be liable to Licensee for loss of revenue, profit, anticipated profit or indirect, incidental, special or consequential damages, including but not limited to, any losses to Licensee resulting from lost computer time or the destruction or damage of records, or any claims or demands made against the Licensee by a third party.

## **7 WARRANTY DISCLAIMER**

Except as expressly provided herein, the Licensor does not make any representations or warranties under this System Maintenance Agreement whatsoever whether statutory, expressed or implied, including but not limited to warranties of merchantability and fitness for a particular purpose, and any warranties arising from course of dealing or usage of trade. No action, regardless of form, arising out of the transactions under this System Maintenance Agreement may be brought by Licensee more than two (2) years after the cause of action has accrued.

## **8 LICENSEE OBLIGATIONS**

During the term of this System Maintenance Agreement, Licensee shall:

- a) Obtain, install and maintain, and provide at no cost to Licensor, direct FTP and fast VPN access (access via Citrix, WebEx, VNC, etc. not acceptable) to all meters, gatekeepers, and every production, backup and test Management System servers under support to allow Licensor to perform System Maintenance for the Program from Licensor's facilities in North Carolina. Reasonable allowance will be made to adhere to Licensee's corporate security administration and monitoring policies. However, during periods when Licensor has access to

the Management System servers, access will be at the administrator level. Reasonable allowances will be made to ensure that Licensee has monitoring abilities for all activities performed on Licensee's systems. No actions will be taken on any Licensee system without Licensee's permission.

- b) Allow Licensor to install as part of its standard support a Troubleshooting Tool with daily access to Licensee's secure FTP site to transfer data, thus enabling Licensor's support personnel to perform maintenance on the Licensee system effectively. Without use of the Troubleshooting Tool response and resolution times may be affected.
- c) Ensure that only personnel properly trained in the operation and use of the Program and its associated equipment call Licensor for direct phone support and that such personnel have sufficient access and computer time when using such service in order to implement the corrections suggested by Licensor.
- d) Allow Licensor to install all Software Upgrades within 60 days of delivery of same; provided, however, that Licensee may delay a Software Upgrade in the event of force majeure or in the event of delays beyond the control of Licensee or Licensor in corollary upgrades to third-party software or equipment. Licensee shall install or allow the install of the Software Upgrade immediately upon the cessation of the cause of delay. Reasonable delays will be accommodated to avoid impacts on Licensee's business operations, resource availability and/or IT policy compliance.
- e) Perform and install all diagnostic activities and routines recommended by Licensor before requesting On-Site Support.
- f) Ensure that all installed Elster Products (meters, gatekeepers, IP AxisLink, etc.) that have Longitude and Latitude attributes contain the correct geographic coordinates. Troubleshooting will not be performed by Elster for devices that do not have corresponding geographic information in the Energy Axis Management System.
- g) Ensure a proper Program environment is maintained and that Licensee's personnel who have access to the Program are properly trained in the operation and usage of the Program and the associated equipment.
- h) Provide adequate safeguards for the protection of Licensee's data and files while System Maintenance is being performed on the Program.
- i) Issue any purchase orders that might be required by Licensee's business processes to honor the payments obligated by this Agreement.
- j) Maintain the Management System servers consistent with industry standards on end of life planning for server systems. Licensor's general recommendation is that Licensees plan for server replacements on a 3 year cycle to consider hardware and OS obsolescence and to provide latest generation servers to support new features provided in Program releases provided as a part of this Agreement.
- k) Maintain the Supported System and the operating system software defined in Appendix B-1 of the System License Agreement. Licensor will specify the third party software and version thereof required for each Software Upgrade or release.
- l) Licensee shall monitor overall system performance such as disk space, CPU, memory usage, etc
- m) Prevent the unauthorized use or copy of binary data used in virtual deployments of EA\_MS systems..

## 9 DATA BACKUP

Licensee shall be solely responsible to ensure that all of its files and data are adequately duplicated or documented, and Licensor shall in no way be responsible for Licensee's failure to do so, nor for the costs or expenses of reconstructing data which are lost, destroyed or otherwise damaged or rendered useless

during the course of or as the result of the performance of any services under this System Maintenance Agreement.

## **10 CONFIDENTIALITY**

Each Party (the "Receiving Party") shall maintain in strict confidence any and all proprietary and confidential information about the business, operations or customers of the other Party or any of their affiliates which it acquires in any form from the other Party (the "Disclosing Party"), including without limitation the terms of this Agreement, or any other information disclosed by the Disclosing Party and identified by Disclosing Party as confidential ("Confidential Information"). The Receiving Party will not disclose such Confidential Information with any third parties without the Disclosing Party's prior written consent. The Receiving Party further agrees to use its best efforts and to take all reasonable precautions to maintain strict confidentiality with respect to the Confidential Information and to prevent disclosure thereof to persons other than its employees, accountants, affiliates, attorneys, bankers, consultants, insurance advisors and carriers, and agents who need access to such information to carry out a Party's obligations under this Agreement, and the Receiving Party shall be liable for the compliance by such third parties with the confidentiality obligations hereof.

The Receiving Party shall not use, or permit the use of, the Confidential Information for any purpose other than performing this Agreement and exercising the rights granted under this Agreement. The Receiving Party acknowledges that the rights of the Disclosing Party in the Confidential Information are unique, and accordingly the Disclosing Party shall, in addition to such other remedies as may be available to it at law or in equity, have the right to enforce its rights hereunder by an action for injunctive relief and specific performance to the full extent permitted by law. Upon termination of this Agreement and the written request of the Disclosing Party, the Receiving Party shall return or destroy all copies of all Confidential Information to the Disclosing Party. To the extent it would be unreasonably costly or cumbersome, neither Party shall be required to delete intangible copies of Confidential Information that are made as part of such Party's routine systems back-up procedures.

Notwithstanding the foregoing, Licensor shall be entitled to disclose to a third party licensor of any Third Party Software (a) the fact of this Agreement (including the identity of Licensee) and (b) audit results with respect to Licensee's compliance with the Third Party Software terms of this Agreement. The provisions of this Article shall survive any termination of this Agreement or of any license granted hereunder.

## **11 FORCE MAJEURE**

Neither party shall be liable for loss, damage, or delay nor be in default for failure to perform (other than payment obligations) due to causes beyond its reasonable control, including but not limited to acts of God, acts of war or terrorism, fire, flood, strike, labor disputes, acts or omissions of any governmental authority or of the other party, compliance with government regulations, embargos, fuel or energy shortage, delays in transportation, inability to obtain necessary labor, materials, or services from usual sources, or from defects or delays in performance of a party's suppliers or subcontractors due to such causes. In the event of a delay by either party due to the foregoing, the date of delivery or time for completion shall be extended by a period of time reasonably necessary to overcome the delay.

## **12 ASSIGNMENT**

Neither this Agreement nor any interest under this Agreement shall be assigned by Client without the prior written consent of Elster, except that either Party may assign this Agreement without prior consent in connection with a sale of controlling interest in the capital stock or other equity interest of such Party, a sale of all or substantially all of the assets of such Party, or pursuant to a merger or consolidation. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

### 13 NOTICES

Any notice required or permitted hereunder shall be in writing and shall be deemed to have been delivered on the date evidenced by receipt obtained upon transmission by fax, upon delivery by commercial delivery service, or upon delivery by certified or registered mail to a party's address or facsimile number shown below:

#### If to Licensee

City of Santa Clara  
Silicon Valley Power  
Director of Electric Utility  
1500 Warburton Avenue  
Santa Clara, CA 95050

#### If to Elster

Elster Solutions, LLC  
208 S Rogers Lane  
Raleigh, NC 27610  
ATTN: Contracts Department  
ContractsDept@us.elster.com

Either Party may at any time change its respective address or point of contact by sending written notice of the change to the other Party.

### 14 AMENDMENT AND ENFORCEMENT

This System Maintenance Agreement, including the Appendices attached hereto, contain the entire understanding of the parties with respect to the matters herein. This System Maintenance Agreement may not be modified except by writing, executed by authorized representatives of Licensor and Licensee. If any provision hereof is or becomes, at any time or for any reason, unenforceable or invalid, no other provision hereof shall be affected, and the remaining provisions shall continue with the same effect as if such unenforceable or invalid provision shall not have been inserted herein. If Licensee issues a purchase order or other document that purports to define System Maintenance other than as set forth in this System Maintenance Agreement, it is agreed that the terms and conditions of any such purchase order shall have no application or effect, and that the provisions of this System Maintenance Agreement shall continue to control matters related to the provision of System Maintenance. Either party's failure to exercise any right under this System Maintenance Agreement shall not constitute a waiver of any other terms or conditions of this System Maintenance Agreement with respect to any other or subsequent breach, nor a waiver by such party of its right at any time thereafter to require exact and strict compliance with the terms hereof.

### 15 HEADINGS

The headings and captions herein shall not be considered for purposes of interpretation or application, and are furnished for convenience only.

### 16 SURVIVAL

The provisions of Sections 1, 2, 6, 7, 9, 12, and 13 shall survive the cancellation, expiration or termination of this Agreement.

### 17 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the choice of law or conflicts of law rules of any jurisdiction. The Parties agree that all causes of action against either Party under this Agreement shall be brought solely and exclusively in the State Courts of the State of California, or the U.S. District Court for California.

INTENDING TO BE LEGALLY BOUND, THE PARTIES HAVE AUTHORIZED THEIR REPRESENTATIVES TO EXECUTE THIS AGREEMENT AS OF THE "EFFECTIVE DATE" FIRST WRITTEN ABOVE.

CITY OF SANTA CLARA

ELSTER SOLUTIONS, LLC

By \_\_\_\_\_  
Printed name Julio J. Fuentes  
Title City Manager  
Date \_\_\_\_\_

By [Signature]  
Printed name Robert Hines  
Title VP contracts and proposals  
Date 6/2/2014

**SELECTED SUPPORT LEVEL**

<b>Support Level</b>	<b>Description</b>	<b>Support Level Selected (Place an "X" in the appropriate box)</b>
9 × 5	Customer Support Mon-Fri, from 8 AM to 5 PM Eastern Time except designated Licensor holidays*	X
12 × 7	Customer Support 7 days a week, from 8 AM to 8 PM Eastern Time*	
24 × 7	Customer Support 24 hours a day, 365 days a year*	
Optional Emergency on-call	Customer Support from 8 PM to 8 AM Eastern time for customers on 9x5 or 12x7 support for Severity 1 issues	

\* Reference Support Level Services table below for list of services available

**SUPPORT LEVEL SERVICES**

	9x5, 12x7 and 24x7 8 AM to 5 PM Mon-Fri	12x7 and 24x7 8 AM to 8 PM 7 days/week	24x7 8 PM to 8 AM 7 days/week
Severity 1 issues	✓	✓	✓
System upgrades/patches	✓	✓	Not supported during overnight hours
Gatekeeper upgrades	✓	✓	
Severity 2 issues	✓	Not supported during extended hours	
Severity 3 issues	✓		
Meter upgrades	✓		
Managed services	✓		
Casual consulting	✓		
Status updates	✓		
Integration support	✓		

All times Eastern

## APPENDIX C-1

### YEARLY SYSTEM MAINTENANCE AGREEMENT FEES

#### 1 SYSTEM MAINTENANCE FEE FOR EACH OPERATIONAL SYSTEM

The system maintenance fee is structured based on the level of support desired by the Licensee, total system size and optional services purchased by the Licensee. The table below describes the structure for system maintenance fees for the EnergyAxis Management System.

The percent of license fees is determined by the desired support level. Total list license fee includes licenses for all programs, system, modules, endpoints, interfaces and custom integrations purchased by the Licensee as defined in the latest amendment to the Licensor System License Agreement or customer statement of work.

Support Level	Support Fees	Optional Emergency On-call Support
9 × 5	20% of SLA List Fees	5% of SLA List Fees per annum in addition to Standard Support, and per call fee of \$1000 for first hour, \$500/hr for each subsequent hour or part thereof
12 × 7	27% of SLA List Fees	
24 × 7	34% of SLA List Fees	

A support level of 12 × 7 or 24 × 7 is mandatory for Advanced and 24 X 7 for Enterprise tier Licensees, as defined in the EnergyAxis System License Agreement.

It is highly recommended that customers with DA support have 24 X 7 SMA support.

#### 2 FUTURE MODULES AND APPLICATIONS

Additional System Maintenance fees for new modules or applications will be determined at time of purchase.

#### 3 ANNUAL INCREASE PROVISION

Licensor reserves the right to increase the annual SMA fee at the time of annual renewal each year after the 1st complete calendar year by the greater of 4% or the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U) for All Urban Consumers, All Items, U.S. City Average. The CPI-U adjustment rate will be determined by comparing the percentage difference between the CPI-U in effect for the base twelve month average (October through September); and each (October through September) 12 month average thereafter. The percentage difference between the two CPI-U issues will be the adjustment rate.

#### 4 OPTIONAL SYSTEM RETRAINING

Licensee with a current System Maintenance Agreement can purchase optional system retraining for 1 week under the following fee structure. Training requests will be accepted subject to Licensor's resource availability.

- a) Training at Licensor's Facility in Raleigh, NC: \$10,000 plus \$250 per set of printed materials (limited to a maximum of nine students in one training session)
- b) Training at Licensee's Facility: \$15,000 plus travel and living and \$250 per additional set of printed materials (limited to a maximum of nine students in one training session).

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## **5 MAINTENANCE FEE FOR SYSTEMS INTEGRATION/BILLING CONVERSION PROGRAM SUPPORT**

An annual fee will be charged for maintenance of Licensor developed interfaces and systems integration, to maintain compatibility with future releases of Energy Axis Management system and customer enterprise system(s). These fees are determined at the time the integration is scoped and quoted, but are a minimum of 20% of initial development cost to Licensee.

## **6 DATABASE REFRESH ON NON-PRODUCTION SERVERS**

Database refresh on test and backup systems requested by the Licensee are not part of the routine upgrade process, thus an additional maintenance fee will apply. The effort will be scoped based on the size of the database (usually 4 - 6 hrs for an Advanced system), at the then current fee for a Support Engineer as defined in Appendix C-2. For Advanced and Enterprise tier support, one database refresh during upgrade of a production or test system, and one during production cut-over is included.

## **7 PRICING NOTES**

System maintenance must be purchased for ALL of the Licensee's Management Systems (operational, backup and test) and the levels of coverage for all the Systems must be the same.

SMA support for any of Licensee's systems is only available if the all of the applicable license fees have been paid (including any incremental backup and/or system Software License fees), the system(s) installed and all of the Licensee's systems are under an active and paid SMA.

If Elster is responsible for Tier 1 support of third party WAN or MDM solutions, additional SMA fees will apply.

**APPENDIX C-2  
EA\_MS Server System Maintenance Agreement  
Professional Services Request Form**

<b>To:</b>	<b>ATTN:</b>	<b>Date:</b>
Elster Solutions, LLC 208 S Rogers Lane Raleigh, NC 27610	Systems Support Manager Fax: (919) 250 5439	

**Work requested by customer:** (Attach additional page(s) if more space is required)

**Rates: The rates quoted below apply to work initiated in calendar year 2014 and completed within one (1) year. Rates are for labor only and DO NOT include travel and living expenses.**

Professional service roles	Hourly rate	Service Description
Program Manager	\$220	Project Management Office for large scale and turn key projects, including projects involving multiple vendors
Project Manager	\$180	Assemble the project team, develop and execute the project schedule, report weekly status, and acquire the appropriate resources necessary to resolve issues
Business Process Specialist	\$250	Technical expertise for business process analysis re-engineering and integration scoping for Enterprise AMI integration
Integration Developer	\$180	Develop software to integrate Enterprise business applications
IT architect	\$170	Technical expertise to ensure that the network elements, metering end points and hardware interfaces of the AMI system deployed function as intended to meet the specified AMI system requirements and configuration of network to meet Licensee's Enterprise IT Requirements
Field Service Engineer	\$170	Field installation coordination and field trouble shooting
Database Administrator	\$170	Assistance with database management, optimization and migration
Support Engineer	\$160	Assistance with maintenance services outside the scope
Logistics Coordinator	\$145	Coordination of equipment and material delivery logistics
Test Engineer	\$140	Definition and execution of system acceptance test of Licensor approved system configuration

Unless otherwise stated herein, Service prices are based on normal business hours (8 a.m. to 5 p.m. Monday through Friday). "Time" is on-the-job plus travel time to and from the job site from the regularly assigned office location. "Time" starts and ends at the person's regularly assigned office location unless otherwise agreed upon prior to the start of work. Overtime, Saturday hours will be billed at one and one half (1 ½) times the hourly rate; Sunday will be billed at two (2) times the hourly rate and holiday hours recognized by Licensor will be billed at three (3) times the hourly rate. Minimum billable time per person will be four (4) hours.

<b>Send Invoices To:</b>	<b>Customer Authorized Representative</b>
<b>Company:</b> _____	
<b>Address:</b> _____	
<b>City, State ZIP:</b> _____	Printed Name
<b>ATTN:</b> _____	
<b>Telephone No.:</b> _____	
	Signature
	Date

<b>Request Received by Elster</b>	<b>Enter Time Tracking System Task Name</b>
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All services and products delivered under this request are governed exclusively by Elster Solutions, LLC General Terms and Conditions.

## APPENDIX C-3

### SEVERITY OF CUSTOMER CASES AND RESOLUTION TIMES

When customers open a case in the Elster Support System (ESS) User Portal, they can specify a priority of the problem. This will guide the support team about the actions to take when the case is assigned to a support analyst. Priorities will determine the urgency with which a support engineer needs to start investigating the problem.

#### 1 SEVERITY 1 ISSUES

System is not functioning, unavailable, or unusable, or billing data is lost. Defects are critical in nature, do not allow the system to fully operate or impact data integrity, do not have workarounds and demand immediate action. Data integrity is defined as 10% or more of the actively communicating meters not read or processed. Examples include:

- a) EA\_MS hangs
- b) Can't login to GUI
- c) Billing schedule fails to run or meter read success rate is unacceptable (below 90%), and WAN is properly functioning.
- d) Integration application fails (if provided by Licensor)
- e) Database needs to be recovered from a backup copy (system fail over)

In addition to opening a case, the customer shall report Severity 1 issues via the EnergyAxis support line (866-554-9007) using the customer specific PIN.

#### 2 SEVERITY 2 ISSUES

Loss of some functionality (not included in Severity 1) or partial loss of data. Defects do not stop system operation, do not preclude users from performing their tasks, and/or may partially impact data integrity (i.e. less than Severity 1). There may be a work around, but implementing the work around is unacceptably time consuming and will adversely affect Licensee's ability to conduct normal system production activities. Examples include:

- a) Non-billing schedule is running with low performance
- b) GIS application does not work
- c) Marriage File import fails
- d) CIS import fails
- e) Sudden change in number of orphaned nodes
- f) Partial data loss (Cannot read a EA\_Gatekeeper or a meter - excluding WAN issues)
- g) Data is corrupt
- h) Application has limited capability

Severity 2 cases shall be reported using the ESS User Portal. Additional telephone and/or email notification to Licensor Support is advisable but not required.

#### 3 SEVERITY 3 ISSUES

Defects do not impact effective system operation, or have minimal effect on the system or licensee's business process. An appropriate workaround is available. Unless expressly agreed, defects will generally be resolved in Licensor's next maintenance release. Examples include:

- a) Request missing marriage file
- b) Explain feature functionality (like daily DR, HHF)
- c) Request software upgrades

- d) Request firmware upgrades
- e) Request any other Elster Managed Services

Severity 3 cases shall be reported using the ESS User Portal

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#### **4 RESPONSE TIME / RESOLUTION**

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The priority of a case governs the expected response time for resolution. Resolution times are as follows:

##### **4.1 Severity 1**

- a) Response time  
Licensor will acknowledge the customer call reporting such problems by phone or email within one hour of notification within contracted support hours. If the problem is reported outside of the contracted support hours, Licensor will acknowledge the call the following business day.
- b) Problem resolution  
Licensor will make commercially reasonable best efforts to start investigating the problem immediately after acknowledgement and attempts to fix the problem or provide a work around solutions as soon as reasonably possible.

##### **4.2 Severity 2**

- a) Response time  
Licensor will acknowledge such notice within six hours of notification within contracted support hours. If the problem is reported outside of the contracted support hours, Licensor will acknowledge the call the following business day.
- b) Problem resolution  
Licensor will make commercially reasonable effort to start investigation the problem within a business day of acknowledgement, and will provide a solution in the form of workaround or documentation clarification, as soon as reasonably possible.

##### **4.3 Severity 3**

- a) Response time  
Licensor will acknowledge such notice within one business day.
- b) Problem resolution  
Licensor will work on the case as time permits. Implementation of the solution may be in the form of a workaround or documentation clarification. Generally, fixes for non-critical errors are addressed in a future scheduled EA\_MS release.

**APPENDIX C-4**

**SYSTEM MAINTENANCE FEES SUMMARY**

This appendix summarizes the system maintenance fees derived from the system license fees in Appendix B-4 of the System License Agreement at the time of the original purchase, and will be amended as necessary to reflect any changes to the License or maintenance configuration after the initial purchase.

**EnergyAxis Premiere License and Maintenance Fee Calculation**

<b>EnergyAxis System License Fees</b>	<b>Qty</b>	<b>List Price</b>	<b>Total</b>	<b>Discount Price</b>	<b>Ext. Price</b>
<b>Base System</b>					
EnergyAxis Premier	1	\$75,000.00	\$75,000.00	\$35,000.00	\$35,000.00
Additional Backup / Test System	2	\$27,000.00	\$54,000.00	\$15,000.00	\$30,000.00
Virtualization	1	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
Incremental AMI/AMR endpoint license fees (per 2,500 unit bundle)	1	\$5,500.00	\$5,500.00	\$906.00	\$906.00
Axis Detect		\$15,000.00	\$0.00	\$15,000.00	\$0.00
Direct Wide Area Network (WAN) connection support	1	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
Third Party Meter Support		\$5,000.00	\$0.00	\$5,000.00	\$0.00
<b>Water</b>					
Water Module Support (includes Site License for Route Manager)	1	\$10,000.00	\$10,000.00	\$6,000.00	\$6,000.00
<b>Gas</b>					
Gas Module Support (includes Site License for Route Manager)		\$10,000.00	\$0.00	\$10,000.00	\$0.00
<b>Demand Response (DR) / Home Area Network (HAN)</b>					
Base License Fee: Home Area Network (HAN) Support	1	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00
DR Element / Device Fee (1 - 500,000)		\$1.00	\$0.00	\$0.75	\$0.00
DR Element / Device Fee (500,000+)		\$0.75	\$0.00	\$0.75	\$0.00
<b>Distribution Automation (DA)</b>					
Base License Fee: Distribution Automation (DA) Support	1	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00
DA Element / Device Fee (1 - 50,000)		\$2.00	\$0.00	\$1.50	\$0.00
DA Element / Device Fee (50,000+)		\$1.50	\$0.00	\$1.50	\$0.00
Secure Tunnel Server Gateways (0 - 50)		\$25,000.00	\$0.00	\$25,000.00	\$0.00
Secure Tunnel Server Gateways (51 - 200)		\$35,000.00	\$0.00	\$35,000.00	\$0.00
Secure Tunnel Server Gateways (200+)		\$50,000.00	\$0.00	\$50,000.00	\$0.00
<b>Custom SW Development / Modules / Interfaces / Stand Alone</b>					
Route Manager	1	\$0.00	\$0.00	\$1,100.00	\$1,100.00
EA_Inspector Manager	1	\$0.00	\$0.00	\$1,100.00	\$1,100.00
<b>Subtotal - AMI Software License Fees (SLA)</b>			<b>\$179,500.00</b>		<b>\$99,106.00</b>
<i>Credit for previously paid license fees</i>					<i>(\$99,106.00)</i>
<b>Total - AMI Software License Fees (SLA)</b>					<b>\$0.00</b>

<b>EnergyAxis System Maintenance Fees</b>	<b>Qty</b>	<b>List Price</b>	<b>Total</b>		
<b>Base System</b>					
Standard Support: 9x5	1	\$35,900.00	\$35,900.00		
Standard Support: 12x7	20%	\$48,465.00	\$0.00		
Standard Support: 24x7	34%	\$61,030.00	\$0.00		
Optional On-Call Emergency Support	5%	\$8,975.00	\$0.00		
Equipment Maintenance Fee: EA_Inspector / EA_Installer Handheld	6	\$895.00	\$5,370.00		
Annual Increase Provision	4%	1	\$41,270.00	\$1,650.80	
<b>Total - EnergyAxis System Maintenance (SMA)</b>			<b>\$42,920.80</b>		

Meeting Date:

6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item #

7B-6



**Date:** June 10, 2014

**To:** City Manager for Council Action

**From:** Director of Electric Utility

**Subject:** Approval of a Call Agreement with Efficiency Services Group, LLC and Call No. 14-1 for Professional Services for the Small Business Snapshot Audit and Direct Install Third Party Energy Efficiency Program

## EXECUTIVE SUMMARY:

In accordance with Public Utilities Code (PUC) Section 385 covering Public Benefits Charge, and 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. As a part of that program portfolio, Silicon Valley Power periodically issues an RFP for third party energy efficiency programs to supplement its ongoing programs. The most recent RFP was issued in December, 2013 resulting in the selection of the Small Business Snapshot Audit & Direct Install Program. Staff proposes to enter into a Call Agreement and Call Number 14-1 for Professional Services with Efficiency Services Group, LLC (ESG) to deliver a program that reduces the energy consumption of small businesses through lighting and electric hot water energy efficiency measures and is designed to provide a free snapshot audit and full incentives to offset the costs of the equipment, yet still fall within the cost effectiveness goals for SVP. ESG will be responsible for marketing outreach to customers, program enrollment, providing the free energy audit, and installing the lighting and hot water efficiency measures, which include LED screw-in and pin-based lamps, bi-level lighting stairwell retrofits, exterior lighting retrofits, LED open signs, pre-rinse spray vales, and low flow shower heads. Anticipated energy savings is up to 1.7 million kWh annually. A copy of the Call Agreement and Call No. 14-1 can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

This program, already offered in multiple markets across the western United States, has proven to be an effective way to motivate small businesses and help them install energy efficiency measures at low or no cost to the customer. Significant savings can still be found in the area of lighting; therefore customers who participate in this program will use energy more efficiently. Finally, this program helps to achieve the requirement that by state law the City of Santa Clara must spend 2.85% of electric revenues on energy efficiency, renewable energy, low income, and electric research projects.

## ECONOMIC/FISCAL IMPACT:

The cost of Call No. 14-1 will not exceed \$431,925.00. Sufficient funds have been budgeted for FY 2014/15 in Electric Department Contractual Services/Not Classified account 191-1312-87870-[F]94100.

**RECOMMENDATION:**

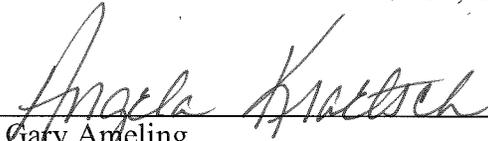
That Council approve, and authorize the City Manager to execute, a Call Agreement with Efficiency Services Group, LLC and Call No. 14-1 for Professional Services, in an amount not to exceed \$431,925.00, for the "Small Business Snapshot Audit and Direct Install Program" third party energy efficiency program.

  
\_\_\_\_\_  
John C. Roukema  
Director of Electric Utility

Certified as to Budget Form:   
191-1312-87870                      \$ 431,925.00

APPROVED:

  
\_\_\_\_\_  
Julio J. Fuentes  
City Manager

  
\_\_\_\_\_  
for Gary Ameling  
Director of Finance/Assistant City Manager

MAJORITY VOTE OF COUNCIL

***Documents Related to this Report:***

- 1) *Call Agreement with Efficiency Services Group, LLC*
- 2) *Call No. 14-1 for Professional Services with Efficiency Services Group, LLC*

**CALL NO. 14-1  
FOR PROFESSIONAL SERVICES  
TO BE PROVIDED TO THE  
CITY OF SANTA CLARA, CALIFORNIA  
BY EFFICIENCY SERVICES GROUP, LLC**

The Parties to this Call No. 14-1 ("Call") agree that on this \_\_\_\_\_ day of \_\_\_\_\_ 2014, this Call is made pursuant to the terms of a Call Agreement between the Parties entitled, "Call Agreement by and between the City of Santa Clara, California and Efficiency Services Group, LLC," of the same date, the terms of which are incorporated by this reference. This Call describes the Services to be provided to the City of Santa Clara, California ("City") by Efficiency Services Group, LLC ("Contractor"), which are more fully described in Contractor's proposal to City entitled "Business Snapshot Audit and Direct Install Program" dated April 25, 2014 ("Proposal"), attached to this Call as Exhibit A and incorporated by this reference. The Services to be performed under this Call shall be completed within the time period beginning on July 1, 2014 and ending on June 30, 2015. The attached Proposal contains a complete description of the Services, and performance dates for the completion of such Services, to be performed by the Contractor under this Call. In no event shall the amount paid to the Contractor for the Services provided to City by the Contractor under this Call, including all fees or pre-approved costs and/or expenses, exceed four hundred thirty one thousand nine hundred twenty five dollars (\$431,925.00), subject to budgetary appropriations.

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

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

\_\_\_\_\_  
JULIO J. FUENTES  
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 Company

By: \_\_\_\_\_

MARK GOSVENER

Title: Chief Operating Officer

Address: 4120 SE International Way, Suite A211  
Milwaukie, Oregon 97222

Telephone: (503) 869-5131

Fax: (503) 344-6942

"CONTRACTOR"

**Scope of Work**

**April 25, 2014**

***Business Snapshot Audit &  
Direct Install Program***

## Overview

Efficiency Services Group (ESG) will develop and administer a Business Snapshot Audit & Direct Install Program (Program) for small commercial/industrial customers of Silicon Valley Power (SVP). The program has proven to be an effective way for utilities to service this hard-to-reach customer segment.

ESG believes that offering the Program will provide SVP the opportunity to:

- Strengthen customer relations
- Acquire information regarding customer demographics, fuel penetrations and existing equipment to be used for load planning and/or targeted marketing of other SVP energy efficiency program offers
- Provide instant energy savings to targeted customers
- Present marketing and/or community relations collateral pieces
- Contribute savings towards their AB2021 targets
- Report a highly cost-effective Program to the CEC

ESG will act as an independent contractor in delivering the Program, which will include the following services:

- Program development
- Customer service/support
- Snapshot audits
- Measure installations
- Marketing/customer educational materials
- Subcontractor oversight/management
- Warranty fulfillment
- Reporting/invoicing
- CEC compliance support

## Target Customer Segment

The Program will be targeted at SVP's small commercial/industrial customers. Eligible customers will have a total demand (aggregate meters, where applicable) of 200kW or less. This customer segment is traditionally one of the most underserved by prescriptive energy efficiency programs.

## Program Objectives

The Program objectives include:

1. Offer eligible SVP customers direct installation of selected measures free of charge to gain entry into facilities and provide instant savings
2. Deliver SVP marketing and/or customer service messages to customers

3. Acquire useful demographic and site/fuel type/equipment data
4. Provide major measure installation leads to SVP and/or the Contractor who administers SVP's C&I programs

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## **Direct Install Measures (DIMs)**

DIMs are energy-savings measures which are typically offered free to customers to help them save energy. The measures lower energy and maintenance costs. The DIMs that can be offered to eligible SVP business owners under the Program include:

ENERGY STAR® LED Screw-In Lamps (replacing incandescent 50W or greater)

ENERGY STAR LED MR16 Pin-Based Lamps (replacing halogen MR16)

Bi-Level Stairwell Retrofits (replacing 4-foot T8)

Exterior Lighting Retrofits (replacing MH, HPS or MV)

Low Flow Showerheads (electric water heating; replacing 2.5 gpm or greater)

Pre-Rinse Spray Valves (electric water heating)

LED Open Signs (replacing neon open sign with high voltage magnetic transformer)

All eligible equipment specifications will be provided to SVP for approval before being included in the program.

## **Data Management**

ESG's Energy Efficiency Advisors (EEAs) use the Ditrak Data Management System to help streamline the data capture and reporting process. This iPad application allows the EEAs to gather snapshot audit and measure installation information and review the data in real-time. The application captures a signature of the business owner, uploads the data to a web-based backend database, and exports a pdf report with the business owner's signature.

## **Business Snapshot Audits**

EEAs will capture the following customer demographic and site/equipment information for each business serviced under the Program:

- Customer name and contact information
- Business type
- Water heater fuel type
- Water heater equipment age (Newer/Older)

- Primary space heat fuel type
- Primary HVAC system type
- Secondary space heat fuel type
- Secondary HVAC system type
- Central Air Conditioning (Yes/No, Newer/Older)
- Own/Lease
- Year built
- Approximate square footage
- Lighting upgrade opportunities
  - T12 (Yes/No, approximate quantity of fixtures)
  - High Bay Metal Halide
  - Incandescent
  - Fluorescent Case Lighting
  - Exterior Security and Parking lot lighting
- Presence of Refrigeration Equipment
- Presence of motor loads
- Approximate number of computers
- Presence of other large energy using equipment
- EEA and/or customer comments

At the request of SVP, additional information can be collected by the EEAs. If the collection of additional information significantly increases the time needed to complete the snapshot audit, ESG's pricing may need to be modified.

## **Program Development**

### Task: Product Selection

ESG will make product recommendations and provide manufacturer specification sheets to SVP based on field installation experience and customer satisfaction rates.

### Task: Field Manual

ESG will develop a field manual that establishes acceptable installation standards, as well as snapshot audit data collection protocols. ESG will coordinate with SVP to finalize the content of the manual.

### Task: Training

ESG will train the Energy Efficiency Advisors (EEAs) on SVP's program and protocols.

### Task: Marketing Materials

ESG will provide samples of Program marketing materials (flyers, door hangers, bill stuffers, etc.) to SVP for review. ESG will coordinate with SVP to finalize the content of marketing and customer relation materials for the Program. ESG will obtain SVP's approval of all collateral prior to distribution. SVP will provide ESG with any leave-behind materials which are intended to promote other SVP programs/services.

### Task: Customer Outreach

Because the Program will only be offered to SVP's small commercial/industrial customers, SVP will provide ESG with a list of business owners who are eligible to receive services. ESG understands the sensitivity of customer information and will assure the list is only used in the context of delivering the Program.

ESG has found that employing a door-to-door outreach approach is very successful for this type of program offer. ESG will coordinate with SVP to finalize a utility-endorsed letter that announces the Program and will mail the letter to business owners on the targeted list. The purpose of the letter is to "warm up the doors" for the EEAs; it also provides SVP the opportunity to stress a commitment to assisting business owners with energy efficiency and energy management.

## **Program Delivery**

### Task: Customer Service/Support

SVP's Business Snapshot & Direct Install Program will have a dedicated (local) phone number for business owners to call with general inquiries and to schedule a specific date/time of service. This number will connect business owners directly to the Lead EEA for SVP's program. However, ESG staffs a toll-free program hotline for multiple utility programs which can be used for customer service/support at the request of SVP.

### Task: Snapshot Audits

EEAs will electronically capture snapshot audit data in the field using the Ditrak Data Management System. A pdf copy of the snapshot audit will be emailed to each business owner and to SVP.

### Task: Measure Installations

All products will be directly installed; no products will be left behind for the business owner to install. Some DIMs will be installed during the snapshot audit visit (ex: LED lamps and showerheads), while others will be installed during a follow-up visit after the products have been procured (ex: spray nozzles, open signs, stairwell and exterior lighting). Measure installations will, on average, be completed within 4 weeks of the snapshot audit.

### Task: Marketing/Customer Education Materials

EEAs will leave behind a packet of information that explains the benefits/applications of installed measures, promotes other SVP programs, and strengthens relationships with SVP's business owners.

### Task: Subcontractor Oversight/Management

ESG oversees the development and implementation of every Program in its entirety, including the tasks of customer outreach and measure installations which are subcontracted to RD Energy Solutions and Blue Earth Energy Management Services™.

### Task: Warranty Fulfillment

Products installed under the Program will carry the standard manufacturer warranty (typically 2-3 years). All products installed under the Program will carry a 1-Year warranty on installation and workmanship from ESG. The leave-behind packet will include a contact number for business owners to request replacements for products that experience early failure. It is ESG's preference that business owners install the replacement products; however, ESG will install replacement product upon request.

Task: Reporting/Invoicing

Detailed customer, site and measure installation data will be reported to SVP for every business owner who participates in the Program. ESG will also supply SVP with summary reports of snapshot audit findings. Both detailed and summary reports will be submitted to SVP on a monthly basis, along with the monthly invoice for work completed. ESG will provide a final Program report which summarizes the major measure recommendations identified during the snapshot audits.

Task: CEC Compliance Support

ESG will maintain the documentation necessary to support SVP's reporting requirements (SB1037, EM&V etc.) for no less than five years.

**Schedule of Performance**

ESG anticipates that program development tasks will be completed within 30 days of the Program start date and program delivery tasks will span no more than 6 months. The following milestone schedule assumes a Program start date of July 1, 2014:

Month/Year	# Businesses	kWh Target	kW Target
7/14	0	0	0.00
8/14	25	169,971	30.40
9/14	37.5	254,957	45.59
10/14	62.5	424,928	75.99
11/14	62.5	424,928	75.99
12/14	37.5	254,957	45.59
1/15	25	169,971	30.40
2/15	0	0	0.00
3/15	0	0	0.00
4/15	0	0	0.00
5/15	0	0	0.00
6/15	0	0	0.00
<b>TOTALS</b>	<b>250</b>	<b>1,699,713</b>	<b>303.95</b>

## Pricing

The Program will be offered free to SVP customers; ESG will charge SVP on a per-measure-installed basis. The per-unit prices include all costs associated with program development, program implementation, administration and overheads. ESG shall bear the time and material costs associated with program development tasks and recover those costs upon successful completion of work.

Measure	Unit Type	Fee Per Unit
Business Snapshot Audit	Audit	\$60.00
LED Lamp: Screw-In or Pin-Base	Lamp	\$30.00
Bi-Level Stairwell Retrofit	Fixture	\$200.00
Exterior Lighting Retrofit (Shoebox or Wallpack): Induction	Fixture	\$260.00
Exterior Lighting Retrofit (Shoebox or Wallpack): Ceramic Metal Halide	Fixture	\$420.00
Low-Flow Showerhead: Standard Model	Showerhead	\$20.00
Low-Flow Showerhead: Handheld Model	Showerhead	\$30.00
Pre-Rinse Spray Valve	Valve	\$140.00
LED Open Sign	Sign	\$130.00

## Projected Budget and Measure Quantities

A Program budget of \$431,925 is expected to support approximately 250 businesses. The projected quantities and budget by measure are as follows:

Measure	Unit Type	Fee Per Unit	QTY	Total Fees
Business Snapshot Audit	Audit	\$60.00	250	\$15,000
LED Lamp: Screw-In or Pin-Base	Lamp	\$30.00	10,750	\$322,500
Bi-Level Stairwell Retrofit	Fixture	\$200.00	50	\$10,000
Exterior Lighting Retrofit (Shoebox or Wallpack): Induction	Fixture	\$260.00	150	\$39,000
Exterior Lighting Retrofit (Shoebox or Wallpack): Ceramic Metal Halide	Fixture	\$420.00	100	\$42,000
Low-Flow Showerhead: Standard Model	Showerhead	\$20.00	50	\$1,000
Low-Flow Showerhead: Handheld Model	Showerhead	\$30.00	13	\$375
Pre-Rinse Spray Valve	Valve	\$140.00	10	\$1,400
LED Open Sign	Sign	\$130.00	5	\$650
<b>Total</b>			<b>11,378</b>	<b>\$431,925</b>

The final number of customers served and measure quantities installed will be determined by the actual installation opportunities identified in the field and will be subject to the overall Program budget approved by SVP.

### Estimated Savings by Item

- Estimated savings for LED lamps are based on SVP's Technical Resource Manual (TRM)
- Estimated savings for bi-level stairwell lighting, exterior induction lighting and CMH lighting are based on the actual pre- and post-equipment and the associated wattage reduction
- Estimated savings for showerheads are based on CMUA's TRM (residential single-family homes)
- Estimated savings for spray nozzles are based on the Regional Technical Forum (RTF) workbook ComCookingPreRinseSprayValve\_v2\_0
- Estimated savings for open signs are based on workpaper *PGE3PLTG167 R0 LED Open Signs*

Measure	Unit Type	kWh per Unit	QTY	Total kWh
LED downlight, screw-in lamp, 4-20W, interior	Lamp	163.00	7,000	1,141,000
LED MR16, pin-based lamp, interior	Lamp	52.00	2,500	130,000
LED downlight, screw-in lamp, 4-20W, exterior	Lamp	195.00	1,250	243,750
Bi-Level Stairwell Retrofit	Fixture	302	50	15,100
Exterior Lighting Retrofit: 40W Induction Lamp	Fixture	64.24	50	3,212
Exterior Lighting Retrofit: 60W Induction Lamp	Fixture	380.42	50	19,021
Exterior Lighting Retrofit: 60W Ceramic Metal Halide	Fixture	558.09	50	27,905
Exterior Lighting Retrofit: 90W Ceramic Metal Halide	Fixture	778.91	50	38,946
Exterior Lighting Retrofit: 140W Ceramic Metal Halide	Fixture	1276.77	50	63,839
Low-Flow Showerhead	Showerhead	124.50	63	7,781
Pre-Rinse Spray Valve 0.65 gpm	Valve	841.00	10	8,410
LED Open Sign	Sign	150.00	5	750
<b>Total</b>			<b>11,128</b>	<b>1,699,713</b>

Measure	Unit Type	kW per Unit	QTY	Total kW
LED downlight, screw-in lamp, 4-20W, interior	Lamp	0.034	7000	238.00
LED MR16, pin-based lamp, interior	Lamp	0.011	2500	27.50
LED downlight, screw-in lamp, 4-20W, exterior	Lamp	0.000	1250	0.00
Bi-Level Stairwell Retrofit	Fixture	0.007	50	0.35
Exterior Lighting Retrofit: 40W Induction Lamp	Fixture	0.016	50	0.80
Exterior Lighting Retrofit: 60W Induction Lamp	Fixture	0.095	50	4.75
Exterior Lighting Retrofit: 60W Ceramic Metal Halide	Fixture	0.139	50	6.95
Exterior Lighting Retrofit: 90W Ceramic Metal Halide	Fixture	0.194	50	9.70
Exterior Lighting Retrofit: 140W Ceramic Metal Halide	Fixture	0.318	50	15.90
Low-Flow Showerhead	Showerhead	0.000	50	0.00
Pre-Rinse Spray Valve 0.65 gpm	Valve	0.000	10	0.00
LED Open Sign	Sign	0.087	5	0.44
<b>Total</b>			<b>11,128</b>	<b>303.95</b>

ESG will coordinate with SVP to finalize the savings that will be reported for each measure.

### Program Levelized Cost

Based on the projected measure quantities and the estimated measure savings, the estimated Program yield is 3.8 cents per kilowatt-hour. The final Program yield will be determined by the actual measure installations and reportable measure savings for the Program.

### Billing / Payment Terms

ESG will invoice SVP monthly for work completed. Invoices will include a summary of all DIMs installed and snapshot audits completed, as well as a detailed report of the DIMs installed and snapshot information for each customer/site. A final summary report of the entire Program will be provided to SVP within thirty days of completion of work in the field.

ESG's payment terms are Net 30 days. In the event that SVP discovers an invoice discrepancy, we ask to be notified within 5 days of receipt of the invoice. ESG will then correct any discrepancies and submit a revised invoice within 5 days of receiving notification from SVP.

**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
EFFICIENCY SERVICES GROUP, LLC  
for Third Party Energy Efficiency Program Services**

**PREAMBLE**

This call agreement (“Agreement”) is made and entered into in the City of Santa Clara, California, on this \_\_\_\_ day of \_\_\_\_\_, 2014 (“Effective Date”), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”) and Efficiency Services Group, LLC, an Oregon limited liability company, with its principal place of business located at 4120 SE International Way, Suite A211, Milwaukie, Oregon 97222 (“Contractor”). City and Contractor may be referred to herein individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

Whereas:

- A. Contractor agrees to provide certain professional services to City on an on-call basis;
- B. Contractor has the ability and desire to provide the quality and type of professional services which meet the objectives and requirements of City as set forth in this Agreement; and,
- C. The Parties have specified in this Agreement the terms and conditions under which such services will be provided to and paid for by the City.

In consideration for the mutual promises contained in this Agreement, the Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. SCOPE OF SERVICES**

- 1.1 To the extent possible, the professional services to be provided under this Agreement shall be performed in the City of Santa Clara and the services shall be described in detail by the Contractor and submitted in a written proposal to the City (“Services”). The Contractor’s final proposal will be included as an exhibit entitled, “Scope of Services” attached to a subsequent agreement between the Parties referred to in this Agreement as a “Call” or a “Call for Services.” Each Call will incorporate the terms of this Agreement by reference and must be signed by both Parties. Contractor agrees to provide professional services to the City as specified in each respective Call, to the extent funds have been authorized by the City.

- 1.2 No Services shall be performed or paid for under this Agreement except as specifically set forth and required in a written Call. No compensation may be sought under this Agreement for work performed prior to the issuance of a Call or for work to be performed or paid for under another contract. No compensation shall be paid in excess of the maximum dollar amount indicated in each respective Call for Services.
- 1.3 The Parties acknowledge that on the Effective Date of this Agreement, they are unaware of the details of all of the services which may be needed by City or provided by Contractor during the term of this Agreement. The Parties intend to specify the details and value of such Services in a subsequent Call, if any. This Agreement does not require that any Call(s) be signed. The Parties intend to provide the details of the contractual relationship between the Parties in this Agreement, so that by incorporating the terms of this Agreement in the Call(s), the Call may be brief and address the specific Services to be provided, the details of the time when the Services are to be provided and the schedule and amount the Contractor is to be paid for such Services.

## 2. PAYMENT

- 2.1 **Not to Exceed Maximum Amount.** The total amount billed to, and paid by, City for Services provided and authorized expenses incurred under a Call shall not exceed the maximum dollar amount specified in the Call. Contractor shall complete all Services contained within the scope of a Call regardless of whether the not to exceed amount has been reached, at no extra charge to the City. However, Contractor shall not perform any Services outside the scope of the Call without prior written authorization when the amount billed for under a Call exceeds the maximum dollar authorized amounts in the Call.
- 2.2 **Monthly Invoices.** Unless provided otherwise in a particular Call, payment to Contractor shall be in accordance with the procedures in this paragraph 2.2 and in paragraph 2.3. On a monthly basis, Contractor shall prepare an invoice which includes an itemization of all time spent based on the percent of Services complete, as well as any Authorized Expenses incurred (i.e., Out-of-Pocket Costs, Sub-contracted Services and/or Extraordinary Expenses).
- 2.2.1 If a particular Call directs that an invoice be presented in a format of a time sheet rather than as a percentage of Services completed, the itemization on each monthly invoice shall set forth the amount of time (recorded in quarter hours), the name of the employee performing the task and a description of each task performed. After setting forth the time spent on a daily basis, the itemization will provide a summary, at its end, of the total hours spent by each employee for the month, the hourly rate charged for that employee, and the total value of the service rendered by that employee for the month. The amount billed for Services shall then be determined by adding the value for the Services rendered by each employee for that particular month.

- 2.2.2 All monthly invoices shall also include a written itemization of the Authorized Expenses incurred, if any, with a detail listing the cost and source of such expenses and when they were incurred.
- 2.2.3 Contractor shall maintain documentation of such time and costs for City inspection for a period of three (3) years from the date of termination of this Agreement.
- 2.2.4 Within thirty (30) days of receipt of an itemized written invoice from the Contractor, City shall pay Contractor the amount billed for Services performed and authorized costs incurred under the Call during that billing period.
- 2.3 **Authorized Expenses.** The amount billed for Services shall be determined as set forth in paragraph 2.2 above plus the following amounts, if allowed under the Call:
- 2.3.1 **“Out-of-Pocket Costs”.** Contractor’s Out-of-Pocket Costs are those expenditures made by Contractor, other than employees’ salaries and payment for Services of retained specialists, which are directly chargeable to the Services performed and which would not otherwise have been incurred by Contractor. Unless otherwise provided, the Out-of-Pocket Costs must be approved in writing in advance by City and may be billed to the City and reimbursed to the Contractor only as specifically authorized and set forth in each respective Call. Authorized Out-of-Pocket Costs shall be billed without additional markup or administrative charge;
- 2.3.2 **Per Diem.** A Call will state whether or not it includes an estimate for anticipated travel expenses. If the Call does not include an estimate for anticipated travel, then the provisions of this paragraph shall apply. A Party’s travel expenses include airfare, rental car, or mileage, lodging and meals. The Party who is receiving the services pursuant to a particular Call, is the Reimbursing Party. Prior to incurring any charge for travel, the Party planning to travel (“Traveling Party”) shall (1) confirm that the Reimbursing Party is available for meetings on the proposed dates and (2) provide (either verbally or by facsimile) a price quote to the Reimbursing Party for the anticipated airfare prior to the charge being incurred, the Reimbursing Party shall either verbally or by facsimile confirm that the airfare may be incurred; in the event that the Reimbursing Party verbally confirms that the airfare may be incurred, the Traveling Party *shall* confirm in writing (prior to incurring the charge) that the Reimbursing Party has agreed to the charge. All travel expenses shall be reimbursed at cost, with no mark-up. Hotel rooms shall not exceed a cost of \$125 per night unless otherwise agreed by Reimbursing Party. Airfare and car rentals shall be reimbursed at economy class, unless economy class is unavailable through no fault of the booking party. Mileage, if applicable, shall be reimbursed in accordance with the current IRS guidelines for mileage reimbursement. Reasonable attempts shall be made to

make plane reservations in advance in order to take advantage of lower fares. In the event that travel plans must be canceled or re-scheduled due to the fault of the Reimbursing Party, then the Reimbursing Party shall pay for any costs associated therewith; if the travel is canceled or re-scheduled due to the fault of the Traveling Party, then the Traveling Party shall bear the expense. Invoices for travel expenses shall be supported by receipts, and shall be reimbursed in accordance with paragraph 2.2.1. Meals, if reimbursed, shall not exceed fifty dollars (\$50) per day.

2.3.3 **Any authorized “Sub-contracted Services” incurred by Contractor.** Authorized Sub-contracted Services are services provided by a retained specialist or sub-contractor and may be billed to City only if specifically described and authorized in a Call. (Retained specialists and sub-contractors shall include individuals or organizations offering qualified special services to City who are particularly skilled in one or more fields and who may be occasionally employed by the Contractor to fill the need for special or unusual services. Unless otherwise provided, the cost of furnishing such special services must be approved in writing in advance by City and the costs billed to City and reimbursed to the Contractor shall be only the actual charges of the retained specialist or sub-contractor, without additional markup or administrative charge); and/or,

2.3.4 **Any other authorized “Extraordinary Expenses” incurred, if any, as set forth in the Call.** Authorized Extraordinary Expenses shall be billed without additional markup or administrative charge.

2.4 **Retainer or Flat Fee for Services.** The Parties to this Agreement may, from time to time, determine that payment for a certain Scope of Services set forth in a Call pursuant to this Agreement should be made to Contractor on a retainer or flat fee for Services basis (“Stipulated Fee”). If the Parties so agree, then the provisions of this paragraph and the provisions of paragraph 2.2.1 shall apply, unless the Call provides otherwise. The Call shall set forth the maximum monthly or annual fee agreed to by the Parties as it relates to any Agency Fee or to any Out-of-Pocket Costs, and Contractor shall not exceed the amount(s) agreed to without written approval of City. The maximum Agency Fee agreed upon by the Parties is deemed to fully compensate Contractor for all work necessary for Contractor to complete the Scope of Work set forth in a Call.

### 3. **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 three (3) years from the date of final payment under this Agreement, to audit Contractor’s books and records for the purpose of verifying any and all charges made by Contractor in connection with Contractor’s compensation under Calls made pursuant to this Agreement, including termination of Contractor’s Services. 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 expense not so recorded shall be disallowed to Contractor.

#### **4. PROSECUTION OF WORK**

Contractor shall perform the Services required under this Agreement and the Call(s) made pursuant to it in an efficient and expeditious manner. Contractor shall commence work on the Effective Date specified in the applicable Call. Contractor is responsible for any delays caused by Contractor, its agents or subcontractors, or caused by factors directly or indirectly under its control. No extension of time for performance shall be given for such delays.

#### **5. QUALIFICATIONS OF CONTRACTOR; STANDARD OF WORKMANSHIP**

Contractor represents that it has sufficient qualified personnel to furnish the Services described under this Agreement and that the Services will be furnished in accordance with generally accepted professional standards and practices in the industry.

The work furnished to the City pursuant to any of the Calls under this Agreement shall be of a quality acceptable to the City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct. The minimum standard of appearance, organization and content of the documents shall be that used by the City for similar projects.

#### **6. SUSPENSION OR TERMINATION**

City may suspend or terminate this Agreement or any or all work covered under any Call under this Agreement at any time upon thirty (30) days' prior written notice. Contractor may terminate this Agreement as set forth in paragraph 6.4. Said termination or suspension shall be effective as of the thirtieth day after the date of the notice ("Effective Date of Termination"). This Agreement, and any portion of the Scope of Services described in any Call including but not limited to any specific task, project, study, advertisement or campaign, may be terminated by the City upon written notice delivered personally or by registered mail or equivalent mail or delivery service which provides for an office signature of receipt. With regard to termination of any portion of the Scope or any specific task, termination will be effective immediately, unless economic or practical considerations result in the Parties mutually agreeing to a specific termination date.

- 6.1 If such termination is due to the fault of Contractor, and if City agrees to make payment for all work and Services satisfactorily rendered up to the Effective Date of Termination, payment will be made within thirty (30) days of receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City may deduct from such payment the amount of actual damage, if any, sustained by City by virtue of the failure to perform the Services or for breach of this Agreement by Contractor.

- 6.2 If such termination is not due to the fault of Contractor, then City agrees to make payment for all work and Services rendered up to the Effective Date of Termination within thirty (30) days from receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City shall reimburse Contractor for any costs, expenses or service charges incurred by Contractor as a result of canceling previously authorized outsourced services.
- 6.3 Upon termination of this Agreement, Contractor shall transfer, assign and make available to City or City's representative, all property and materials in Contractor's possession belonging to and paid for by City.
- 6.4 Contractor may suspend or terminate this Agreement upon completion of work on all outstanding Call(s). Contractor may terminate work under a particular Call if the City is in default of the terms of this Agreement or any Call.

**7. AVAILABILITY OF FUNDS**

City represents that adequate funds will be available to make payments for Services received as required by each Call.

**8. CONTRACTOR IS AN INDEPENDENT CONTRACTOR**

In performing work under this Agreement, Contractor is not an agent or employee of City, but is an independent contractor for professional Services with full rights to manage its employees subject to the requirements of the law. All persons employed by Contractor in connection with this Agreement will be employees of Contractor and not employees of City in any respect.

**9. AMENDMENTS**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

**10. HOLD HARMLESS/INDEMNIFICATION**

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissioners, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost and/or expense or damage ("Claim"), including all costs and reasonable attorney's fees in providing a defense to any such Claim which arises from Contractor's acts, errors or omissions with respect to, or in any way connected with, the prosecution of the work performed by Contractor pursuant to this Agreement.

## **11. 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 be three (3) years, beginning on the Effective Date and terminating three years later. However, this Agreement shall be deemed extended for such time as is necessary for Contractor to complete work on any Call which is issued prior to the termination date of this Agreement, but is still in progress on the termination date of this Agreement. Any incomplete Call(s) which have been issued pursuant to the terms of a previous agreement between the Parties is/are hereby reaffirmed and each such Call shall remain in full force and effect under this Agreement, subject to the terms of such Call.

## **12. INSURANCE REQUIREMENTS**

During the term of this Agreement, and for any period following the termination date as set forth in this Agreement, Contractor shall purchase and maintain in full force and effect the following insurance policies:

- 12.1 commercial general liability (including bodily injury and property damage);
- 12.2 business automobile liability insurance;
- 12.3 worker's compensation employer's liability; and
- 12.4 if applicable, professional liability insurance.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts and with the required endorsements, certificates of insurance and coverage verifications as defined in Exhibit C, attached and incorporated by this reference. Contractor shall make its best effort to secure, and thereafter maintain in effect, such insurance policies. In the event that any required insurance policy expires or is terminated for any reason, Contractor agrees to replace the policy prior to any lapse in coverage. In the event any policy required under this Agreement is allowed to lapse, City may, in its sole discretion, elect to purchase the required insurance policy and the cost of such policy shall be charged to Contractor or withheld from the payments due to Contractor from City under this Agreement.

CONTRACTOR AGREES THAT, PRIOR TO EXECUTION OF THIS AGREEMENT, CONTRACTOR SHALL PROVIDE ITS INSURANCE BROKER WITH A COPY OF THIS PAGE OF THE AGREEMENT AS WELL AS WITH A COMPLETE COPY OF EXHIBIT C, AND WILL OBTAIN ASSURANCE FROM ITS CARRIER THAT ITS INSURANCE CARRIER WILL PROVIDE: (1) THE EXACT COVERAGES IN THE REQUIRED DOLLAR AMOUNTS STATED THEREIN, (2) AN ENDORSEMENT NAMING THE CITY OF SANTA CLARA, ITS COUNCIL, EMPLOYEES AND OFFICERS AS ADDITIONAL INSURED ON THE CGL AND BAL, AND (3) AN ACCORD EXPLICITLY STATING THAT "THE CITY OF SANTA CLARA, ITS

COUNCIL, EMPLOYEES, AND OFFICERS ARE HEREBY ADDED AS ADDITIONAL INSUREDS IN RESPECT TO ALL LIABILITIES ARISING OUT OF CONTRACTOR'S PERFORMANCE OF WORK UNDER THIS AGREEMENT" AS REQUIRED BY PARAGRAPH 2 OF EXHIBIT C.

**13. OWNERSHIP OF DATA AND INFORMATION**

City shall own any written reports or other items deemed deliverables by the respective Call, as well as any documents, data or other information supplied by City to Contractor during the course of this Agreement. Contractor shall deliver said data and information to City whenever requested to do so, but in any event within thirty (30) calendar days of the completion of the task. All material, including information developed on computer(s), which shall include, but not be limited to, data, artwork, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, advertisements, pamphlets, mailers and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City whether or not used, so long as that material has been paid for by the City. City shall not be limited in any way or at any time in its use of said material. City acknowledges that it shall not own any of Contractor's proprietary, confidential or trade secret information, such as formulas, patterns, compilations, programs, devices, methods, techniques or processes through which Contractor derives independent economic value because the foregoing item[s] is not generally known to the public and is the subject of reasonable efforts to maintain its secrecy.

**14. CONFIDENTIALITY OF DATA AND MATERIAL**

14.1 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. Such data information or reports may be viewed by or distributed to third parties only after prior written approval of City. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

14.2 Contractor shall take reasonable efforts to safeguard any and all City property entrusted to Contractor's custody or control; however, Contractor shall not be liable to City for any loss, damage, or destruction of any such property unless Contractor's actions constitute negligence or reckless disregard of City's property.

14.3 A Party disclosing information to the other which it considers to be Confidential Information, shall clearly label that information "Confidential" before disclosing it to the other Party. Confidential Information means information which is of a non-public, proprietary or confidential nature belonging to the Disclosing Party, including

without limitation, all reports and analyses, technical and economic data, studies, forecasts, trade secrets, research or business strategies, financial or contractual information, gas or coal reserve information, rates, loads, energy requirements, certain sales market information, research, developmental, engineering, manufacturing, technical, marketing, sales, financial, operating, performance, cost, business and process information or data, know-how, and computer programming or other written or oral information. Confidential Information may be in any form whatsoever, including without limitation writings, recordings, electronic or oral data, computer programs, logic diagrams, component specifications, drawings or other media. Only that information disclosed by a Party and clearly designated in writing as Confidential Information prior to its disclosure shall be deemed to be Confidential Information. Verbal information that is intended to be treated as Confidential Information shall be described in writing and identified as Confidential Information.

- 14.4 Contractor acknowledges that City is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. City acknowledges that Contractor may submit information to City that Contractor considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Contractor acknowledges that City may submit to Contractor information that City considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). 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 as practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end 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, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.
- 14.5 The Receiving Party may cooperate with the Disclosing Party in any efforts to prevent release of the Confidential Information; however, the Receiving Party shall not be required to expend any monies in excess of the cost of notifying the Disclosing Party by telephone, facsimile and/or mail of the pendency of a demand for the Confidential Information. So long as the Receiving Party complies with the provisions of notification set forth in this Agreement, the Receiving Party shall not be liable for, and Customer and City hereby release each other from, any liability for any damages arising from any requirement under the law that the Receiving Party release Confidential Information to a Requestor, and such release includes the

officers, commissioners, employees, agents, council members, and directors, as those terms may apply to each Party hereto, without limitation.

- 14.6 The Receiving Party may, at its sole expense, institute, or intervene in any proceeding, in order to protect the Confidential Information from disclosure, and if the Disclosing Party requests and agrees in writing to indemnify the Receiving Party from any expense or liability for expenses, the Receiving Party may cooperate actively in any such action or proceeding; provided, however, that the Receiving Party shall have no duty to the Disclosing Party to actively cooperate, notwithstanding an offer by the Receiving Party to provide a complete indemnity.

**15. CORRECTION OF WORK**

The performance of Services by Contractor shall not relieve Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to City.

**16. NOTICES**

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

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050,  
or by facsimile at (408) 244-2990

and to Contractor addressed as follows:

Efficiency Services group, LLC  
4120 SE International Way, Suite A211  
Milwaukie, Oregon 97222  
or by facsimile at (503) 344-6942

**17. CHANGES**

City may, from time to time, request changes in the "Scope of Services" to be performed pursuant to a Call issued under this Agreement. Such changes, including any increase or decrease in the amount of Contractor's compensation, which are mutually agreed upon by and between City and Contractor, shall be incorporated in written amendments to the Call, or included in a subsequent Call.

**18. CONTRACT FOR ADMINISTRATIVE SERVICES**

To the extent that this Agreement is a contract authorizing Calls to be made for Administrative Services, the City Council entered into such Agreement upon the recommendation of the City Manager pursuant to Section 1108 of City's Charter. The policy decision with respect to the Services to be provided under this Agreement was made exclusively by the City Council.

**19. SUB-CONTRACTING AND ASSIGNMENT**

Except as specifically provided in this Agreement, the City intends that the work described in each Call must be performed by the Contractor and not by a subcontractor or agent of the Contractor. Contractor shall not assign any interest in this Agreement, or any Call issued pursuant to this Agreement, and shall not transfer any interest in same (whether by assignment or novation) without prior written approval of City. Inclusion of a subcontractor in a proposal attached to a Call, once signed by the City, constitutes written approval.

However, claims for money due to or to become due to Contractor from City under this Agreement may be assigned to a bank, trust company or other financial institution, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to City. In case of the death of one or more members of Contractor's firm, the surviving member or members shall complete the Services covered by this Agreement or any incomplete Call. Any such assignment shall not relieve Contractor from any of its obligations or liability under the terms of this Agreement.

**20. OTHER AGREEMENTS**

This Agreement shall not prevent either Party from entering into similar agreements with others.

**21. TOTALITY OF AGREEMENT**

This Agreement embodies the entire Agreement between City and Contractor and all the terms and conditions agreed upon by the Parties to this Agreement. No other understanding, agreements, conversations, oral or otherwise, with any officer, agent, or employee of the City prior to the execution of this Agreement, regarding the subject matter of this Agreement shall affect or modify any of the forms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding on either Party to this Agreement.

**22. SERVICE WARRANTY**

Contractor warrants that Services provided hereunder shall conform with the generally accepted professional practices and standards appropriate to the nature of the Services rendered, that the personnel furnishing said Services shall be qualified to perform the Services assigned to them and that the recommendations, guidance and performance of such personnel shall meet the standard of care normally practiced by engineers or contractors performing the same or similar Services. Contractor shall be required to correct, at no expense to City, all deficiencies in the performance of the contract service that results from Contractor's failure to observe and adhere to the above warranty and which are detected within one (1) year from the date of completion of the Services. Work performed under this warranty shall also be warranted for a one (1) year period from the date of completion of such work. Contractor shall be required to reimburse City for all misexpenditure of funds resulting from Contractor's deficient performance of its Services.

## 23. DISPUTE RESOLUTION

Any documented dispute between the Parties which arises during the performance of this Agreement and which the Parties cannot then resolve, shall be subject to the following administrative remedy prior to any litigation occurring between the Parties.

- 23.1 **Internal Resolution.** Both Parties shall attempt to resolve any controversy claim, problem or dispute arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. In the event that any problem or dispute is not resolved, by the project managers of each Party, either Party may upon written notice to the other request that the matter be referred to senior management officials within each respective organization with express authority to resolve the problem or issue. Such representatives shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within ten (10) business days of such written notice. If the parties cannot reach a mutually agreeable resolution, then the dispute or issue shall be submitted to mediation within thirty (30) calendar days of the written request of one Party after the service of that request on the other Party.
- 23.2 **Notice.** A Party with claims arising under this Agreement shall, within thirty (30) days of knowledge of said claim, begin the process of exhausting all administrative remedies, as well as any other administrative remedies required by law. If the final decision or outcome of any administrative proceeding is unacceptable to a Party, then within thirty (30) days of the date of that final decision, the dissatisfied Party shall give written notice (certified mail-return receipt requested) to the other Party of the issues it deems outstanding that must be submitted to mediation (Request for Mediation).
- 23.3 **Mediation.** Any controversies between City and Contractor regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, except those for which the appropriate remedy should be injunctive relief shall be mediated within sixty (60) days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available.
- 23.4 **Mediator.** Within twenty (20) days or less of the written Request for Mediation, the Parties shall agree on one mediator. If they cannot agree on one mediator within such twenty-day period each Party shall list the names of three (3) potential mediators affiliated with the Judicial Arbitration and Mediation Service (“JAMS”) and shall supply them to the Party demanding the mediation. The Party demanding the mediation shall merge the names of all the potential mediators into a single list, not indicating which Party submitted the name. On that same date as all names are received by the demanding Party, the Parties shall jointly sign a letter directed to the San Jose office of JAMS, requesting that JAMS appoint a mediator from the enclosed list. If a Party refuses or fails to submit three (3) names within the three day period to the Party preparing the letter, then the letter shall be sent on the fifth day without input from the Party failing to submit names. 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.

23.5 **Costs.** The costs of mediation shall be borne by the Parties equally.

23.6 **Discovery.** If, during any dispute between the Parties, a demand is made by Contractor for documents under the Public Records Act, the City shall have reciprocal rights to demand documents from Contractor.

23.7 **Condition Precedent to Filing Suit.** Except as provided in Article 23.3, mediation under this section is a condition precedent to a Party filing an action in any court, unless that Party has made demand for mediation and the other Party has failed or refused to engage in mediation. In the event of litigation arising out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

23.8 **Work Through Disputes.** If the City and the Contractor are unable to reach agreement on disputed work, the Contractor shall nevertheless proceed with the disputed work, and Payment therefore shall be as subsequently determined pursuant to this Article.

24. **CAPTIONS**

The captions of the various paragraphs of this Agreement are for convenience or record only, and shall not be considered or referred to in resolving questions or interpretations.

25. **APPLICABLE LAW**

Any dispute regarding this Agreement, including without limitation, its validity, interpretation, performance, enforcement and damages shall be determined in accordance with the laws of the State of California without regard to California's choice of law principles.

26. **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.

27. **NO PLEDGING OF CITY'S CREDIT**

Under no circumstances shall Contractor have the authority or power to pledge the credit of the City of Santa Clara, or to incur any obligation in the name of the City without City's prior written agreement or confirmation. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor or its subcontractors under this Agreement. Contractor agrees to obtain City's approval of all expenditures in connection with any materials to be purchased, projects to be performed, advertising to be placed, work

to be “outsourced” or other items or Services which will or might be charged to the City. Such approval, if verbal, shall be confirmed by the City in a written letter sent via facsimile and U.S. mail to Contractor in accordance with the terms of this Agreement.

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**28. USE OF CITY NAME OR LOGO**

Contractor shall not use City of Santa Clara’s or Silicon Valley Power’s name, insignia, trademark, logo or distribute exploitative publicity pertaining to the Services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of City.

**29. MONITORING AND EVALUATION OF SERVICES**

City may monitor the Services performed under this Agreement to determine whether Contractor’s operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accordance with applicable City, county, state and federal requirements. If, in the course of monitoring and evaluation, City believes it has discovered any practice, actions, procedure or policy of Contractor which deviates from the terms of this Agreement, City may notify Contractor in writing and Contractor agrees to respond in writing to City within seven (7) calendar days regarding such action, procedure or policy. However, if any action of Contractor constitutes a breach of this Agreement, City may notify contractor in writing that the Agreement has been terminated pursuant to the provisions set forth in this Agreement.

**30. 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 state or federal law.

**31. SEVERABILITY CLAUSE**

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

**32. WAIVER**

Waiver by a Party of any one or more of the conditions of performance under this Agreement shall not be construed as a subsequent waiver(s) of that condition or of any other condition of performance under this Agreement. No delay in exercising, partial exercise, or complete failure to exercise any right, power, or privilege under this Agreement shall operate as a waiver.

**33. CONFLICT OF INTEREST**

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

**34. CONSTRUCTION AND INTERPRETATION OF AGREEMENT**

This Agreement, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the Parties. Accordingly, each of the Parties expressly acknowledges and agrees that this Agreement shall not be deemed to have been authored by, prepared by, or drafted by, any particular party, and that the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or in the resolution of disputes.

**35. COMPLIANCE WITH ETHICAL STANDARDS**

As a condition precedent to entering into this Agreement, Contractor shall:

- 35.1. Read Exhibit A, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA" incorporated by this reference; and,

(continued on page 16 of 16)

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35.2. Execute the affidavit included in Exhibit B, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS" incorporated by this reference.

The Parties acknowledge and accept the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives. It is the intent of City and Contractor that this Agreement shall become operative on the Effective Date first set forth in the Preamble, above.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

\_\_\_\_\_  
JULIO J. FUENTES  
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 company

By: \_\_\_\_\_

MARK GOSVENER

Title: Chief Operating Officer

Address: 4120 SE International Way, Suite A211  
Milwaukie, Oregon 97222

Telephone: (503) 869-5131

:

Fax: (503) 344-6942

"CONTRACTOR"

**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
EFFICIENCY SERVICES GROUP, LLC  
EXHIBIT A**

**ETHICAL STANDARDS FOR CONTRACTORS  
SEEKING TO ENTER INTO AN AGREEMENT WITH  
THE CITY OF SANTA CLARA, CALIFORNIA**

**Termination of Agreement for Certain Acts**

- A. City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor<sup>1</sup> does any of the following:
    - a. Is convicted<sup>2</sup> of operating a business in violation of any Federal, State or local law or regulation;
    - b. Is convicted of a crime punishable as a felony involving dishonesty<sup>3</sup>;
    - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or sub-contract;
    - 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 City Contractor or sub-contractor; 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 the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the

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<sup>1</sup> For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

<sup>2</sup> For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

<sup>3</sup> As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

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

- 
- B. City may also terminate this Agreement in the event any one or more of the following occurs:
1. If City determines that Contractor no longer has the financial capability<sup>4</sup> or business experience<sup>5</sup> to perform the terms of, or operate under, this Agreement; or
  2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with city, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- 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 City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

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<sup>4</sup> 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.

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

**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
EFFICIENCY SERVICES GROUP, LLC**

**EXHIBIT B**

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS  
[CITY OF SANTA CLARA]**

I, Mark Gosvener, being first duly sworn, depose and say that I am the Chief Operating Officer of Efficiency Services Group, LLC and I hereby state that I have read and understand the language, entitled “*ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA*” (herein “Ethical Standards”) set forth in Exhibit A. I have 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 inquiry of those individuals potentially included within the definition of “Contractor” contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit A [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 Exhibit A 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.

**EFFICIENCY SERVICES GROUP, LLC**  
an Oregon limited liability company

By:



MARK GOSVENER  
Chief Operating Officer

**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.



# Acknowledgment by Individual

State of Oregon County of Clackamas

On this 8<sup>th</sup> day of May, 20 14, before me, Ashley E Staudt  
Name of Notary Public

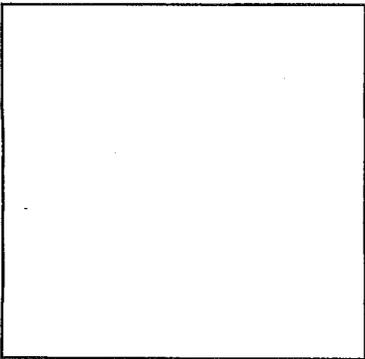
the undersigned Notary Public, personally appeared Mark Gosvener

Name of Signer(s)

- Proved to me on the oath of \_\_\_\_\_
- Personally known to me
- Proved to me on the basis of satisfactory evidence Oregon Drivers license  
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

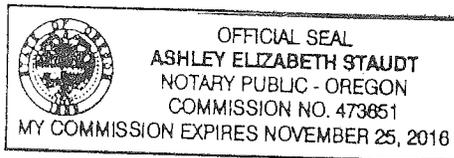
WITNESS my hand and official seal.



Notary Seal

Ashley E Staudt  
(Signature of Notary Public)

My commission expires November 25<sup>th</sup> 2016



**Optional:** A thumbprint is only needed if state statutes require a thumbprint.

## Description of Attached Document

Type or Title of Document

Affidavit of compliance with ethical  
Document Date \_\_\_\_\_ Number of Pages Standards

Signer(s) Other Than Named Above

N/A

Right Thumbprint of Signer

Top of thumb here

Scanner Enabled Stores should scan this form  
Manual Submission Route to Deposit Operations



**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
EFFICIENCY SERVICES GROUP, LLC  
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 purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

- 1.** Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
  - \$1,000,000 Each Occurrence
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - \$1,000,000 Personal Injury
- 2.** Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
- 3.** The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a.** Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b.** There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c.** Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

**B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

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

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In

the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

#### E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

#### F. EVIDENCE OF COVERAGE

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



Meeting Date:

6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item #

7B-7



**Date:** June 19, 2014

**To:** City Manager for Council Action

**From:** Director of Information Technology

**Subject:** Approval of Amendment No. 1 with Unisys Corporation for Information Technology Services

## EXECUTIVE SUMMARY:

Unisys Corporation (Unisys) has been providing comprehensive Information Technology (IT) Services to the City since 2009, including but not limited to: technical staff for application management, business analyst services, data center and network operations, 24x7 help desk; desk side services; system security, program management, and IT consulting services. These services were competitively procured in 2009 through a comprehensive and robust RFP process, resulting in an initial five (5) year base contract, with two optional extension years. The initial five year term ends on June 30, 2014.

During the past five years with Unisys, the City has made significant progress in achieving our stated objectives and strategic goals at the start of relationship:

- Reduce costs while improving service delivery
- Build a performance based partnership with a service provider
- Serve as provider of choice for specialized departmental needs while promoting a City-wide approach
- Serve the City in support of delivering superb core services
- Enable IT transformation via best practices, process maturity, standards and innovation
- Maximize the return on City information technology investments
- Optimize IT systems, application and resources across the City

Over the same five years, the City has saved over \$4 million dollars (\$2.6M in hard costs, and \$1.4M on cost avoidance) based on the structure of the Unisys agreement and services provided. In addition, although we have a Cost of Living (COLA) mechanism in our contract, due to the economic climate from 2009-2013, Unisys agreed to forgo COLA, despite changes in services provided and increasing costs of doing business. The requested 2014-2015 amendment will be the first year we have requested a COLA adjustment, in the amount of 2.6%, based on the Consumer Price Index All Urban Wage Earners, Not Seasonally Adjusted, San Francisco – Oakland – San Jose CA as provided by the Department of Labor Bureau of Statistics. This equates to an average annual cost increase of 0.52% for the period 2009 through June 2014.

The City has engaged external information technology services for over twenty-five years. Due to the extensive domain knowledge and expertise needed to properly manage the City IT systems and services, it is necessary that these types of contract relationships be long term to ensure consistency of resources and expertise. Past IT services Agreements in the City have been for multi-year periods; the previous provider being on contract for over two decades.

This proposed Amendment No. 1 is to exercise the two extension years and contains minor changes in contract terms, contract rates, and contract scope, based on current changes to the environment. A copy of the complete Amendment No. 1 and the Original Agreement with Unisys Corporation can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

**ADVANTAGES AND DISADVANTAGES OF ISSUE:**

The City requires a high level of technical assistance to keep Mission Critical IT functions operating. Unisys continues to provide significant support for Citywide and departmental IT activities including support of the City's IT Security, technology infrastructure, applications, and business processes.

**ECONOMIC/FISCAL IMPACT:**

The total cost of this two year extension for Information Technology Services, ending June 30, 2016, will not exceed \$11,000,000. The cost associated with FY 2014/15 is \$5,005,032. Appropriations are available in various funds and departments; \$4,473,364 in the General Fund; \$292,926 in the Electric Fund; and \$238,742 in General Government Capital Projects. The remaining balance of \$5,994,968 is for FY2015/16 appropriations, and any approved service amendments over the two year term. Funding for each option year is dependent on Council Budget approval.

**RECOMMENDATION:**

That the Council:

1. Approve and authorize the City Manager to execute the Amendment No. 1 to the Agreement with Unisys Corporation for Information Technology Services in an amount not to exceed \$11,000,000 for a two year term ending June 30, 2016, with \$5,005,032 appropriated in FY 2014/15 and \$5,994,968 in FY2015/16, and any documents necessary to agreement execution.
2. Authorize the City Manager or his designee to execute amendments that may be required over the two year term that do not exceed the \$11,000,000 total contract value, but allows the IT Department to update services based on technology needs.

  
\_\_\_\_\_  
Gaurav Garg  
Director of Information Technology

**Certified to the Budget Form:**

*OK*

IT	001-1931-87870	\$4,165,564
Police	001-7745-87870	\$307,800
SVP	091-1312-87870	\$45,000
SVP	091-1313-87870	\$45,000
SVP	091-1321-87870	\$66,750
SVP	091-1318-87870	\$136,176
FIN	539-3332-80100-6103	\$238,742

APPROVED:

  
\_\_\_\_\_  
Julio J. Fuentes  
City Manager

  
\_\_\_\_\_  
for Gary Ameling  
Director of Finance/  
Assistant City Manager

MAJORITY VOTE OF COUNCIL

***Documents Related to this Report:***

- 1) *Amendment No. 1 to Agreement with Unisys Corporation for Information Technology Services*

**AMENDMENT NO. 1  
TO THE MASTER SERVICE AGREEMENT BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
UNISYS CORPORATION**

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**PREAMBLE**

This agreement (“Amendment No. 1”) is made and entered into on this \_\_\_ day of \_\_\_, 2014, (“Effective Date”) by and between Unisys Corporation, a Delaware corporation, with its principal offices located at Township Line and Union Meeting Roads, Bluebell PA 19424 (“Contractor”), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Amendment No. 1.”

**RECITALS**

- A. The Parties previously entered into an agreement entitled “Master Service Agreement For Information Technology Outsourcing Services”, dated August 26, 2009 (the “Original Agreement”); and
- B. The Parties entered into the Original Agreement for the purpose of having Contractor provide Information Technology Outsourcing Services, and the Parties now wish to amend the Original Agreement to exercise the two extension years and update minor changes in contract terms, contract rates, and contract scope.

The Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. AMENDMENT PROVISIONS**

Pursuant to the terms of Section 15.3 of the Agreement, this Amendment No. 1 extends the term of the Agreement for two (2) additional one (1) year periods. The revised Period of Performance shall be effective as of July 1, 2014 (“Amendment Effective Date”) through June 30, 2016. The following Schedules to the Agreement have been restated and replaced as stated:

- A. Schedule 3B (Service Desk Services SOW) is replaced with the Restated Schedule 3B (Service Desk Services SOW) attached to this Amendment;
- B. Schedule 3C (Deskside Services SOW) is replaced with the Restated Schedule 3C (Deskside Services SOW) attached to this Amendment;

- C. Schedule 3D (Enterprise Computing Services SOW) is replaced with the Restated Schedule 3D (Enterprise Computing Services SOW) attached to this Amendment;
- D. Schedule 3E (Applications and Web Services SOW) is replaced with the Restated Schedule 3E (Applications and Web Services SOW) attached to this Amendment;
- E. Schedule 5 (Fees) is replaced with the Restated Schedule 5 (Fees 2 Year Extension) attached to this Amendment; and
- F. Schedule 19 (Customer Software) is replaced with the Restated Schedule 19 (Customer Software) attached to this Amendment.

**2. TERMS**

All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

**3. COUNTERPART/FACSIMILE SIGNATURE**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

(contract terms continue on next page)

The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment No. 1 shall become operative on the Effective Date first set forth above.

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

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

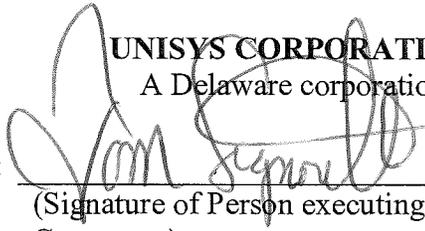
ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

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

“CITY”

**UNISYS CORPORATION**  
A Delaware corporation

By: 

\_\_\_\_\_  
(Signature of Person executing the Agreement on behalf of Contractor)

Name: Tom Signorello

Title: VP & GM NA Enterprise Services

Local Address: Unisys Corporation

\_\_\_\_\_  
Unisys Way M/S H2-20

\_\_\_\_\_  
Township Line & Union Meeting Rds, Bluebell PA 19424

Telephone: ( 215 ) 986-6174

Fax: ( 215 ) 986-3673

“CONTRACTOR”

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**RESTATED**  
**SCHEDULE 3B**  
**SERVICE DESK SERVICES SOW**  
**DATED JULY 1, 2014**  
**TO MASTER SERVICE AGREEMENT**  
**BY AND BETWEEN**  
**CITY OF SANTA CLARA**  
**AND**  
**UNISYS CORPORATION**

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## 1. Overview

This Restated Statement of Work for Service Desk services (“SOW”) has been entered into pursuant to the Master Services Agreement between Customer and Service Provider dated August 26, 2009 (the “MSA”) and is a restatement and replacement of the initial Service Desk SOW included in the MSA.

In the event of an inconsistency, ambiguity, contradiction or conflict between the terms of this SOW and its exhibits, any Work Orders or Change Orders pursuant to this SOW, and the MSA, including its schedules and exhibits, these documents will be interpreted in the following order of precedence:

- (a) the terms of a Change Order will take precedence,
- (b) followed by the terms of the MSA (unless otherwise provided therein),
- (c) followed by Schedule 3A – Cross Functional Service SOW
- (d) followed by the terms of a Work Order, and
- (e) followed by the terms of a Schedule or Exhibit not specifically identified herein as controlling.

A Change Order may only amend this SOW, exhibits or Work Orders by express reference to the term or condition of the SOW, exhibit or Work Order that is to be amended.

If this SOW changes any of the terms and conditions in the MSA then Section 12 of this SOW must contain those changes. In the event a discrepancy arises between this SOW and amendments to this SOW with respect to the same subject matter, the most recently executed SOW (or Statement of Work amendment) will prevail.

Capitalized terms used in this SOW have the meanings set forth in Exhibit 1. Capitalized terms not defined in this SOW will have the meanings specified in the MSA.

This SOW, along with Schedule 3C – Deskside Services SOW and the applicable sections of SOW 3A – Cross-Functional Services SOW constitute the Service Tower – End User Services.

## 2. Service Description and Major Functions

The primary objective is to establish an efficient Service Desk for Customer users that provides first level support for user issues pertaining to Deskside Devices and Components, network, connectivity, E-Mail, collaboration, and applications. This SOW defines the responsibilities, assumptions, exclusions, and Service Levels for delivering Service Desk Services.

Service Provider will provide Service Desk Services that will be the first point of contact for information systems problems and inquiries related to Customer’s environment. Service Desk services covers Level 1 support for all supported applications, devices and services mentioned in Section 3 of this SOW. Service Desk will also have the responsibility to log calls for applications and devices not mentioned in Section 3, and transfer them to the appropriate resolver groups for further actions.

The major functions include the following

1. Operate the Service Desk 24x7x365 using Unisys Managed Services Center in Salt Lake City, Utah (“SLC MSC”) Service Desk personnel.
2. Receive technical support calls from Customer Users and provide Level 1 support.
3. Open, log, route, and close problems and service requests.
4. Contribute and maintain the knowledge management database with a goal to improve the resolution turnaround time and first level resolution during initial call.
5. Manage priority identifications, escalations and problem resolution process.
6. Report call traffic related data, resolution levels and explanations for deviations from norm, and to provide trend analysis on volumes and types of problems reported. The reporting formats,

timelines, distribution list and distribution mode will be approved by Customer and Service Provider during the transition period.

7. Analyze data from Customer User satisfaction surveys and provide actionable strategies to improve performance of the Service Desk.
8. Use bulletin board and communicate to users about planned outages and unplanned outages. All outages and escalation contacts will be logged in daily reports as well.
9. Attempt resolution of problem and troubleshooting where appropriate using remote diagnostic tools.

Across all Services provided, Service Provider understands that the objective of the relationship is not just for Service Provider to operate the environment, but for Service Provider to take a leading role in driving alignment between IT strategy and Customer business objective with the overall objective of making Customer IT the IT provider of choice for all Customer departments. Each Service Tower will both perform the core responsibilities associated Service operations as well as contribute to the strategic development and evolution of IT services within Customer’s business.

### 3. Supported Systems and Quantities

Service Desk will provide support for standard desktop applications as well as support for the enterprise applications listed in Schedule 19, of the Agreement and may be changed from time to time through Change Control Procedures.

Additionally Service Desk will provide first level support for desktop hardware, laptop hardware, printers, scanners, plotters, PDAs and other PC peripherals.

#### 3.1 Quantitative Parameters

The Service Provider solution is based on the following consumption parameters:

*Table A-1 Service Desk Assumptions and Parameters*

Service Consumption Parameter	Anticipated Value
Total number of end users with full support	<> 950 End Users
Total number of end users with email only support	<> 100 End Users
Average number of Incidents per month	525 Incidents
Average Incident Handle Time (AHT) per Incident	< 12 minutes

As the Service Desk Services are provided using the SLC MSC, Service Provider will absorb any minor changes in supported quantities without any material impact to the support model and pricing for Service Desk Services. If in the future significant changes to the underpinning assumptions occur Service Provider will work with Customer to adjust services and staffing as appropriate through the Change Control Procedures.

The number of Customer VIP Users will not exceed 5% of Customer Users. Customer will provide the list of Customer VIP Users to Service Provider during the transition period.

### 4. Responsibility Matrix

Exhibit 2 sets forth the Responsibility Matrix for services relevant to this SOW.

### 5. Support Requirements

Service Provider will provide Service Desk Services through the SLC MSC 24x7x365

Unisys reserves the right to deliver the Services from other locations within the U.S., as may be altered from time to time, based on factors such as capacity and workload, skills available, time of day and language requirements. Unisys will perform the Services in accordance with the Service Levels as defined in Section 6 based on the anticipated consumption data provided by Client.

## 6. Service Levels

The Service Levels applicable for Service Desk services is provided in Schedule 4 Service Levels. Customer may change or add Service Levels through the Change Control procedures. Customer may classify some Service Levels as Critical Service Levels for which Service Credits will be applicable.

## 7. Dedicated and Non-dedicated Resources

Location	Resource Name / Role	Responsibilities / Skills
Onsite (Management responsibility)	Technical Lead	Overall responsibility for service desk and infrastructure services; manage and oversee people, processes and tools required to deliver services. Make recommendations to IT Governance for enhancements to Service Provider's services or Service portfolio based on operational observations.
Offsite - Unisys Managed Services Center (Primary responsibility for Service Desk Services)	Managed Service	Primary responsibility for Service Desk activities detailed in this SOW

Detailed job descriptions of each of the above dedicated and non-dedicated resources are set forth in Schedule 5 Fees.

## 8. Reports

Number and types of reports will be finalized during transition and will continue to evolve during steady state. Request for changes can be made through the Change Control Procedures. Service Provider will recommend new reports as capabilities and requirements evolve. The following monthly reports are identified as of the Effective Date of this Agreement:

- Monthly report on recommendations for improvement based on operational reports/metrics
- Types of Service Incidents Resolved by the Service Desk and Resolvers
- Number of Incidents Received each month
- Number of Service Requests completed for the month
- Report of the Incidents that the Service Desk solved without having to be dispatched
- Incidents the Resolver Teams closed
- Problem Management Reports

- Trend of Top 10 Incident per month
  - Trend of Incidents by Location
  - Report of the Client Satisfaction Surveys
  - Incident trending
- 
- Root Cause analysis reports, if any.

#### **Report Due Dates**

Unless otherwise agreed to by the Customer, Reports are due as follows:

- Monthly Reports     Within ten (10) business days from the end of the month.
- Biweekly Reports    First Thursday after the end of the biweekly period.
- Weekly Reports       First Tuesday after the end of the week.
- Daily Reports         09:00 AM Pacific Time the following day

### **9. Optional Resources**

The optional resources that may be engaged by the Customer during the Term for Service Desk services are as provided in Schedule 5 Fees. The detailed job descriptions, qualifications, experience and skill sets of such resources are also provided in Schedule 5.

### **10. Critical Deliverables**

There are no Critical Deliverables associated with this SOW.

### **11. Changes to MSA**

This SOW does not change any terms in the MSA and its Schedules.

**EXHIBIT 1: DEFINITIONS**

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ACD .....	Automatic Call Distributor. Feature of the telephone system that routes an incoming call to an Agent in the ACD group in accordance with properties such as the Agent's skill set, availability, and time since the Agent last completed an incoming call. The ACD also tracks the time that an Agent is logged in and available for work.
Application .....	Application can be either a standard "shrink-wrapped" software product or a custom developed product. Furthermore it can also be a collection of software products that have been integrated together to appear as one "application" or "system" to perform a set of functions, such as Single Sign-On or a Portal.
ASA.....	Average Speed of Answer. Average number of elapsed seconds to answer inbound calls, as measured from completion of dialing, connection, menu selection, and alert message, to presentation to Service Desk Agents.
Customer VIP .....	Those named Customer Users that are eligible to receive priority services.
Customer Users.....	Personnel at Customer Locations eligible to receive Service Desk services.
CAB .....	Change Approval Board which approves and publishes all planned changes to Customer's information technology environment.
Call.....	An inbound telephone call to Customer's Service Desk phone number that Service Provider manages.
Call Abandonment Rate .....	Measured as the percentage of all Service Desk calls that enter the ACD and are abandoned before the call is answered by Service Provider Service Desk personnel.
Call Coordination.....	Call Coordination consists of the coordination of activities required for IMAC services as well as the dispatch and management of technician work queues.
Call Duration.....	The length of a Call. This measurement includes talk time, wrap-up time and handoff time (if applicable), and begins when the caller hears the quality assurance announcement (if any) on the Service Provider phone system.
Call Triage .....	The process followed to determine the appropriate resolution of a call.
Caller .....	An Customer User calling the Service Desk.
Change Management.....	The process of controlling changes to the infrastructure or any aspect of services, in a controlled manner, enabling approved changes with minimum disruption.
Configuration Management.....	The process for tracking the configuration of a system. The configuration may include a complete inventory of the technical

environment as well as maintenance contract information such as dates and support level for the maintenance support.

Entitlement..... The process by which the Service Desk verifies the authority of the caller to request and receive service.

First Call Resolution ..... The percentage of incidents/questions/service requests that is resolved at the Service Desk during the first telephone contact.

Incident Management..... The process for the following activities: Incident recording and alerting, Incident support and classification, Investigation and diagnosis, Resolution and recovery, Incident tracking and customer/user communication, Incident ownership, monitoring and closure.

IP ..... Internet Protocol.

LAN..... Local Area Network.

Level 1 ..... First level of support that for all service requests and incidents. Service Desk agents will provide the following support for service requests and incidents – entitlement, verify information, accurately record information, classify prioritize, attempt to resolve the incidents (trouble shooting), fulfill the service request when able and route to the appropriate support or service request group when applicable.

Level 2 ..... Second level of support – contacted by Level 1 support after Level 1 support has attempted to resolve the incident or service request with the tools and processes available to Level 1.

Level 3 ..... Third level of support – highest level of support before vendor support.

Level 4 ..... Fourth level of support – vendor support.

MDC..... Mobile Data Computer

MDT ..... Mobile Data Terminals

OS..... Operating System.

PCs ..... Personal Computers. A stand-alone laptop or desktop computer running Windows, Macintosh, or Linux O/Ss, running on Intel or AMD processors.

PDA ..... Personal Digital Assistant, including Smart phones.

Problem Management..... The process that identifies the root cause of defects, actual and potential. The primary objective is to make sure the services are stable, timely and accurate and the problems neither occur nor recur.

RCA ..... Root cause analysis.

Reactive Escalations ..... Manage Customer User’s status/inquiry calls received via phone when a Customer User needs to have their existing case escalated.

Schedule 3B – Service Desk SOW

Remedy .....	Service Provider's service management software application, as provided by BMC Software, Inc.
Resolvable .....	An incident or request for which the Service Desk can provide a satisfactory solution based on their ability to have access to the proper knowledge base, resolution scripts or authorization to the systems need to provide the solution.
SPOC.....	Single Point of Contact.
Ticket Dispatch .....	Process of assigning of the ticket by the Service Desk to another resolver group.
TPP.....	Third party provider
Unisys .....	Unisys Corporation.

**EXHIBIT 2: RESPONSIBILITY MATRIX**

The Responsibility Matrix below shows which party is responsible for the listed task. For those instances where there are checks in more than one column, this indicates a shared responsibility or combined effort between the parties. It is not the intent of the Responsibility Matrix to absolutely identify or define every process, activity or task to be performed by Service Provider as a managed services function.

The responsibility matrix for Service Desk Services is set out below.

No.	Responsibility	Service Provider	Customer	Third Party Provider
<b>General responsibilities</b>				
1.	Set up the Service Desk, including implementation of systems necessary to document, track and manage End-User request for Services, inquiries and Incident notifications	X		
2.	Provide SPOC and coordination for all Incident reports and requests for information and Service (e.g., IMACs)	X		
3.	Provide expert Level 1 assistance to inquiries on the features, functions and usage of supported systems	X		
4.	Identify, escalate (e.g., Level 2 and Level 3 escalation), manage Incident resolution and close Incidents	X		
5.	Manage the Root Cause Analysis process on recurring Incidents	X		
6.	Coordinate account administration Services such as creating, changing and deleting End-User accounts	X		
7.	Utilize and coordinate asset management	X		
<b>Single Point of Contact</b>				
8.	Provide SPOC call-in access number for all Service Desk Services described in this SOW		X	
9.	Provide multiple alternative communications channels, including voice messages, email and Intranet.		X	
10.	Utilize multiple alternative communications channels, including voice messages, email and Intranet.	X		
<b>Service Desk Operations</b>				
11.	Develop, document and provide operational procedures which meet the City requirements and adhere to defined Service Desk policies	X		
12.	Review and approve operational procedures		X	
13.	Receive, track, answer and resolve customer User and technical staff calls	X		
14.	Coordinate IMACs for all Service Towers covered within the Agreement	X		
15.	Provide How To and Level 2 assistance for the Customer defined COTS applications included in its desktop environment	X		
16.	Coordinate End-User account administration, activation, changes and terminations, including: Password/account setup, remote access connectivity, e-mail accounts, User IDs, remote paging devices, voicemail administration, telephone lines, etc. (Coordination includes document routing for approval)	X		
17.	Approve account administration changes		X	
18.	Provide end-to-end Incident identification, escalation,	X		

No.	Responsibility	Service Provider	Customer	Third Party Provider
	resolution and closure process			
	<b>Service Desk Administration</b>			
19.	Develop, document and provide administration procedures which meet Customer requirements and adhere to defined Service Desk policies	X		
20.	Review and approve Service Desk Administration procedures		X	
21.	Select and implement software and hardware needed to collect, monitor, track and manage calls received by the Service Desk	X		
22.	Approve software and hardware needed to collect, monitor, track and manage calls received by the Service Desk		X	
23.	Track/manage/report Service Desk utilization	X		
24.	Provide escalation contact list(s) for Customer and Third Party contacts		X	
25.	Maintain and provide escalation contact list(s) for all Service Towers (including Third Parties such as vendors and service providers)	X		
26.	Issue broadcasts or other notices to provide status updates as required for planned and unplanned events	X		
27.	Provide End-User or manager online/portal access to Incident reports	X		
28.	Develop and execute procedures for conducting End-User satisfaction surveys	X		
29.	Review and approve procedures for conducting End-User Satisfaction Surveys		X	
30.	Maintain a continuous improvement program that improves Service Desk Service delivery	X		
31.	Coordinate and make available environment documentation (i.e., Network configuration, and inventory of Software to be supported)		X	
	<b>Service Request and Incident Management</b>			
32.	Identify and describe priorities, response and resolution targets for service calls and service requests that have differing impacts	X		
33.	Select and implement a system to document, manage and track all requests for Service, Incident reports and inquiries regardless of the means by which the Service Request is submitted (e.g., telephone, email, fax, direct online input by End-Users)	X		
34.	Approve a system to document, manage and track all requests for Service, Incident reports and inquiries regardless of the means by which the Service Request is submitted		X	
35.	Develop and provide procedures to receive and respond to the calls for service according to defined prioritization, escalation and resolution targets.	X		
36.	Review and approve procedures to receive and respond to the calls		X	
37.	Review and approve procedures for the escalation and notification of Incidents		X	
38.	Resolve Incidents within prescribed time limits, if possible,	X		

No.	Responsibility	Service Provider	Customer	Third Party Provider
	otherwise escalate and/or notify to appropriate Level 2 resource			
39.	Identify Incident characteristics and root cause	X		
40.	Categorize, prioritize and log all IT Incidents	X		
41.	Monitor Incidents (Service Desk Incidents) and escalate/notify per policies and procedures until resolution and End-User satisfaction	X		
42.	Notify End-User upon closure of IT Incidents (e.g., inquiries /problems /Service Requests)	X		
43.	Verify acceptance of Services by contacting the End-User to confirm results and level of satisfaction	X		
44.	Review recurring Incidents with Customer which meet defined criteria using Root Cause Analysis processes	X		
45.	Coordinate with asset inventory and configuration management to record and update records to reflect completed Service Request (IMACs and others)	X		
46.	Notify third-party service vendors who are under contract to the Customer to provide support	X		
47.	Track and report service call response and resolution activities of third party service vendors	X		
48.	Escalate service call if third-party vendors do not provide effective service	X		
49.	Negotiate service agreements with third-party service vendors	X		
<b>Remote Desktop Management</b>				
50.	Recommend policies for the use of remote control tools for maintenance and troubleshooting	X		
51.	Define policies for the use of remote control tools for maintenance and Troubleshooting	X		
52.	Diagnose Problems using remote control capability and when possible implement corrective actions to resolve Problems. If resolution is not possible escalate per the escalation/notification procedures	X		
53.	[Reserved]			
54.	[Reserved]			
55.	Assist in enabling the enforcement of compliance to standards and the appropriate optimization at the desktop	X		
<b>End-user Administration Services</b>				
56.	Recommend requirements and policies regarding End-User Administration	X		
57.	Approve requirements and policies regarding End-User Administration		X	
58.	Receive and track requests for End-User account activation, changes and terminations	X		
59.	Reset passwords as required in accordance with Customer's security policies	X		
<b>IMAC</b>				
60.	Receive and track requests for IMACs	X		
61.	Schedule an appropriate, agreed time with End-User for the IMAC to take place in remote offices	X		
62.	Verify completion of IMACs by contacting the End-User to confirm Satisfaction	X		

No.	Responsibility	Service Provider	Customer	Third Party Provider
<b>Self Help Support</b>				
63.	[Reserved]			
64.	Monitor and review the effectiveness of Self-Help Support capabilities and usage	X		
65.	Develop and provide recommendations for improvements to Self-Help Support capabilities	X		
66.	Review and approve recommendations for improvements to Self-Help Support capabilities		X	
67.	Implement approved recommendations for improvements to Self-Help Support capabilities	X		
<b>Reporting</b>				
68.	Recommend a list of Service Desk management reports	X		
69.	Review and approve list of Service Desk management reports		X	
70.	Report on Service Desk statistics and trends as specified in the Procedures Manual (e.g., Service Request volumes and trends by types of End-Users)	X		
71.	Report on trends in service requests indicating a need for training	X		
72.	Audit results & operations periodically		X	
73.	Provide online/portal access to Service Desk reports	X		
<b>Others</b>				
74.	Provide Level 2 support for Hardware Incidents	X		
75.	Provide Level 2 support for Operating System Incidents	X		
76.	Provide Level 2 for Application-related Incidents	X		
77.	Provide contact list and routing information for non-Service Provider resolver groups on, at minimum, a monthly basis		X	
78.	Provide initial knowledge base, during transition, for all supported technologies including scripts, technical architecture, and logistical information (such as, site access procedures); inform Service Provider of Customer-driven changes to the initial knowledge base through the Change Management process		X	X
79.	Provide sample hardware to the Service Provider service desk to enhance their familiarity with the environment and for use in Incident resolution; 2 units per widely deployed hardware model		X	
80.	Coordinate L2 support and service for printers, scanners and fax machines	X		
81.	Coordinate L2 support and service for PDAs, Blackberry's, cell phones and mobile wireless cards	X		
82.	Provide L2 support and service for printers, scanners and fax machines			X
83.	Provide L2 support and service for PDAs, Blackberry's, cell phones and mobile wireless cards			X
84.	Recommend and, if appropriate, author FAQ or help files to improve the knowledge base	X		X
85.	Based on operational observations, recommend changes to IT Governance for service enhancements to improve the services delivered by IT	X		

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**RESTATED  
SCHEDULE 3C  
DESKSIDE SERVICES SOW  
DATED JULY 1, 2014  
TO MASTER SERVICE AGREEMENT  
BY AND BETWEEN  
CITY OF SANTA CLARA  
AND  
UNISYS CORPORATION**

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This SOW, along with Schedule 3B – Service Desk Services SOW and the applicable sections of SOW 3A – Cross-Functional Services SOW constitute the Service Tower – End User Services.

## 2. Service Description and Major Functions

The primary objective of Deskside Services is to provide Customer with a stable and reliable deskside environment. This includes the management of all activities associated with the procurement, maintenance, inventory, design, selection, implementation, utilization, modification, testing and configuration, troubleshooting and problem resolution of all Deskside Devices and Components. This SOW defines the responsibilities, assumptions, exclusions, and Service Levels for delivering Deskside Services.

Service Provider shall provide and support the Customer deskside infrastructure environment (Deskside Devices and Components) that are specifically listed in Section 3 of this SOW

Working in conjunction with the Service Desk Service Provider will provide comprehensive Deskside Services that includes:

- Desktop Management
  - Image Management
  - Patch Management
  - Application Distribution
  - Desktop Security
  - Asset Management
- Field Services

- Deskside Software Support
- Install, Move, Add, Change, Delete (IMACD)
- Mobile Device Administration
- L1 Output fleet triage
- Data Network Cabling triage

Across all Services provided, Service Provider understands that the objective of the relationship is not just for Service Provider to operate the environment, but for Service Provider to take a leading role in driving alignment between IT strategy and Customer business objective with the overall objective of making Customer IT the IT provider of choice for all Customer departments. Each Service Tower will both perform the core responsibilities associated Service operations as well as contribute to the strategic development and evolution of IT services within Customer’s business.

### 3. Supported Systems and Quantities

Service Provider will have responsibility to manage the following supported systems:

- Microsoft Windows Operating system 32 and 64 bit versions plus the -1 version
- Desktops/Laptops: 850 devices consisting of the following models: Dell Latitude D Series and E Series, Dell OptiPlex family of desktops, Dell Precision T1700 or similar manufacture and model
- Mobile Data Computer (MDC): About 100 devices
- Printers: About 75 devices
- Scanner, Plotter: About 10 devices
- PDA / Smart Phones / iOS Tablets: About 100 devices
- Application Virtualization Technology

#### 3.1 Shoretel VoIP System Support – As implemented in future during the Term Quantitative Parameters

The Service Provider solution is based on the following consumption parameters:

Table A-1 Deskside Services Assumptions and Parameter

Metric	Value	Notes
Actively Managed Images	3	Post project approval to create single image; operate under current procedures until then
Application Packaged per year	5	Average Package Complexity – Normal
Patches for deployment per year	30	Average Patch Complexity – Normal

Table A-2 Deskside Services – Estimated Support Duration

Metric	Value
Deskside Software Support onsite time	1 hour
Average Duration of Resolution – MACD	1 hour
Average Duration of Install – Laptop	1.25 hour
Average Duration of Install – Desktop	1.0 hour

The number of Customer VIP Users will not exceed 5% of Customer Users. Customer will provide the list of Customer VIP Users to Service Provider during the transition period.

#### 4. Responsibility Matrix

Exhibit 2 sets forth the Responsibility Matrix for services relevant to this SOW.

#### 5. Support Requirements

Service Provider will provide Deskside Services through the dedicated, onsite end user services team during normal Customer business hours. The normal Customer business hours are 7:00 am – 6:00 pm (Pacific Time), Monday through Friday excluding Customer holidays.

#### 6. Service Levels

The Service Levels applicable for Deskside Services is provided in Schedule 4 Service Levels. Customer may change or add Service Levels through the Change Control procedures. Customer may classify some Service Levels as Critical Service Levels for which Service Credits will be applicable.

#### 7. Dedicated and Non-dedicated Resources

Location	Resource Name / Role	Responsibilities / Skills and Location
Onsite (Management Responsibility)	Technical Lead	Overall responsibility for service desk, Deskside Services and Enterprise Computing Services Manage and oversee people, processes and tools required to deliver Services. Make recommendations to IT Governance for enhancements to Service Provider's services or Service portfolio based on operational observations.
Onsite Deskside Support Team (Primary Responsibility)	Technicians 3	Primary responsibility for Deskside Software Support, IMACD and Smart Hand for the data center and infrastructure. Backup responsibility Service Desk activities detailed in the Service Desk SOW Project responsibility for projects requiring technician assistance.
Onsite	Desktop Management SMEs	Provide technical assistance to Technical Lead for Image, Patch, Application Distribution and management of the associated infrastructure
Remote	Desktop Security SMEs	Provide technical assistance to Technical Lead as it relates to end point security management

Detailed job descriptions of each of the above dedicated and non-dedicated resources are set forth in Schedule 5 Fees.

## 8. Reports

Number and types of reports will be finalized during transition and will continue to evolve during steady state. Request for changes can be made through the Change Control Procedures. Service Provider will recommend new reports as capabilities and requirements evolve. The following monthly reports are identified as of the Effective Date of this Agreement:

- Monthly report on recommendations for improvement based on operational reports/metrics
- SLA achievement reports
- Open call reports
- Closed call reports
- Monthly Executive Incident Report and Incident trends
- Customer Satisfaction Survey Report that provides an overall review of the Customer satisfaction surveys
- Changes to inventory and configuration reports

### Report Due Dates

Unless otherwise agreed to by the Customer, Reports are due as follows:

- Monthly Reports      Within ten (10) business days from the end of the month.
- Biweekly Reports    First Thursday after the end of the biweekly period.
- Weekly Reports      First Tuesday after the end of the week.
- Daily Reports        09:00 AM Pacific Time the following day

## 9. Optional Resources

The optional resources that may be engaged by the Customer during the Term for Deskside Services are as provided in Schedule 5 Fees. The detailed job descriptions, qualifications, experience and skill sets of such resources are also provided in Schedule 5.

## 10. Critical Deliverables

As of the Effective Date of the Agreement, the Critical Deliverables associated with Deskside Services are provided in the table below.

Critical Deliverable	Description	Timeline
Creation of a single desktop image	Create a single, Hardware agnostic image, using industry best practices for Image and Software distribution.	Pending project prioritization – 12 months from Service Commencement Date
Package all standard desktop application	Package select standard desktop application into a standard format suitable for remote distribution	Pending project prioritization – 12 months from Service Commencement Date

## 11. Changes to MSA

This SOW does not change any terms in the MSA and its Schedules.

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**EXHIBIT 1: DEFINITIONS**

Abandon Rate.....	Percentage of calls received but not answered
ACD (Automatic Call Distributor).....	Feature of the telephone system that routes an incoming call to an Agent in the ACD group in accordance with properties such as the Agent's skill set, availability, and time since the Agent last completed an incoming call. The ACD also tracks the time that an Agent is logged in and available for work.
Add .....	An IMAC Incident; to install new Hardware or Software components on an existing system.
Agent .....	A generic term indicating the Service Provider employee who handles the End User contact, any back-office processing activities, or both.
Agreement.....	Agreement means this SOW and the Master Services Agreement between Customer and Service Provider.
Asset.....	Component of a business process, such as people, accommodation, computer systems, networks, paper records, and fax machines.
Asset Inventory .....	Inventory of all in-scope Hardware and Software assets
Average Handle Time (AHT) .....	Average time spent handling a Customer transaction. For telephone calls, it is calculated as follows: (Talk Time + hold time + after call work for all calls) / (total number of calls handled)
Average Speed of Answer (ASA) .....	Average number of elapsed seconds to answer Inbound calls, as measured from completion of dialing, connection, menu selection, and alert message, to presentation to Service Desk Agents.
Category 1 Application .....	This category shall consist of the supported Desktop Standard Software Suite Applications. Service Provider Supplier will provide Level 1 and Level 2 support based on the problem definition for these applications. Category 1 applications are eligible for the First Call Resolution Service Level
Category 2 Application .....	This category consists propriety Application which Service Provider Supplier will provide: (a) Service Provider will provide Level 1 and Level 2 Support based on Customer-provided training, documentation, scripts, and specific problem types, (b) Customer or third party provider will provide Level 3 Support for these applications when the Service Desk Agent cannot support the problem and (c) Service Provider will monitor and escalate the Incident with Customer, the named Customer third party resource, or both until the Incident is resolved.
Category 3 Application .....	The Service Provider Service Desk will refer Incidents to the appropriate Customer resolver groups for proprietary application calls

Catalog .....	List of available products, Services, and bundles that are available to Customer's End User. The Catalog consists of all or any combination of standard, nonstandard, and Customer-specific items.
Change .....	An IMAC request; to change existing Hardware or Software components on an existing system.
COTS.....	Commercial Off-the-Shelf Software. Common PC Software such as Microsoft Office that is widely available for retail purchase. Does not include contain beta versions of this Software or any free Software (freeware).
Configuration Item .....	Component of an infrastructure which is (or is to be) under the control of Configuration Management.
CMDB .....	Configuration Management Database. Database that contains all relevant details of each Configuration Item and details of the important relationships between Configuration Items.
De-Install .....	Removal of Device from the environment. Does not include disposal.
Deskside Services .....	The services for supporting Deskside Devices and Components as defined in this SOW.
Deskside Devices and Components .....	Hardware and software provided in Section 3 of this SOW that Service Provider shall have responsibility to support per this SOW.
Device.....	Supported in-scope Hardware asset
DSL.....	Definitive Software Library. The (electronic) library, which contains all approved and accepted Software that is available for use in the environment.
End User.....	End User – refers to the Customer staff, the recipient of the services stated in this SOW.
Escalation .....	Customer contact that is escalated to management, Customer, or third-party companies in accordance with procedures documented in the SOW.
ESM.....	Enterprise System Management
Facility or Site .....	Building or a group of buildings operating as a single unit
FAQs.....	Frequently Asked Questions
First Call Resolution Rate (FCR).....	Measurement of the percentage of Incidents, in a qualified subset of Incident types categorized as resolvable at the Service Desk, that are resolved on initial contact with the Service Desk.
Hardware .....	Hardware – any Device or peripheral
IMAC.....	Installing, moving, adding, or changing Hardware equipment and/or Software at the desktop
IMACD.....	Installing, moving, adding, changing and/or disposing Hardware equipment and/or Software at the desktop

Inbound Call .....	Incoming (not outgoing) Customer calls.
Incident.....	Any event that is not part of the standard operation of a service and that causes, or may cause, an interruption to, or a reduction in, the quality of that service.
Incident Control .....	Identification, recording, classifying, and progressing of Incidents until affected services return to normal operation.
Inventory Tracking.....	Inventory tracking includes consists of the administration of the Customer's IT infrastructure Devices (e.g., Maintaining Inventory and Asset Records and User and Inventory Reconciliation, etc.).
Issue .....	Service Delivery metrics or quality not meeting Customer expectations
IT.....	Information technology.
ITIL.....	Information Technology Infrastructure Library
Known Error.....	An Incident or Problem for which the root cause is known and for which a temporary work-around or a permanent alternative has been identified.
LAN.....	Local Area Network
Level 1 .....	The first point of contact with the End User. Broad technical skills, follows scripts and pre-defined solutions to resolve End User issues. Service Desk agents will provide the following support for service requests and incidents – entitlement, verify information, accurately record information, classify prioritize, attempt to resolve the incidents (trouble shooting), fulfill the service request when able and route to the appropriate support or service request group when applicable.
Level 2 .....	Generally a service specific resolver group with moderate-to-advanced skills in a subject matter or service.
Level 3 .....	Deep Technical Support – Expert level troubleshooting and analysis; experts in their fields. Could be vendor or individual
MSC.....	Unisys Managed Services Center
O/S.....	Operating System
Off-the-Shelf Software .....	See the definition for COTS.
PC.....	Personal Computer - A stand-alone laptop or desktop computer running Windows, Macintosh, or Linux O/Ss, running on Intel or AMD processors.
PMO.....	Program Management Office
Problem .....	Unknown underlying cause of one or more Incidents
Problem Management.....	Process that minimizes the effect on Customers of defects in Services and in the infrastructure, human errors, and external events.

Schedule 3C – Deskside Services SOW

Software .....	Any application package, O/S, or utility that runs on Hardware.
Security Patch Management .....	Security Patch Management provides automatic updates to the O/S.
Self Service Catalog .....	Self-service Catalog provides a Web-based catalog of services that an End User can request.
Service Desk .....	Single point of contact in the IT organization for users of IT Services.
Service Level .....	Measure of Customer service performance.
Service Request .....	A Service Request is a request from a user for advice, information, a routine change or access to some IT service
SME .....	Subject Matter Expert
SOW .....	Statement of Work
Talk Time .....	Total length of the call in minutes
VIP .....	Very Important Person – Generally an individual who receives priority service
WAN .....	Wide Area Network
Workaround .....	Method of avoiding an Incident or a problem either with a temporary fix or with a technique, which means Customer, will not rely on a particular aspect of the service that is known to have a problem.

**EXHIBIT 2: RESPONSIBILITY MATRIX**

The Responsibility Matrix below shows which party is responsible for the listed task. For those instances where there are checks in more than one column, this indicates a shared responsibility or combined effort between the parties. It is not the intent of the Responsibility Matrix to absolutely identify or define every process, activity or task to be performed by Service Provider as a managed services function.

The responsibility matrix for Deskside Support Services is set out below.

No.	Responsibility	Service Provider	Customer	TPP
	<b>IMACD</b>			
1.	Perform equipment installations, moves, adds, changes, and disposals ("IMACDs").	X		
2.	Perform coordination functions for the management and allocation of IMACD's	X		
3.	Receive equipment in accordance with the IMACD Service Request	X		
4.	Service equipment in accordance with the IMACD service request.	X		
5.	Maintain a Definitive Software Library (DSL), which holds the master copy and associated documentation for Software.	X		
6.	Load standard (base) Software image onto the new or existing Hardware.	X		
7.	Load additional Software image or images onto the base build.	X		
8.	Load required Software onto the new or existing Hardware as an on-site activity. This is an exception and is used when remote Software distribution is not available or where the urgency requires a physical presence.	X		
9.	Perform migration of End User data from old equipment to new equipment to backup device.	X		
10.	Perform migration of End User data to new equipment from backup device.	X		
11.	Package and transit equipment to new internal Customer location.	X		
12.	Package of equipment to new sites or locations.	X		
13.	Formal sign-off of equipment handover to the End User after completion of IMACD service request. Equipment configuration meets the required specifications as defined in the service request or builds policies.	X		
14.	Provide and install firmware updates and upgrades on the physical device.	X		
15.	Provide on-site desk side support in order to assist help End Users resolve Incidents and/or to fulfill service requests that cannot be addressed by remote means.	X		
16.	Support Apple MAC on a commercially reasonable basis	X		
17.	Apply asset management tags and update appropriate database per the Policies and Procedures Manual	X		
	<b>Break-fix</b>			
18.	Maintain agreements with vendor/third party for repair of in-warranty equipment.		X	
19.	Coordinate with OEM Hardware maintenance supplier to repair failed Hardware for in-warranty Devices	X		
20.	Diagnose and identify/confirm fault and execute process defined in Process and Procedures for service of non-	X		

No.	Responsibility	Service Provider	Customer	TPP
	warranty Device failures. This may entail replacement with a spare after initial triage or initiation of the procurement process.			
21.	Use of swap pool or 'hot-swap' components as appropriate, or use of Customer supplied parts to repair for non-warranty Devices.	X		
22.	Obtain quote for repair then obtain authorization from Customer for expenditure for repair of non-warranty Devices.	X		
<b>Swap pool and spares management</b>				
23.	Package and ship failed equipment to the manufacturer or authorized third party for repair.	X		
24.	Position and store spare equipment in accordance with agreed policies or protocols.	X		
25.	Provide a quarterly report identifying equipment at or near end-of-life and its impact on spare parts inventories and service repairs.	X		
26.	Provide loan equipment for the temporary replacement of Hardware that requires off-site repair		X	
27.	Maintain financial responsibility for spare systems required for provisioning, and maintenance of spare parts inventory.		X	
28.	Administer manufacturer warranty repair or replacement on pool spares equipment.	X		
<b>VIP Support</b>				
29.	Prioritize and escalate Incidents from End Users and determine those that fall under agreed criteria for special handling such as VIP Executive support or other business critical systems and functions.	X		
30.	Provide list of VIP users and update as necessary		X	
31.	Provide On-Site support as requested, for VIP Services.	X		
<b>Mobile access devices support</b>				
32.	Create a process for authorizing the provisioning of Mobile Access Devices and manage aspects of provisioning, maintenance, support and termination of services.	X		
33.	Coordinate the repair of Mobile Access Devices	X		
34.	Contact the appropriate Third-Party service provider(s) to arrange repair.	X		
35.	Obtain a RMA (return materials authorization) if required.	X		
36.	Coordinate the issuance of new Mobile Access Devices, the replacement of lost or stolen devices, and the recovery of devices no longer required.	X		
37.	Provide mailbox and calendar service management for authorized Mobile Access Devices.	X		
38.	Re-load data or back up files as necessary.	X		
<b>Printers, Plotters, Scanners, MFD, Copier Support</b>				
39.	Provide on-site Level 1 triage for Printer, Scanner, Plotter, MFD, Copiers	X		
40.	Maintain support agreements with third party providers		X	
41.	Coordinate with 3 <sup>rd</sup> party service providers for Level 2 and Level 3 support and Hardware break-fix	X		
42.	Provide Level 2 and Level 3 support and break-fix			X
<b>LAN Cabling</b>				
43.	Triage LAN / Voice cabling issues and coordinate repair with cabling vendor if required	X		

No.	Responsibility	Service Provider	Customer	TPP
44.	Establish support agreements with cabling vendor as required		X	
45.	Provide Level 2 and Level 3 support for LAN Cabling			X
	<b>Continuous improvement</b>			
46.	Based on operational observations, recommend changes to IT Governance for service enhancements to improve the services delivered by IT	X		
47.	Assist departments to configure and obtain quotations for Hardware purchases	X		
48.	Recommend and maintain Hardware standards for End User Hardware	X		

The responsibility matrix for Desktop Management Services is set out below.

No.	Responsibility	Service Provider	Customer	TPP
1.	Define and facilitate the release management and change management process for: Image Management, Patch Management, Desktop Security Policy Management (e.g. ePO) and Application Distribution	X		
2.	Certify new applications and patches against the applications identified as packaged in Application List and any future application package by Service Provider	X		
3.	Package applications and patches in a industry standard format (e.g. MSI)	X		
4.	Define and execute the agreed to Alpha and Beta release process as documented in the Procedures Manual prior to distribution	X		
5.	Facilitate User Acceptance Test of application package	X		
6.	Load packaged application and patches onto the Service Provider provided desktop management tool and assign to target user groups / profiles	X		
7.	Confirm packages are deployed to target user groups and profiles;	X		
8.	Actively manage core images (update on an annual basis) and distribute to OEM, VARs and resolver teams as required.	X		
9.	For critical patches or application distribution, remediating action on missed installs	X		
10.	Perform operational management and administration of the desktop management tool application	X		
11.	Recommend architectural changes and upgrades to the desktop management infrastructure Change Management Process.	X		
12.	Perform operational management and administration of the security policy management application	X		
13.	Recommend architectural changes and upgrades to the security policy management infrastructure to the Change Management Process	X		
14.	Provide approval, licenses and Software prior to certification, packaging and deployment.		X	
15.	Provide desktop management Software such as infrastructure, licenses and support contract	X		
16.	Provide representative new and legacy Hardware for Image testing		X	
17.	Provide requirements document for new application requests		X	

Schedule 3C – Deskside Services SOW

No.	Responsibility	Service Provider	Customer	TPP
18.	Provide detailed install and configuration settings and documentation for each application to be managed by Service Provider during transition		X	
19.	Provide process and resources necessary for User Acceptance Test:		X	
20.	Provide licenses and infrastructure for security policy management application		X	
21.	Provide Software license management such as tracking deployed Software, tracking purchased licenses and providing reconciliation reports as requested	X		

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**RESTATED  
SCHEDULE 3D  
ENTERPRISE COMPUTE SERVICES SOW  
DATED JULY 1, 2014  
TO MASTER SERVICE AGREEMENT  
BY AND BETWEEN  
CITY OF SANTA CLARA  
AND  
UNISYS CORPORATION**

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## 1. Overview

This Statement of Work for Enterprise Compute services (“SOW”) has been entered into pursuant to the Master Services Agreement between Customer and Service Provider dated August 26, 2009 (the “MSA”) and is a restatement and replacement of the initial Enterprise Compute services SOW included in the MSA.

In the event of an inconsistency, ambiguity, contradiction or conflict between the terms of this SOW and its exhibits, any Work Orders or Change Orders pursuant to this SOW, and the MSA, including its schedules and exhibits, these documents will be interpreted in the following order of precedence:

- (a) the terms of a Change Order will take precedence,
- (b) followed by the terms of the MSA (unless otherwise provided therein),
- (c) followed by Schedule 3A – Cross Functional Service SOW
- (d) followed by the terms of a Work Order, and
- (e) followed by the terms of a Schedule or Exhibit not specifically identified herein as controlling.

A Change Order may only amend this SOW, exhibits or Work Orders by express reference to the term or condition of the SOW, exhibit or Work Order that is to be amended.

If this SOW changes any of the terms and conditions in the MSA then Section 12 of this SOW must contain those changes. In the event a discrepancy arises between this SOW and amendments to this SOW with respect to the same subject matter, the most recently executed SOW (or Statement of Work amendment) will prevail.

Capitalized terms used in this SOW have the meanings set forth in Exhibit 1. Capitalized terms not defined in this SOW will have the meanings specified in the MSA.

## 2. Service Description and Major Functions

Service Provider will provide operational management of the data center and system administration within the Enterprise Compute Tower as set forth in Section 2 (“Services”). System Administration will be comprised of monitoring and event notification, infrastructure availability and infrastructure management:

- Monitoring and Event Notification will provide remote monitoring and notification, threshold monitoring, event aggregation and correlation, impact analysis, severity level setting, and data collection and ticketing distribution.
- Infrastructure Availability will comprise the features and functionality of Monitoring and Event Notification in addition to automated Incident ticketing, assignment, tracking, and escalation, remote service restoration and service level reporting.
- Infrastructure Management will comprise the features and functionality of Infrastructure Availability and automated functionality and services.
- Administration, management and security of servers, storage, infrastructure applications, network devices and other supported systems

Service Provider shall manage the Customer’s information technology landscape such as the data center, network, storage devices and volumes such as scheduling, testing and storage of all backups and their subsequent recovery. Backup and recovery processes will be implemented and executed on a regular basis and backup and archive copies of data stored offline. Files will be managed according to Customer

policy with regard to file type, size and longevity. Service Provider shall also provide systems and operating environment administration in accordance with this Statement of Work.

Across all Services provided, Service Provider understands that the objective of the relationship is not just for Service Provider to operate the environment, but for Service Provider to take a leading role in driving alignment between IT strategy and Customer IT business objective with the overall objective of making Customer IT the IT provider of choice for all Customer departments. Each Service Tower will both perform the core responsibilities associated Service operations as well as contribute to the strategic development and evolution of IT services within Customers business

Incident tickets will be generated and routed to the appropriate resolver groups in two ways. The monitoring service will automatically generate and route Incidents based upon predefined performance and availability thresholds. The service desk will accept calls and generate Incidents during the Principle Period of Service. Services will be performed using a combination of on-site, dispatch and remote support with a Converged Remote Infrastructure Services solution set.

The following two tables summarize the scope for which Enterprise Compute Services.

**Server & Application Scope of Service**

	Server & Application Scope of Service							
	Server	DB Server	Web Server	App Server	Infrastructure Apps	Collaboration Apps	Messaging & SOA Apps	
Monitoring & Event Notification	√	√	√	√	√	√	√	
Infrastructure Availability	√	√	√	√	√	√	√	
Infrastructure Management	√	√	√	√	√	√	√	

**Non - Server & Application Scope of Service**

	Non - Server & Application Scope of Service				
	Storage	LAN	WAN	IP Telephony	Security
Monitoring & Event Notification	√	√	√	√	√
Infrastructure Availability	√	√	√	√	√
Infrastructure Management	√	√	√	√	√

In detail, Service Provider will provide the following services as part of this SOW.

**2.1 Monitoring and Event Notification**

Service Provider provides a standard set of monitoring definitions and performance thresholds. A baseline set of events and metrics have been identified and serve as the starting point for all new Customer engagements. This baseline covers the spectrum of technologies that Service Provider supports. A pre-implementation review provides the opportunity for the baseline to be adjusted as well as additional monitoring elements to be introduced into the baseline configuration to make sure that Service Level Agreements (SLAs), Operational Level Agreements (OLAs), and Key Performance Indicators (KPIs) can be met. Once the monitoring has been put into a production mode, any modifications to the running configuration are subject to the standard Change Management process.

The Service Provider Event Management system is the primary repository and system of record for recording, aggregating and correlating events and gathering Service Level, Operational Level and Key Performance metrics relative to Monitoring and Event Management. Service Provider will provide 24X7X365 monitoring of infrastructure elements in scope for the engagement. Monitoring consists of one or more of the following activities depending on the device and situation:

- Deployment of management agents on infrastructure elements that send event data to Service Provider monitoring tools and teams
- Deployment of agent-less discovery services within the Customer-provided network DMZ that requests event data from current monitoring tools deployed within the Customer environment

The receipt of monitoring data from the Customer to a Service Provider provided integration service that translates event data into the format required by the Service Provider monitoring service.

## **2.2 Infrastructure Availability**

Availability Management is the ITIL process that focuses on making sure that services are available when the End User needs them. This involves monitoring the infrastructure and “in-scope” applications for pre-defined faults and performance threshold violations, alerting the support staff when errors are detected, and providing relevant and timely data to the Incident Management process to all service to be restored as quickly as possible.

Service Provider will use an integrated monitoring and event management system to monitor the Customer's infrastructure and application elements. The Service Provider Event Management system is the primary repository and system of record for recording, aggregating and correlating events and gathering Service Level, Operational Level and Key Performance metrics relative to Monitoring and Event Management. Service Provider will provide 24X7X365 monitoring of infrastructure elements in scope for the engagement. Monitoring consists of one or more of the following activities:

- Deployment of management agents on infrastructure elements that send event data to Service Provider monitoring tools and teams
- Deployment of agent-less discovery services within a Customer-provided network DMZ that requests event data from current monitoring tools deployed within the Customer environment

The receipt of monitoring data from the Customer to a Service Provider provided integration service that translates event data into the format required by the Service Provider monitoring service

## **2.3 Infrastructure Management**

Operations Management/Operations Control is the ITIL process focused on running day-to-day operational activities. Service Provider uses Operations Management/Operations Control to achieve stability for the Customer's day-to-day processes and activities. Service Provider will apply manual and automated responses to diagnose and resolve any IT Operations failure that is in the scope of services offered. Service Provider will apply regular scrutiny and improvements to achieve improved service, while maintaining the stability of the IT Operations environment.

Service Provider Managed Server Service provides the day-to-day operations, management, support, and administration of the Customer's server infrastructure using a flexible and process-oriented service delivery approach. Infrastructure Management functions are supported by a number of ITIL processes which provide repeatability and accountability of the functions performed.

## **2.4 Administration and Management**

Service Provider will be responsible to provide administration and management functions for servers, network, storage, infrastructure applications and other supported systems. Detailed responsibilities are provided in Exhibit 2 of this SOW.

### 3. Supported Systems and Quantities

The baseline quantities supported by Enterprise Compute Services are listed in Schedule 5 Fees.

### 4. Responsibility Matrix

Exhibit 2 sets forth the Responsibility Matrix for services relevant to this SOW.

### 5. Support Requirements

- Remote Service will be provided 24x7
- Non-Incident / event activities will be performed during Customer's normal business hours. The normal Customer business hours are 7:00 am – 6:00 pm (Pacific Time), Monday through Friday.
- Onsite support will be provided during normal business hours
- Onsite after hours support will be provided for Priority 1 Incidents (e.g. impact to public safety)

### 6. Service Levels

The Service Levels applicable for Enterprise Compute Services is provided in Schedule 4. Customer may change or add Service Levels through the Change Control procedures.

### 7. Dedicated and Non-Dedicated Resources

Location	Resource Name / Role	Responsibilities / Skills and Location
Onsite (Management Responsibility)	Technical Lead	Overall responsibility for service desk, End User support and infrastructure services; manage and oversee people, processes and tools required to deliver services. Make recommendations to IT Governance for enhancements to Service Provider's services or Service portfolio based on operational observations.
Onsite (Management and Architectural Responsibility)	Infrastructure Architect	Responsible for Infrastructure roadmap and aligning the infrastructure roadmap to the requirements of the Service Portfolio – Lead Infrastructure upgrade projects both from a technical and strategic
Remote (Primary responsibility)	Remote Operations Staff	Responsible for Monitoring, Management and Administration for the in-scope infrastructure environment
Onsite (Secondary responsibility)	Smart hands (Tech 3)	Assist with basic Incident Management for Enterprise Computing activities (e.g. reboot server) as well as assist with project work (e.g. server installs)

Detailed job descriptions of each of the above dedicated and non-dedicated resources are set forth in Schedule 5 Fees.

### 8. Reports

Number and types of reports will be finalized during transition and will continue to evolve during steady state. Request for changes can be made through the Change Control Procedures. Service Provider will recommend new reports as capabilities and requirements evolve. The following reports are identified as of the Effective Date of this Agreement:

## Schedule 3D – Enterprise Compute Services SOW

- Monthly report on recommendations for improvement based on operational reports/metrics
- CPU, Disk space utilization reports
- Critical Processes SPs/Apps - List of critical processes running on database servers, top 10, etc.
- Alerts and issues of operations - For specified time periods
- Space report - Report on database space used and space available
- Incident/Problem/Service Request reports - List of cases opened, closed, unresolved listed by priority
- Software reporting - Current version/patch levels, OS versions, software stats/matrix
- Forecasting reports - Projected needs for upgrades on hardware, space, usage, etc.
- Alert/threshold history - For a given period, list of top alerts, breached thresholds, pages, etc.
- Configuration report - Report of version/patch number, OS version, software, stats, etc.
- Change request Report – Response and Closure
- Root cause analysis – Consolidated Report

### **Report Due Dates**

Unless otherwise agreed to by the Customer, Reports are due as follows:

- Monthly Reports      Within ten (10) business days from the end of the month.
- Biweekly Reports    First Thursday after the end of the biweekly period.
- Weekly Reports      First Tuesday after the end of the week.
- Daily Reports        09:00 AM Pacific Time the following day

## 9. Optional Resources

The optional resources that may be engaged by the Customer during the Term for Enterprise Compute Services are as provided in Schedule 5.

The detailed job descriptions, qualifications, experience and skill sets of such resources are provided in Schedule 5.

## 10. Critical Deliverables

As of the Effective Date of the Agreement, the Critical Deliverables associated with Enterprise Compute Services are provided in Schedule 3A Cross – Functional Services, Critical Deliverables section.

## 11. Changes to MSA

This SOW does not change any terms in the MSA and its Schedules.

**EXHIBIT 1 – DEFINITIONS**

Availability.....	Ability of a component or service to perform its required function at a stated instant or over a stated period of time.
COBIT.....	Control Objectives for Information and related Technology is a set of best practices (framework) for information technology (IT) management created by the Information Systems Audit and Control Association (ISACA), and the IT Governance Institute (ITGI) in 1992. COBIT provides managers, auditors and IT users with a set of generally accepted measures, indicators, processes and best practices to assist them in maximizing the benefits derived through the use of information technology and developing appropriate IT governance and control in a company.
Configuration Item (CI).....	A component of an infrastructure or an item, such as a Request for Change, associated with an infrastructure that is (or is to be) under the control of Configuration Management. CIs may vary widely in complexity, size, and type, from an entire system (including such as all hardware, software and documentation) to a single module or a minor hardware component.
CMDB.....	Configuration Management Database. A database that contains all relevant details of each CI and details of the important relationships between CIs.
Convergence.....	Convergence, or system monitoring, administration and management processes across conventional technology-oriented service towers (server, storage, network, and desktop, etc'), is a consolidation of data and workflow to provide visibility to causal effects of the performance of one system element on another element or set of elements.
C-RIM.....	Converged Remote Infrastructure Management
Critical business functions.....	The critical elements of the business process supported by an IT service.
DC.....	Data Center
Delta Release.....	A Delta, or partial release, is one that includes comprises only those CIs within the release unit that have actually changed or are new since the last full or Delta Release. For example, if the release unit is the program, a Delta Release contains only those modules that have changed or are new since the last full release of the program, or the last Delta Release of certain modules. See also 'Full Release.'
Downtime.....	The unavailability of the IT Service during hours that the business deems the systems to be available as advertised within SLAs.
End-to-end service.....	All components of the IT Infrastructure required for delivering an IT service.
ECC.....	Enterprise Command Center
EUS.....	End-User Services

Schedule 3D – Enterprise Compute Services SOW

Full Release.....	All components of the release unit that are built, tested, distributed and implemented together. See also 'Delta Release.'
High availability.....	Minimizing or masking component failures.
Incident lifecycle .....	An Availability Management technique which analyzes the broken down stages of an Incident to allow for timing and measurement of each stage.
ITIL.....	Information Technology Information Library
ISO.....	International Standards Organization
ICMP.....	Internet Control Message Protocol. A core protocol of the Internet protocol suite. Chiefly used by networked computers' operating systems to send error messages—indicating, for example, that a requested service is unavailable or that a host or router cannot be reached.
KPI.....	Key Process Indicator
LAN.....	Local Area Network
Maintainability.....	The ability of an IT infrastructure component to be retained in, or restored to, an operational state.
MSC.....	Managed Service Center
Network Devices.....	General term used to include cover network switches, routers, UPS devices, and DSU/CSU.
NOC.....	Network Operations Center
Operating Level Agreement .....	An internal agreement covering the delivery of services that support the IT Service Provider in the delivery of services.
Post Implementation Review (PIR) .....	A review to ensure the success or failure of a release roll-out.
QoS.....	Quality of Service
Release .....	A collection of new and/or changed Configuration Items (CIs) which are tested and introduced into the live environment together.
Reliability .....	The freedom from failure of services and components over a given period of time.
Request For Change (RFC) .....	A form or screen used to record details of a Request for Change to any CI within an infrastructure, or to procedures and items associated with the infrastructure.
Risk Management.....	The identification, selection, and implementation of countermeasures to the identified risks to assets to reduce them to an acceptable level.
Run Book.....	A routine compilation of the procedures and operations being made by the administrator or operator of the system.
RBA .....	Run Book Automation (RBA) is the ability to define, build, orchestrate, manage and report on workflows that support

Schedule 3D – Enterprise Compute Services SOW

system and network operational processes. A run book process can cross all management disciplines and interact with all types of infrastructure elements, such as applications, databases, and hardware.

Security Operation Center - SOC..... Security Operation Center

Serviceability ..... The contractual arrangements made with Third-Party IT service providers to provided or maintain IT Services or components.

SNMP ..... Simple Network Management Protocol. Forms part of the Internet Protocol suite defined by the Internet Engineering Task Force (IETF). Used by network management systems to monitor network-attached devices for conditions that warrant administrative attention.

SOW ..... Statement of Work

VPN ..... Virtual Private Network

WAN ..... Wide-Area Network

Workflow ..... A depiction of a sequence of operations, declared as work of a person, work of a simple or complex mechanism, work of a group of persons, work of an organization of staff, or machines.

Z-3-2-1-0..... An Incident and Problem handling methodology for the ITIL Problem Management process across all delivery towers. The purpose of the methodology is to reduce to a minimum the handling time of an Incident by referring it to the most appropriate resource for resolution.

**EXHIBIT 2 – RESPONSIBILITY MATRIX**

The Responsibility Matrix below shows which party is responsible for the listed task. For those instances where there are checks in more than one column, this indicates a shared responsibility or combined effort between the parties. It is not the intent of the Responsibility Matrix to absolutely identify or define every process, activity or task to be performed by Service Provider as a managed services function.

The responsibility matrix for Enterprise Compute Services is set out below.

**Monitoring and Event Notification Responsibilities**

Function/Responsibility	Service Provider	Customer
<b>Threshold Management:</b> Using established baseline measures to determine appropriate thresholds for the Customer computing environment. Monitor, analyze and report on these thresholds.		
Establish Thresholds: Establish and maintain a baseline measurement in order to determine appropriate thresholds for the Customer computing environment based on environmental build, technology specific good practice and manufacturer recommendations.	X	
Provide business driven thresholds for Event Management		X
Heartbeat Monitoring: Detect report and generate events on the absence of heartbeat activity between co-dependent systems.	X	
Threshold Monitoring: Monitor threshold violations on agreed critical application, system, and Network components, such as system processes and application threads indicating a fault or problem.	X	
Threshold Analysis & Review: Analyze the environment Configuration, processor performance, memory usage, and input/output utilization to identify potential processing bottlenecks and imbalances in order to make recommendations as to potential Changes within the environment.	X	
Threshold Reporting: Provide reporting on threshold breaches in accordance with Service Levels. Make recommendations to modify threshold limits or operating baselines in the cases of under or over reporting.	X	
<b>Utilization Management</b> Collect and report critical resource utilization data at a frequency that accords with the Service Levels. This is used for trend analysis or as an input into capacity planning. Collect data for total resource utilization and data for the load that each service places on each particular resource (over the total infrastructure, Server, Network, local Server and client or Workstation).		
Utilization Monitoring: Monitor consumable resources against planned allocation and report in accordance with the Service Levels. Establish a baseline for infrastructure usage.	X	
Utilization Analysis & Review: Analyze and review the monitoring outputs and review the Configuration, processor performance, memory usage, and I/O utilization of in-scope environments to identify potential processing bottlenecks and imbalances in order to make recommendations as to potential Changes within the environment.	X	

Schedule 3D – Enterprise Compute Services SOW

Function/Responsibility	Service Provider	Customer
Utilization Reporting: Provide enterprise wide computing reporting on resource consumption and utilization activities in accordance with agreed requirements.	X	
<b>Performance Management</b> Monitor, analyze and report on the performance of in-scope systems in accordance with agreed thresholds.		
Establish Thresholds: Establish thresholds, baselines or profiles of the normal operating levels against which the system can be periodically audited or monitored. Establish the normal boundaries for the operating environment or specific applications within the environment.	X	
Provide business driven thresholds and specification		X
Performance Monitoring: Monitor systems and specific applications for transaction throughput rates, Response times and potential performance issues.	X	
Environment Monitoring: Monitor the enterprise computing environmental factors to identify potential performance Problems based on Configuration or environmental factors within the boundaries of technology provided.		X
Application Monitoring: Monitor the application environment to identify potential performance Problems affecting the end-to-end performance and the End User experience due to internal application locks or contention. Assumes applications have monitor hook points or operational inspection points.	X	
Response Time Monitoring: Proactively monitor end-to-end application and system components to provide baseline End User Response measures, report deviations from normal, and provide resolution and enhancement activity to maintain and improve end-to-end Response times.	X	
Performance Analysis & Review: Analyze the monitoring outputs and review the Configuration, processor performance, memory usage, and I/O utilization of in-scope equipment.	X	
Performance Reporting: Report on the monitoring outputs identifying potential processing bottlenecks and imbalances and to make recommendations as to potential Changes within the environment.	X	
Performance Tuning: Review performance reporting and conduct appropriate tuning actions to address any identified performance deficiencies.	X	
<b>Toolsets</b> Provide agreed toolsets to aid management of distributed or centralized Devices, their performance and capacity and to provide an event stream.		
Provision: Provide and deploy agreed toolsets.	X	
Configuration: Configure agreed toolsets.	X	
Management: Manage and support agreed toolsets.	X	

**Availability Management Functions & Responsibilities**

Function/Responsibility	Service Provider	Customer
<b>Scope</b>		
Provide a detailed list of the activities Service Provider will be responsible for in accordance with Customer's information technology service management framework in relation to availability management.		
<b>Availability Management Plan:</b> Create and manage an availability management plan to establish an integrated process for identifying, documenting, monitoring, evaluating and controlling the Customer's technology, systems or information technology Services.	X	
<b>Availability Management Process Run:</b> Have the entitlement to own the end-to-end process across all environments. Coordinate and control the participation in the process for all service providers, such as the provision, support and maintenance of the Availability Plan for components of this environment.	X	
<b>Participate in Availability Management Process:</b> Provide input to the Availability Plan in relation to CIs in this environment.	X	
<b>Optimization</b>		
Analyze and determine the infrastructure required to achieve efficient use of resources to deliver service requirements.		
<b>Service Level &amp; KPI Monitoring:</b> Monitor and measure Service Levels and Key Performance Indicators for availability in accordance with the availability management plan. Report both status and exceptions.	X	
<b>Trend Analysis &amp; Reporting:</b> Provide monitoring and trend analysis of the availability, reliability and maintainability of technology, systems or information technology Services to identify areas for improvement.	X	
<b>Availability Improvement Plans:</b> Design and manage plans to improve availability.	X	
<b>Forecasting:</b> Review service availability in accordance with planned future requirements.		
<b>Strategic Forecasting:</b> Provide strategy reviews using trend analysis to review service availability against planned future requirements.	X	
<b>New Service Provision Planning:</b> Plan for new and enhanced Services in accordance with forecasting activities.	X	
<b>New Service Provision Planning:</b> Prioritize and approve new and enhanced Services through the Change Management process		X
<b>Risk Analysis:</b> Identify threats and vulnerabilities to the ongoing availability of the service in accordance with diagnosed trends and future proposed developments.	X	
<b>Toolsets:</b>		
Provide agreed toolsets for the Availability Management process		
<b>Provision:</b> Provide and deploy agreed toolsets.	X	
<b>Configuration:</b> Configure agreed toolsets.	X	

Function/Responsibility	Service Provider	Customer
Management: Manage and support agreed toolsets.	X	

**Infrastructure Management**

Function/Responsibility	Service Provider	Customer
<b>Server Operations Administration</b>		
Control and reconfigure Servers, Operating Systems, processing complexes, peripheral sub-systems and applications.		
Un-automated Console Administration: Use single or aggregated consoles (single point of operation) to provide access for operations to receive event streams or routine console messages. Provide for logging, resumption or commencement of jobs, error indication and other acts that require operator intervention or action. Provide console automation.	X	
Server Hardware Administration: Configure and monitor in-scope physical processing partitions, input/output sub-systems, channels and peripheral Devices. Monitor power, air conditioning and other environmental factors. Check that system Devices are maintained in accordance with the build documentation or manufacturer's instructions.	X	
Process Administration: Administer system processes using physical intervention and according to agreed policies and procedures.	X	
Error Administration: Provide primary detection and diagnosis of Server environment failure, such as environmental failure.	X	
Workload Administration: Assign or reassign Server resources to maintain load balancing.	X	
Date & Time Synchronization: Synchronize clocks on system Devices with the central time Server.	X	
Maintenance Planning Recommendations: Recommend maintenance for the enterprise computing Configuration based on good practice and manufacturer instructions.	X	
Automated Operations: Automate operations that would otherwise require human intervention and that occur automatically based on schedules, events, threshold, or status Changes. These are routine systems activities as distinct from job or workload scheduling.	X	
<b>Operating Environment Support</b>		
Maintain the appropriate status and availability of the operating system, in accordance with Service Levels keeping a consistent and compliant base operating system.		
Installation & Maintenance: Provide standard procedural deployment of operating system and firmware versions in accordance with Service Provider directions. Provide an ongoing managed Server state in accordance with agreed maintenance schedules and Service Levels. Such as monitoring for, and notification of, updates and revisions of the operating environment for review, acceptance by the Customer and the raising of appropriate Change controls.	X	

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Function/Responsibility	Service Provider	Customer
<b>Firmware Management:</b> Provide and install firmware upgrades to in-scope information communication technology equipment.	X	
<b>Remote Management &amp; Support:</b> Control and maintain the base components of the operating system and system Software that manages the Hardware and Software resources of a computer. This comprises remote systems access and / or take-over (Remote control). This also comprises the regular check schedules.	X	
<b>Level 2 Assignment, Analysis &amp; Support:</b> Provide analysis and support to either address Incidents or support requests. Where required, to identify the appropriate Level 3 support teams for escalation and re-assignment.	X	
<b>Level 3 Assignment, Analysis &amp; Support:</b> Provide Level 3 support on In-scope equipment such as developing and deploying support resolutions or fixes. Where appropriate, identify the external service provider(s) and co-ordinate a solution.	X	
<b>Security Patch Management:</b> Provide ongoing analysis of manufacturer security and patch releases for review and recommendation to the Customer for appropriate upgrades. If approved, prepare Change Request.	X	
<b>Systems Programming &amp; Scripting:</b> Develop, deploy and maintain appropriate operating level scripts to automate the delivery of operating system activities.	X	
<b>Toolsets</b> Provide agreed toolsets for the Server Management process.		
Provision: Provide and deploy agreed toolsets.	X	
Configuration: Configure agreed toolsets.	X	
Management: Manage and support agreed toolsets.	X	

**Administration & Management: Server, Storage, Network, Database, Infrastructure Applications and Others**

Function/Responsibility	Service Provider	Customer
<b>Storage and Data Management</b>		
Manage In-Scope Equipment in accordance with the storage policy defined in the Policies and Procedures Document.	X	
Manage storage consumption for and within applications and/or systems so that the appropriate users or applications have the correct quotas and that usage falls within the guidelines for capacity and usage as defined in Policies and Procedures Document.	X	
Provide monthly monitoring and analysis of stored data in terms of size, location, and type for exceptions in accordance with agreed policies as defined in Policies and Procedures Document.	X	
<b>Disk and Data Management</b>		
Manage disk and storage arrays in accordance with policy defined in Policies and Procedures Document.	X	
Provide for the allocation and initialization of disk and storage arrays in terms of usage and location.	X	

Schedule 3D – Enterprise Compute Services SOW

Function/Responsibility	Service Provider	Customer
Modify and upgrade the allocation of disk arrays and disk packs based on business requirements as requested by the Customer.	X	
Provide monthly monitoring and analysis of disk and storage arrays for exceptions in accordance with agreed policies.	X	
Remove (archive or delete) expired data in accordance with the archiving, retention and deletion policies defined in Policies and Procedures Document.	X	
Provide for the initialization, recovery and resizing of file systems based on utilization and/or projected growth.	X	
<b>Data Transfer</b>		
Maintain processes for file transfer to and from required systems, verifying successful transfer and data verification.	X	
<b>Back-Up and Restore Operations</b>		
Execute and monitor the backup, recovery and archive activity within the Customer environment in accordance with the storage policy defined in Policies and Procedures Document.	X	
Provide backup schedules and effectiveness reporting, especially in distributed environments.	X	
Perform media backup on a centralized and/or remote basis.	X	
Restore or recover lost or damaged data from backup media upon Customer request in accordance with the media and data catalog.	X	
Testing of media backups to determine media readability as defined in the Process and Procedures Manual.	X	
Pre and post testing of backup subsystems such as reporting on success and failure rates.	X	
Testing of media restores to determine media readability and data validity as requested.	X	
Prior to and after post testing of restores such as reporting on success and failure rates.	X	
<b>Media Management and Library Management</b>		
Maintain and schedule automated media devices, such as auto-identification, tagging and security of physical media and associated data.	X	
Maintain the schedule of media packaging and off-site dispatch. Maintain a usage and availability register so that adequate physical media is available to meet actual and forecasted usage. Perform escalation in accordance with agreed policies when thresholds are exceeded.	X	
Provide secure storage of Customer media at the data center, off-site or Customer site location, maintain records of media movement and provide periodic reports or audits of media stored.	X	
Prior to and after post testing of restores such as reporting on success and failure rates.	X	
<b>Directory, Name and Address Management</b>		
Manage and provide for the availability of directory, name and address systems in accordance with business service requirements.	X	
Perform activities to provide for the availability of domain name system (DNS) services.	X	
Perform activities to provide for the availability of dynamic host configuration protocol (DHCP) systems.	X	
Perform necessary activities to provide availability of directory systems.	X	
<b>Infrastructure Application Management</b>		

Schedule 3D – Enterprise Compute Services SOW

Function/Responsibility	Service Provider	Customer
Monitor, analyze and diagnose availability, status and performance of core service infrastructure applications.	X	
Monitor and control web services access, configuration, resource utilization and throughput activity.	X	
Monitor and control Virtual services access, configuration, resource utilization and throughput activity.	X	
<b>Server Operations Administration</b>		
Control and reconfigure servers, operating systems, processing complexes, peripheral sub-systems and applications.	X	
Use single or aggregated consoles (single point of operation) to provide access for operations to receive event streams or routine console messages. Provide for logging, resumption or commencement of jobs, error indication and other acts that require operator intervention or action. Provide console automation.	X	
Configure and monitor in-scope physical processing partitions, input/output sub-systems, channels and peripheral devices. Monitor power, air conditioning and other environmental factors. Check that system devices are maintained in accordance with the build documentation or manufacturer's instructions.	X	
Administer system processes using physical intervention and according to agreed policies and procedures.	X	
Provide primary detection and diagnosis of server environment failure, such as environmental failure.	X	
Assign or reassign server resources to maintain load balancing.	X	
Synchronize clocks on system devices with the central time server.	X	
Recommend maintenance for the enterprise computing configuration based on good practice and manufacturer instructions.	X	
Automate operations that would otherwise require human intervention and that occur automatically based on schedules, events, threshold, or status changes. These are routine systems activities as distinct from job or workload scheduling.	X	
<b>Physical Database Support</b>		
Configure and maintain the Customer's database servers	X	
Coordinate and implement database server upgrades and service packs. (Major Releases / Patches)	X	
Setup, configure and write scripts/programs for in-scope database server related maintenance.	X	
Analyze, identify and troubleshoot issues in databases: <ul style="list-style-type: none"> <li>Investigate and research on the type of issues.</li> <li>Categorize issues that pertain to known database errors and bugs, or a newly encountered database problems related to any kind of processes that are running that require immediate resolution.</li> <li>Provide prompt fixes for complex problem such as database corruption. Work closely with the database users, application developers and network administrators/engineers to provide direction in identifying and resolving database issues.</li> </ul>	X	
Implement backup and recovery strategy to support data replication and to provide high availability databases.	X	
Perform evaluation on backup tools/methods to improve database availability.	X	

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Function/Responsibility	Service Provider	Customer
Build and complete code release for in-scope databases.	X	
Configure and monitor database replication on servers to provide up-to-date data between servers.	X	
Analyze and monitor the performance statistics of databases. <ul style="list-style-type: none"> <li>Review thresholds and capacity planning.</li> <li>Perform trend analysis to end-up with the best forecast to prevent Customer/user problems related to hardware, software and network functions</li> </ul>	X	
Perform database related performance tuning and optimization as necessary.	X	
Performing database cleanups and archives, reconfiguring database's default configuration, and other database tuning processes that help to improve the performance of the system.	X	
Manage database users and security by granting/revoking appropriate logins and permissions for individual users.	X	
Prepare code and document the step-by-step procedures on database Disaster Recovery in preparation for any catastrophic events.	X	
Perform periodic audits on production and test databases of user rights. Comply with named regulatory requirements.	X	
<b>Operating Environment Support</b>		
Maintain the appropriate status and availability of the operating system, in accordance with Service Levels keeping a consistent and compliant base operating system.	X	
Provide standard procedural deployment of operating system and firmware versions in accordance with Service Provider directions. Provide an ongoing managed server state in accordance with agreed maintenance schedules and Service Levels. Such as monitoring for, and notification of, updates and revisions of the operating environment for review, acceptance by the Customer and the raising of appropriate change controls	X	
Provide and install firmware upgrades to in-scope information communication technology equipment.	X	
Control and maintain the base components of the operating system and system software that manages the hardware and software resources of a computer. This comprises remote systems access and / or take-over (Remote control). This also comprises the regular check schedules.	X	
Provide analysis and support to either address Incidents or support requests. Where required, to identify the appropriate 3rd Level support teams for escalation and re-assignment.	X	
Provide analysis and support to either address Incidents or support requests. Where required, to identify the appropriate 3rd Level support teams for escalation and re-assignment.	X	
Provide 3rd level support on In-Scope Equipment such as developing and deploying support resolutions or fixes. Where appropriate, identify the external service provider(s) and co-ordinate a solution.	X	
Provide ongoing analysis of manufacturer security and patch releases for review and recommendation to the Customer for appropriate upgrades. If approved, prepare Change Request.	X	
Develop, deploy and maintain appropriate operating level scripts to automate the delivery of operating system activities.	X	
<b>Production Schedule Management</b>		
Add, modify or remove automated, scheduled system activities such as the	X	

Schedule 3D – Enterprise Compute Services SOW

Function/Responsibility	Service Provider	Customer
identification of their appropriate precursors and dependencies. Undertake these changes at the appropriate time, monitor for the appropriate completion and carry out appropriate remedial tasks if these fail inside the relevant pre-defined time constraints. Manage and automate jobs, such as workloads, batches, transaction services, continuous processes, or operating and application services.		
Establish job or workload characteristics of job activity.	X	
Schedule jobs and provide scheduling workarounds or advice as to alternative timing.	X	
Execute and manage on-line and batch processing in accordance with production schedules.	X	
Monitor on-line and batch processing and escalate alarms to the Service Desk.	X	
<b>Network Component Administration</b>		
Maintain and monitor in-scope network equipment such as switches and routers.	X	
Maintain and administer configurations of network devices. Configure circuits or paths through non-switched networks. Control changes, such as the recording changes that are made to the hardware, software, firmware, and documentation throughout the system lifecycle.	X	
Monitor and manage in-scope network devices. Monitor the condition of the network, such as the availability of devices and interfaces. Actively manage and report on event notification, problem identification, fault isolation and problem resolution.	X	
Manage carriers and other agreed third parties to provide network services.	X	
Administer and configure traffic profiles that allow traffic prioritization, such as profiles to segment the traffic logically, to load balance over different networks with the objective of improving responsiveness and offloading functionality from servers on the network.	X	
<b>Transport Services</b>		
Schedule, coordinate, and perform support activities for Transport Services.	X	
Procure Transport Services to the Customer as requested.	X	
Coordinate and manage the installation, testing, and support activities of Transport Vendors as a Project.	X	
Perform yearly reviews with the Transport Vendors to ensure contractual obligations are met.	X	
Check that Transport Vendors provide quotes and execute orders in accordance with each Transport Vendor's respective Service Level Agreement.	X	
Review and report on the performance of Transport Services to cover load and latency metrics.	X	
Analyze performance reports and recommend actions to the Customer as necessary.	X	
Conduct review of Telecommunication invoices: <ul style="list-style-type: none"> <li>• Identify invoice variances</li> <li>• Escalate deviation to the Customer governance team for action</li> <li>• Assign/categorize invoices to appropriate Business Unit</li> <li>• Conduct annual contract and invoice review with Transport Vendors and provide recommendations to the Customer</li> </ul>	X	
<b>Facilities</b>		

Schedule 3D – Enterprise Compute Services SOW

<b>Function/Responsibility</b>	<b>Service Provider</b>	<b>Customer</b>
Provide the building services within the in-scope facilities.		X
Monitor and maintain power, air conditioning and other environmental factors in accordance with data center classification policies.		X
Manage the physical security of the in-scope facilities.		X
Provide an environment to house servers and information communication technology equipment in facilities other than data centers.		X
Provide the housing facilities within the non-data center site locations.		X
Maintain power, air conditioning and other environmental factors as appropriate relative to the quality of the facility.		X
Monitor power, air conditioning and other environmental factors as appropriate relative to the quality of the facility within the constraints of the technology provided	X	
Manage the physical security of then non-data center facilities		X
Maintain and manage the audit logs and access records for non-data center facilities.		X
Report on the audit logs and access records within the boundaries of the technology provided	X	
Provide a secure workspace for the non-data center operations staff		X
<b>Others</b>		
Develop standards, policies and associated procedures establishing Customer systems management requirements.		X
Provide secure storage of Customer media at the data center, off-site or Customer site location, maintain records of media movement and provide periodic reports or audits of media stored.	X	
Provide Letter of Agency for 3rd Party contracts.		X
Provide a physically secure environment that meets the required data center classification and standards engineering specifications and the provision of space for the equipment in the environment, such as facilities management and Data center operations of in-scope equipment.		X

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**RESTATED**  
**SCHEDULE 3E**  
**APPLICATIONS AND WEB SERVICES SOW**  
**DATED JULY 1, 2014**  
**TO MASTER SERVICE AGREEMENT**  
**BY AND BETWEEN**  
**CITY OF SANTA CLARA**  
**AND**  
**UNISYS CORPORATION**

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### 1. Overview

This Restated Application and Web Services Statement of Work (“SOW”) has been entered into pursuant to the Master Services Agreement between Customer and Service Provider dated August 26, 2009 (the “MSA”) and is a restatement and replacement of the initial Application and Web Services SOWs included in the MSA.

In the event of an inconsistency, ambiguity, contradiction or conflict between the terms of this SOW and its exhibits, any Work Orders or Change Orders pursuant to this SOW, and the MSA, including its schedules and exhibits, these documents will be interpreted in the following order of precedence:

- a) the terms of a Change Order will take precedence,
- b) followed by the terms of the MSA (unless otherwise provided therein),
- c) followed by Schedule 3A – Cross Functional Service SOW
- d) followed by the terms of a Work Order, and
- e) followed by the terms of a Schedule or Exhibit not specifically identified herein as controlling.

A Change Order may only amend this SOW, exhibits or Work Orders by express reference to the term or condition of the SOW, exhibit or Work Order that is to be amended.

If this SOW changes any of the terms and conditions in the MSA then Schedule 19 of this SOW must contain those changes. In the event a discrepancy arises between this SOW and amendments to this SOW with respect to the same subject matter, the most recently executed SOW (or Statement of Work amendment) will prevail.

Capitalized terms used in this SOW have the meanings set forth in Exhibit 1. Capitalized terms not defined in this SOW will have the meanings specified in the MSA.

## 2. Service Description and Major Functions

This SOW defines the responsibilities, assumptions, exclusions, and service levels required to deliver Application Services to the Customer. The Service Provider Application Management team will provide Application Support & Maintenance services, Application Development and Deployment services, and Application Rationalization/Optimization services.

Across all Services provided, Service Provider understands that the objective of the relationship is not just for Service Provider to operate the environment, but for Service Provider to take a leading role in driving alignment between IT strategy and Customer business objectives with the overall objective of making Customer IT the IT provider of choice for all Customer departments. Each Service Tower will perform the core responsibilities associated with Service operations and driving operational efficiencies as well as contribute to the strategic development and evolution of IT services within Customer's business.

### 2.1 Application Management Services

For application management of the general Commercial off the Shelf (COTS), Utility Management Information System (UMIS), the Finance and Human Resource Management System (FHRMS), Public Safety, Permitting / Land Management / GIS, web services, and other general government applications as identified in Exhibit 4, the Service Provider Application Support & Maintenance service provides:

- Incident management
- Service request support
- Third party vendor coordination and release support
- Logical database administration services
- Project management
- Reporting
- Portfolio management and rationalization
- Application Security
- Application administration
- Application analysis
- Business requirements and business process alignment
- Application evaluation and selection
- Application implementation / deployment

For approved application development, enhancements, deployment and modifications, the Service Provider will perform the following services:

- Requirements Development
- Design
- Construction
- Implementation / Deployment
- Unit testing
- Logical database administration services

- Project management
- Configuration management
- Reporting

## **2.2 Application Rationalization/Optimization Services**

The Service Provider will provide leadership and support to the Customer in creating an IT vision with a supporting IT plan of prioritized IT initiatives in support of Customer business goals. These initiatives will have a brief description with a rough order of magnitude cost and business impact.

These initiatives will be identified by an Application Rationalization/Optimization process that will perform a high-level assessment of the existing application portfolio by analyzing specific functional domains of the Customer and the high impact applications that support the processes within that domain.

The Service Provider will deliver an assessment and analysis of the Customer's high impact application assets and provide direction through an IT roadmap for the Customer. The IT roadmap can be used by the Customer to get approval and funding for future projects to improve the state of the application portfolio.

Application Rationalization/Optimization service provides:

- Working collaboratively with business and IT stakeholders to identify business goals and critical business processes and interactions
- Current application state assessment
- IT roadmap with prioritized initiatives and rough order of magnitude cost and business impact

Detailed responsibilities for Application Rationalization and Optimization are documented in Exhibit 2.

## **2.3 Web Services**

The Service Provider will provide leadership and support to the Customer in creating a web practice that can be evangelized and add value to the Customer departments. The web strategy plan will provide direction in the development of a web identity across Customer business domains and engage the Customer internal and external constituents in its use. The web strategy plan will be used by the Customer and Service Provider to get approval for future web projects to bring the Customer web practice to a modern state of maturity and continuous innovation.

The Service Provider Web Services provides:

- establish and maintain the Customer Web Strategic Plan
- participation in the marketing and branding of the Customer's web services
- assist with definition and evaluation of web based services and applications
- bring industry and domain best practices
- drive the development of a Customer web practice
- evangelize web services both the internal and external constituents
- participation in Customer's web user group
- make recommendation for resource staffing through Change Management

## **2.4 Business Analysis Services for Customer Departments**

Service Provider will provide application management, rationalization/optimization services and ongoing technical and business analysis services for applications used by Customer departments. As of the

Effective Date, such services are provided for public safety applications, electric utility applications, finance applications and general applications.

### 3. Supported Systems and Quantities

Exhibit 4 identifies the applications that will be supported by the Service Provider. The detailed applications list will be updated during transition and ongoing operations through Change Management.

### 4. Responsibility Matrix

Exhibit 2 sets forth the Responsibility Matrix for services relevant to this SOW.

### 5. Support Requirements

Application management, deployment and optimization services and web services will be provided during Customer's normal business hours. The normal Customer business hours are 7:00 am – 6:00 pm (Pacific Time), Monday through Friday excluding holidays or as mutually agreed.

### 6. Service Levels

The application support and maintenance services and application development services described in this SOW will be delivered to the Service Levels stated in Schedule 4 Service Levels.

### 7. Dedicated and Non-dedicated Resources

Location	Resource Name	Responsibilities / Skills
Onsite (Primary and Management Responsibility)	Application Tower Lead	Manage processes and requirements associated with application support optimization services
Remote (Primary Responsibility)	Database Administrator	Database administration for the MS SQL, and Oracle databases associated with UMIS, FHRMS, and other applications
Onsite (Primary Responsibility)	Technical Software Analyst	Support for the FHRMS PeopleSoft application suite
Onsite (Primary Responsibility)	UMIS Application Analyst	Support for the UMIS application suite
Onsite (Primary Responsibility)	Silicon Valley Power Business Analyst	Develop the functional requirements, testing, training, implementation, and support artifacts specific to the Silicon Valley Power application portfolio by working closely with the business domain and business subject matter experts.
Onsite (Primary Responsibility)	Senior Web Developer / Business Analyst	Develop the web enterprise and provide management and support for the internet and intranet web technologies. Create and maintain the strategic partnership between stakeholders and Customer IT delivery.

Location	Resource Name	Responsibilities / Skills
Onsite (Primary Responsibility)	Web Developer	Management, support, and operational oversight of the internet and intranet web technologies
Onsite (Primary Responsibility)	Application Support Analyst	COTS application support, FHRMS operations, and general UMIS application support
Onsite (Primary Responsibility)	Application Business Analyst	Develop the functional requirements, testing, training, implementation, and support artifacts across the Customer application portfolio by working closely with the business domains and business subject matter experts. Work to foster the strategic partnership between Customer business domains and Customer IT delivery.
Onsite (Primary Responsibility)	Web Designer	Develop the website designs to establish a common look and feel and effectively communicate the intent and message for all Customer websites
Onsite (Primary Responsibility)	UMIS Business Analyst	Develop the functional requirements, testing, training, implementation, and support artifacts specific to the UMIS application portfolio by working closely with the business domain and business subject matter experts. Create and maintain the strategic partnership between utility business stakeholders and Customer IT delivery.
Onsite (Primary Responsibility)	Public Safety Business Analyst	Develop the functional requirements, testing, training, implementation, and support artifacts specific to the Public Safety application portfolio by working closely with the business domain and business subject matter experts. Create and maintain the strategic partnership between utility business stakeholders and Customer IT delivery.
Remote (Primary Responsibility)	.NET Web Developer	.NET development for websites on a requirements basis

Detailed job descriptions of each of the above dedicated and non-dedicated resources are set forth in Schedule 5 Fees.

## 8. Reports

Number and types of reports will be finalized during transition and will continue to evolve during steady state. Request for changes can be made through the Change Control Procedures. Service Provider will

recommend new reports as capabilities and requirements evolve. The following reports are identified as of the Effective Date of this Agreement:

### 8.1 Application Support and Maintenance Reports

Report Name	Description	Frequency
Application incident report	<ul style="list-style-type: none"> <li>• Summary of open tickets</li> <li>• Aging of ticket information</li> <li>• Current status</li> <li>• Type(defect/enhancement)</li> <li>• Number of tickets</li> <li>• Priority of tickets</li> <li>• Root cause analysis</li> <li>• Impact/ effort analysis (If applicable)</li> <li>• Migration Strategy</li> <li>• Module of ticket</li> <li>• Person assigned for resolution</li> <li>• Resolution details</li> <li>• Severity level</li> </ul>	Weekly
Application summary report	<ul style="list-style-type: none"> <li>• Inflow / outflow of tickets</li> <li>• Performance vs. Service Level Objectives</li> <li>• Recommendations based on analysis</li> </ul>	Monthly

### 8.2 Application Development and Deployment Reports

Report Name	Description	Frequency
Application development report	<ul style="list-style-type: none"> <li>• Application development plan vs. accomplishments</li> <li>• Milestones achieved</li> <li>• Key issues escalation</li> <li>• Key risk highlights</li> <li>• Plan for upcoming week</li> </ul>	Weekly

#### Report Due Dates

Unless otherwise agreed to by the Customer, Reports are due as follows:

- Monthly Reports Within ten (10) business days from the end of the month.
- Biweekly Reports First Thursday after the end of the biweekly period.
- Weekly Reports First Tuesday after the end of the week.
- Daily Reports 09:00 AM Pacific Time the following day

## 9. Optional Resources

The optional resources that may be engaged by the Customer during the Term for Applications and Web Services are as provided in Schedule 5.

The detailed job descriptions, qualifications, experience and skill sets of such resources are provided in Schedule 5.

## 10. Critical Deliverables

As of the Effective Date of the Agreement, the Critical Deliverables associated with Applications and Web Services are provided in Schedule 3A – Cross – Functional Services, Critical Deliverables section.

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## 11. Changes to MSA

This SOW does not change any terms in the MSA and its Schedules.

Schedule 3E – Applications and Web Services SOW

**EXHIBIT 1 – DEFINITIONS**

Definitions applicable to this SOW will be updated by the Service Provider before Service Commencement Date.

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**EXHIBIT 2 – RESPONSIBILITY MATRIX**

The Responsibility Matrix below shows which party is responsible for the listed task. For those instances where there are checks in more than one column, this indicates a shared responsibility or combined effort between the parties. It is not the intent of the Responsibility Matrix to absolutely identify or define every process, activity or task to be performed by Service Provider as a managed services function.

The responsibility matrix for Applications and Web Services is set out below.

**Application Support and Maintenance**

No.	Responsibility	Service Provider	Customer	TPP
	<b>Incident Management</b>			
1.	Provide functional and technical support for in-scope applications as listed in section 2	X		
2.	Accept incidents for in-scope applications (listed in section 2) escalated by the Service Desk, detected by the event detection infrastructure or reported by Customer staff	X		
3.	Classify the incident as a problem, defect, or new feature suggestion	X		
4.	Classify the application incident to determine status and priority and to provide initial support to resolve the incident where possible. If resolution is not possible, refer the incident to the relevant specialist	X		
5.	Assess, collect, and provide detailed analysis of the application incident. Attempt to resolve the incident. If resolution is not possible, refer the incident to the relevant specialist	X		
6.	Provide ownership, coordination, visibility, monitoring, and communication for application incidents to agreed parties in accordance with the incident management plan	X		
7.	Escalate unresolved COTS and ASP incidents to third party vendors	X		
8.	Where responsibility for resolving an incident is in dispute, communicate with the relevant parties to clarify responsibility	X		
9.	Provide the means to govern and control the efficient restoration of service after an application incident has occurred	X		
10.	Resolve the application incident and restore service operation using the appropriate solution, workaround, change request, or third party vendor solution	X		
11.	Contribute to the resolution of application incident and restore service operation using the appropriate solution, workaround, change request, or third party vendor solution		X	X
12.	Provide and update documentation for applications currently implemented at the Customer	X		
13.	Update existing service desk documentation, scripts, and knowledge bases with details of the application incident resolution	X		
14.	Communicate the resolution to an incident to the end users via email (normal) or phone call	X		
	<b>Service Request management</b>			
15.	Review the service request for completeness and confirm it adheres to the service request policy	X		
16.	Implement the change or update indicated by the service	X		

No.	Responsibility	Service Provider	Customer	TPP
	request and confirm it is complete			
17.	Schedule and implement any minor configuration changes for COTS and ASP applications	X		
18.	Test configuration changes for COTS and ASP applications	X		
19.	Create adhoc reports for the UMIS Reporting Data Store (RDS) custom application	X		
	<b>Application support</b>			
20.	Provide the support agreements with third party vendors for access to knowledge bases and level 3 support		X	
21.	Assume third party vendor costs for Customer provided hardware, software and maintenance		X	
22.	Maintain the relationship with third party vendors	X	X	
23.	Coordinate and escalate unresolved application problems to third party vendors	X		
24.	Coordinate with third party vendors to verify the timeframe for problem and defect resolution and the schedule for new feature suggestion implementation	X		
25.	Coordinate with third party vendors on the release and implementation of vendor-initiated patches and maintenance releases	X		
26.	Coordinate with third party vendors to identify any impacted interfaces due to vendor-initiated patches and maintenance releases and escalate any impacts with the COTS vendor	X		
27.	If a third party vendor does not respond to a request for service within the timeframe defined in the service level objectives, the Customer will work with the vendor to establish an agreed response time. The Customer will not hold the Service Provider liable if a third party vendor is not responsive.		X	
28.	Provide the user acceptance testing criteria for application maintenance releases		X	
29.	Test patches and maintenance releases received from third party vendors. Testing of ASP applications is out of scope	X		
30.	Test interfaces impacted as a result of patches or maintenance releases	X		
31.	Approve scheduled application maintenance releases for implementation		X	
32.	Implement COTS application patches per change management and configuration management procedures. ASP application patches will be implemented by the ASP vendor	X		
33.	Update application documentation and knowledge bases	X		
	<b>Application support</b>			
34.	Perform database table and index creation and maintenance	X		
35.	Perform database design and schema changes for internal/custom, interface, and web applications	X		
36.	Load and manage data provided by the Customer for the application development and test environments	X		
37.	Run ad-hoc queries to support incident resolution	X		
38.	Provide database administration expertise for the management and tuning of the application databases	X		
	<b>Application support</b>			
39.	Evaluate the scope and risk of application support and	X		

No.	Responsibility	Service Provider	Customer	TPP
	maintenance activities			
40.	Create the support and maintenance schedule	X		
41.	Manage the support and maintenance schedule	X		
42.	Monitor and control the support & maintenance activities	X		
43.	Jointly work with the Service Provider to establish application support, maintenance, and development priorities	X	X	
44.	Purchase and maintain, at Customer expense, all software licenses and agents used in providing services in this SOW that reside on Customer-owned products		X	
45.	Provide, at Customer expense, the facilities for onsite application support and maintenance resources		X	
	<b>Reporting</b>			
46.	Create the application support and maintenance reports.	X		

### Application Development and Deployment

No.	Responsibility	Service Provider	Customer	TPP
	<b>Functional requirements definition</b>			
1.	Review and approve application enhancement requests to understand the business need to be resolved and the requested capability to be delivered		X	
2.	Define the detailed functional and technical requirements to be implemented for enhancements	X		
3.	Review and approve the detailed requirements of application enhancements		X	
4.	Develop the cost and schedule estimates for the enhancement requests	X		
5.	Provide direction to either reduce the scope of the enhancement if the cost or schedule is outside the available capacity or skills of the resources defined in the SOW or approve the use of project pool resources to complete the enhancement		X	
6.	Submit the requirements document to the Customer for approval	X		
7.	Manage subsequent changes to the approved requirements and assess their overall impact to the project cost and schedule	X		
	<b>Design</b>			
8.	Design the software and data components of enhancements	X		X
9.	Review and approve the design of application enhancements		X	
10.	Document test cases and procedures	X		X
11.	Review and approve the test cases and procedures of application enhancements		X	
12.	Review and revise cost and schedule estimates	X		X
	<b>Develop and test</b>			
13.	Code and unit test enhancements	X		X
14.	Provide the data required for testing application enhancements	X	X	
15.	Conduct functional and performance testing per the agreed acceptance test criteria	X		X
16.	Document the test results	X		
17.	Review and approve the results of enhancement testing		X	

No.	Responsibility	Service Provider	Customer	TPP
	<b>Implement and deploy</b>			
18.	Package enhancements	X		X
19.	Create enhancement documentation	X		X
20.	Oversee the gathering and execution of user acceptance testing of enhancements	X		
21.	Provide the user acceptance testing criteria for application enhancements		X	
22.	Review and approve the formal test acceptance criteria (e.g. test case pass rate) of application enhancements		X	
23.	Approve application enhancements for implementation		X	
24.	Implement enhancements into production	X		
	<b>Database administration</b>			
25.	Perform database table and index creation and maintenance	X		X
26.	Perform database design and schema changes for internal/custom, interface, and web applications	X		X
27.	Load and manage data for the application development and test environments	X		
28.	Provide database administration expertise for the management and tuning of the application databases	X		
	<b>Configuration management</b>			
29.	Provide configuration management software for maintaining application source code for application enhancements		X	
30.	Maintain source code and version control	X		
31.	Maintain application documents and system technical and functional documentation	X		
	<b>Project management</b>			
32.	Evaluate the scope and risk of enhancements	X		
33.	Create the development schedule of enhancements	X		
34.	Manage the development schedule	X		
35.	Monitor and control the project	X		X
36.	Provide feedback or approval on artifacts submitted for review with five business days of artifact delivery unless otherwise agreed and documented for large projects		X	
37.	Review and approve all changes of scope, key milestones, key assumptions, and project budgets		X	
38.	Provide, at Customer expense, the facilities for onsite application development resources		X	
	<b>Reporting</b>			
39.	Create the application development reports	X		

#### Application Rationalization and Optimization

No.	Responsibility	Service Provider	Customer	TPP
	<b>Collaborative workshops</b>			
1.	Document and refine the Customer IT vision with supporting business goals, objectives and metrics	X	X	
2.	Organize Customer functions into domains and further document and refine IT vision with supporting business goals, objectives and metrics within these domains.	X	X	
3.	Identify the high impact applications that will be the scope of the application assessment for each domain	X	X	
4.	Identify the stakeholders by domain	X	X	

No.	Responsibility	Service Provider	Customer	TPP
5.	Execute the discovery process to access the business value of applications (Service Provider led with input from the Customer)	X	X	
6.	Execute the discovery process to access the technical value of applications (Service Provider led with input from the Customer)	X	X	
7.	Identify the rough order of magnitude cost of ownership of applications	X	X	
8.	Facilitate collaborative workshops	X		
	<b>IT assets assessment</b>			
9.	Create an evaluation report of the application portfolio	X		
10.	Identify opportunities to improve application integration	X		
11.	Identify opportunities to reduce application redundancy	X		
12.	Identify opportunities to achieve economies of scale within the portfolio	X		
13.	Establish the return on investment (ROI) associated with addressing a business problem	X		
14.	Review initial evaluation report and provide input		X	
15.	Prioritize the business problems to be addressed according to ROI and urgency	X	X	
16.				
17.				
18.				
19.				
20.				
	<b>IT roadmap</b>			
21.	Create a brief description of recommended IT initiatives with a rating value of High, Medium, or Low on both cost and impact	X		
22.	Review IT initiative descriptions and reconcile with existing IT initiatives		X	
23.	Create a report of initiatives prioritized by business goals, cost, and impact with interdependent scheduling issues also taken into account	X		
24.	Review initial IT roadmap and provide input		X	
25.	Create IT roadmap ready for presentation to stakeholders	X		
26.	Present IT roadmap to stakeholders for approval and funding (Customer led with support from the Service Provider)	X	X	
27.	Make recommendations to plan of record for projects identified by the IT roadmap	X		
	<b>Web strategy plan</b>			
28.	Create a brief description of recommended web initiatives with a rating value of High, Medium, or Low on both cost and impact	X		
29.	Review web initiative descriptions and reconcile with existing web initiatives		X	
30.	Create a report of web initiatives prioritized by business goals, cost, and impact with interdependent scheduling issues also taken into account	X		
31.	Review initial web strategy plan and provide input		X	
32.	Create web strategy plan ready for presentation to stakeholders	X		

No.	Responsibility	Service Provider	Customer	TPP
33.	Present web strategy plan to stakeholders for approval and funding (Customer led with support from the Service Provider)	X	X	
34.	Make recommendations to plan of record for projects identified by the web strategy plan	X		
	<b>Continuous improvement</b>			
35.	Maintain and evolve the artifacts created by Application Rationalization	X		

**RESTATED  
SCHEDULE 5  
FEES (2 YEAR EXTENSION)  
DATED JULY 1, 2014  
TO  
MASTER SERVICES AGREEMENT  
BY AND BETWEEN  
CITY OF SANTA CLARA  
AND  
UNISYS CORPORATION**

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## Schedule 5

### Fees

#### 1. Introduction

This Restated Schedule 5 Fees (2 Year Extension) is applicable as of the Amendment Effective Date and sets forth the Fees payable to Service Provider for provision of Services and the methodology to calculate adjustments to Fees, if any. This Schedule also includes the Termination Fees that are applicable to this Agreement.

#### 2. Definitions

“Additional Resource Charge” (“ARC”) means the amount payable, in addition to the Base Fees, for additional Resource Units consumed above Baseline Volumes, computed monthly on a per-Resource Unit basis applicable to all units consumed above the Dead Band.

“Amendment Effective Date” means the effective date of Change Request , July 1, 2014, to which this Restated Schedule 5 (Fees 2 Year Extension) is attached.

“Annual Minimum Spend” means the minimum annual amount that Customer has agreed to pay Service Provider for Services. All fees or charges paid by the Customer to Service Provider excluding fees or charges paid towards Pass-Through Orders shall be included to determine Annual Minimum Spend.

“ARC Ceiling” means the maximum percentage of ARC unit changes that can occur before Parties agree to mutually review and may renegotiate such applicable Resource Unit items such as Base Fees, Baseline Volumes, ARC Rates and RRC Rates.

“Base Fees(s)” means the total Fees to Customer for Services for the then current Baseline Volumes and FTEs.

“Baseline Volume” means the specific quantity of FTEs or Resource Units included within the Base Fees for a month.

“Contract Rate Card” means the hourly rate card that will apply for additional FTEs that Customer may decide to add to Services during the Term of this Agreement through the Change Control Procedures.

“Customer Project Resources” means the funds available for use at Customer’s discretion identified in Section 3.7.2 and Attachment 1 to Schedule 5, Fees (Customer Project Resources table).

“Dead Band” means a range of Baseline Volumes for each type of Resource Unit within which no adjustment of Base Fees is required.

“FTE” means a full time equivalent resource used in delivery Services and included in the Base Fees

“IMAC” has the meaning set forth in the applicable Service Descriptions.

“Operational Utilization” means the percentage of time resources spend keeping the existing environment functioning (e.g. incident management, problem management)

“Pass-Through Order” means an order, signed by Customer, for Third Party product(s) and/or service(s) that are not Services, to which Service Provider may add mark-up or administrative fee in accordance with Section 5.3 of this Schedule 5 Fees. Pass-Through Orders may be placed for items such as specialized IT consulting services. Pass-Through Order procedures are further explained in Section 5.3.

“Project Utilization” means the percentage of time resources spend changing, upgrading or performing strategic planning for the environment.

“Reduced Resource Credit” (“RRC”) means the reduction in the Base Fees when actual Resource Units consumption falls below Baseline Volumes computed monthly applicable to the units consumed below the lower threshold of the Dead Band, on a per-Resource Unit basis, and credited only when consumption falls below the lower threshold of the applicable Dead Band.

“Resource Units” refers to categories of resources, or particular kinds of resources (such as numbers of devices, FTEs, calls or other measurable items) used to determine Base Fees.

“Retainage” means the amount Customer can withhold from the payment due for Transition Milestones or Critical Transition Milestones for delays beyond the deadlines for such Transition Milestones or Critical Transition Milestones set forth in Schedule 13 Transition Plan and Milestones.

“RRC Floor” means the minimum percentage of RRC unit credits that can occur before Parties agree to mutually review and may renegotiate such applicable Resource Unit items such as Base Fees, Baseline Volumes, ARC Rates and RRC Rates.

“Service Provider Project Resources” means Fees identified in Attachment 1 to Schedule 5 Fees (Device/Service based pricing table) which will be included in the Base Fees.

“Transition Cost” means Fees paid during transition, as identified in Schedule 13 Section 5 or as an amortized cost component and included in the monthly invoice as set forth in Attachment 1 to Schedule 5 Fees (Transition Cost table).

“Volume Discounts” means the discounts Service Provider will provide to Customer as identified in Section 3.5 of this Schedule 5.

### **3. Baselines and Base Fees**

#### **3.1 Baseline Volume and Baseline Volume Adjustments**

The Baseline Volumes Resource Units as of the Amendment Effective Date of the Agreement are set forth in Attachment 1 (Baseline Volumes for Device/Service Based Pricing, Dead band and ARC/RRC Rates table) to this Restated Schedule 5.

##### **3.1.1 Adjustment to Baseline Volume**

During the final two (2) months of each Contract Year of this two (2) year extension, beginning with the first Contract Year, with changes to be effective at the beginning of the next invoicing period of the succeeding Contract Year and implemented in accordance with the reconciliation process described below, Service Provider shall measure actual consumption of all Resource Units and recommend any changes to Baseline Volumes, if necessary, so that Baseline Volumes accurately reflect Customer’s then-current consumption, but excluding any unusual, exceptional or non-recurring conditions. Base Fees shall be adjusted accordingly, using applicable ARC, RRC or other adjustments described by this Schedule or the Agreement. If the Parties are unable to agree upon adjusted Baselines (and related adjustments to Base Fees) in a timely manner, the matter shall be referred to the governance committee and if they are unable to agree, then resolved, if necessary, in accordance with Section 21 of the Agreement (concerning disputes). Section 4 of this Schedule sets forth the methodology to adjust Baseline Volumes in the event of substantial changes to Baseline Volumes.

#### **3.2 Base Fees and Base Fees Adjustments**

Base Fees for Services are as provided in Attachment 1 (Base Fees table) to this Restated Schedule 5. Base Fees reflect consumption of chargeable Resource Units in accordance with the Baseline Volumes contained therein. Base Fees commence upon the Amendment Effective Date.

### 3.2.1 [Reserved]

### 3.2.2 COLA

The Fees for Baseline FTEs and Resource Units may be adjusted annually for inflation in labor costs (COLA: Cost of Living Adjustment) based on the Consumer Price Index, All Urban Wage Earners, Not Seasonally Adjusted, San Francisco – Oakland – San Jose Ca provided by the Department of Labor Bureau of Statistics. COLA adjustment will begin in July 2011 and each subsequent Contract Year in July, based on the period ending December of the previous year. Customer and Service Provider agree to negotiate the impact of COLA on pricing with consideration to the then current economic conditions affecting the City budget to determine if any increases or decreases are appropriate. Contract rate card and ARC/RRC rates will be adjusted annually regardless of City budget constraints. COLA will not be applied to Customer Resource Pool.

### 3.3 Incremental Charges and Credits

As of Amendment Effective Date, Customer shall pay Base Fees for the Services plus ARCs (if consumption of Resource Units exceeds the upper limit of the Dead Band) or minus RRCs (if consumption of Resource Units fall below the lower limit of the Dead Band). Dead Band, ARCs and RRCs shall be determined, reported and invoiced on a monthly basis.

#### 3.3.1 Reporting and Payment of ARCs and RRCs

Within thirty (30) days following the end of each month, Base Fees for Services will be adjusted by Service Provider based upon (i) positive or negative differences between actual usage of Resource Units for the preceding month and (ii) then-current Baseline Volumes, (iii) multiplied by applicable ARCs and RRCs, provided, that there shall be no actual adjustment unless actual consumption falls outside the Dead Band. After calculation of all adjustments, Service Provider shall deliver to Customer, a statement in reasonable detail specifying all adjustments for that month, and explaining their calculation. If there has been a net overpayment by Customer, the amount of the overpayment shall be credited against the next succeeding Service Provider invoice(s) or paid by check when the Agreement expires or terminates. If there has been a net underpayment by Customer, the amount of the underpayment shall be added to the next succeeding Service Provider invoice(s) or paid by check when the Agreement expires or terminates. Customer agrees to pay the net amount due, if any, as provided in Section 11.3 of the Agreement after receipt of a correct Service Provider's invoice.

#### 3.3.2 Credits for non-availability of FTEs

Customer shall not pay corresponding prorated Fees for vacancies or absences in excess of agreed schedule of FTEs, unless prior agreement has been reached for adequate backfill for such FTEs. The agreed schedule of FTEs is as below.

- a. The base hours for calculating credits for non-availability of an FTE is 2080 hours per year.
- b. Total hours of non-training absences for any fulltime FTE shall be 248 hours. This number is based on 13 Customer holidays, 13 vacation days and 5 sick days. If the number of Customer holidays is decreased from 13 days, the time allocated for Customer holidays will be added to Service Provider vacation days. For the avoidance of doubt, the total working hours per FTE include time for FTEs to perform administrative activities (e.g. corporate email, required corporate training (e.g. ethics, security), and performance evaluations).
- c. The total hours of non-training absences for any part-time FTE shall be reduced proportionately per base hours specified in (a).
- d. Total training hours shall be 40 hours per year unless otherwise agreed to by Customer. For the purpose of this Section 3.3.2, training hours refers to training that enhances that job skills and

capabilities of the FTE in providing the Services. For the avoidance of doubt, training hours shall not include administrative or other training not directly related to providing the Services.

In the event a credit is due to Customer pursuant to this Section, Service Provider will credit the prorated Fees for the applicable FTE in the upcoming monthly invoice.

### 3.4 Annual Minimum Spend:

Annual Minimum Spend commitment is as follows:

Contract Year 6	Contract Year 7
3.6 Million USD	3.6 Million USD

### 3.5 Volume Discounts

Volume Discount schedule is set forth below.

#### Level 1

Two percent (2%) discount applied annually on the amount of the total annual Fees for the current Contract Year that exceed \$4.5 Million USD up to \$5.5 Million USD; Any annual discount credits due will be applied to the first invoice following the current Contract Year. Any Contract Year that is not a full twelve (12) months will have discounts and credits pro-rated based on the actual number of invoices in the Contract Year.

For example:

- Customer total invoices 5 Million in a Contract Year
- \$5,000,000 Million minus \$4,500,000 Million equals \$500,000
- Two percent (2%) discount applied to \$500,000 equals \$10,000
- \$10,000 discount credit applied to first invoice of next Contract Year

#### Level 2

Three percent (3%) discount applied annually on the amount of the total annual Fees for the current Contract Year that exceed \$5.5 Million USD; Any annual discount credits due will be applied to the first invoice following the current Contract Year. Any Contract Year that is not a full twelve (12) months will have discounts and credits pro-rated based on the actual number of invoices in the Contract Year.

For example:

- Customer total invoices 6 Million in a Contract Year
- 6 Million minus 4.5 Million equals \$1,500,000 (amount available for discount)
- \$1,500,000 (amount available for discount) minus \$1,000,000 (amount available which 2% band applied) equals \$500,000 (amount of available discount dollars which three percent (3%) discount will apply)
- \$500,000 multiplied by three percent (3%) equals \$15,000 (discount credit due for 3% band)
- \$1,000,000 (amount available which 2% band will apply) multiplied by 2% equals \$20,000 (discount credit due for 2% band)
- \$35,000 discount credit (discount credit for 2% band plus discount credit for 3% band) applied to first invoice of next Contract Year

### 3.6 Project Resources

#### 3.6.1 Service Provider Project Resources:

The Service Provider Project Resources will be paid monthly as part of the Base Fees. Service Provider will provide Customer detailed information regarding the usage of the Service Provider Project Resources

such as consumption, accrued resources, travel and projected effort expenditures. The Service Provider Variable Resource Pool purpose is to enable Service Provider to complete contractually required duties both for labor and travel (e.g. contribute to the creation and maintenance of Critical Deliverables identified in Schedule 3A, provide subject matter to assist with operations and identified in-flight projects).

### **3.6.2 Customer Project Resources:**

Resources used for Customer Project Resources are on a pay when used basis and invoiced on the next monthly invoice. Customer retains the right to change or remove Customer Project Resources at its sole discretion during the Term of the Agreement. Customer Project Resources identified as of the Effective Date is Attachment 1 to Schedule 5 (Customer Project Resources table).

## **4. ARCs Ceiling and RRCs Floor**

ARC Ceilings and RRC Floors are established to provide a means to evaluate and adjust pricing if there are dramatic shifts in Resource Unit usage volumes over a sustained period. In the event that the Resource Unit usage is greater than the ARC Ceiling or less than the RRC Floor for a period of two (2) consecutive months, the Parties agree to mutually review and may renegotiate such applicable Resource Unit items such as Base Fees, Baseline Volumes, ARC Rates and RRC Rates.

The following ARC Ceiling and RRC Floor table identifies the factors that are to be used in calculating whether Resource Unit usage has exceeded those limits. The ARC Ceiling is to be calculated by multiplying the Baseline Volume of the Resource Unit by the sum of 1.00 plus the ARC Ceiling percentage where ARC Ceiling percentage will be 25% of the Baseline Volume for the Resource Unit. The RRC Floor is to be calculated by multiplying the Baseline Volume of the Resource Unit by the sum of 1.00 less the RRC Floor percentage where RRC Floor percentage will be 25% of the Baseline Volume for the Resource Unit.

Immediately following the second consecutive month that a Resource Unit usage exceeds the ARC Ceiling or falls below the RRC Floor, the Parties agree to negotiate in good faith an equitable adjustment to such Resource Unit items within thirty (30) days. Any adjustments to pricing (ARC, RRC, Base Fees, Baseline Volumes, ARC Ceilings, RRC Floors, and Dead Band) shall become effective on the date when the Parties execute an amendment to reflect it. Notwithstanding the foregoing, until a mutual agreement is reached by the parties on making adjustments to the Resource Unit items referenced above, the then-existing ARCs and RRCs will continue in effect.

## **5. Expenses and Fees**

### **5.1 Retained Expenses**

Customer agrees to pay the expenses listed in Schedule 30 Financial Responsibility Matrix identified as Customer's responsibility, and as otherwise specified by the Agreement or agreed to from time to time in writing.

### **5.2 Travel and Living Expenses**

Service Provider will seek to limit travel costs by utilizing local or regional resources when possible and will make efforts to limit travel to specialized resources whenever feasible. Customer will reimburse actual travel and living expenses for Contract Staff identified in Schedule 30 Financial Responsibility Matrix with prior written consent from Customer, in connection with the performance of Services. Travel expenses as applicable for the preceding month will be included in the monthly invoice. Invoices shall describe reimbursable expenses in reasonable detail. Service Provider shall provide backup documentation including receipts for all reimbursable travel and living expenses. Travel, living and other expenses shall comply with Customer's written policies.

### **5.3 Pass-Through Orders**

A Pass-Through Order consists of third party products or services, or both, which shall be provided on a pass-through basis, (individually a “Third Party Product” or a “Third Party Service” and collectively “Third Party Items.”). Pass-Through Orders may not be placed for items included in the Services. Pass-Through Orders may be placed for items such as specialized IT consulting services. The total value of all Pass-Through Orders in a Contract Year, on which Service Provider will not add any mark-up or administrative fees, shall not exceed \$60,000.00 USD, unless otherwise agreed by Service Provider, prorated for Contract Years of less than 12 months. If agreed by Service Provider, Pass-Through Orders accepted in excess of the annual Contract Year limit will be subject to a 5% administrative fee. Third Party Order related to Service Provider office space reconfiguration in Contract Year 1, as approved by Customer shall be exempt from the total not-to-exceed prorated value of \$60,000 USD of Pass-Through Orders that shall be processed by the Service Provider without any administrative or other fees in Contract Year 1.

These Third Party Item(s) are included in the Pass-Through Order solely as a convenience to Customer to acquire the Third Party Item(s). By signing the Pass-Through Order, Customer authorizes Service Provider to order each Third Party Item for provision to the Customer by the applicable vendor. Service Provider has alliances with certain third party product and service vendors. As part of any such alliance relationship, Service Provider may be entitled to receive from these vendors certain fees, discounts, or other financial benefits. Customer acknowledges that Service Provider may receive these benefits for the Third Party Item(s).

The Third Party Item(s) shall be governed solely by the standard terms, conditions and service descriptions of their vendor. Service Provider will invoice Customer for each Third Party Item at the applicable price in the Pass-Through Order. Service Provider shall invoice Customer for each Third Party Product on shipment and for each Third Party Service in advance of the service. The undisputed invoices will be due and payable to Service Provider upon receipt of the Third Party Items. Service Provider shall pay the vendor after Service Provider receives Customer’s payment. Vendor must agree in advance of Pass-Through Order placement to be paid after Service Provider is paid by Customer and agree that Customer is responsible for any dispute concerning a Third Party Item(s). Customer agrees that Service Provider has no responsibility for the Third Party Items, which Service Provider provides on a pass-through, AS IS basis, and Customer agrees to look solely to the applicable vendor for each Third Party Item.

### **5.4 Overtime and Weekend Pay**

Customer agrees to pay overtime rates based on industry standards only for non-exempt Service Provider employees performing project work on an hourly basis for Contract Staff work in excess of standard business hours of the Customer. The standard business hours of Customer are 7:00 am – 6:00 pm Pacific Time, Monday through Friday. Overtime pay may be claimed by Service Provider only with written consent from Customer in advance of anticipated overtime hours.

### **5.5 Optional Services**

In the event Customer decides to avail any of the optional services identified in Attachment 1 to Schedule 5 (Optional services table), at any time during the Term, Customer agrees to pay the one-time and recurring fees for the applicable optional services identified in Attachment 1 to Schedule 5 (Optional services table). Charges for availed optional services for the preceding month will be included in the monthly invoice.

### **5.6 Contract Rate Card**

Contract Rate Card is set forth in Attachment 1 to Schedule 5 (Contract Rate Card table).

## 6. Termination for Convenience Fees

Customer agrees to pay Termination for Convenience set forth in Attachment 1 to Schedule 5, in accordance with Section 15.4 of the Agreement.

Termination for Convenience Fees will be subject to credits set forth in Attachment 1 to Schedule 5 of this Schedule 5, when termination rights per Section 15.4.1 of the Agreement is exercised by Customer.

## 7. Estimated allocation of project hours per FTE

Onsite FTEs shall perform both Project Utilization and Operational Utilization based work. The estimated percentage of time allocated for Project Utilization work for each onsite FTE is provided in Attachment 1 to Schedule 5 (Estimated Project Utilization table). If the actual percentage of time performing project work per quarter is materially lower than the estimated percentage of time allocated for project work, Service Provider shall justify the variation in writing to the Customer. If the Customer is not satisfied that the variations is justified, the Parties shall resolve in accordance with Section 21 of the Agreement.

**Attachment 1 to Schedule 5 Fees (pages 10-19) are  
confidential and are available in the City Clerk's Office for  
Council review only.**

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**RESTATED  
SCHEDULE 19  
CUSTOMER SOFTWARE  
TO  
DATED JULY, 1 2014  
MASTER SERVICES AGREEMENT  
BY AND BETWEEN  
CITY OF SANTA CLARA  
AND  
UNISYS CORPORATION**

**Schedule 19**

**Customer Software**

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As of the Effective Date, Customer Software includes the following:

**Tools & Knowledgebase**

1. End user information intranet site (CSI, TLC)
2. Software and patch distribution toolset and infrastructure (e.g. SCCM)
3. Security assessment software (e.g. Critical Watch or similar)
4. End user security software (e.g. SCEP)
5. SharePoint repositories

Schedule 19 – Customer Software

**Applications**

The list of Customer applications as of the Effective Date is attached below.

The table below provides details about the applications environment at the City of Santa Clara.

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
AutoCAD	AUTOCAD	Assists in the design and planning tasks	Desktop Application	Departmental	Autodesk Inc.	Departmental	6.6	Workstation
Civil 3D	AUTOCAD	Enhanced AutoCAD with Civil Engineering Features	Desktop Application	Departmental	Autodesk Inc.	Departmental	9.1	Workstation
Advanced Quality Assurance (AQUA Evolution)	CAD	Performs the quality assurance review of Emergency Medical Dispatch (EMD) protocol processed calls for public safety service.	Desktop Application	Departmental	Priority Dispatch Corp.	Departmental	9.1 Feature Pack 2	Workstation
ATT - Magic	CAD	CAD System Call Accounting	COTS	Third Party	ATT	Departmental	2.0.0.1008	Server
CAD - AVL - Automated Vehicle Locator	CAD	Tracks PS vehicles - tracks each vehicle every x minutes (differs depending on whether vehicles are in the garage or out.	COTS	Third Party	Motorola Inc.	Departmental	8.8	Server
CAD - Centracom Elite Dispatch Control Center	CAD	Controls and monitors City radio transmissions	COTS	Third Party	Motorola Inc.	CityWide	7.0.0.8.4	Server

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
CAD - Open Query System	CAD	Query system between CAD and County Databases	COTS	Third Party	Motorola Inc.	Departmental	2.80	Server
CAD - PMDC - Premier Mobile Data Computer	CAD	System supports SCPD, FD, and EMS dispatch functions for the City Mobile Data Computers	COTS	Third Party	Motorola Inc.	Departmental	7.5.1	Server
CAD - Premier CAD	CAD	System supports SCPD, FD, and EMS dispatch functions for the City	COTS	Third Party	Motorola Inc.	Departmental	7.01.0850	Server
CAD - UDT	CAD	Middleware between CAD and Police RMS & Fire RMS	COTS	Third Party	Motorola Inc.	Departmental	6	Server
CAD - VESTA System	CAD	E-911 call handling system for Dispatch Center	COTS	Third Party	Cassidian Communications	Departmental	9.97	Server
CAD - Zetron	CAD	Interface between the CAD and the Fire Stations. Performs Emergency Location Printing and shuts off stoves when the fire alarm goes off at the station.	COTS	Third Party	Zetron Inc	Departmental	2.4.0.5	Server
FTP Zilla	CAD	FTP server on UDT (used to transfer files to Tiburon and SunPro)	COTS	IT	ZillaSoft	Departmental		Server
Genwatch - PTT	CAD	Identification of radio system to officer	COTS	Third Party	Genesis	Departmental	4.8	Server

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
PROQA	CAD	Helps emergency dispatchers move smoothly through Case Entry and Key Questioning.	COTS	Departmental	Priority Dispatch Corp.	Departmental	2012	Workstation
Class	CLASS	System supports recreation class scheduling and rosters	COTS	IT	The Active Network Inc	Departmental	5.6.1.240	Server
Guard Card and EPI Suite - YAC / Teen Center	CLASS	Guard Card and EPI Suite for YAC / Teen Center	Unknown	IT		Departmental		Workstation
Realquest	CoreLogic	Web based inquiry to property and ownership information	Cloud	IT	CoreLogic Solutions, LLC	Departmental		SAAS
Crossroads eCitations (handheld citations) and Traffic Collision (eCrash)	Crossroads	The Crossroads Software Handheld Citation and Report Writing Program is an electronic solution for traffic citation, collision report, and DUI arrest report writing	Desktop Application	IT	Crossroads Software Inc.	Departmental	6.2.13	Workstation
FireRMS (RescueNet)	FD RMS	Was Sun Pro RMS. This application is used by the Fire Department to log and track details about incidents such as traffic accidents	COTS	Departmental	Zoll Data	Departmental		Server
Imagetrend	FD RMS	ImageTrend	Cloud	Departmental	ImageTrend, Inc	Departmental	Millennium Gold Build 2.0.542	SAAS

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
Patient Care Tracking System	FD RMS	Provides patient care reports for EMS	COTS	Departmental	Toomay	Departmental	2.6	Server
CORE Onestep	FHRMS	FHRMS Non Utility Cashiering - BL, AR, etc	COTS	IT	Core Business Technologies	Departmental	N/A	Server
FAS	FHRMS	Fixed Asset Management Suite	Desktop Application	Departmental	Sage Software, Inc.	Standalone	4.5.2013.0.110	Workstation
HdL Prime Business License	FHRMS	Supports business licensing and Fire Inspections/ Fees	COTS	IT	HdL Companies LLC	Departmental	5.0	Server
Hyperion Planning	FHRMS	Budget Preparation Software	COTS	IT	Oracle America Inc.	CityWide		Server
Linkup	FHRMS	Check And direct deposit printing for PS Accounts Payable and Payroll	COTS	IT	Standard Register	Departmental	5.1.3.4	Server/Workstation
PAYware CONNECT	FHRMS	Credit Card Processing for Core OneStep	Service	IT	Verifone	Departmental	2014	Service
PeopleSoft Enterprise Financial Management	FHRMS	FHRMS Supports financial functions including GL, AP, AR, BI, INV, PO	COTS	IT	Oracle America Inc.	CityWide	FAS2013.1	Server

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
PeopleSoft Enterprise Human Capital Management System	FHRMS	FHRMS Supports HR and Payroll functions	COTS	IT	Oracle America Inc.	CityWide		Server
Secure Pay Pro	FHRMS	Positive Pay file formatting from PeopleSoft to send to Bank of America	Desktop Application	IT	AP Technology	Departmental	6.3	Workstation
SunGard Treasury System - AvantGard	FHRMS	ACCTNG Cash Management software. provides government entities, bank, investment managers and financial institutions with investment portfolio, debt and derivative management and accounting capabilities that are integrated with SunGard's other treasury software	COTS	Departmental	SunGard Treasury Systems Inc.	Departmental		Server/Workstation
Works	FHRMS	Purchase Card transaction Processing and Approval	Cloud	IT	Bank Of America	CityWide		SAAS
Enterprise GIS (ArcGIS)	GIS	Enterprise GIS	COTS	IT	ESRI	CityWide		Server

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
GIS Legacy (InfoMap: ArcIMS+SDE)	GIS	Legacy GIS environment	COTS	IT	ESRI	CityWide	4.6	Server
TerraSync 5 for Windows Mobile	GIS	fast and efficient field GIS data collection and maintenance.	Desktop Application	IT		Departmental		Workstation
GuardCard and EPI Suite	Guard Card	Photo badging System: System captures photo and employee information to creation of ID badges	Desktop Application	IT	ImageWare Systems	Departmental		Workstation
Canon Utilities Photo	GuardCard	Software used for editing photos for badges	Desktop Application	Departmental		Departmental	2.0	Workstation
Access Meter Database	LUCITY	Meter Data Management System	Custom	Departmental		Departmental	1	Workstation
Filemaker Pro Applications	PD RMS	Provides data management and reporting functions for Evidence Tracking, Abandoned Vehicles, and Neighborhood Alert	Custom	Third Party	Filemaker, Inc	Departmental		Server/Workstation
Intellivue	PD RMS	Database reporting tool - Document Imaging	COTS	Departmental	Intellinetics	Departmental	16	Server
Tiburon RMS	PD RMS	Provides data management and analysis functions to support Department Operations	COTS	Third Party	Tiburon Inc	Departmental	6.6	Server

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
TMS Millennium	PD RMS	Training Records Module	Desktop Application	Departmental	Training Innovations, Inc	Departmental	6.2	Workstation
SIRE Agenda Management	SIRE	Sire Agenda Management and Streaming Video	COTS	IT	Hyland Software, Inc	Departmental	8.3.2	Server
Sire Agenda To Go	SIRE	Sire Agenda Mobile	COTS-Mobile	IT	Hyland Software, Inc	Departmental	12.3	Server/Mobility
SIRE Document Management	SIRE	Document Management - scanning, retention.	COTS	IT	Hyland Software, Inc	CityWide		Server
RemotePlus	Sungard	Obtain market pricing for securities in City Portfolio via Sungard	COTS	IT		Departmental	7.0	Workstation
CalPers - SVACA	SVACA	CA State reporting tool used by SVACA	Website	Departmental		Departmental	CMS5	Website
Bentley - RAM Steel, SAP2000	Tidemark	Gravity Analysis and Design of Steel Structures	Desktop Application	IT	Bentley Systems Inc	Departmental		Workstation
Bluebeam PDF Revu	Tidemark	PDF markup software	COTS	IT		Departmental		Workstation
Image Import	Tidemark	Images for Tidemark	COTS	IT	Synergetic Consulting	Departmental		Server
Permitting Web Portal (PWP)	Tidemark	PWP allows customers to submit and pay for their permits online	COTS	IT	Synergetic Consulting	Departmental		Server

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
TES-TIM (Field Inspection)	Tidemark	Integration between Tidemark and the handheld devices.	COTS	IT	Synergetic Consulting	Departmental		Server/Workstation
Tidemark	Tidemark	Permitting Application	COTS	IT	Accela, Inc.	Departmental	6.2.1	Server/Workstation
Vodavi IVR	Tidemark	Interfaced with Tidemark solution to provides interactive voice response services	COTS	IT	Vodavi Communication Systems Inc.	Departmental	7.0	Server
Agentview	UMIS	Runs the overhead display Readerboard in the contact center	COTS	IT	Centergistic Solutions Inc.	Departmental	6.0	Server
Dictaphone Freedom Workstation	UMIS	UMIS Voice recording of customer phone calls	COTS	IT	Nice Systems Inc.	Departmental		Workstation
Harris Customer Connect	UMIS	Utility Bill payment, customer interaction	COTS	IT	Harris Computer Systems	Departmental	6.3.1 MR28.1	Server
Harris NorthStar	UMIS	Utility Billing	COTS	IT	Harris Computer Systems	CityWide	v4.5.3.3	Server
MessagePro	UMIS	UMIS Secondary IVR	COTS	IT	Automated Communications Co	Departmental	1.3.1	Server

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
Metaviewer	UMIS	Provides online access to reports and system outputs (i.e. bill statements), Payroll Information, Financial Information	COTS	IT	Metafile Inc.	CityWide	v2.11.3	Server
MVRS	UMIS	Manages Meter reader devices	COTS	IT	Itron, Inc.	Departmental		Server
My Utilities Account (Formerly SCUO)	UMIS	Review and pay utility bills online.	Custom	IT		Departmental		Server
Paymode Certificate for Cashiering CSRs	UMIS	Cashiers need to have a Paymode Certificate in order to process Bank of America Paymode files.	Service	IT	Bank Of America	Departmental	4.0.4	Workstation
Syntellec IVR	UMIS	IVR - Utility Billing Bill payment and review functions	COTS	IT	Enghouse Interactive	Departmental	13.3.1	Server
Teloquent - Automated Call Distribution System (ACD)	UMIS	UMIS Support customer service center by providing intelligent call management and routing capabilities	COTS	IT	Enghouse Interactive	Departmental	2010	Server
UMIS - RDS	UMIS	UMIS Reporting Data Store - Reporting from the Harris system	Custom	IT		CityWide		Server

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
Vision Content Management	Vision CMS	City Website Content Management System	COTS	IT	Vision Internet	CityWide	2010	Server
ADOBE In Design		Used for the creation of the Activity Guide in the Teen Center	Desktop Application	Departmental	Adobe	Departmental	2.9.9	Workstation
APBNet (Critical Reach)		Fax and scanner application for sending and receiving information on missing children	Desktop Application	Departmental	Critical Reach	Departmental		Workstation
ARIES		Automated Regional Information Exchange System	Website	IT	County of Contra Costa	Departmental	2009 (Licensed for 2012 but not installed)	Server
ATMS.now		This application controls and monitors the traffic signal systems around the City.	COTS	Departmental	Trafficware	Departmental	1.0	Server
Autoscope		View live traffic video cameras	Desktop Application	Departmental	Econolite	Departmental		Workstation
Autoturn		Auto Turn is a CAD based program that simulates low speed turning manoeuvres for highway vehicles	Desktop Application	IT	Transoft Solutions	Departmental		Workstation
BOSS 3.0 (Back Office System Software)/ PIPS		License Plate Recognition	COTS	Third Party	PIPS Technology, Inc	Departmental		Server

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
CAL - JAC		Access DB that Provides Firefighter training data to State of CA	Desktop Application	Departmental	State of CA	Departmental	4.5.0.4.165	Workstation
Calea		Used by Investigations to identify Cell Tower locations	Website	Departmental		Departmental	6.3	Website
Cal-Gang		Calgang® is a, wide area, low cost, easy to use, securely networked, relational, intelligence database, targeting specifically members of criminal street gangs, tracking their descriptions, tattoos, criminal associates, locations, vehicles, if's, criminal	Website	Third Party	State of CA	Departmental		Website
Calphoto		Cal Photo provides access to mugshot images maintained by CA law enforcement agencies as well as photos and data from DMV.	Website	Third Party	State of CA	Departmental		Website
Cashpro		Connect to virtually all treasury, debt, liquidity, investment, trade and foreign exchange solutions	Cloud	Departmental	Bank Of America	Departmental	3.2.2.187 PIPs client v2.7.1.125	SAAS
C-Cure 9000		Access Control Card key system. Printing of PD Photo ID cards	COTS	Third Party	Software House	Departmental		Workstation
CERS		State Haz Mat Reporting	Service	Departmental		Departmental	R10.00.11	Service

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
Chameleon		Record and report on adoption and other pet transactions	COTS	Third Party		Departmental		Website
CiberLIMS		Used by Investigations to connect to the County Crime Lab to view forensic reports.	Website	Departmental		Departmental		Website
Code Publishing		Stores City codes -- access provided via HTML and PDF search and retrieval software	Service	Third Party	Code Publishing Inc	Departmental		SAAS
Composer		Software to make street signs	Desktop Application	Third Party	GSP Software	Departmental	v0.9.37	Workstation
Coplink		Consolidated Data Query system.	Website	Third Party	Copware	Departmental	4.6.02	Website
Crossroads Traffic Collision Database		Traffic Monitoring Software Collision including Speed Study and Traffic Counts modules	COTS	IT	Crossroads Software Inc.	Departmental	v11.0	Workstation
CSAR		California Sex and Arson Registry	Website	Departmental		Departmental		Website
Data Works - Livescan Plus		Captures photographs of suspects, employees and applicants for some licenses	Desktop Application	Departmental	DataWorks Plus Inc.	Departmental	CP5.5	Workstation
DataWatchs		Website maintained by County of Santa Clara to provide law enforcement agencies access to various reports	Cloud	Third Party	County of Santa Clara	Departmental		SAAS

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
Digital Reel		Digital Retrieval of microfilmed archives. Digital Reel is a complete microfilm conversion solution. BMI converts microfilm to virtual, digital microfilm rolls at one of our secure facilities.	Desktop Application	IT	BMI Imaging Systems	Departmental		Workstation
DORS		Online Incident Reporting	Cloud	IT	CopLogic	Departmental	5.0	SAAS
EBIX		Ebix BPO provides outsourced solutions for tracking and managing incoming Certificates of Insurance.	Cloud	Departmental	EBIX BPO	CityWide		SAAS
ECARS		Used by Records for electronic submission of crime statistics to DOJ	Website	Departmental		Departmental	v4.0	Website
Electronic Employee Pull Notice (EPN)		Provide employers and regulatory agencies with a means of promoting driver safety through the review of driver records. Used to determine if driver has a valid DL and reveals problem drivers or driving behavior	Desktop Application	Departmental	DMV	Departmental	eCitations v1.3.0.3, eCrash v2.1.1.2	Workstation
Elster Route Manager		The Elster Route Manager application requires a data base of accounts and routes so that "water marriage files" can be created (seems crazy but that is the way it is).	COTS	IT		Departmental	CS5 version 7.0.4	Workstation

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
EMSystems - EMResource		Application used to track EMS resource availability	Cloud	Third Party	Intermedix EMSystems	Departmental	2.0	SAAS
EMTRAC - Systems Manager Software		The Systems Manager software is used to set up the vehicles, intersections, and intersection-approach zones for the EMTRAC system	Desktop Application	Departmental	EMTRAC Systems	Departmental	2.0.4	Workstation
ETABS 2013		structural analysis and design of buildings	Desktop Application	IT	Computers & Structures Inc	Departmental	14.05.01	Workstation
ETS - Electronic Tracking System		Tracking stolen property (money) via hidden microchips	Desktop Application	IT	Spectrum Management Systems	Departmental	1.5.45.231	Workstation
Express Scribe Pro		Audio player that assists in the transcription of audio recordings	Desktop Application	IT	NCH Software Inc	Departmental	8.0	Workstation
FASTER Fleet Management		Support vehicle fleet maintenance and management	COTS	IT	Faster Asset Solutions	Departmental	2012	Server
Fire Studio		Used for creating fire simulations. Such as put flames or smoke on a house in a picture or video	Desktop Application	IT	Digital Combustion, Inc	Departmental	1.32	Workstation
Fuel Master		Vehicle fuel management system	Desktop Application	IT	Syn-Tech Systems	Departmental	1.10	Workstation

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
Game Day Staffing		Special Events Scheduling System	COTS	IT	Game Day Staffing	Departmental	7.6 SP1	Server
Gerber Omega		create professional graphics such as signs, labels and decals, display graphics.	Desktop Application	Departmental	Gerber Scientific	Departmental		Workstation
GPS PathFinder		To accurately place assets in the city	Desktop Application	Departmental		Departmental		Workstation
GuardCard and EPI Suite		Photo badging System: System captures photo and employee information to creation of ID badges	Desktop Application	IT	ImageWare Systems	Departmental		Workstation
H20Map		Maps of water assets	Desktop Application	IT	Innovyze	Departmental		Workstation
Insight Applicant Tracking (Neogov)		Applicant tracking system (NeoGov)	Cloud	IT	Neogov	Departmental	30.0	SAAS
itPipes		Pipeline Inspection Management	COTS	IT		Departmental		Server
Kanine (K-9 Software)		This software tracks the training of K9 dogs.	Desktop Application	IT	Code Blue Designs	Departmental		Workstation

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
Legal SourceBook		A training and resource manual for state and local law enforcement personnel covering updated California and Federal law on Search and Seizure, Interrogation, Driving Under the Influence, Juveniles, and Criminal Offenses.	Website	IT	Copware	Departmental		Website
LEO - Law Enforcement Online		Portal for law enforcement orgs to search/share info - classified/unclassified, case info (VICAP)	Website	Departmental		Departmental		Website
LoanLedger		LOANLEDGER is an online, real-time system that has every loan management function. It has comprehensive reporting capabilities, audit trails and logs, agings, detailed life-of-loan histories, transaction reports.	Desktop Application	Third Party	Dynamic Interface Systems Corp.	Departmental		Workstation
Lucity		Asset and Maintenance Management	COTS	IT		Departmental		Server
Megans Law Enforcement Site		California Sex Offenders Site	Website	Departmental		Departmental	4.0	Website
Milestone		Records interviews in interview rooms. Used for building video surveillance (PD Main, Substation, EOC, ...)	COTS	Third Party	MileStone Systems	Departmental		Server

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
Millennium		System supports LIB operations with check in/out and management of materials	COTS	Departmental	Innovative Interfaces Inc.	Departmental		Server
Mocha W32 TN3270 / CJIC		3270 Emulator software used for accessing CJIC by PD	Desktop Application	IT	MocaSoft Apps	Departmental		Workstation
Mugshot		County website to look up felons pictures and details.	Website	Third Party	County Sheriff's Office	Departmental		Website
Net File		E-Filing and Administration systems for both Campaign Disclosure Forms and Statements of Economic Interests for local California governments.	Cloud	Third Party	Netfile	Departmental		SAAS
NICE Systems		Recording of Public Safety Radio Traffic and 911 Calls coming into the Dispatch Center. Apps are Nice Call loggers, Nice SNMP (monitor), Nice Store (manage recordings), Nice CLS, Nice Inform (client to playback recordings)	COTS	Departmental	Nice Systems Inc.	Departmental		Server
Open City Hall (Peak Democracy)		Online forum for civic citizen engagement.	SAAS	IT		Departmental		SAAS
Parole Leads		Parole information from County.	Website	Departmental		Departmental		Website

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
Passage Point Software - Senior Center		System tracks (using a badge and card reader) patrons entering and using Youth Activity Center	COTS	IT	Stopware Inc.	Departmental		Server
PassagePoint Software - YAC		System tracks (using a badge and card reader) patrons entering and using Youth Activity Center & Sr Center	COTS	IT	Stopware Inc.	Departmental	2.5a	Server
Pavement Maintenance Management System		Tracks and reports maintenance activity	Website	Third Party	MITC	Departmental		Website
PC Travel		Use to process the data collected in the field to generate the travel time and delay statistics and produce reports.	Desktop Application	Departmental		Departmental	5.0	Workstation
QuickBooks		QuickBooks accounting Software	Desktop Application	Departmental		Departmental		Workstation
QuickBooks		QuickBooks Accounting Software (PAL)	Desktop Application	Departmental		Departmental		Workstation
RAIDS Online		Crime reporting / trending via maps.	Website	Third Party	Bair Analytics	Departmental		Website
Ricoh NSI		Enterprise scanning, printing, faxing	COTS	IT		CityWide		Server

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
RightFax - Open Text Fax Server		Enterprise Faxing	COTS	IT	Instant InfoSystems	CityWide		Server
SCADA – HSQ Miser		Provides information about facilities for operational management	COTS	Third Party	HSQ Technologies	Departmental		Server
Schedule Anywhere		Online Employee Scheduling Software	Cloud	IT		Departmental	3.4.3.33	SAAS
SCPD iPhone/iPad app		View SCPD Manual, CMD's, phone numbers, and other resources. It has a Traffic Court Date function that allows them to push a button and get the current traffic court date.	COTS	Third Party	Moobila	Departmental	BETA	Mobile
Sharepoint - CSI		CSI - City Intranet Sharepoint Implementation	COTS	IT	Microsoft	CityWide	V2.1.6	Server
Shoretel VOIP/ECC		Contact Center - Including IVR	COTS	IT		Departmental		Server
Sigma V Professional Edition		Applicant Management System - Facilitates the tracking and management of applicants during the hiring process	COTS	Departmental	Neogov	Departmental	0.00.58.9	Server
SLETS/CLETS		Police checks on individuals, connects to county and national police agencies	Desktop Application	IT	County of Santa Clara	Departmental	Version 1.00 Release 7	Workstation

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
SpeedCHECK Traffic Stats Viewer		Checks file and displays Traffic info - works in conjunction with VSpeedVMS	Desktop Application	Departmental	Information Display Company	Departmental	6.2	Workstation
Synchro Studio		Modelling, Optimizing, and visualizing traffic networks.	Desktop Application	Departmental	Trafficware	Departmental	10.1 SP2	Workstation
Taser x26 - Evidence Sync		Taser Software Recorder	Desktop Application	IT	Taser International Inc	Departmental	3.6.0.6	Workstation
Tech Logic		System support materials handling and sorting; interfaces with both the Innovative Interfaces and Checkpoint systems	COTS	Departmental	Tech Logic Systems Inc.	Departmental		Workstation
The "Q"		Council on Aging - Case Managers DB	Cloud	Departmental	Council on Aging	Departmental		SAAS
TimeMark VIAS		VIAS (Vehicle Identification and Analysis System) Portable Traffic Counters and Classifiers and Advanced Data Analysis	Desktop Application	Departmental	Timemark Incorporated	Departmental	2.0 MR 3.1	Workstation
TLO		DB of vital records search (address, phone, SSN, etc)	Website	Departmental		Departmental		Website
Traconet		Allows the Department to monitor and change signal timing from a centralized point	COTS	Departmental	Peek Traffic	Departmental	Custom In-House	Workstation
Traffic Engineers ToolBox		Toolbox	Desktop Application	IT		Departmental	3.3.9	Workstation

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
Traffic for Windows		TRAFFIX is an interactive computer program for IBM PC compatible computers that enables planners and engineers to efficiently conduct traffic impact and medium size city-wide traffic forecasting studies.	Desktop Application	Departmental	PTV America	Departmental	Rev. V, Version 4	Workstation
Unidocs		Assists in complying with state and local hazardous materials and hazardous waste regulatory requirements	Website	Departmental	Echo Interactive	Departmental	2.0	Website
UPS Worldship		UPS Shipping and tracking	COTS	IT	UPS	CityWide		Server
Vendini TicketAgent		Point-of-sale system that enables staff to sell tickets to events, monitor sales activity, and produce detailed reports.	Cloud	Departmental	Vendini, Inc	Departmental	6.2.2.790	SAAS
Veripic		Evidence imaging	COTS	IT	Veripic	Departmental	Version 5	Server
VideoTrak Vistro		SIGNAL OPTIMIZATION and traffic impact analysis	Desktop Application	Departmental	PTV America	Departmental	5.0	Workstation
VideoTrak Plus		Traffic Control and Road Safety	COTS	Departmental	Peek Traffic	Departmental	2.0.12.0	Workstation
Volgistics		Volunteer Management	Cloud	Departmental		Departmental		SAAS
VSpeedVMS		Traffic Calming Driver Awareness (slows Traffic down without road obstructions)	Desktop Application	Departmental	Fortell Traffic Inc	Departmental	8.2.4	Workstation
WebEOC		Web based Emergency Operations Center	Cloud	Departmental	ESI	Departmental	3.4.4	SAAS

Schedule 19 – Customer Software

Software Package	Parent Application	Purpose	Software Type	Support Lead	Vendor	Application Scope	Currently Installed Version	Hardware Platform
Westlaw		Provides legal research tools and materials (online through browser)	Website	Departmental	Thompson Reuters West	Departmental		Website
Winpacs		Automates the management and enforcement of false alarm bylaws, permits and fee/fine collections.	COTS	Departmental	Moose Rapids Technologies	Departmental	5.4.8.1	Workstation
WIN-PAK Honeywell's Access Control		Honeywell's Access Control Software on a standalone desktop pc for the automated gates at the corporation yard.	Desktop Application	Third Party	Eagle Security Service	Departmental	9.0, 9.2 SP6 (Dev/Test)	Workstation
ZyFind/ZyIndex		Facilitates indexing and retrieval of electronic files	COTS	IT	Zylabs Inc.	Departmental	8.7.3.100	Server

## APPLICATION FOOTPRINT: UMIS

The UMIS technical infrastructure consists of systems, applications, interfaces and operational scripts. The systems supporting Municipal Services can be broken into the following categories.

- Bill Processing
- Payment Processing
- Customer Self-Service
- Agent Delivered Services
- Reporting Services

### **Bill Processing System – UMIS**

The Bill Processing System is comprised of the following applications, hardware, database, and interfaces:

#### **Applications**

- Harris Northstar (Northstar 6.3.1, mCare, eCare, Reports Anywhere, EIS)
- Itron MVRs Meter Reading

#### **Hardware**

- Virtual Servers in the City DataCenter
- ITRON MVRs Meter Reading personal computer in the Meter Reading Office
- Handheld devices for ITRON

#### **Database**

- SQL Server 2005

#### **Interfaces**

- Itron Import – Meter Number File – batch file on Itron personal computer transfers meter number file from Harris to Itron personal computer for loading to handheld meter reading capture devices.
- Itron Export – Meter Reading File – batch files on Itron personal computer transfers meter readings from Itron personal computer to the Harris PUB & Care.
- Harris Export – email at 5:00 pm with billing file data for the day
- Bill Feed Files to Infosend – SFTP script.
- Harris Export – Harris program creates the GL file for transfer to FHRMS
- Harris Import – Meter Readings from Itron – Harris program imports the meter readings
- Harris Export – STOPY file for Infosend
- IVR (Sparkleberry) Script – FTP's PDF file from Infosend (bill processing service), unzips the file, and loads file to the lastbill folders
- Script that merges and load PDF bill files to Metaviewer
- File Retrieval – Script for SCUO website Load PDF Bill files to SCUO

**Payment Processing System – UMIS**

The Payment Processing System is comprised of following applications, hardware, database, and interfaces.

**Applications**

- Harris NorthStar (NorthStar, eCare)
- My Utilities Account (SCUO)
- Cybersource – credit card verification
- Syntellect Interactive Voice Response (IVR)

**Hardware**

- MS Windows Virtual Servers in the City Data Center
- MS Windows Servers (Smoketree, Sparkleberry) in the City Data Center

**Database**

- MS SQL Server
- Sybase (IVR)

**Interfaces**

- Harris Export – Home banking STOPY file
- Home Banking file from BofA is manually retrieved (FTP) by Cashiers Harris Import – import the home banking file to Harris Lockbox, create compare and zero reports, email to users and sends copies to Metaviewer
- Harris Export – email the Home banking stopy file to Municipal Services staff
- Harris Export – IVR Exceptions File – script FTP's file with Tickler data to IVR on Sparkleberry server
- Harris Interface – Harris API provides data to the Syntellect IVR
- Harris Export – Pre-Authorized Payment File – for transfer to BofA
- File Transfer – PAP file is transferred by modem to BofA
- Harris Export – Pre-Authorized Payment report, email sent to Sandy
- PAP Error Check – script emails alert when services are added to account with a payment plan and user did not update the payment plan
- Harris Interface – Harris API provides data to the SCUO website
- Harris Export – IVR Exceptions File – script FTP's file with Tickler data to IVR on Sparkleberry
- Harris Interface – Harris API provides data to the Syntellect IVR
- Credit Card Information – from IVR, Harris and My Utilities Account(SCUO) to Cybersource for credit card validation

**Customer Self Service System – UMIS**

The UMIS Customer Self Service System is comprised of the following applications, hardware, databases, and interfaces.

**Customer Self Service System – UMIS**

**Applications**

- My Utilities Account (SCUO)
- Cybersource – credit card verification
- Syntellect Interactive Voice Response (IVR)

**Hardware**

- MS Windows Virtual Servers in the City Data Center
- MS Windows Servers (Smoketree, Sparkleberry) in the City Data Center

**Database**

- MS SQL Server

**Interfaces**

- Credit Card Information – from IVR and My Utilities Account to Cybersource for credit card validation
- Harris Export – IVR Exceptions File – script FTP's file with Tickler data to IVR (Sparkleberry)
- Harris Interface – Harris API provides data to the Syntellect IVR
- IVR (Sparkleberry) Script – unzips PDF files from Infosend, and loads files to the lastbill folders
- File Retrieval – Script for My Account website loads PDF bill files from Infosend to My Utilities Account (SCUO)
- Harris Interface – Harris API provides data to the My Utilities Account website

**Agent Delivered Services – UMIS**

UMIS Agent Delivered Services is comprised of the following applications, hardware, databases, and interfaces.

**Applications**

- Right Fax
- Teloquent – Automated Call Distribution (ACD)
- AgentView
- Dictaphone Freedom Workstation
- MessagePro – secondary Automated Call Distribution (ACD)

**Hardware**

- MS Windows Virtual Servers in the City Data Center
- MS Windows Servers (Sourgum; Spicebush) in the City Data Center and MS Windows personal computer (Poplar) in the Municipal Services Contact Center

**Database**

- MS SQL Server

**Interfaces**

- Credit Card Information – Input by Contact Center to Cybersource for credit card validation

**Applications – UMIS**

Municipal Service relies on 20 commercial off the shelf (COTS) applications or shrink wrapped applications. In addition, Municipal Services uses a custom application for data storage and reporting, the Reporting Data Store (RDS), which was developed using Microsoft SQL Server and Reporting Services.

The below applications are supported by a combination of vendor maintenance agreements, Municipal Services and the IT Department staff, and other service providers (i.e. consultants, etc.).

- Agentview – Centergistic Solutions, Inc.
- Cognos Impromptu – Cognos, Inc.
- Cybersource Simple API – Cybersource Corp.
- Dictaphone Freedom Workstation – Nice Systems, Inc.
- Harris EIS – Harris, Inc.
- Harris NorthStar (NorthStar, Reports Anywhere, mCare, eCare) – Harris, Inc.
- MessagePro – AnswerNet Network
- Metaviewer – Metafile Inc.
- ITRON Meter Reading Devices – ITRON, Inc.
- Reporting Data Store (RDS) – Microsoft SQL Server
- Teloquent Automated Call Distribution System (ACD) – Syntellect, Inc.
- Vista Interactive Voice Response (IVR) – Syntellect, Inc.
- My Utilities Account Website
- Scheduled Call Back/TDD –

Meeting Date:

6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item #

7B-8



**Date:**

June 24, 2014

**To:**

City Manager for Council Action

**From:**

City Attorney

**Subject:**

Adoption of Ordinance No. 1927 which Approves the Second Amendment to the Development Agreement with The Irvine Company, LLC; 2525 Augustine Drive, LLC; and 3255 Scott Boulevard, LLC for the Properties Located at 2620-2790, 2465 and 2475 Augustine Drive (including properties on Bowers Avenue and Scott Boulevard)

## **EXECUTIVE SUMMARY:**

Ordinance No. 1927 which approves the Second Amendment to the Development Agreement with The Irvine Company, LLC; 2525 Augustine Drive, LLC; and 3255 Scott Boulevard, LLC for the properties located at 2620-2790, 2465 and 2475 Augustine Drive (including properties on Bowers Avenue and Scott Boulevard) was passed for the purpose of publication ("passed to print") on June 10, 2014. Pursuant to City Charter Sections 808 and 812, proposed Ordinance No. 1927 was published on June 18, 2014 and copies were posted in at least three public places.

The City Council reviewed the Project on June 10, 2014, and adopted resolutions approving the addendum to the EIR, the General Plan Amendment, the rezoning, and the Vesting Tentative Parcel Map. For the rezoning resolution, the Council adopted the Planning Commission recommendation to impose a condition requiring that the project design for Office Phases II and III and the sign program be referred to the Architectural Committee, and that the project design for the Retail Center be referred to the Director of Planning and Inspection. Finally, the Council passed to print the proposed Ordinance to approve the Second Amendment to the Development Agreement, with the same conditions on architectural review as in the rezoning.

## **ADVANTAGES AND DISADVANTAGES OF ISSUE:**

Approval of the project provides an opportunity to locate a specialty retail center adjacent to high quality office developments and to nearby future residents. The project will increase the amount and diversity of retail services in a transit, bicycle and pedestrian friendly location that would further enhance the City's General Plan development priorities for this area. The project site is located in an urbanized area served by existing municipal services, and the physical development of the project site would localize employment in a central geographic area. The landscape and open space concept for the office development include campus serving amenities, such as sports courts, event space, and seating areas. Both the retail and office developments provide shade structures and outdoor seating areas. These onsite private open space areas and recreational facilities help to meet the needs of tenants and patrons of this project. The project includes the construction of street and intersection improvements at Augustine Drive and Bowers Avenue, and the payment of local and regional traffic impact fees and fair share contributions toward the cost of improvements at Central Expressway and Bowers Avenue, San Tomas Expressway and Scott Boulevard, San Tomas Expressway and El Camino Real, and Montague Expressway and Trimble Road. The project will also provide a creek trail connecting Augustine/Octavius Drive to the San Tomas Aquino Creek Trail.

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The 2014 Project would still result in impacts with regard to air quality, traffic, population and housing and greenhouse gas, but to a lesser extent than the 2009 Project. The availability of recycled water for the 2014 Project results in reduced hydrological impacts when compared to the 2009 Project. In addition, the 2014 Project will need to comply with the Santa Clara Climate Action Plan which imposes a number of requirements, such as a 20% Vehicle Miles Traveled reduction, implementation of water conservation measures, and waste reduction programs.

**ECONOMIC/FISCAL IMPACT:**

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

**RECOMMENDATION:**

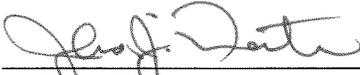
That the Council adopt Ordinance No. 1927, which approves the Second Amendment to the Development Agreement with The Irvine Company, LLC; 2525 Augustine Drive, LLC; and 3255 Scott Boulevard, LLC for the properties located at 2620-2790, 2465 and 2475 Augustine Drive (including properties on Bowers Avenue and Scott Boulevard).



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Richard E. Nosky, Jr.  
City Attorney

APPROVED:



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Julio J. Fuentes  
City Manager

***Documents Related to this Report:***

***1) Ordinance No. 1927***

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Discussion

The applicant is requesting to amend the previously approved 1,969,600 square feet of office development and 35,000 square feet of retail development (2009 Project, PLN2008-06859). The proposal will shift the approved office development south of Augustine Drive from the 2009 Project to make room for 125,000 square feet of retail specialty center and relocate the remaining approved office uses immediately to the east of the Office Phase I on the north side of Augustine Drive. This 2014 Project provides for the development of an office campus totaling no more than 1,243,300 million square feet of office space, and up to 125,000 square feet of retail space, on the Retail and Office Phases II and III properties, for a total (inclusive of Office Phase I) of up to 2,000,100 square feet of development, or 4,500 square feet less than the total development that was approved in the 2009 Project. Office Phase I, approved and under construction, consists of approximately 618,800 square feet of office space and 13,000 square feet of retail space located in three 6-8 story office buildings. The proposed neighborhood serving specialty retail center will provide much needed retail to the surrounding properties and community. The proposed office development location directly adjacent to the Highway 101 is more suitable for office use and could serve as a buffer for the future residential use in areas south of Augustine Drive as designated in Phase III of the 2010-2035 General Plan. The requested Vesting Tentative Parcel Map allows for the removal of existing lot lines on the 13.8 Acre Retail portion of the project site. The Amendment to the Development Agreement allows for a phased development of the project and its associated facilities and improvements. There is no change to the contributions set forth in the Original DA to the City's Housing Fund. The project also contributes to the City's Trails, Open Space and Parks, and included contributions to mitigate traffic impacts.

This project was reviewed by the City Council at a study session on February 11, 2014. Based on the comments heard at the City Council Study Session, the applicant has further refined the proposal for the specialty center that would link to the offices nearby. The applicant has worked with staff to add the mid-street crossing, additional bike and pedestrian connections. The applicant has also added a retail pad along Scott Boulevard, and refined the retail walking street. The primary change to the drawings presented to Council is the addition of vertical elements for the retail buildings.

The Vesting Tentative Parcel Map was reviewed by the City's Subdivision Committee and determined to be complete on April 22, 2014. For the Retail Center, South of Augustine Drive, existing lot lines are to be removed through the tentative and final map approval process. The consideration and action on the Vesting Tentative Parcel Map is a function of the City Council.

The project was reviewed by the Planning Commission on May 28, 2014. The Planning Commission recommended that the City Council approve the Santa Clara Square Project, and refer the project design, including the sign program, to the Director of Planning and Inspection for review and approval for the Retail Center, and to the Architectural Committee for Office Phases II and III, subject to Conditions, as reflected in the Minutes, and in the Resolutions and Ordinance prepared for Council Action.

**ORDINANCE NO. 1927**

**AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND THE IRVINE COMPANY LLC; 2525 AUGUSTINE DRIVE LLC; AND 3255 SCOTT BOULEVARD LLC FOR THE PROPERTIES LOCATED AT 2620-2790, 2425, 2465 and 2475 AUGUSTINE DRIVE (INCLUDING PROPERTIES ON BOWERS AVENUE AND SCOTT BOULEVARD), SANTA CLARA**

SCH# 2008052065  
CEQ 2014-01172 (Addendum No.2 to EIR)  
PLN2014-10256 (General Plan Amendment #80)  
PLN2014-10257 (Rezone to PD)  
PLN2014-10258 (Rezone to Commercial Park)  
PLN2014-10259 (Vesting Tentative Parcel Map)  
PLN2014-10260 (Second Amendment to Development Agreement)  
PLN2014-10381 (Architectural Review)

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

**WHEREAS**, California Government Code Sections 65864 through 65869.51 (“Development Agreement Act”) authorize cities to enter into binding development agreements with owners of real property and these agreements govern the development of the property;

**WHEREAS**, on May 19, 2009, the City of Santa Clara entered into such a development agreement with EOP-Industrial Portfolio, LLC and CA-Santa Clara Office Center, LP (“Prior Owners”), adopted by Ordinance No. 1844 and recorded in the official records of Santa Clara County (“Official Records”) on June 25, 2009 as Document No. 20314645 (the “Original Agreement”);

**WHEREAS**, the Original Agreement concerned a proposed campus development located at 2620-2727 Augustine Drive (including properties on Bowers Avenue and Scott Boulevard), a 30.73-acre project site comprised of eight parcels located on the north and south sides of Augustine Drive, immediately east of Bowers Avenue, between Scott Boulevard and Highway 101 (APNs: 216-45-009, -011, -014, -019, -027, -028, -031, -032) in the City of Santa Clara (“2009 Project Sites”);

**WHEREAS**, on August 2, 2012, The Irvine Company, LLC acquired fee title to the Property as legally described in Exhibit A and entered an Assignment and Assumption Agreement with the Prior Owners, pursuant to which The Irvine Company took all right, title and interest under the Development Agreement. The Assignment and Assumption Agreement was recorded in the Official Records of Santa Clara County on August 16, 2012 as Document No. 21797365;

**WHEREAS**, on January 8, 2013, The Irvine Company submitted to the City an application to amend the Original Agreement to revise the project layout; decrease the density, building footprints and floor area ratio; modify the parking; and divide the project into phases (“2013 Project”);

**WHEREAS**, on July 16, 2013, the City of Santa Clara approved Developer’s application for an amendment of the PD zoning and approved the First Amendment to the Development Agreement. The Original Agreement, as modified by the First Amendment to the Development Agreement, is referred to herein as the “Previous Agreement”;

**WHEREAS**, on October 16, 2013, by grant deed, the Developer transferred fee title to the portion of the Property north of Augustine Drive (APNs 216-45-009, 216-45-031, and 216-45-032) (“Office Phase I Property”) to Augustine Bowers LLC, a Delaware limited liability company;

**WHEREAS**, on September 11, 2013, 2525 Augustine Drive LLC, a Delaware limited liability company, acquired fee title to two directly adjacent parcels (APNs 216-45-036 and 216-45-037) (“Office Phase II Property”), and on April 22, 2013, 3255 Scott Boulevard LLC, a Delaware limited liability company, acquired fee title to another nearby parcel (APN 216-45-006) (“Office Phase III Property”). The Irvine Company, LLC, 2525 Augustine Drive, LLC, and 3255 Scott Boulevard, LLC, are collectively referred to herein as the “Developer.”

**WHEREAS**, on February 18, 2014, Developer submitted to the City an application to amend a previously-approved Planned Development (PD) zoning district and Development Agreement for the Santa Clara Technology Campus Project;

**WHEREAS**, the present application is for the properties located at 2620-2790, 2425, 2465 and 2475 Augustine Drive, a 47.57-acre project site comprised of eight parcels located on the north and south sides of Augustine Drive, between Bowers Avenue and San Tomas Aquino Creek, Scott Boulevard and Highway 101 (APNs: 216-45-011, -014, -019, -027, -028, -036, -037, -006) in the City of Santa Clara (“2014 Project Sites”);

**WHEREAS**, Section 11.1 of the Original Development Agreement provides that the Parties, by mutual consent, may modify the terms of the Original Agreement, and the Parties have recently negotiated a proposed “Second Amendment to Development Agreement,” attached hereto and incorporated herein by this reference (“Second Amendment to Development Agreement”);

**WHEREAS**, the City Council has reviewed the Second Amendment to the Development Agreement and has considered all available facts related to the Second Amendment to the Development Agreement;

**WHEREAS**, as a result of the proposed revisions to the Project, City staff prepared an addendum to the EIR for the Revised Project;

**WHEREAS**, before considering the Amendment to the Development Agreement, the City Council reviewed and considered the information contained in the Addendum to the EIR;

**WHEREAS**, the EIR addendum indicated that the Revised Project would not result in any new significant adverse environmental impacts or increase the severity of any previously identified significant environmental impacts identified and studied in the EIR;

**WHEREAS**, the City Council voted to approve the EIR addendum on June 10, 2014;

**WHEREAS**, on May 28, 2014, City's Planning Commission held a duly noticed public hearing on Second Amendment and (i) determined that consideration of Second Amendment, based on the EIR Addendum, complies in all respects with the California Environmental Quality Act ("CEQA"); (ii) determined that Second Amendment is consistent with the City's General Plan; and (iii) recommended that the City Council approve Second Amendment; and,

**WHEREAS**, on June 10, 2014, the City Council introduced this ordinance, and on June 24, 2014, the City Council conducted a public hearing, at which time the Council received and considered all verbal and written testimony and evidence submitted.

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

**SECTION 1:** The City Council hereby finds that all of the foregoing recitals are true and correct.

**SECTION 2:** Pursuant to Government Code section 65867.5, the City Council hereby finds that the provisions of the Second Amendment are consistent with the General Plan, in that the General Plan designation for the Property is High Intensity Office/R&D, which encourages campus-like developments for corporate headquarters, R&D and supporting uses, and the proposal is to construct a high density office campus and supporting amenities.

**SECTION 3:** The City Council has reviewed the Second Amendment, and based on its review finds that the Original Development Agreement, as amended by Second Amendment, complies with all requirements of Government Code section 65865.2 [entitled "Contents" (of a Development Agreement)].

**SECTION 4:** The City Council hereby approves the Second Amendment, substantially in the form attached hereto, a copy of which is on file with the City Clerk and can be reviewed by members of the public at the City Clerk's office, 1500 Warburton Avenue, Santa Clara, California.

**SECTION 5:** The City Manager is hereby authorized to execute the Second Amendment on behalf of the City upon the Effective Date of this Ordinance, together with such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof. The City Manager, or designee, is also authorized and directed to take any action and execute any documents or agreements necessary to implement the Development Agreement as amended, including but not limited to conducting an annual review of compliance as specified therein.

**SECTION 6:** Except as specifically set forth herein, this ordinance suspends and supersedes all conflicting resolutions, ordinances, plans, codes, laws and regulations.

**SECTION 7:** Within ten (10) days after the City Manager executes the Second Amendment, the City Clerk shall cause the Second Amendment to be recorded with the Santa Clara County recorder.

**SECTION 8: Constitutionality, severability.** If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

**SECTION 9:** This Ordinance shall not be codified in the Santa Clara City Code.

**SECTION 10: 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 10<sup>th</sup> day of June, 2014, by the following vote:

AYES:	COUNCILORS:	Davis, Gillmor, Kolstad, Mahan, Marsalli and O’Neill and Mayor Matthews
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:   
\_\_\_\_\_  
ROD DIRIDON, JR.  
CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:  
1. Second Amendment to Development Agreement

RECORD WITHOUT FEE  
PURSUANT TO GOVERNMENT CODE § 6103

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

City of Santa Clara  
City Clerk's Office  
1500 Warburton Avenue  
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT**

This SECOND AMENDMENT TO DEVELOPMENT AGREEMENT ("**Second Amendment**") to amend the Development Agreement between the City of Santa Clara, a chartered California municipal corporation ("**City**") and The Irvine Company LLC, a Delaware limited liability company; 2525 Augustine Drive LLC, a Delaware limited liability company; and 3255 Scott Boulevard LLC, a Delaware limited liability company (collectively, "**Developer**") is entered into on \_\_\_\_\_, 2014. The City and Developer are hereinafter individually a "**Party**" and collectively, the "**Parties.**"

**RECITALS:**

Developer and City enter into this Second Amendment on the basis of the following facts, understandings and intentions:

- A. Pursuant to Government Code Sections 65864 through 65869.5 and Santa Clara City Code Chapter 17.10, the City of Santa Clara and Developer's predecessors in interest, EOP-Industrial Portfolio, LLC and CA-Santa Clara Office Center, LP ("**Prior Owners**"), entered into the Development Agreement adopted by Ordinance No. 1844 on May 19, 2009 which was recorded in the official records of Santa Clara County ("**Official Records**") on June 25, 2009 as Document No. 20314645, as amended on July 16, 2013 by the First Amended Development Agreement, recorded in the Official Records on August 29, 2013 as Document No. 23369909 (collectively "**Development Agreement**").
- B. The Development Agreement covered eight (8) separate parcels (APNs 216-45-009, 216-45-031, 216-45-032, 215-45-011, 216-45-014, 216-45-019, 216-45-027, 216-45-028) totaling 30.73 acres ("**Original Property**").
- C. In 2009, the City approved the Prior Owners' applications for a General Plan Amendment to *Office/Research and Development* ("**2009 General Plan Amendment**") and a rezoning of the Original Property to Planned Development ("**2009 PD**") (PD #PLN 2008-06858/06859/06860, CEQ 2008-0105) ("**2009 Rezoning**"). The 2009 Rezoning allowed the development of the 30.73 acre Original Property by the demolition of all of the existing structures on the site and the construction of up to 1,969,600 square feet of office

development (a net increase of 1,524,848 square feet) and up to 35,000 square feet of retail development (a net increase of 29,710 square feet), for a total of 2,004,600 square feet of development (collectively, the **"2009 Project"**).

- D. The Irvine Company acquired fee title to the Original Property as legally described in Exhibit A and entered an Assignment and Assumption Agreement taking all right, title and interest under the Development Agreement on August 2, 2012 which was recorded in the Official Records of Santa Clara County on August 16, 2012 as Document No. 21797365.
- E. On July 16, 2013, the City approved the Developer's application for an amendment of the PD zoning (PLN2013-09609/09866/09865, CEQ 2013-01159) (**"2013 Amended PD"**). The 2013 Amended PD reduced the office campus to 1,200,000 square feet and maintained 35,000 square feet of retail space (**"2013 Project"**).
- F. On October 16, 2013, by grant deed, the Developer transferred fee title to the portion of the Property north of Augustine Drive (APNs 216-45-009, 216-45-031, and 216-45-032)(**"Office Phase I Property"**) to Augustine Bowers LLC, a Delaware limited liability company. The Developer retained ownership of the remaining portion of the Property located south of Augustine Drive (APNs 215-45-011, 216-45-014, 216-45-019, 216-45-027, 216-45-028) (**"Retail Property"**). This Second Amendment is not intended to amend the Development Agreement as it applies to the Office Phase I Property.
- G. 2525 Augustine Drive LLC, a Delaware limited liability company and wholly owned subsidiary of The Irvine Company acquired fee title to two directly adjacent parcels (APNs 216-45-036 and 216-45-037) as legally described in Exhibit B, which was recorded in the Official Records of Santa Clara County on September 11, 2013 as Document No. 22382954 (**"Office Phase II Property"**). 3255 Scott Boulevard LLC, a Delaware limited liability company and wholly owned subsidiary of The Irvine Company acquired fee title to a parcel (APN 216-45-006) as legally described in Exhibit B, which was recorded in the Official Records of Santa Clara County on April 22, 2013 as Document No. 22184282 (**"Office Phase III Property"**). The Retail Property, Office Phase II Property, and Office Phase III Property are collectively referred to as the **"Modified Property"**.
- H. The Developer intends to develop a specialty retail center on the Retail Property. The remaining approved office development in the 2009 Project will be relocated from the Original Property to the adjacent and more suitable Office Phase II Property and Office Phase III Property to allow for the development of a specialty retail center.
- I. This Second Amendment allows the development of the 14.2 acre Retail Property by the demolition of all of the existing structures on the Retail Property and the construction of up to 125,000 square feet of specialty retail development (a net increase of 119,710 square feet of retail use), and allows development of the 9.19 acre Office Phase II Property and 7.65 acre Office Phase III Property by the demolition of all of the existing structures on the Office Phase II Property and Office Phase III Property and the construction of up to

1,243,300 of corporate office development (a net increase of 602,730 square feet of office use), (collectively, the "2014 Project"). The total development on the Office Phase I Property, the Retail Property, the Office Phase II Property, and the Office Phase III Property will not exceed 2,000,100 square feet, and is 4,500 square feet less than the 2,004,600 square feet of approved development in the 2009 Project.

- J. Consistent with Sections 11.1, 11.2 and 24 of the Development Agreement, the revisions to the Development Agreement set forth below constitute a Development Agreement Amendment pursuant to Government Code Section 65868.
- K. This Second Amendment is intended to conform the Development Agreement to the Parties' modifications to the 2009 Project pursuant to application File Nos. PLN 2014-10256, 10257, 10258, 10259, 10260, and 10381.
- L. On \_\_\_\_\_, the City's Planning Commission held a duly noticed public hearing where following public testimony, the Planning Commission recommended that the City Council approve: (i) the EIR Second Addendum; (ii) the General Plan Amendment for the Retail Property to *Community Commercial*, and General Plan Amendment of the Office Phase II Property and Office Phase III Property to *High Intensity Office Research and Development*, ("2014 General Plan Amendments"); (iii) the zoning change of the Office Phase II Property and Office Phase III Property to *Commercial Park* ("2014 Rezoning"); and (iv) the PD Amendment for the Retail Property to allow a 125,000 square foot specialty retail center ("2014 PD Amendment").
- M. On \_\_\_\_\_, the City Council approved Resolution No. \_\_\_\_\_ adopting the 2014 General Plan Amendments, Resolution No. \_\_\_\_\_ adopting the 2014 Rezoning and the 2014 PD Amendment, and Resolution No. \_\_\_\_\_ approving the parcel maps for the Retail Property, the Office Phase II Property, and the Office Phase III Property ("Parcel Maps"), and introduced Ordinance No. \_\_\_\_\_ to approve this Second Amendment.
- N. On \_\_\_\_\_, the City Council held a duly noticed public hearing and (i) determined that based on the EIR and the EIR Second Addendum, this Second Amendment complies in all respects with CEQA, and approved the EIR Addendum; (ii) determined that this Second Amendment is consistent with the City's General Plan, as amended.
- O. On \_\_\_\_\_, the City Council approved this Second Amendment and adopted Ordinance No. \_\_\_\_\_ approving the Second Amendment.

## AMENDMENTS

NOW THEREFORE, in consideration of the mutual representations, covenants and promises of the Parties hereto, the Parties agree as follows:

- a. Defined Terms. All terms used herein shall have the meanings given in the Development Agreement, except as expressly otherwise provided herein.
- b. Office Phase I. The Second Amendment does not modify the Development Agreement as it applies to the Office Phase I Property.
- c. Enumeration of Specific Amendments. The Development Agreement is hereby revised to incorporate the following changes to the Development Agreement:

- a. Modified Property. Recital C is amended to read as follows:

C. Developer is currently the legal owner of the property ("Modified Property") governed by this Agreement. The Modified Property consists of eight (8) separate parcels (APNs, 215-45-011, 216-45-014, 216-45-019, 216-45-027, 216-45-028, 216-45-036, 216-45-037, and 216-45-006) totaling 31.04 acres, as further described in Exhibit "RevisedPropDesc", attached hereto and incorporated by this reference. Any reference to "Property" in the Development Agreement shall mean "Modified Property" as set forth in this Second Amendment.

- b. 2014 Project. Recital D is amended to read as follows:

D. Developer has submitted the following applications to the City: an amendment to the 2013 Amended PD ("**2014 PD Amendment**"), General Plan Amendments to Community Commercial and High Intensity Office Research and Development ("**2104 General Plan Amendments**"); and rezoning ("**2014 Rezoning**") some of the Property to Commercial Park (PLN2014-10256, 10257, 10258). The application(s) request the Developer be allowed to develop the 31.04 acre Property by demolishing all of the existing structures on the site and constructing up to 1,243,300 square feet of office development (a net increase of 602,730 square feet of office use) and up to 125,000 square feet of specialty retail development (a net increase of 119,710 square feet of retail use) (collectively, the "**2014 Project**"). Any reference to "Project" in the Development Agreement shall mean the "2014 Project" as set forth in this Second Amendment.

- c. Development Plan. Recital E is amended to read as follows:

E. The Project, including but not limited to the buildings, access and parking facilities, landscaping, and infrastructure improvements, is shown on the 2014 PD Amendment as approved by the City Council after duly noticed public hearings on \_\_\_\_\_, 2014 by Ordinance No. \_\_\_\_\_ ("**2014 Development Plan**") and incorporated by this reference. Any reference to

"Development Plan" in the Development Agreement shall mean the "2014 Property" as set forth in this Second Amendment.

d. Recital H is amended to read as follows:

H. Developer acknowledges and recognizes that material inducements for the City to enter into this Agreement are (i) an opportunity to create a modern corporate campus; (ii) an opportunity to create a specialty retail center (iii) the contributions by Developer to City's Housing Funds and toward the construction of trails, open space and parks within the City and (iv) the attainment of a Project designed to LEED, or equivalent standards.

e. Conditions of Approval. Recital N is amended as follows:

N. Certain improvements as set forth in the conditions of approval for the Project ("**Conditions of Approval**"), which are attached hereto as **Exhibit "Second Revised CoA-R"** and incorporated by this reference, are necessary to provide infrastructure support for the Project. Exhibit "Second Revised CoA-R" shall replace both former Exhibit CoA-R and Revised Exhibit CoA-R in their entirety and any reference in the Development Agreement to "Exhibit CoA-R", "Revised Exhibit CoA-R" or to the "Conditions of Approval" shall mean Exhibit "Second Revised CoA-R".

f. Property. Section 2.1 is amended to read as follows:

2.1 Property. The Property that is the subject of this Agreement is that certain real property described in **Exhibit "RevisedPropDesc"** attached hereto.

g. Life Approvals. Section 2.3 is amended to read as follows:

2.3 Life of Approvals. Pursuant to Government Code Section 66452.6(a) and this Agreement, the life of the Project approvals, including but not limited to certification of the EIR, certification of the EIR Second Addendum, adoption of the 2009 General Plan Amendment and 2014 General Plan Amendments, approval of the 2014 Rezoning, approval of the 2014 PD Amendment, approval of the Development Agreement Ordinance and this Development Agreement, approval of a Development Plan, approval of a Vesting Tentative Parcel Map, approval of Parcel Maps, and architectural approval of the Project (collectively, "**Approvals**") shall automatically be extended to and until the later of the following: (1) the end of the Term of this Agreement; or (2) the end of the term or life of any such approval. Notwithstanding the foregoing, the Vested Elements, as defined in Section 2.4, secured by Developer under this Agreement shall remain vested for a period no greater than the Term of this Agreement, and any extension thereof.

h. Vested Elements. Section 2.4(b) is amended to read as follows:

b. The SCCC, current as of the Effective Date, including the rezoning of the Property to PD, as subsequently amended by the 2013 Amended PD and 2014 PD Amendment, and 2014 Rezoning;

i. Vested Elements. Section 2.4(c) is amended to read as follows:

c. The Planned Development Zoning District, as subsequently amended by the 2013 PD Amendment and 2104 PD Amendment, and 2014 Rezoning, and the Conditions of Approval imposed thereon;

j. Permitted Uses. Section 2.5 is amended to read as follows:

2.5 Permitted Uses. The permitted uses for the Property and the Office Phase I Property are as follows: 2,004,600 square feet of office and retail development in buildings up to fourteen (14) stories and 244 feet in height and parking at a ratio of 3.3/1000 square feet averaged over the entire property, all of which must be implemented in accordance with the Development Plan and the Conditions of Approval.

k. Present Right to Develop. Section 2.6 is amended to read as follows:

2.6 Present Right to Develop. Subject to Developer's fulfillment of the provisions of this Agreement, the Development Plan and the Conditions of Approval, the City hereby grants to Developer the present vested right to develop and construct on the Property all the improvements authorized by, and in accordance with, this Agreement and the Vested Elements, including in particular the terms of the 2014 Development Plan and the 2014 Rezoning. To the extent permitted by law, no future modification (including by later-adopted initiative and/or referendum) of the City's General Plan, SCCC, ordinances, policies or regulations that purport to (i) limit the rate or timing of development, size of buildings or other improvements (including developable square footage), or amount of development of the portions of the Project to be built; or (ii) impose fees, exactions or conditions upon development, occupancy or use of the Property other than as provided in the Development Plan or Conditions of Approval or pursuant to this Agreement, shall apply to the Property; provided, however, that nothing in this Agreement shall prevent or preclude City from adopting any fees or land use regulations or amendments thereto, expressly permitted herein.

l. Fair Share Traffic Fees. Section 4.9 is amended to read as follows:

4.9 Fair Share Traffic Fees. Developer agrees to the sum of nine hundred sixty-eight thousand, eight hundred ninety-three dollars (\$968,893) payable to the City for the Project's contribution to the intersection improvements identified in the EIR and allocated as shown on **Exhibit "FairShare" ("Fair Share Traffic Fees")**. Developer has already satisfied its obligation to pay the first four hundred eighty-three thousand, nine hundred dollars (\$483,900) of the Fair Share Traffic Fees, and remains obligated to pay the remaining

four hundred eighty-four thousand, nine hundred ninety-three dollars (\$484,993). The remaining Fair Share Traffic Fees shall be paid in full prior to the issuance of any additional Building Permits.

m. Notices. Section 17.1 is amended as follows:

17.1 Notices. Except as otherwise expressly provided herein, all notices and demands pursuant to this Agreement shall be in writing and delivered in person, by commercial courier or by first-class certified mail, postage prepaid. Except as otherwise expressly provided herein, notices shall be considered delivered when personally served, upon delivery if delivered by commercial courier, or two (2) days after mailing if sent by mail. Notices shall be sent to the addresses below for the respective parties; provided, however, that either Party may change its address for purposes of this Section by giving written notice to the other Party. These addresses may be used for service of process:

City: City Clerk  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050,

With copy to: City Attorney  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050

Developer: The Irvine Company LLC  
550 Newport Center Drive  
Newport Beach, CA 92660  
Attention: General Counsel

With copies to: Holland & Knight LLP  
50 California Street, Suite 2800  
San Francisco, California 94111  
Attention: Jennifer Hernandez

The provisions of this Section shall be deemed directive only and shall not detract from the validity of any notice given in a manner that would be legally effective in the absence of this Section.

n. Exhibits. The Exhibits are amended as follows:

Exhibits "Plans", "Revised CoA-R" and "MMRP" to the Development Agreement are deleted each in its entirety. Exhibit "Revised CoA-R" is replaced by Exhibit "Second Revised CoA-R" attached hereto.

\_\_\_\_\_SIGNATURES FOLLOW ON PAGES 8 and 9.\_\_\_\_\_

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

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

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

“CITY”

**The Irvine Company LLC,**  
**a Delaware limited liability company**

By: \_\_\_\_\_

Signature of Person executing the Agreement on behalf of  
Developer

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

**2525 AUGUSTINE DRIVE LLC,**  
**a Delaware limited liability company**

By: \_\_\_\_\_

Signature of Person executing the Agreement on behalf of  
Developer

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

3255 SCOTT BOULEVARD LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Signature of Person executing the Agreement on behalf of  
Developer

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

“DEVELOPER”

EXHIBITS

- Exhibit “A” – Original Property Description
- Exhibit “B” – Office Phases II and III Property Description
- Exhibit "RevisedPropDesc" – Legal Property Description
- Exhibit “Second Revised CoA-R” – 2014 Conditions of Approval
- Exhibit "Development Plan" – 2014 Development Plan

**EXHIBIT "A"**

**ORIGINAL PROPERTY DESCRIPTION**

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

**TRACT 1:**

ALL OF PARCEL "A", AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP OF CROWSPIEKER #19, PORTION SECTION 28, TOWNSHIP 6 SOUTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN IN THE CITY OF SANTA CLARA, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 16, 1975 IN BOOK 354 OF MAPS AT PAGE 23.

APN: 216-45-011

**TRACT 2:**

ALL OF PARCEL 1 AS SHOWN ON PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 08, 1977, IN BOOK 392 OF MAPS, PAGES 28 AND 29.

APN: 216-45-019

**TRACT 3:**

PARCEL 1, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 26, 1979, IN BOOK 440 OF MAPS, PAGES 3 AND 4.

APN: 216-45-027

**TRACT 4:**

PARCEL 2, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 26, 1979, IN BOOK 440 OF MAPS, PAGES 3.

APN: 216-45-028

**TRACT 5:**

PARCEL A, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JANUARY 06, 1976, IN BOOK 366 OF MAPS, PAGES 16 AND 17.

APN: 216-45-014

TRACT 6:

SUB-TRACT ONE:

PARCEL 3, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON NOVEMBER 20, 1984, IN BOOK 536 OF MAPS, PAGES 20.

APN: 216-45-032

SUB-TRACT TWO:

PARCEL 2, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON NOVEMBER 20, 1984, IN BOOK 536 OF MAPS, PAGES 20.

APN: 216-45-031

SUB-TRACT THREE:

PARCEL C, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 22, 1975, IN BOOK 354 OF MAPS, PAGE 22.

APN: 216-45-009

## EXHIBIT "B"

### OFFICE PHASES II AND III PROPERTY DESCRIPTION

#### Office Phase II

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

#### PARCEL ONE:

PORTIONS OF PARCELS A AND B AS SHOWN ON PARCEL MAP RECORDED JULY 8, 1982 IN BOOK 502 OF MAPS, PAGES 10 AND 11, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF AUGUSTINE DRIVE AT THE COMMON CORNER OF PARCEL A AND PARCEL B AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 8, 1982 IN BOOK 502 OF MAPS, PAGES 10 AND 11; THENCE ALONG THE COMMON BOUNDARY OF SAID PARCEL A AND SAID PARCEL B THE FOLLOWING THREE COURSES AND DISTANCES; 1. NORTH 00° 50' 53" EAST 270.00 FEET; 2. NORTH 46° 30' 04" EAST 170.60 FEET; 3. SOUTH 89° 09' 07" EAST 30.00 FEET; THENCE LEAVING SAID COMMON LINE NORTH 00° 50' 17" EAST 46.70 FEET; THENCE SOUTH 89° 10' 08" EAST 35.67 FEET; THENCE NORTH 00° 49' 52" EAST 17.04 FEET; THENCE NORTH 19° 14' 23" EAST 191.50 FEET TO THE MOST NORTHERLY LINE OF SAID PARCEL A; THENCE ALONG THE MOST NORTHERLY LINES OF SAID PARCEL A AND SAID PARCEL B THE FOLLOWING TWO COURSES AND DISTANCES, 1. NORTH 70° 45' 37" WEST 308.80 FEET; 2. NORTH 74° 10' 28" WEST 136.68 FEET TO THE MOST NORTHWESTERLY CORNER OF SAID PARCEL B. THENCE ALONG THE WEST LINE OF SAID PARCEL B, SOUTH 00° 50' 53" WEST 767.48 FEET TO SAID NORTHERLY RIGHT OF WAY LINE OF AUGUSTINE DRIVE; THENCE ALONG SAID RIGHT OF WAY LINE, SOUTH 89° 09' 07" EAST 177.00 FEET TO THE POINT OF BEGINNING.

#### PARCEL TWO:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY OF AUGUSTINE DRIVE AT THE COMMON CORNER OF PARCEL A AND PARCEL B, AS SHOWN ON THE PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 8, 1982 IN BOOK 502 OF MAPS, PAGES 10 AND 11, THENCE ALONG THE COMMON BOUNDARY OF SAID PARCEL A AND PARCEL B THE FOLLOWING THREE COURSES AND DISTANCES: 1. NORTH 00° 50' 53" EAST 270.00 FEET; 2. NORTH 48° 30' 04" EAST 170.60 FEET; 3. SOUTH 89° 09' 07" EAST 30.00 FEET, THENCE LEAVING SAID COMMON LINE NORTH 00° 50' 17" EAST 46.70 FEET; THENCE SOUTH 89° 10' 08" EAST 35.67 FEET; THENCE NORTH 00° 49' 52" EAST 17.04 FEET; THENCE NORTH 19° 14' 23" EAST 191.50 FEET TO THE MOST NORTHERLY LINE OF PARCEL A; THENCE ALONG SAID NORTHERLY LINE THE FOLLOWING TWO COURSES AND DISTANCES: 1. SOUTH 70° 45' 37" EAST 245.23 FEET; 2. SOUTH 69° 24' 27"

EAST 119.15 FEET TO A POINT WHICH BEARS ALONG SAID LINE NORTH 69° 24' 27" WEST 48.77 FEET FROM THE MOST NORTHEASTERLY CORNER OF SAID PARCEL A; THENCE LEAVING SAID NORTHERLY LINE SOUTH 20° 35' 33" WEST 36.00 FEET; THENCE SOUTH 69° 24' 27" EAST 8.07 FEET; THENCE SOUTH 20° 09' 59" WEST 10.00 FEET TO THE COMMON CORNER OF PARCEL ONE AND PARCEL TWO, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 23, 1998 IN BOOK 711 OF MAPS, PAGES 29 AND 30; THENCE ALONG THE COMMON LINE OF SAID PARCEL ONE AND PARCEL TWO THE FOLLOWING NINE COURSES AND DISTANCES: 1. SOUTH 20° 09' 59" WEST 16.00 FEET; 2. NORTH 69° 24' 27" WEST 126.68 FEET, 3. NORTH 70° 45' 37" WEST 51.81 FEET; 4. SOUTH 19° 14' 23" WEST 111.30 FEET; 5. SOUTH 00° 50' 53" WEST 228.54 FEET; 6. SOUTH 89° 09' 07" EAST 33.00 FEET; 7. SOUTH 00° 50' 53" WEST 150.03 FEET; 8. NORTH 89° 09' 07" WEST 33.00 FEET; 9. SOUTH 00° 50' 53" WEST 45.77 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF AUGUSTINE DRIVE, AS SHOWN ON SAID PARCEL MAP AND THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT TO WHICH A TANGENT LINE BEARS NORTH 83° 28' 31" WEST; THENCE WESTERLY ALONG SAID CURVE TO THE LEFT, WITH A RADIUS OF 3030.00 FEET, THROUGH A CENTRAL ANGLE OF 5° 40' 38" FOR AN ARC LENGTH OF 300.20 FEET; THENCE NORTH 89° 09' 07" WEST 76.52 FEET TO THE POINT OF BEGINNING.

APNs 216-45-036 and 216-45-037

**Office Phase III**

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

ALL OF PARCEL A-2, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP P'TN LANDS OF KAISER-AETNA BEING A PORTION P'CL "C", BOOK 273 OF P'CL MAPS, PAGE 3, WITHIN THE CITY OF SANTA CLARA, SANTA CLARA COUNTY, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON DECEMBER 21, 1973 IN BOOK 334 OF MAPS, AT PAGE 28.

APN 216-45-006

**EXHIBIT "REVISEDPROPDESC"**

**LEGAL PROPERTY DESCRIPTION**

**Retail**

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

**TRACT 1:**

ALL OF PARCEL "A", AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP OF CROWSPIEKER #19, PORTION SECTION 28, TOWNSHIP 6 SOUTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN IN THE CITY OF SANTA CLARA, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 16, 1975 IN BOOK 354 OF MAPS AT PAGE 23.

**TRACT 2:**

ALL OF PARCEL 1 AS SHOWN ON PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 08, 1977, IN BOOK 392 OF MAPS, PAGES 28 AND 29.

**TRACT 3:**

PARCEL 1, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 26, 1979, IN BOOK 440 OF MAPS, PAGES 3 AND 4.

**TRACT 4:**

PARCEL 2, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 26, 1979, IN BOOK 440 OF MAPS, PAGES 3.

**TRACT 5:**

PARCEL A, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JANUARY 06, 1976, IN BOOK 366 OF MAPS, PAGES 16 AND 17.

APNs 216-45-11, 216-45-019, 216-45-027, 213-45-028 and 216-45-014

**Office Phase I**

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

TRACT 6:

SUB-TRACT ONE:

PARCEL 3, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON NOVEMBER 20, 1984, IN BOOK 536 OF MAPS, PAGES 20.

SUB-TRACT TWO:

PARCEL 2, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON NOVEMBER 20, 1984, IN BOOK 536 OF MAPS, PAGES 20.

SUB-TRACT THREE:

PARCEL C, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 22, 1975, IN BOOK 354 OF MAPS, PAGE 22.

APNs 216-45-032, 213-45-031 and 216-45-009

**Office Phase II**

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

PARCEL ONE:

PORTIONS OF PARCELS A AND B AS SHOWN ON PARCEL MAP RECORDED JULY 8, 1982 IN BOOK 502 OF MAPS, PAGES 10 AND 11, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF AUGUSTINE DRIVE AT THE COMMON CORNER OF PARCEL A AND PARCEL B AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 8, 1982 IN BOOK 502 OF MAPS, PAGES 10 AND 11; THENCE ALONG THE COMMON BOUNDARY OF SAID PARCEL A AND SAID PARCEL B THE FOLLOWING THREE COURSES AND DISTANCES; 1. NORTH 00° 50' 53" EAST 270.00 FEET; 2. NORTH 46° 30' 04" EAST 170.60 FEET; 3. SOUTH 89° 09' 07" EAST 30.00 FEET; THENCE LEAVING SAID COMMON LINE NORTH 00° 50' 17" EAST 46.70 FEET; THENCE SOUTH 89° 10' 08" EAST 35.67 FEET; THENCE NORTH 00° 49' 52" EAST 17.04 FEET; THENCE NORTH 19° 14' 23" EAST 191.50 FEET TO THE MOST NORTHERLY LINE OF SAID PARCEL A; THENCE ALONG THE MOST NORTHERLY LINES OF SAID PARCEL A AND SAID PARCEL B THE FOLLOWING TWO COURSES AND DISTANCES, 1. NORTH 70° 45' 37" WEST 308.80 FEET; 2. NORTH 74° 10' 28" WEST 136.68 FEET TO THE MOST NORTHWESTERLY CORNER OF SAID PARCEL B. THENCE ALONG THE WEST LINE OF SAID PARCEL B, SOUTH 00° 50' 53" WEST 767.48 FEET TO SAID NORTHERLY RIGHT OF WAY LINE OF AUGUSTINE DRIVE; THENCE ALONG SAID RIGHT OF WAY LINE, SOUTH 89° 09' 07" EAST 177.00 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY OF AUGUSTINE DRIVE AT THE COMMON CORNER OF PARCEL A AND PARCEL B, AS SHOWN ON THE PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 8, 1982 IN BOOK 502 OF MAPS, PAGES 10 AND 11, THENCE ALONG THE COMMON BOUNDARY OF SAID PARCEL A AND PARCEL B THE FOLLOWING THREE COURSES AND DISTANCES: 1. NORTH 00° 50' 53" EAST 270.00 FEET; 2. NORTH 48° 30' 04" EAST 170.60 FEET; 3. SOUTH 89° 09' 07" EAST 30.00 FEET, THENCE LEAVING SAID COMMON LINE NORTH 00° 50' 17" EAST 46.70 FEET; THENCE SOUTH 89° 10' 08" EAST 35.67 FEET; THENCE NORTH 00° 49' 52" EAST 17.04 FEET; THENCE NORTH 19° 14' 23" EAST 191.50 FEET TO THE MOST NORTHERLY LINE OF PARCEL A; THENCE ALONG SAID NORTHERLY LINE THE FOLLOWING TWO COURSES AND DISTANCES: 1. SOUTH 70° 45' 37" EAST 245.23 FEET; 2. SOUTH 69° 24' 27" EAST 119.15 FEET TO A POINT WHICH BEARS ALONG SAID LINE NORTH 69° 24' 27" WEST 48.77 FEET FROM THE MOST NORTHEASTERLY CORNER OF SAID PARCEL A; THENCE LEAVING SAID NORTHERLY LINE SOUTH 20° 35' 33" WEST 36.00 FEET; THENCE SOUTH 69° 24' 27" EAST 8.07 FEET; THENCE SOUTH 20° 09' 59" WEST 10.00 FEET TO THE COMMON CORNER OF PARCEL ONE AND PARCEL TWO, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 23, 1998 IN BOOK 711 OF MAPS, PAGES 29 AND 30; THENCE ALONG THE COMMON LINE OF SAID PARCEL ONE AND PARCEL TWO THE FOLLOWING NINE COURSES AND DISTANCES: 1. SOUTH 20° 09' 59" WEST 16.00 FEET; 2. NORTH 69° 24' 27" WEST 126.68 FEET, 3. NORTH 70° 45' 37" WEST 51.81 FEET; 4. SOUTH 19° 14' 23" WEST 111.30 FEET; 5. SOUTH 00° 50' 53" WEST 228.54 FEET; 6. SOUTH 89° 09' 07" EAST 33.00 FEET; 7. SOUTH 00° 50' 53" WEST 150.03 FEET; 8. NORTH 89° 09' 07" WEST 33.00 FEET; 9. SOUTH 00° 50' 53" WEST 45.77 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF AUGUSTINE DRIVE, AS SHOWN ON SAID PARCEL MAP AND THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT TO WHICH A TANGENT LINE BEARS NORTH 83° 28' 31" WEST; THENCE WESTERLY ALONG SAID CURVE TO THE LEFT, WITH A RADIUS OF 3030.00 FEET, THROUGH A CENTRAL ANGLE OF 5° 40' 38" FOR AN ARC LENGTH OF 300.20 FEET; THENCE NORTH 89° 09' 07" WEST 76.52 FEET TO THE POINT OF BEGINNING.

APNs 216-45-036 and 216-45-037

**Office Phase III**

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

ALL OF PARCEL A-2, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP P'TN LANDS OF KAISER-AETNA BEING A PORTION P'CL "C", BOOK 273 OF P'CL

MAPS, PAGE 3, WITHIN THE CITY OF SANTA CLARA, SANTA CLARA COUNTY, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON DECEMBER 21, 1973 IN BOOK 334 OF MAPS, AT PAGE 28.

APN 216-45-006

**EXHIBIT "SECOND REVISED CoA-R"**

**2014 CONDITIONS OF APPROVAL**

**CONDITIONS OF APPROVAL - REZONE  
SANTA CLARA SQUARE PROJECT**

**EXHIBIT "DEVELOPMENT PLAN"**

**2014 DEVELOPMENT PLAN**

**DEVELOPMENT PLANS  
SANTA CLARA SQUARE PROJECT**

**CONDITIONS OF APPROVAL - REZONE  
SANTA CLARA SQUARE PROJECT**

**GENERAL**

- G1. The Developer shall comply with all applicable codes, regulations, ordinances and resolutions.
- G2. If relocation of an existing public facility becomes necessary due to a conflict with the developer's new improvements, then the cost of said relocation shall be borne by the developer.

**ATTORNEY'S OFFICE**

- A1. The Developer agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, attorneys' fees, injuries, costs, and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed by a third party against the City by reason of its approval of developer's project.

**PLANNING AND BUILDING INSPECTION**

- P1. Obtain required permits and inspections from the Building Official and comply with the conditions thereof. If this project involves land area of 1 acre or more, the developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be sent to the City Building Inspection Division. A storm water pollution prevention plan is also required with the NOI.
- P2. Refer the project design, including the sign program, to the Director of Planning and Inspection for review and approval for Retail Center, and to the Architectural Committee for Office Phases II and III. Line of sight and shadow studies shall be required for Office Phases II and III.
- P3. Submit plans for final architectural review to the Planning Division and obtain architectural approval prior to issuance of building permits. Said plans to include, but not be limited to: site plans, floor plans, elevations, landscaping, lighting and signage. Landscaping installation shall meet City water conservation criteria in a manner acceptable to the Director of Planning and Inspection. Major modifications to the architecture of buildings would require Architectural Committee review and approval.
- P4. Construct six-foot masonry wall along property lines abutting residential properties in accordance with Zoning Ordinance requirements to the satisfaction of the Director of Planning and Inspection.
- P5. Construction activity shall be limited to the hours of 7:00 a.m. to 6:00 p.m. weekdays and 9:00 a.m. to 6:00 p.m. Saturdays for projects within 300 feet of a residential use and shall not be allowed on recognized State and Federal holidays.
- P6. Prior to issuance of a demolition permit, Developer/Owner shall have an asbestos survey of the proposed site performed by a certified individual. Survey results and notice of the proposed demolition are to be sent to the Bay Area Air Quality Management District (BAAQMD). No demolition shall be performed without a demolition permit and BAAQMD approval and, if necessary, proper asbestos removal.
- P7. Incorporate Best Management Practices (BMPs) into construction plans and incorporate post construction water runoff measures into project plans in accordance with the City's Urban Runoff Pollution Prevention Program standards prior to the issuance of permits. Proposed BMPs shall be submitted to and thereafter reviewed and approved by the Planning Division and the Building Inspection Division for incorporation into construction drawings and specifications.
- P8. An erosion control plan shall be prepared and copies provided to the Planning Division and to the Building Inspection Division for review and approval prior to the issuance of grading permits or building permits that involve substantial disturbance of substantial ground area.
- P9. Commercial, industrial, and multi-family residential buildings must have enclosures for solid waste and recycling containers. The size and shape of the enclosure(s) must be adequate to serve the estimated solid waste and recycling needs and size of the building(s) onsite, and should be designed and located on the property so as to allow ease of access by collection vehicles. As a general rule, the size of the enclosure(s) for the recycling containers should be similar to the size of the trash enclosure(s) provided

- onsite. Roofed enclosures with masonry walls and solid metal gates are the preferred design. Any required enclosure fencing (trash area, utility equipment, etc.) if not see-thru, shall have a six (6) inch opening along the bottom for clear visibility. Any gates or access doors to these enclosures shall be locked.
- P10. The Final Storm Water Management Plan (SWMP) must be certified by a third-party consultant from SCVURPP's current list of qualified consultants. Five copies of the approval letter from the certified third party review (wet stamped and signed) must be submitted prior to the issuance of grading or building permit.
- P11. Prior to the issuance final occupancy, the applicant shall enter into Operations and Maintenance (O&M) agreement with the City. The project operator is responsible for the operations and maintenance of the SWMP and stormwater BMPs consistent with the O&M agreement throughout the life of the project.
- P12. A complete landscape plan that includes, type, size and location of all plant species shall be required as part of architectural review of the project. Review and approval of the complete landscape plan, including water conservation calculations and irrigation plan shall be required prior to issuance of building permits. Installation of landscaping is required prior to occupancy permits.
- P13. A master sign program shall be required as part of architectural review of the project.
- P14. A master outdoor seating plan shall be required as part of architectural review of the project.
- P15. The Planning Division requires the replanting of specific trees by the Developer as a Condition of Approval. In conformance with the Santa Clara Community Design Guidelines and the project EIR, the following tree replacement standards shall be included in the final landscaping plans:
- Minimum fifteen (15) gallon street tree.
  - Minimum fifteen (15) gallon on private property.
  - Minimum twenty (24) or thirty-six (36) inch box to replace a mature tree which has been or is proposed to be removed.
- P16. Prior to the issuance of building permit, the Developer shall submit to the Planning Division all draft covenant, joint-maintenance, and/or shared-access agreements, for review and approval. Such agreements shall ensure consistent maintenance of all landscaped areas and shared access between adjacent parcels.
- P17. The Developer shall comply with the Mitigations Monitoring and Reporting Program identified in the Augustine-Bowers Environmental Impact Report and Mitigations as amended in the Addendum No. 2 for the Santa Clara Square Project, and shall be incorporated in the Conditions of Approval for this project.
- P18. The Developer shall comply with the conditions set forth in the Development Agreement in effect between the City of Santa Clara and The Irvine Company LLC, as successor interest to EOP-Industrial Portfolio, LLC and CA-Santa Clara Office Center Limited Partnership, effective June 18, 2009, as may be amended from time to time in accordance with the terms of the Development Agreement.
- P19. For Regional Traffic Fee, the Developer shall pay the sum of one dollar (\$1.00) per square foot of building payable to the City prior to the issuance of Building Permit for the Vertical Construction of each building within the Project based on net square footage of applicable building. "Net Square Footage" is defined as occupiable building square footage subject to the issuance of a Building Permit, excluding parking structures, trash enclosures and similar non-occupiable facilities, less the occupiable square footage subject of existing buildings, existing on the Effective Date, which have previously been demolished, or as subject to Demolition Permits which have not been previously included in a Net Square Footage calculation. Regional Traffic Fees are nonrefundable.
- P20. For Local Traffic Fee, the Developer shall pay the sum of one dollar (\$1.00) per square foot of building payable to the City prior to the issuance of Building Permit for the Vertical Construction of each building within the Project based on net square footage of applicable building. Local Traffic Fees are non-refundable.
- P21. For Fair Share Traffic Fees, Developer agrees to the sum of nine hundred sixty-eight thousand, eight hundred ninety-three dollars (\$968,893) payable to the City for the Project's contribution to the intersection improvements identified in the EIR. Developer has already satisfied its obligation to pay the first four hundred eighty-three thousand, nine hundred dollars (\$483,900) of the Fair Share Traffic Fees, and remains obligated to pay the remaining four hundred eighty-four

- thousand, nine hundred ninety-three dollars (\$484,993). The remaining Fair Share Traffic Fees shall be paid in full prior to the issuance of any additional Building Permits.
- P22. The Developer shall participate in exploring the feasibility of adding transportation services to link businesses with multi-modal transit in cooperation with the City, other public agencies, and other local business interests.
- P23. The Developer will employ all reasonable efforts such that the project will be built to, and certified in, accordance with Leadership for Energy and Environmental Design (LEED) at the "SILVER" certificate level, or equivalent. LEED is a nationally acceptable benchmark for the design, construction, and operation of high performance green buildings.
- P24. The Developer shall submit a Notice of Proposed Construction or Alteration - Form 7460-1 to the Federal Aviation Administration, in accordance with Federal Aviation Regulation, Part 77 "Objects Affecting Navigable Airspace". Public Utilities Code Section 21659 prohibits structural hazards near airports. Project is subject to the provisions of 49 U.S.C, Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77. A determination of "No Hazard" shall be made prior to issuance of building permit for any of the four proposed tower buildings.
- P25. Prior to issuance of the occupancy permit, the applicant shall prepare and receive approval on a 20 percent vehicle miles traveled (VMT) reduction strategy, 10 percent of which would come from a Transportation Demand Management program (TDM).
- P26. On the annual anniversary of project occupancy, the Developer/ Owner shall prepare and provide to the Planning Division an annual report outlining the performance of the TDM program.
- P27. The Developer/ Owner shall develop and implement a Transportation Demand Management (TDM) program. The project proposes the following elements in the TDM Program, or similar, alternative transportation demand management measures acceptable to the City:
- Provide physical improvements, such as sidewalk improvements, landscaping and bicycle parking that would act as incentives for pedestrian and bicycle modes of travel.
  - Connect individual sites with regional bikeways.
  - Provide on-site transit information kiosks.
  - Implement a carpool/vanpool program, e.g., carpool ride matching for employees, assistance with vanpool information, provision of vanpool vehicles, etc.
  - Develop a transit use incentive program for employees in the project area, such as on-site distribution of passes and/or subsidized transit passes for local transit systems. (Examples include VTA EcoPass system and "Wageworks" which utilizes pre-tax dollars to purchase transit passes.)
  - Provide preferential parking for carpools.
  - Provide a guaranteed ride home program.
  - Implement a flextime policy.
  - Provide on-site services such as ATMs, dry cleaning facilities, exercise room, cafeteria, etc.
  - Participate in a shuttle program for employees to access local transit services within the City. (Examples include the Altamont Commuter Express (ACE) Yellow Shuttle and the Lawrence Caltrain Bowers/Walsh Shuttle.)
  - Provide showers and lockers for employees bicycling or walking to work.
- P28. The VTA Community Design & Transportation (CDT) Guidelines and VTA Pedestrian Technical Guidelines should be used as a guide by the Developer to on site planning, building design, street design, preferred pedestrian environment, intersection design and parking requirements.
- P29. Prior to the issuance of building permits, the Developer shall submit a plan to minimize construction vehicle trips during peak hour traffic conditions to the Planning Division for review and approval.
- P30. The Developer shall fully construct the intersection and street improvements at Augustine Drive and Bowers Avenue prior to occupancy of any building shown on the Development Plans unless partial improvements identified in a subsequent Traffic Impact Analysis to the satisfaction of the City Traffic Engineer demonstrates that partial improvements to allow for the construction of the office towers north of Augustine Drive will meet or exceed the reduction in Level of Service impacts as identified in the

project EIR. The Developer shall complete full intersection improvements prior to occupancy of the retail center south of Augustine Drive.

- P31. Buildings may be phased in any order provided that adequate parking is completed in conjunction with each office tower. Landscaping may be phased with each building, provided that at least 20% of the landscape plan is implemented with each office tower and/or free-standing amenity building.
- P32. The Retail Center site shall be rezoned to Planned Development (PD). The permitted uses and development standards to this PD Zoning District are stated in the Development Plans.
- P33. The Office Phase II and III properties shall be rezoned to Commercial Park (CP). The permitted uses and development standards are specified in the City Zoning Ordinance.

#### **ENGINEERING**

- E1. Obtain site clearance through Engineering Department prior to issuance of building permit. Site clearance will require payment of applicable development fees. Other requirements may be identified for compliance during the site clearance process. Contact Engineering Department at (408) 615-3000 for further information.
- E2. All work within the public right-of-way and/or public easement, which is to be performed by the Developer/Owner, the general contractor, and all subcontractors shall be included within a **Single Encroachment Permit** issued by the City Engineering Department. Issuance of the Encroachment Permit and payment of all appropriate fees shall be completed prior to commencement of work, and all work under the permit shall be completed prior to issuance of occupancy permit.
- E3. The sanitary sewer (SS) discharge information (i.e., building use, square footage, point of connection to the public system, and 24-hour average and peak SS flow graphs for the peak day, showing average daily and peak daily SS flows) submitted by the developer was added to the City's Sanitary Sewer Hydraulic Model (SSHM) to determine if there is enough SS conveyance capacity in the SS trunk system to accommodate the proposed development. The SSHM output shows that there is mild surcharge in some downstream SS trunk lines and a slightly worsened surcharge in a downstream SS trunk line (RMC Technical Memorandum dated March 18, 2014). The SSHM output may change based on pending development applications and future projects. The SSHM output does not guarantee or in any way reserve or hold SS conveyance capacity until developer has Final Approval for the project. For purposes of this condition, "Final Approval" shall mean the final vote of the City Council necessary for all entitlements to be approved, unless a legal challenge is brought to the Council decisions, in which case the Final Approval shall mean the final disposition of the legal challenge
- E4. The sanitary sewer (SS) main serving the site along property's Augustine Drive frontage that was not included in the Sanitary Sewer Capacity Model (SSCM) were monitored in the field by the developer. The field monitoring information along with the SS discharge information submitted by the developer were analyzed by developer's Civil Engineer and determined that said SS mains currently have enough conveyance capacity to accommodate the proposed development. The Civil Engineer's results may change based on pending development applications and future projects. The Civil Engineer's results do not guarantee or in any way reserve or hold SS conveyance capacity until the Developer has final approval for the project.
- E5. Developer shall provide a complete storm drain study for the 10-year and 100-year storm events. The grading plans shall include the overland release for the 100-year storm event and any localized flooding areas. System improvements, if needed, will be at developer's expense.
- E6. Submit public improvement plans prepared in accordance with City Engineering Department procedures which provide for the installation of public improvements. Plans shall be prepared by a Registered Civil Engineer and approved by the City Engineer prior to approval and recordation of final map and/or issuance of building permits.
- E7. Confirm that the existing sanitary sewer laterals are in good condition. The developer shall CCTV /video the lateral in the presence of the City inspector. Do not reuse unless the laterals are in good condition.
- E8. All driveways shall be City standard ST-8 or ST-9 except those at 4-way signalized intersections. Those shall be curb return style with asphalt roadway.

- E9. Provide root barrier when trees are planted adjacent to the sidewalk. Root barriers shall be 12' long x 2' deep, and centered on trees.
- E10. Storm drain and sanitary sewer laterals shall be outside the drip line of mature trees or 10' clear of the tree trunk.
- E11. Developer is responsible for cost of relocation or modification of any public facility necessary to accommodate subject development.
- E12. Damaged curb, gutter, and sidewalk within the public right-of-way along property's frontage shall be repaired or replaced (to the nearest score mark) in a manner acceptable to the City Engineer or his designee. The extents of said repair or replacement within the property frontage shall be at the discretion of the City Engineer or his designee.
- E13. Existing non-standard or non-ADA compliant frontage improvements shall be replaced with current City standard frontage improvements as directed by the City Engineer or his designee.
- E14. Unused driveways in the public right-of-way shall be replaced with City standard curb, gutter, and sidewalk.
- E15. Existing sanitary sewer and storm drain laterals that do not serve any purpose shall be abandoned to City standards.
- E16. Show and comply with City's driveway vision triangle requirements at all driveways and City's intersection visibility obstruction clearance requirements. No trees and/or structures obstructing drivers' view are allowed in the vision triangle & visibility obstruction areas. Contact Traffic Engineering at (408) 615-3000 for further information.
- E17. Provide onsite ADA walkway connecting proposed buildings/parking structure to the public sidewalk.
- E18. Provide 10' wide sidewalk along the property's Bowers Avenue and Scott Boulevard frontages.
- E19. Provide 5' wide sidewalk along the property's Augustine Drive frontage.
- E20. Provide 10' wide minimum creek trail along the property's Augustine Drive southern frontage.
- E21. Provide 12' wide minimum creek trail/easement connecting Augustine/Octavius Drive to the San Tomas Aquino Creek Trail.
- E22. Provide 6' wide minimum bicycle lane along property's Bowers Avenue frontage. Gutter pan shall not be used as part of bicycle lane (8' wide minimum from face of curb).
- E23. Provide 4' wide minimum bicycle lane along property's Augustine Drive and Scott Boulevard frontages. Gutter pan shall not be used as part of bicycle lane (6' wide minimum from face of curb).
- E24. Construct traffic signal at proposed Mid-Block crossing on Augustine Drive. The ADA curb ramps at this crossing shall be Caltrans Case A ramps in order to meet onsite and public paths of travel.
- E25. Traffic signal improvement at proposed driveway entrance on Augustine Drive, approximately 900' east of Bowers/Augustine intersection shall be required.
- E26. Provide Stop Study/Analysis to determine if a new traffic signal or a 4-way stop is needed at the Augustine/Montgomery intersection.
- E27. Remove existing bus bench/sign on Bowers Avenue, north of Scott Boulevard, and replace with bus duck-out/shelter/bench per VTA's requirements.
- E28. Remove existing bus bench/sign on Scott Boulevard, at Coronado Drive, and replace with bus stop/pad/bench per VTA's requirements.
- E29. Traffic signal modification for Bowers/Scott & Bowers/Augustine intersections shall be provided. Bowers/Augustine traffic signal modification plans shall have all vehicular turning radius for the intersection shown without any conflict. Minimum left-turn lane width shall be 11'.
- E30. Remove existing curb ramps at the NE corner of Bowers/Scott, NE & SE corners of Bowers/Augustine, and the beginning 101 on ramp at Bowers and replace with ADA compliant curb ramps.
- E31. All traffic striping, messages, symbols destroyed/damaged due to proposed improvements' construction shall be replaced with thermoplastic striping/messages/symbols. All proposed traffic striping, messages, symbols shall be thermoplastic.
- E32. Dedicate on-site easements for new public utilities and/or sidewalk as required by means of parcel map or approved instrument at time of development.

- E33. Obtain Council approval of a resolution ordering vacation of existing public easement(s) proposed to be abandoned, through Engineering Department, and pay all appropriate fees, prior to start of construction.
- E34. File and record parcel map to create parcel for proposed development and pay all appropriate fee(s) prior to Building Permit issuance.
- E35. Proposed vacation of street Right-of-Way (corner bulb) at the NE corner of Augustine and Octavius Drive will require further review/discussion when final development plans for Phase II and III are determined.
- E36. For current proposed Retail/Market areas, Office Buildings, and Parking Structures, the following minimum bicycle facilities shall be provided at the main entrance and/or high visible areas:
- 107,588 SF Retail: 1 Class I Bike Locker space per each 30 employees and 20 Class II Bike Rack spaces for patrons.
  - 543,288 SF Office Bldgs: 68 Class I Bike Locker spaces 23 Class II Bike Rack spaces.
  - Parking Structures: TBD (depend on proposed parking stalls).
- E37. The Developer shall mitigate traffic impacts as outlined in the Traffic Impact Analysis Report (TIA), Final Environmental Impact Report (FEIR), and Addendum to FEIR.

### **ELECTRICAL**

- EL1. Prior to submitting any project for Electric Department review, applicant shall provide a site plan showing all existing utilities, structures, easements and trees. Applicant shall also include a "Load Survey" form showing all current and proposed electric loads. A new customer with a load of 500KVA or greater or 100 residential units will have to fill out a "Service Investigation Form" and submit this form to the Electric Planning Department for review by the Electric Planning Engineer. Silicon Valley Power will do exact design of required substructures after plans are submitted for building permits.
- EL2. The Developer shall provide and install electric facilities per Santa Clara City Code chapter 17.15.210.
- EL3. Electric service shall be underground. See Electric Department Rules and Regulations for available services.
- EL4. Installation of underground facilities shall be in accordance with City of Santa Clara Electric Department standard UG-1000, latest version, and Santa Clara City Code chapter 17.15.050.
- EL5. Underground service entrance conduits and conductors shall be "privately" owned, maintained, and installed per City Building Inspection Division Codes. Electric meters and main disconnects shall be installed per Silicon Valley Power Standard MS-G7, Rev. 2.
- EL6. The developer shall grant to the City, without cost, all easements and/or right of way necessary for serving the property of the developer and for the installation of utilities (Santa Clara City Code chapter 17.15.110).
- EL7. All electric meters and services disconnects shall be grouped at one location, outside of the building or in a utility room accessible directly from the outside. A double hasp locking arrangement shall be provided on the main switchboard door(s). Utility room door(s) shall have a double hasp locking arrangement or a lock box shall be provided. Utility room door(s) shall not be alarmed.
- EL8. If transformer pads are required, City Electric Department requires an area of 17' x 16'-2", which is clear of all utilities, trees, walls, etc. This area includes a 5'-0" area away from the actual transformer pad. This area in front of the transformer may be reduced from a 8'-0" apron to a 3'-0", providing the apron is back of a 5'-0" min. wide sidewalk. Transformer pad must be a minimum of 10'-0 from all doors and windows, and shall be located next to a level, drivable area that will support a large crane or truck.
- EL9. All trees, existing and proposed, shall be a minimum of five (5) feet from any existing or proposed Electric Department facilities. Existing trees in conflict will have to be removed. Trees shall not be planted in PUE's or electric easements.
- EL10. Any relocation of existing electric facilities shall be at Developer's expense.
- EL11. Electric Load Increase fees may be applicable.
- EL12. The developer shall provide the City, in accordance with current City standards and specifications, all trenching, backfill, resurfacing, landscaping, conduit, junction boxes, vaults, street light foundations, equipment pads and subsurface housings required for power distribution, street lighting, and signal communication systems, as required by the City in the development of frontage and on-site property.

- Upon completion of improvements satisfactory to the City, the City shall accept the work. Developer shall further install at his cost the service facilities, consisting of service wires, cables, conductors, and associated equipment necessary to connect a customer to the electrical supply system of and by the City. After completion of the facilities installed by developer, the City shall furnish and install all cable, switches, street lighting poles, luminaries, transformers, meters, and other equipment that it deems necessary for the betterment of the system (Santa Clara City Code chapter 17.15.210 (2)).
- EL13. Electrical improvements (including underground electrical conduits along frontage of properties) may be required if any single non-residential private improvement valued at \$200,000 or more or any series of non-residential private improvements made within a three-year period valued at \$200,000 or more (Santa Clara City Code Title 17 Appendix A (Table III)).
- EL14. Non-Utility Generator equipment shall not operate in parallel with the electric utility, unless approved and reviewed by the Electric Engineering Division. All switching operations shall be "Open-Transition-Mode", unless specifically authorized by SVP Electric Engineering Division. A Generating Facility Interconnection Application must be submitted with building permit plans. Review process may take several months depending on size and type of generator. No interconnection of a generation facility with SVP is allowed without written authorization from SVP Electric Engineering Division.
- EL15. Applicant is advised to contact SVP (CSC Electric Department) to obtain specific design and utility requirements that are required for building permit review/approval submittal. Please provide a site plan to Leonard Buttitta at 408-261-5469 to facilitate plan review.

#### WATER

- W1. Existing water services to the site are available for use, otherwise they shall be abandoned back to their respective water mains.
- W2. Water mains shall be placed in the public right-of-way. Public water mains not in the public right-of-way shall be placed within water easements, which shall be executed prior to Project acceptance.
- W3. All landscaping and irrigation systems shall meet water conservation requirements as per City's Rules and Regulations for Water Service (Resolution 6390).
- W4. Landscape design shall keep trees a minimum of 10' from water and sewer facilities.
- W5. All water improvements for this development shall be paid for by the Owner.
- W6. Applicant is advised that applicant must design and install adequate plumbing for the proposed development and the affected building, or reduced residual water pressure may be experienced due to added water demand.
- W7. The proposed project is in an area with limited water distribution capability. Prior to the issuance of Building or Grading Permits, the applicant shall provide hydraulic calculations showing the impacts of the proposed development on the water utilities to the satisfaction of the Director of Water & Sewer Utilities.
- W8. Prior to issuance of Building Permits, the applicant shall submit plans for independent water service to each individual parcel connected to a public main in the public right-of-way to the satisfaction of the Director of Water & Sewer Utilities. Additionally, different types of water use (domestic, irrigation, fire) shall be served by individual water services.
- W9. Prior to the issuance of Building or Grading Permits, the applicant must indicate the disposition of all existing water services on the plans. The applicant must properly abandon all existing water services on the property that will not be used per Water & Sewer Utilities standards.
- W10. Each parcel shall have their own domestic, fire and landscape services and cannot be connected thru adjacent parcels.
- W11. Show Water meters and backflow preventers to scale as per City Standard Details.
- W12. Design water meters and backflow preventers to be in public right-of-way, if not then 5 feet around, water easements must be provided for the services to be on the private side of the property.
- W13. Need to show separate landscape services for the development.

**FIRE**

**Occupancy Classifications:**

F1. State the occupancy classification in accordance with the 2013 California Building Code for each building and/or areas.

**Fire Department Emergency Access:**

- F2. Approved fire apparatus access roads (public/private) shall be established and maintained to within 150 feet of all exterior walls of any building.
  - F3. Approved fire apparatus access roads shall have a minimum 20-foot width, have a minimum 13 ½-foot vertical clearances and have a minimum 36-foot inside turning radius.
  - F4. Dead-end fire apparatus access roads that exceed 150-feet in length shall be provided with a 75-foot diameter vehicle turnaround or an approved hammerhead turnaround (incorporating the minimum 36-foot inside turning radius).
  - F5. Fire apparatus access roads shall be designed and maintained to support imposed loads of fire apparatus (75,000 lbs) and shall be surfaced to provide all-weather driving capabilities (2013 CFC, 503.2.3).
  - F6. Any barricades, bollards, gates that may obstruct the fire lane shall be approved by the Fire Department.
  - F7. Adjacent private emergency access roads from lands adjoining a property required to have access shall not be considered unless such access is designated as a “shared Emergency Access Easement” (E.A.E.).
- Note: When parcels are subdivided, E.A.E. will most likely be required.**

**Emergency Responder Radio Coverage:**

- F8. All new buildings shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communication systems of the jurisdiction at the exterior of the building (any exceptions are required to be approved by Fire Code Official). The radio coverage system shall be provided with an approved secondary source of power capable of operating for a period of at least 24 hours. (2013 CFC 510.1). The emergency responder radio shall be in accordance with Section 510 of the CFC and City of Santa Clara Radio Shop (408-615-5590). **NOTE:** A third party review and report is required under a separate permit.
- F9. Obstruction by new buildings: When determined, a new structure obstructs the line of sight emergency radio communications to existing buildings or to any other locations, the developer of the structure shall provide and install the radio retransmission equipment necessary to restore communications capabilities. The equipment shall be located in an approved space or area within the new structure (SCMFEC 510.1.1)
- F10. **S906.1 GENERAL. Portable fire extinguishers shall be installed according to the Table 906.1 A.** Servicing of fire extinguishers shall be required on an annual basis. The Chief may require additional extinguishers and other ratings for protection of special hazards or hazard areas if, in his opinion, the additional requirements are better suited to protect such hazard. Portable fire extinguishers shall be in accordance with NFPA 10.

**TABLE 906.1 A - FIRE EXTINGUISHER SIZE AND PLACEMENT**

<b>Occupancy Hazard Classification</b>	<b>Light (Low)</b>	<b>Ordinary (Moderate)</b>	<b>Extra (High)</b>
<b>Descriptions</b>	Offices Classrooms Churches Assembly Halls	Dining Areas Mercantile Shops Lt. Manufacturing Auto Showrooms Parking Garages	Woodworking Vehicle Repair Cooking Areas Hazardous-Occupancies
<b>Minimum Extinguisher Rating</b>	2A:10B:C	2A:20B:C	4A:80B:C
<b>Maximum Floor Area per</b>	3,000 sq. ft.	1,500 sq. ft.	1,000 sq. ft.

<b>Extinguisher</b>			
<b>Maximum Travel Distance to Extinguisher</b>	50 ft.	50 ft.	50 ft

Fire Permits and Guidelines:

F11. Refer to <http://santaclaraca.gov/index.aspx?page=564> for local amendments and standards.

Water Supply:

- F12. For buildings/structures where standpipe hose valves are required, a drawing shall be submitted at time of building application showing the location of each standpipe hose valve connection along with hose reach distances. See STANDPIPES below for additional requirements. NOTE: A Class 1 standpipe shall be required.
- F13. On-site fire hydrants and mains capable of supplying the required fire flow shall be provided. Fire flow for hydrants shall be in accordance with Appendix B and C of the 2013 CFC. **Show all existing and proposed on-site and city fire hydrants on the site plan at time of Building Permit application. Also show the proposed fire service line with FDC, PIV and ASR. NOTE: No reduction in fire flow is allowed for the number of hydrants and average spacing between hydrants. Otherwise, a 75% fire flow reduction is acceptable. Revise drawings to show the construction types of each building so that the proper fire flow and hydrant spacing can be verified.**
- F14. When underground fire service mains are required, submit separate plans, fees and fire flow calculations to the Fire Department for separate review and permit. Each parcel or building may require separate fire service. (NOTE: Stamped and wet signed civil drawings shall be submitted in conjunction with shop quality drawings by the installing "A" or "C-16" licensed contractor).
- F15. Any development providing any combination of six (6) or more fire hydrants, fire sprinkler or standpipe services, shall not be served by a dead end water main, but rather served by a looped service with two separate feeds containing fire department connections (FDCs), post indicator valves (PIVs) and private fire hydrants. When a FDC pressurizes fire service mains including private hydrants, the hydrant intended to be used by the fire department must be a hydrant directly connected to the public water main (i.e., a city hydrant). Each fire sprinkler system shall be provided with an independent FDC when the fire service main includes fire hydrants and sprinkler systems. The FDC and PIV shall be located on the street fronting each building. The FDC shall be located within 50 feet of a city (public) fire hydrant, plus on the same side of the road as the fire hydrant(s).
- F16. Backflow preventer model and installation detail shall be approved by City of Santa Clara Water Department. Contact: (408) 615-2000. If property has a single fire service connection to the City water main, typically a minimum Double-Check Detector Assembly (DCDA) backflow device is required. If property has more than one fire service connection to the City water main, typically the backflow device at each connection shall be a Reduced Pressure Detector Assembly (RPDA).

Fire Pump Rooms Requirements For All Occupancies:

- F17. Ventilation (NFPA 20, 5.12.5). Provision shall be made for ventilation of a pump room or pump house.
- F18. Drainage (NFPA 20, 5.12.6). Floors shall be pitched for adequate drainage of escaping water away from critical equipment such as the pump, driver, controller, and so forth. The pump room or pump house shall be provided with a floor drain that will discharge to a frost-free location.
- F19. Temperature (CBC 913.3). Suitable means shall be provided for maintaining the temperature of a pump room or pump house, where required, above 40°F (5°C). Temperature of the pump room, pump house or area where engines are installed shall never be less than the minimum recommended by the engine manufacturer. The engine manufacturer's recommendations for oil heaters shall be followed.
- F20. Normal Lighting (NFPA 20, 5.12.3). Artificial light shall be provided in a pump room or pump house.
- F21. Emergency Lighting (NFPA 20, 5.12.4). Approved emergency lighting shall be provided in the pump room or pump house.

- F22. Indoor Fire Pump Room Fire Resistance (CBC 913.2.1). Indoor fire pump rooms shall be constructed with a minimum one or two-hour (high rises) fire resistance rating in accordance with CBC 913.2.1.
- F23. The fire pump suction, discharge and bypass valves, and isolation valves on the backflow prevention device or assembly shall be supervised in the **open position**. Where a fire alarm system is installed, the central station shall monitor the valves. NOTE: Fire pump test outlet valves shall be supervised in the **closed position**. (CBC 913.4, 913.4.1)
- F24. Fire pump and automatic sprinkler system riser rooms shall be provided with a door(s) and an unobstructed passageway large enough to allow removal of the largest piece of equipment (CFC 901.4.6).

Specific Requirements for High Rises:

- F25. A sprinkler water flow alarm-initiating device and a control valve with a supervisory signal-initiating device shall be provided at the lateral connection to the riser for each floor (2013 CFC 403.3).
- F26. Required fire pumps shall be supplied by connections to a minimum of two water mains located in different streets. Separate supply piping shall be provided between each connection to the water main and the pumps. Each connection and the supply piping between the connection and the pumps shall be sized to supply the flow and pressure required for the pumps to operate. (2013 CBC 403.3.2). **EXCEPTIONS:**
  - a. Two connections to the same main shall be permitted provided the main is valved such that an interruption can be isolated so that the water supply will continue without interruption through no fewer than one of the connections
  - b. High-rise buildings not having an occupied floor more than 120 feet above the lowest level of fire department vehicle access where a secondary water supply is provided in accordance with Section CBC 903.3.5.2.
- F27. Fire pumps in high-rise buildings:
  - a. Engine-driven fire pumps and electric drive fire pumps supplied by generators shall both be provided with an on-premises fuel supply, sufficient for not less than 8-hour full-demand operation at 100 percent of the rated pump capacity in addition to all other required supply demands in accordance with Sections 9.6 and 11.4.2 of NFPA 20 and this section (also see Section 604.2.14.1.1 of the CFC). **NOTE: The code now requires the fuel supply to be maintained at an 8-hour level at all times for serving fire pumps. Other standby power requirements (such as elevators) need only a minimum duration of 6 hours of fuel supply.**
  - b. Fire pumps shall be located in rooms that are separated from all other areas of the building by 2-hour fire barriers constructed in accordance with Section 707 or 2-hour horizontal assemblies constructed in accordance with Section 711, or both (CBC 913.2.1). **Exception:** Separation is not required for fire pumps physically separate in accordance with NFPA 20.
- F28. An automatic secondary on-site water supply having usable capacity of not less than the hydraulically calculated sprinkler demand, including the hose stream requirement, shall be provided for high-rise buildings and Group I-2 occupancies having occupied floors located more than 75 feet above the lowest level of fire department vehicle access assigned to Seismic Design Category C, D, E, or F as determined by the California Building Code. An additional fire pump shall not be required for the secondary water supply unless needed to provide the minimum design intake pressure at the suction side of the fire pump supplying the automatic sprinkler system. The secondary water supply shall have a duration of not less than 30 minutes as determined by the occupancy hazard classification in accordance with NFPA 13, whichever is greater. The Class I standpipe system demand shall not be required to be included in the secondary on-site water supply calculation. In no case shall the secondary on-site water supply be less than 15,000 gallons (2013 CBC 903.3.5.2).
- F29. A fire alarm system shall be provided as required in Section 907.2.13.
- F30. An emergency voice/alarm communication system shall be provided in accordance with Section 907.6.2.2 of the CFC. In high rise building the system shall operation on a minimum of the alarming floor, the floor above and the floor below. Speakers shall be provided throughout the building by paging zones. At a minimum, paging zones shall be provided as follows:
  1. Elevator Groups
  2. Exit stairways.

3. Each floor.
  4. Areas of refuge as defined in Section 1002.1
- F31. Emergency responder radio coverage shall be provided in accordance with Section 510 of the CFC (CBC 403.4.4).
- F32. Luminous Egress Path Marking - Required for A, B, E, I, M & R-1 buildings having occupied floors located more than 75 feet above the lowest level of fire department vehicle access. Exceptions may apply, and refer to CFC, 1024 for specific requirements.
- F33. Smoke detection shall be provided in accordance with Section 907.2.13.1. of the CBC.
- F34. The fire command center shall be a minimum of 200 square feet in area with a minimum dimension of 10 feet (CFC 508.1.3). The fire command center shall include, but not be limited to the following features (CFC 508.1.5):
1. The emergency voice/alarm communication system control unit.
  2. The fire department communications system.
  3. Fire detection and alarm system annunciator.
  4. Annunciate unit visually indicating the location of the elevators and whether they are operation.
  5. Status indicators and controls for air distribution systems.
  6. The fire-fighter's control panel for smoke control systems installed.
  7. Controls for unlocking stairway doors simultaneously.
  8. Sprinkler valve and water-flow detector display panels.
  9. Emergency and standby power status indicators.
  10. A telephone for fire department use with controlled access to the public telephone system.
  11. Fire pump status indicators.
  12. Schematic building plans indicating the typical floor plan and detailing the building core, means of egress, fire protection systems, fire-fighting equipment and fire department access, and the location of fire walls, fire barriers, fire partitions, smoke barriers and smoke partitions.
  13. An approved Building Information Card that contains, but is not limited to, the information described in 2013 CFC 508.1.5 item #13.
  14. Work table.
  15. Generator supervision devices, manual start and transfer features.
  16. Public address system.
  17. Elevator fire recall switch in accordance with California Code of Regulations, Title 8, Division 1, Chapter 4, Subchapter 6, Elevator Safety Orders.
  18. Elevator emergency or standby power selector switch(es), where emergency or standby power is provided.
  19. A table with chairs (size and number of chairs shall be approved by Fire Chief) (SCMFEC).
  20. A locking key box, acceptable to the Chief, large enough for 10 sets of master keys (SCMFEC).
  21. Ten (10) sets of master keys for the building (SCMFEC).
  22. A complete set of electrical, mechanical, and plumbing plans for the building (SCMFEC).
- \*\*\*Fire Command Center shall not be used for the housing of any boiler, heating unit, generator, combustible storage, or similar hazardous equipment storage.
- F35. A passive or active smoke control system or combination thereof shall be provided in accordance with Section 909 of the CFC.
- F36. A standby power system complying with Chapter 27 shall be provided for standby power loads specified in Section 403.4.7.2 of the CFC. If the standby system is a generator set inside a building, the system shall be located in a separate room enclosed with 2-hour fire barriers constructed in accordance with Section 707 or horizontal assemblies constructed in accordance with Section 712 or both. System supervision with manual start and transfer features shall be provided at the fire command center (CBC 403.4.7).
- F37. An emergency power system complying with Chapter 27 shall be provided for emergency power loads specified in Section 403.4.8.1 (CBC 403.4.8).

- F38. An on-premise fuel supply, sufficient for not less than 6-hour full-demand operation of the standby power system, shall be provided. The minimum required fuel supply shall be maintained at all times. (CFC 604.2.14.1.1).
- F39. Stairway doors other than the exit discharge doors shall be permitted to be locked from the stairway side. Stairway doors that are locked from the stairway side shall be capable of being unlocked simultaneously without unlatching upon a signal from the fire command center. Upon failure of electrical power to the locking mechanism the door shall unlock (CBC 403.5.3).
- F40. A telephone or other two-way communications system connected to an approved constantly attended station shall be provided at not less than every fifth floor in each stairway where the doors to the stairway are locked (CBC 403.5.3.1).

Required Fire Sprinkler/Suppression Systems:

- F41. At time of building permit application, state on the title sheet what type of sprinkler system will be required (NFPA 13 or 13R). If a sprinkler system is used for increases in height/stories/area allowable, etc., it shall be a NFPA 13 system
- F42. An approved automatic sprinkler system in accordance with Section 903.1.1 shall be allowed to be substituted for 1-hour fire-resistance rated construction, provided such system is **not otherwise required by other provision of the code** or used for an allowable increase in accordance with Section 506.3 or an allowable height increase in accordance with Section 504.2. The 1-hour substitution for the fire resistance of exterior walls shall not be permitted (CBC Table 601, footnote d).
- F43. The following rooms shall be calculated at 0.25 gpm/ft<sup>2</sup> density over the entire area:
- Standby Emergency Diesel Generator and Combustion Turbine Rooms
  - Fire pump rooms/houses
  - Auxiliary Boilers. Oil-fired boilers or boilers using oil ignition should be provided with protection.
- F44. Standpipe System: When installing or modifying the Standpipe System, notify the installer (a licensed C-16 contractor) to apply for a "Standpipe System" permit. NOTE: A separate permit is not required when the standpipe system is combined with an automatic sprinkler system. Class I standpipe hose connections shall be provided in all of the following locations: a) In every required stairway, a hose connection at each floor level (not at the intermediate landings between floors), including the first floor b) On each side of the wall adjacent to the exit opening of a horizontal exit. Exceptions may apply. c) In every exit passageway, at the entrance from the exit passageway to other areas of a building. Exceptions may apply. 4) Where the roof has a slope less than four units vertical in 12 units horizontal (33.3 percent slope), each standpipe shall be provided with a hose connection located either on the roof or at the highest landing of a stairway with stair access to the roof. An additional hose connection shall be provided at the top of the most hydraulically remote standpipe for testing purposes (CFC, 905.4). Additional standpipes may be required (AHJ & CFC, 905.1). **A drawing showing the hose reach distances for each standpipe hose valve connection is required at time of application.**
- F45. The installation of a kitchen automatic fire protection system will be required for the cooking areas. The system shall comply with 2002 NFPA 17A; 2013 California Fire Code (CFC) Chapter 9, Section 904.11; and the 2013 California Mechanical Code (CMC) Chapter 5. A permit must be obtained directly from the Fire Department.

Dumpster Storage:

- F46. Rubbish containers: Containers that are 1.5 cubic yards (40.5 cubic feet) or more shall not be stored in buildings or placed within 5 feet of combustible walls, openings, property lines or combustible roof eave lines unless protected by approved fire sprinklers (CFC 304.3.3). Exceptions may apply. If a roof over the trash enclosure is to be provided, then it shall be of non-combustible construction.

Spill Prevention Control and Countermeasure Plan

- F47. Businesses that store more than 1,320 gallons (accumulative for 55 gallons and larger in drums and/or tanks on a contiguous property) of petroleum products aboveground must prepare a Spill Prevention Control and Countermeasure (SPCC) plan. If the business has over 10,000 gallons of petroleum products, the SPCC must be signed by a professional engineer. If the business has between 1,320 and 10,000

gallons the owner/operator can self-certify the SPCC plan (additional requirements apply for self-certification).

For businesses that currently do not have a SPCC plan, the SPCC plan must be signed and a copy kept on-site prior to using/filling the tank/equipment. Have the SPCC plan available to the Fire Department at time of inspection.

For businesses that currently have a SPCC plan, and are adding additional tanks/equipment amendments to the existing SPCC plan must be made, signed and a copy kept on-site within 6 months of the change.

SPCC Plan requirements are found in Title 40, Code of Federal Regulations, Part 112. Information regarding SPCC plan preparation and submittal requirements is available on the Internet at <http://www.calepa.ca.gov/CUPA/Aboveground/FactSheetSPCC.pdf>

(H&SC §2527005(c)).

Fire Safety During Construction:

F48. **At the time of permit application, submit** a construction “**Fire Safety Plan**” to the Fire Department for review and approval. The “Fire Safety Plan” shall address fire protection (i.e., access roads, water mains, on-site fire hydrants, fire extinguishers and standpipes) be installed and made serviceable prior to the time of construction. Include in the safety plan the location of fire extinguishers, fire hydrants (public and private), storage of combustible construction materials, propane tanks, and “NO SMOKING” signs. Plus the Safety plan shall address the how the following items will be used: temporary heating devices, temporary electrical wiring, cutting/welding and other open-flame devices. See “Standards for Construction site fire Safety” handout or website at [www.unidocs.org/fire](http://www.unidocs.org/fire)

Fire Department (Required on plans/ drawings at the time of application)

- F49. **At the time of Building Permit application**, submit Civil Drawings that denote existing and proposed locations of fire hydrants, underground sectional valves, fire department connections and post indicator valves for fire department review and approval.
- F50. Prior to combustible materials being brought onto the site, approved fire apparatus access roads shall be constructed. These shall be capable of supporting the imposed fire apparatus load (75,000 lbs.) and have a FD approved all-weather driving surface.
- F51. Construction materials shall not obstruct access roads, access to buildings, hydrants or fire appliances.
- F52. Combustible construction in excess of 100 feet from the street shall not commence until emergency access roads; underground fire service lines and permanent on-site hydrants are in service and have been tested, flushed and approved by the Fire Department.
- F53. During construction of a building and until permanent fire-extinguishers have been installed, portable fire extinguishers are required within 50 feet travel distance to any part of the building in accordance with California Fire Code and the Santa Clara Municipal Fire and Environmental Code.
- F54. General Permit Storm Water Discharges Associated with Construction Activity-Water Quality through the State (order 99-08-DWQ) shall be adhered to regarding non-point source issues on construction sites. (i.e., prevention of paints, debris, etc. from going down storm drains). The Permit is issued by the State Water Resources Control Board. Information regarding the permit can be found at [www.waterboards.ca.gov/stormwtr/index.html](http://www.waterboards.ca.gov/stormwtr/index.html).
- F55. Internal-combustion-powered construction equipment shall be used as follows; (a) Equipment shall not be refueled while in operation, (b) Exhausts shall be piped to the outside of the building.

**POLICE**

- PD1. The Developer shall provide a minimum average illumination of one-foot candle in carport, parking areas and in all common pedestrian or landscaped areas of the development, subject to adjustments by the Police Chief in consultation with Silicon Valley Power and Planning Department as necessary for the project to meet LEED Certification, or equivalent, objectives. The illumination should be deployed in fixtures that are both weather and vandal resistant.
- PD2. Address numbers of the individual units shall be clearly visible from the street and shall be a minimum of six (6) inches in height and of a color contrasting with the background material. Numbers shall be illuminated during the hours of darkness. Individual apartment numbers shall be a minimum of six (6)

- inches in height and a color contrasting to the background material and either visible from the street or from the center area of the project. Where multiple units/buildings occupy the same property, unit/building address shall be clearly visible.
- PD3. The Developer shall meet the City's guidelines established for radio signal penetration, detailed in the Santa Clara Police Department's Public Safety Radio System Building Penetration Guidelines. The intended use of telecommunications sites shall be clearly and accurately stated in the project description. The signal, of whatever nature, of any communications facility or system, shall in no way whatsoever interfere with or affect any Police communication or Police communication system.
- PD4. When in the opinion of the fire code official, a new structure obstructs the line of sight of emergency radio communications to existing buildings or to any other locations, the developer of the structure shall provide and install the radio retransmission equipment necessary to restore communications capabilities. The equipment shall be located in an approved space or area within the new structure.
- PD5. The Developer shall provide enclosure fencing (trash area, utility equipment, etc.) that is either see-through or that has a six (6) inch opening along the bottom for clear visibility subject to adjustments by the Police Chief. Any gates or access doors to these enclosures should be locked.
- PD6. The Owner/Developer shall ensure that exterior elevators are see-through for maximum visibility. The Owner/Developer shall ensure that all elevators are well lit and equipped with a security mirror to provide interior and exterior visibility prior to entry or exit.
- PD7. In a development where there is an alley, driveway, etc. providing a rear entrance or access, the Developer shall ensure that addresses are displayed to both the front and rear of the individual buildings. Where an alley, driveway, etc. provides vehicular access, address numbers shall be clearly visible from that access.
- PD8. Parking structures, including ramps, corners and entrances, should be illuminated per ISNA recommendations by the Developer, subject to adjustments by the Police Chief in consultation with Silicon Valley Power and Planning Department as necessary for the project to meet LEED Certification, or equivalent, objectives.
- PD9. The Developer should equip the parking structure/site with an emergency panic alarm system that reports to a central office and/or 9-1-1. If more than one button is installed, they should be placed no more than 100 ft. apart.
- PD10. All entrances to parking areas (surface, structure, sub-terranean, etc.) should be posted with appropriate signage to discourage trespassing, unauthorized parking, etc. (See California Vehicle Code Section 22658(a) for guidance).
- PD11. The developer should install skate stoppers on any low clearance wall of 36 inches in height or lower to prevent vandalism to the wall.
- PD12. If the development includes any benches, these benches should not be longer in five feet in length and have arm rests at both ends. If the benches are longer than five feet in length, there should be a divider (arm rest or similar) in the middle of the bench in addition to the arm rests on both ends.
- PD13. If there is outdoor seating associated with a restaurant or similar business which is near vehicle parking stalls or roadways, the developer should install bollards, low fencing, or some other means to separate outdoor seating from vehicle traffic.

### **STREET**

- ST1. Submit copy of complete landscape and automatic irrigation plans for review and comment by City staff. Plans are to include all existing trees with 4" or larger diameter (measured 30" above ground) on development property and adjacent property if they may be impacted. Trees are to be correctly labeled with specie name and correctly plotted as to exact location on the plans. Trees are to be noted as to whether they are proposed to be saved or removed. City tree preservation specifications are to be included on all plans where existing trees are to be saved during construction. A copy of these specifications can be obtained from the City Arborist at 408-615-3080.
- ST2. The Developer is to supply and install City street trees per City specifications; spacing, specie, and size (15 gallon minimum) to be determined by City Arborist.

- ST3. No cutting of any part of City trees, including roots, shall be done without following city tree preservation specifications and securing approval and direct supervision from the City Arborist at 408-615-3080.
- ST4. No cutting of any part of private trees, including roots, shall be done without direct supervision of a certified arborist (Certification of International Society of Arboriculture).
- ST5. Identified existing mature trees to be maintained. Prepare a tree protection plan for review and approval by the City prior to any demolition, grading or other earthwork in the vicinity of existing trees on the site. Provide 48-inch box trees for screening adjacent to the existing residential properties, type to be determined by City Arborist.
- ST6. All trees, existing and proposed, must maintain minimum of ten (10) feet from any existing or proposed Water Department facilities. Existing trees that conflict must be removed by developer. Trees shall not be planted in water easements or public utility easements.
- ST7. Prior to submitting any project for Street Department review, applicant shall provide a site plan showing all existing trees (including size and species), proposed trees (including size and species), existing stormwater drainage facilities, proposed storm water drainage facilities, proposed locations of solid waste containers and, if applicable, a statement on the site plan confirming compliance with Fire Department approved fire apparatus access roads (1998 CFC 902.2.2.1 & 902.2.2.3).
- ST8. All landscaping and irrigation systems shall meet City standard specifications.
- ST9. Since this project involves disturbing a land area of one acre or more, the developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board for coverage under the State Construction General Permit (Order No. 2009-0009-DWQ) prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be sent to the City Building Inspection Division. A storm water pollution prevention plan is also required with the NOI.
- ST10. Incorporate Best Management Practices (BMPs) into construction plans and incorporate post construction water runoff measures into project plans in accordance with the City's Urban Runoff Pollution Prevention Program standards prior to the issuance of permits. Proposed BMPs shall be submitted to and thereafter reviewed and approved by the Planning Division and the Building Inspection Division for incorporation into construction drawings and specifications.
- ST11. An erosion control plan shall be prepared and copies provided to the Planning Division and to the Building Inspection Division for review and approval prior to the issuance of grading permits or building permits that involve substantial disturbance of substantial ground area.
- ST12. All post construction structural controls shall require property owner to execute with City a Stormwater Treatment Measures Inspection and Maintenance Agreement.
- ST13. Decorative water features such as fountains and ponds shall be designed and constructed to drain to sanitary sewer only. No discharges allowed to storm drain.
- ST14. Special Urban Runoff Stormwater Pollution Prevention requirements apply. Set up meeting with the Street Department to discuss requirements. Contact Dave Staub at 408-615-3080.
- ST15. Commercial, industrial, and multi-family residential buildings must have enclosures for solid waste and recycling containers. The size and shape of the enclosure(s) must be adequate to serve the estimated solid waste and recycling needs and size of the structure, and should be designed and located on the property so as to allow ease of access by collection vehicles. As a general rule, the size of the enclosure(s) for the recycling containers should be similar to the size of the trash enclosure(s) provided onsite. Roofed enclosures with masonry walls and solid gates are the preferred design.
- ST16. Potable water must be used for irrigation to redwood trees.
- ST17. A minimum 15 gallon tree at a 2:1 on- or off-site replacement for trees removed as part of the proposal or 36" box tree at a 1:1 replacement.
- ST18. Landscape screening shall be provided along the Highway 101 frontage.

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**CONDITIONS OF APPROVAL - MAP  
SANTA CLARA SQUARE PROJECT**

**GENERAL**

- G1. The Developer shall comply with all applicable codes, regulations, ordinances and resolutions.
- G2. If relocation of an existing public facility becomes necessary due to a conflict with the developer's new improvements, then the cost of said relocation shall be borne by the developer.

**ATTORNEY'S OFFICE**

- A1. The Developer agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, attorneys' fees, injuries, costs, and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed by a third party against the City by reason of its approval of developer's project.

**PLANNING AND BUILDING INSPECTION**

- P1. Obtain required permits and inspections from the Building Official and comply with the conditions thereof. If this project involves land area of 1 acre or more, the developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be sent to the City Building Inspection Division. A storm water pollution prevention plan is also required with the NOI.
- P2. The Developer shall comply with the Mitigations Monitoring and Reporting Program identified in the Augustine-Bowers Environmental Impact Report and Mitigations as amended in the Addendum No. 2 for the Santa Clara Square Project, and shall be incorporated in the Conditions of Approval for this project.
- P3. The Developer shall comply with the conditions set forth in the Development Agreement in effect between the City of Santa Clara and The Irvine Company LLC, as successor interest to EOP-Industrial Portfolio, LLC and CA-Santa Clara Office Center Limited Partnership, effective June 18, 2009, as may be amended from time to time in accordance with the terms of the Development Agreement.

**ENGINEERING**

- E1. Obtain site clearance through Engineering Department prior to issuance of Building Permit. Site clearance will require payment of applicable development fees. Other requirements may be identified for compliance during the site clearance process. Contact Engineering Department at (408) 615-3000 for further information.
- E2. All work within the public right-of-way and/or public easement, which is to be performed by the Developer/Owner, the general contractor, and all subcontractors shall be included within a **Single Encroachment Permit** issued by the City Engineering Department. Issuance of the Encroachment Permit and payment of all appropriate fees shall be completed prior to commencement of work, and all work under the permit shall be completed prior to issuance of occupancy permit.
- E3. After City Council approval of the Vesting Tentative Parcel Map, submit 10 copies of the Parcel Map, prepared by a Licensed Land Surveyor or a Registered Civil Engineer with Land Surveyor privileges to the Engineering Department. The submittal shall include a title report, closure calculations, and all appropriate fees. Parcel Map must be approved by staff and recorded by developer prior to building permit issuance.
- E4. Submit public improvement plans prepared in accordance with City Engineering Department procedures which provide for the installation of public improvements. Plans shall be prepared by a Registered Civil Engineer and approved by the City Engineer prior to approval and recordation of final map and/or issuance of building permits.

- E5. All driveways shall be City standard ST-8 or ST-9 except those at 4-way signalized intersections. Those shall be curb return style with asphalt roadway.
- E6. Provide root barrier when trees are planted adjacent to the sidewalk. Root barriers shall be 12' long x 2' deep, and centered on trees.
- E7. Storm drain and sanitary sewer laterals shall be outside the drip line of mature trees or 10' clear of the tree trunk.
- E8. Developer is responsible for cost of relocation or modification of any public facility necessary to accommodate subject development.
- E9. Damaged curb, gutter, and sidewalk within the public right-of-way along property's frontage shall be repaired or replaced (to the nearest score mark) in a manner acceptable to the City Engineer or his designee. The extents of said repair or replacement within the property frontage shall be at the discretion of the City Engineer or his designee.
- E10. Existing non-standard or non-ADA compliant frontage improvements shall be replaced with current City standard frontage improvements as directed by the City Engineer or his designee.
- E11. Unused driveways in the public right-of-way shall be replaced with City standard curb, gutter, and sidewalk.
- E12. Existing sanitary sewer and storm drain laterals that do not serve any purpose shall be abandoned to City standards.
- E13. Show and comply with City's driveway vision triangle requirements at all driveways and City's intersection visibility obstruction clearance requirements. No trees and/or structures obstructing drivers' view are allowed in the vision triangle & visibility obstruction areas. Contact Traffic Engineering at (408) 615-3000 for further information.
- E14. Provide 10' wide sidewalk along the property's Bowers Avenue and Scott Boulevard frontages.
- E15. Provide 5' wide sidewalk along the property's Augustine Drive frontage.
- E16. Provide 10' wide minimum creek trail along the property's Augustine Drive southern frontage.
- E17. Provide 6' wide minimum bicycle lane along property's Bowers Avenue frontage. Gutter pan shall not be used as part of bicycle lane (8' wide minimum from face of curb).
- E18. Provide 4' wide minimum bicycle lane along property's Augustine Drive and Scott Boulevard frontages. Gutter pan shall not be used as part of bicycle lane (6' wide minimum from face of curb).
- E19. Construct traffic signal at proposed Mid-Block crossing on Augustine Drive. The ADA curb ramps at this crossing shall be Caltrans Case A ramps in order to meet onsite and public paths of travel.
- E20. Remove existing bus bench/sign on Bowers Avenue, north of Scott Boulevard, and replace with bus duck-out/shelter/bench per VTA's requirements.
- E21. Remove existing bus bench/sign on Scott Boulevard, at Coronado Drive, and replace with bus stop/pad/bench per VTA's requirements.
- E22. Traffic signal modification for Bowers/Scott & Bowers/Augustine intersections shall be provided. Bowers/Augustine traffic signal modification plans shall have all vehicular turning radius for the intersection shown without any conflict. Minimum left-turn lane width shall be 11'.
- E23. Remove existing curb ramps at the NE corner of Bowers/Scott, NE & SE corners of Bowers/Augustine, and the beginning 101 on ramp at Bowers and replace with ADA compliant curb ramps.

- E24. All traffic striping, messages, symbols destroyed/damaged due to proposed improvements' construction shall be replaced with thermoplastic striping/messages/symbols. All proposed traffic striping, messages, symbols shall be thermoplastic.
- E25. Dedicate on-site easements for new public utilities and/or sidewalk as required by means of parcel map or approved instrument at time of development.
- E26. Obtain Council approval of a resolution ordering vacation of existing public easement(s) proposed to be abandoned, through Engineering Department, and pay all appropriate fees, prior to start of construction.
- E27. File and record parcel map to create parcel for proposed development and pay all appropriate fee(s) prior to Building Permit issuance.

I:\PLANNING\2014\Project Files Active\PLN2014-10256 2620-2790 Augustine Dr (SCSQ)\CC\SCSQ Exhibit Condition of Approval-Map.doc

PROOF OF PUBLICATION

*Santa Clara Weekly*

P.O. Box 580, Santa Clara, California 95052

IN THE

City of Santa Clara,  
State of California,  
County of Santa Clara

**CITY OF SANTA CLARA NOTICE OF PROPOSED ORDINANCE  
ORDINANCE NO. 1927**

State of California, }  
County of Santa Clara } SS.

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to nor interested in the above entitled proceeding; and was at and during all said times and still is publisher of the Santa Clara Weekly, a newspaper of general circulation printed and published weekly in the County of Santa Clara, State of California, and said Santa Clara Weekly is and was at all times hereinmentioned a newspaper of general circulation as that term is defined by sections 6000 and following, of the government code of the State of California, and, as provided by said sections, is published for the dissemination of local or telegraphic news and intelligence of a general character, having a bonafide subscription list of paying subscribers, and is not devoted to the interest or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professions, trades, callings, races or denominations; that at all times said newspaper has been established, printed and published in the said County of Santa Clara and State of California at regular intervals for more than one year proceeding the first publication of the notice herein mentioned; that said notice was set in type not smaller than non-parell, describing and expessing in general terms the purport and character of the notice intended to be given; that the clipping of which the annexed is a true printed copy, was published and printed in said newspaper on the following dates to wit:

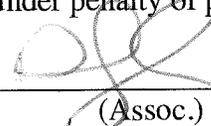
**Pub: 6/18/2014**

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Dated at Santa Clara, California

This 18TH day of JUNE, 2014

I declared under penalty of perjury that the foregoing is true and correct.

Signed:  \_\_\_\_\_  
(Assoc.) Publisher of the Santa Clara Weekly

The Santa Clara Weekly was adjudicated a newspaper of general circulation in and for the County of Santa Clara on September 3, 1974 (Case No. 314617). The Santa Clara Weekly was adjudicated a newspaper of general circulation within the City of Santa Clara on April 2, 1976 (Case No. 347776).

**NOTICE OF PROPOSED ORDINANCE NO. 1927  
AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AP-  
PROVING THE SECOND AMENDMENT TO THE DEVELOPMENT  
AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND THE IR-  
VINE COMPANY LLC; 2525 AUGUSTINE DRIVE LLC; AND 3255 SCOTT  
BOULEVARD LLC FOR THE PROPERTIES LOCATED AT 2620-2790, 2425,  
2465 and 2475 AUGUSTINE DRIVE (INCLUDING PROPERTIES ON BOW-  
ERS AVENUE AND SCOTT BOULEVARD), SANTA CLARA**

In 2009, the City Council entered into a Development Agreement for the construction of an office park at the intersection of Augustine Drive and Bowers Avenue, with up to 1,969,600 square feet of office development and 35,000 square feet of retail space. In 2013, the City Council approved a first amendment to this Development Agreement, to modify the size and configuration of the office park, and reflect that the Irvine Company, LLC, had acquired the property. The proposed ordinance would authorize a second amendment to the Development Agreement with the Irvine Company and its subsidiaries, to further modify the configuration by allowing the construction of up to 1,875,000 square feet of office development and 125,000 square feet of retail space, and expanding the project area to include three nearby parcels.

**DATE OF ORDINANCE INTRODUCTION:** June 10, 2014

**DATE OF PUBLIC HEARING:** June 24, 2014, at 7:00 p.m.

**LOCATION OF PUBLIC HEARING:** City Council Chambers, 1500 Warburton Avenue, Santa Clara

**POSTING LOCATIONS:** City of Santa Clara locations where the full text of the proposed ordinance is available for review: City Clerk's Office, 1500 Warburton Avenue, Santa Clara, CA; Central Park Library, Central Park Library 2635 Homestead Road Santa Clara, CA; Mission Branch Library, 1098 Lexington Street, Santa Clara, CA

**Pub.:** 6/18/2014

Meeting Date: 6/24/14

# AGENDA REPORT

Agenda Item # 7B-9

City of Santa Clara, California



**Date:** June 16, 2014

**To:** City Manager for Council Action

**From:** Economic Development Officer/Assistant City Manager

**Subject:** Approval Amendment No. 1 to the Lease Agreement with Peninsula Corridor Joint Powers Board for Use of City-Owned Property at the Santa Clara Train Station

**EXECUTIVE SUMMARY:**

The Peninsula Corridor Joint Powers Board (PCJPB) provides daily Caltrain passenger service between Gilroy and San Francisco with a stop at the Santa Clara Train Station. The 1.49-acre City-owned parcel at the corner of El Camino Real and Railroad Avenue, just east of and across the street from the Station, is used as a parking lot for Caltrain commuters. The lot, comprised of approximately 130 parking spaces, has been used by PCJPB for Caltrain parking since prior to 2002. The current Lease was approved by City Council in July 2009 and expires on June 30, 2014. The existing arrangement provides that 25 spaces be reserved for Police Department visitors. In addition, the Lease allows the City to enter into parking arrangements for Earthquakes Soccer home games.

The proposed Amendment No. 1 would extend the term by three years to June 30, 2017 with a 90-day notice of termination if the property is needed for development purposes. The annual rent for the use of the parking lot would increase to \$5,400.

**ADVANTAGES AND DISADVANTAGES OF ISSUE:**

Approval of the Amendment would allow PCJPB to continue to provide needed parking for Caltrain users, including daily commuters, thereby encouraging the use of rail transit and helping to reduce congestion.

**ECONOMIC/FISCAL IMPACT:**

The PCJPB will pay the City \$5,400 annually for use of the parking lot.

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City Manager for Council Action

Subject: Approval of Amendment No. 1 to Lease Agreement with Peninsula Corridor Joint Powers Board

May 6, 2014

Page 2

**RECOMMENDATION:**

That the Council approve and authorize the City Manager to execute Amendment No. 1 to Lease Agreement with Peninsula Corridor Joint Powers Board for City-owned property at Santa Clara Train Station for transit parking.



---

Ruth Shikada  
Economic Development Officer/  
Assistant City Manager

APPROVED:



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Julio J. Fuentes  
City Manager

**AMENDMENT NO. 1  
TO THE AGREEMENT BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
PENINSULA CORRIDOR JOINT POWERS BOARD**

**PREAMBLE**

This agreement ("Amendment No. 1") is made and entered into on this \_\_\_\_ day of \_\_\_\_, 2014, ("Effective Date") by and between Peninsula Corridor Joint Powers Board, Joint Powers Authority, with its principal place of business located at 1250 San Carlos Avenue, San Carlos, CA 94070 ("Lessee"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Amendment No. 1."

**RECITALS**

- A. The Parties previously entered into an agreement entitled "Real Estate Lease Agreement", dated July 8, 2009 (the "Original Agreement"); and
- B. The Parties entered into the Original Agreement for the purpose of having Lessee provide additional parking for Caltrain patrons at the Santa Clara Train Station, and the Parties now wish to amend the Original Agreement to add term to the agreement and modify the rents.

The Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. AMENDMENT PROVISIONS**

- a. That Section 3 of the Agreement, entitled "Agreement Date and Term of the Agreement" is hereby amended to read as follows:

"For purposes of all Leasehold rights and interest created by this Agreement, the term of this Agreement shall commence on July 1, 2009. For the purpose of the calculation of rent and fees and their respected due date, the term of the Agreement shall commence on July 1, 2009 (also known as the "Effective Date"). The term of the Agreement for the payment of rent shall commence on the Effective Date and shall terminate eight years thereafter on June 30, 2017 ("Lease Term") or on the date resulting from an earlier termination as herein after set forth.

If Parties mutually agree, the Parties may elect to extend the Agreement for up to an additional two year period (i.e., June 30, 2019), subject to the execution by the

Parties of a written amendment to this Agreement evidencing the extension of the Lease.

Notwithstanding the forgoing, the City may terminate this Lease with a ninety day (90) written notice if the Property is necessary for development purposes.

- b. That Section 44 of the Agreement entitled "Authority" is hereby added to read as follows:

"The City Manager shall have the authority to execute any necessary amendments to this agreement to extend the term as provided under the terms of this Amendment No. 1"

- c. That Exhibit B of the Agreement entitled "Rent Schedule" is hereby amended to read as follows:

"Rent to be paid each month shall be as follows:

<u>Years</u>	<u>Annual Rent Amount</u>
1 thru 3	\$3,600
4 thru 5	\$4,200
6 thru 8	\$4,800
8 thru 10	\$5,400

## 2. TERMS

All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

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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. It is the intent of the Parties that this Amendment No. 1 shall become operative on the Effective Date first set forth above.

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

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

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

“CITY”

**PENINSULA CORRIDOR JOINT POWERS BOARD**  
a Joint Powers Authority

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Name: C. H. (Chuck) Harvey  
Title: Deputy CEO

\_\_\_\_\_  
Michael N. Conneran  
Attorney

1250 San Carlos Avenue  
San Carlos, CA 94070-1306  
Telephone: (650) 508-6269  
FAX: (650) 508-6365

“LESSEE”



# CERTIFICATE OF LIABILITY INSURANCE

280281

DATE (MM/DD/YYYY)  
7/9/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Commercial Lines - (650) 413-4200 Wells Fargo Insurance Services USA, Inc. - CA Lic#: 0D08408 959 Skyway Road San Carlos, CA 94070	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Peninsula Corridor Joint Powers Board c/o San Mateo Co. Transit P.O. Box 3006 San Carlos CA 94070	<b>INSURER A:</b> Aegis Security Insurance Company	NAIC # 33898
	<b>INSURER B:</b> Gemini Insurance Company	10833
	<b>INSURER C:</b> Lexington and Various	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	

**COVERAGES**

CERTIFICATE NUMBER: 6336335

REVISION NUMBER: See below

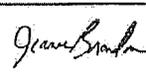
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Railroad Liability-Ex 1.5M SIR \$1M <input checked="" type="checkbox"/> Retro Date: 07/01/2013 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		N13QA04140 Excess \$1.5 MIL SIR \$1M	07/01/2013	07/01/2014	EACH OCCURRENCE \$ 1,500,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 1,500,000 PRODUCTS - COM/OP AGG \$ \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		N13QA04140 Excess \$10 MIL SIR	07/01/2013	07/01/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,500,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTIONS		N13QA04150 Excess \$2.5 MIL Retro Date: 07/01/2013	7/1/2013	7/1/2014	EACH OCCURRENCE \$ 500,000 AGGREGATE \$ 500,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	Excess Liability		N13QA04160 Excess \$3 MIL Retro Date: 07/01/1992	07/01/2013	07/01/2014	\$22,000,000 Each Accident \$22,000,000 Per Aggregate

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**

Re: Re-negotiated lease agreement between Peninsula Joint Powers Board and the City of Santa Clara at Railroad Ave. and the El Camino Real in Santa Clara.  
 The City of Santa Clara, its City Council, Commissions, Officers & Employees, volunteers and agents as well as the Redevelopment Agency of the City of Santa Clara are named as additional insured as respects the insured's Ground Lease, CalTrain Parking Lot agreement.  
 Such Insurance is primary & non-contributory as respects this agreement. Waivers of subrogation are in effect in favor of the certificate holder as respects the named insured's general liability coverage.

**CERTIFICATE HOLDER****CANCELLATION**

City of Santa Clara, its City Council, Commissions, Officers, Employees, Volunteers and & Agents Insurance Compliance P.O. Box 12010-S2 Hemet, CA 92546-8010	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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ACORD 25 (2010/05)

(This certificate replaces certificate # 6336331 issued on 7/9/2013)

### Certificate of Insurance (Con't)

**OTHER Coverage**

INSR LTR	TYPE OF INSURANCE	ADDL INSR	WVD SUBR	POLICY NUMBER	EFFECTIVE DATE (MM/DD/YY)	EXPIRATION DATE (MM/DD/YY)	LIMIT
B	Auto \$500Th Ex \$10M			N13QA04150	07/01/2013	07/01/2014	\$500,000 Each Accident
				Excess \$10 MIL SIR			Any Auto
C	Auto 22M Ex \$10M			N13QA04160	07/01/2013	07/01/2014	\$22,000,000 Each Accident
				Excess \$10 MIL SIR			Any Auto
B	Excess \$25 MIL			N13QA04180	07/01/2013	07/01/2014	\$25,000,000 Each Accident
				Excess \$25 MIL			\$25,000,000 Per Aggregate

Meeting Date: 6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-10



**Date:** June 10, 2014  
**To:** City Manager for Council Action  
**From:** Director of Electric Utility  
**Subject:** Approval of a Call Agreement with Reichman, Karten, Sword, Inc. dba RKS Research & Consulting and Call No. 14-1 for Professional Services for Augmentation of Existing Statewide Market Research with Santa Clara-Specific Oversampling Research

## **EXECUTIVE SUMMARY:**

Every year the California Municipal Utilities Association (CMUA) contracts with Reichman, Karten, Sword, Inc. dba RKS Research & Consulting (RKS) to provide telephone and email-based surveys on behalf of its members. Silicon Valley Power (SVP) and a dozen other California municipal utilities support the CMUA statewide effort. SVP seeks to contract with RKS directly to perform market research in Santa Clara as a way to benchmark Santa Clara's specific customer satisfaction and other metrics against the statewide results. This year, the statewide focus is on residential electric customers. RKS is in the unique position to provide a comparative ranking and a collective utility perspective for Santa Clara. Staff proposes to enter into a Call Agreement and Call 14-1 to provide this oversampling survey which will be conducted among Santa Clara residential customers. A copy of the Call Agreement and Call No. 14-1 can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

## **ADVANTAGES AND DISADVANTAGES OF ISSUE:**

Creating, supporting and prioritizing electric utility services based on methodical and statistically significant customer feedback is essential to maintaining viable, pertinent programs and achieving high levels of customer satisfaction. A high level of satisfaction builds trust equity with our customers and that makes a big difference when unpopular events such as rate increases or power outages occur. Routine customer research creates a culture of continuous improvement that has brought many benefits to the utility and City. The unique opportunity provided by RKS through direct benchmarking with other California municipal utilities increases the value and the benefit of the research substantially.

## **ECONOMIC/FISCAL IMPACT:**

The cost of Call No. 14-1 will not exceed \$26,250.00. Sufficient funds are available in the Electric Department capital project Implementation of Marketing and Customer Service Program Development, account 591-1313-80500-2377-[F]92300.

**RECOMMENDATION:**

That Council approve, and authorize the City Manager to execute, a Call Agreement with Reichman, Karten, Sword, Inc. dba RKS Research & Consulting, and Call No. 14-1 for Professional Services, in an amount not to exceed \$26,250.00, for augmentation of existing statewide market research, and to further authorize the City Manager to execute any future amendments to this Call No. 14-1

  
\_\_\_\_\_  
John C. Roukema  
Director of Electric Utility

Certified as to Availability of Funds:   
591-1313-80500-2377 \$26,250.00

APPROVED:

  
\_\_\_\_\_  
Julio J. Fuentes  
City Manager

  
\_\_\_\_\_  
Gary Ameling  
Director of Finance/Assistant City Manager

MAJORITY VOTE OF COUNCIL

***Documents Related to this Report:***

- 1) *Call Agreement with Reichman, Karten, Sword, Inc., dba RKS Research & Consulting*
- 2) *Call No. 14-1 for Professional Services with Reichman, Karten, Sword, Inc., dba RKS Research & Consulting*

**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
REICHMAN, KARTEN, SWORD, INC.  
DBA RKS RESEARCH & CONSULTING**

**PREAMBLE**

This call agreement (“Agreement”) is made and entered into in the City of Santa Clara, California, on this \_\_\_\_ day of \_\_\_\_\_ 2014 (“Effective Date”), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”) and Reichman, Karten, Sword, Inc. dba RKS Research & Consulting, a New York corporation, with its principal place of business located at 12 Main Street, Suite 279, Brewster, New York 10509 (“Contractor”). City and Contractor may be referred to herein individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

Whereas:

- A. Contractor agrees to provide certain professional services to City on an on-call basis;
- B. Contractor has the ability and desire to provide the quality and type of professional services which meet the objectives and requirements of City as set forth in this Agreement; and,
- C. The Parties have specified in this Agreement the terms and conditions under which such services will be provided to and paid for by the City.

In consideration for the mutual promises contained in this Agreement, the Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. SCOPE OF SERVICES**

- 1.1 To the extent possible, the professional services to be provided under this Agreement shall be performed in the City of Santa Clara and the services shall be described in detail by the Contractor and submitted in a written proposal to the City (“Services”). The Contractor’s final proposal will be included as an exhibit entitled, “Scope of Services” attached to a subsequent agreement between the Parties referred to in this Agreement as a “Call” or a “Call for Services.” Each Call will incorporate the terms of this Agreement by reference and must be signed by both Parties. Contractor agrees to provide professional services to the City as specified in each respective Call, to the extent funds have been authorized by the City.

- 1.2 No Services shall be performed or paid for under this Agreement except as specifically set forth and required in a written Call. No compensation may be sought under this Agreement for work performed prior to the issuance of a Call or for work to be performed or paid for under another contract. No compensation shall be paid in excess of the maximum dollar amount indicated in each respective Call for Services.
- 1.3 The Parties acknowledge that on the Effective Date of this Agreement, they are unaware of the details of all of the services which may be needed by City or provided by Contractor during the term of this Agreement. The Parties intend to specify the details and value of such Services in a subsequent Call, if any. This Agreement does not require that any Call(s) be signed. The Parties intend to provide the details of the contractual relationship between the Parties in this Agreement, so that by incorporating the terms of this Agreement in the Call(s), the Call may be brief and address the specific Services to be provided, the details of the time when the Services are to be provided and the schedule and amount the Contractor is to be paid for such Services.

## 2. PAYMENT

- 2.1 **Not to Exceed Maximum Amount.** The total amount billed to, and paid by, City for Services provided and authorized expenses incurred under a Call shall not exceed the maximum dollar amount specified in the Call. Contractor shall complete all Services contained within the scope of a Call regardless of whether the not to exceed amount has been reached, at no extra charge to the City. However, Contractor shall not perform any Services outside the scope of the Call without prior written authorization when the amount billed for under a Call exceeds the maximum dollar authorized amounts in the Call.
- 2.2 **Monthly Invoices.** Unless provided otherwise in a particular Call, payment to Contractor shall be in accordance with the procedures in this paragraph 2.2 and in paragraph 2.3. On a monthly basis, Contractor shall prepare an invoice which includes an itemization of all time spent based on the percent of Services complete, as well as any Authorized Expenses incurred (i.e., Out-of-Pocket Costs, Sub-contracted Services and/or Extraordinary Expenses).
  - 2.2.1 If a particular Call directs that an invoice be presented in a format of a time sheet rather than as a percentage of Services completed, the itemization on each monthly invoice shall set forth the amount of time (recorded in quarter hours), the name of the employee performing the task and a description of each task performed. After setting forth the time spent on a daily basis, the itemization will provide a summary, at its end, of the total hours spent by each employee for the month, the hourly rate charged for that employee, and the total value of the service rendered by that employee for the month. The amount billed for Services shall then be determined by adding the value for the Services rendered by each employee for that particular month.

- 2.2.2 All monthly invoices shall also include a written itemization of the Authorized Expenses incurred, if any, with a detail listing the cost and source of such expenses and when they were incurred.
- 2.2.3 Contractor shall maintain documentation of such time and costs for City inspection for a period of three (3) years from the date of termination of this Agreement.
- 2.2.4 Within thirty (30) days of receipt of an itemized written invoice from the Contractor, City shall pay Contractor the amount billed for Services performed and authorized costs incurred under the Call during that billing period.
- 2.3 **Authorized Expenses.** The amount billed for Services shall be determined as set forth in paragraph 2.2 above plus the following amounts, if allowed under the Call:
- 2.3.1 **“Out-of-Pocket Costs”.** Contractor’s Out-of-Pocket Costs are those expenditures made by Contractor, other than employees’ salaries and payment for Services of retained specialists, which are directly chargeable to the Services performed and which would not otherwise have been incurred by Contractor. Unless otherwise provided, the Out-of-Pocket Costs must be approved in writing in advance by City and may be billed to the City and reimbursed to the Contractor only as specifically authorized and set forth in each respective Call. Authorized Out-of-Pocket Costs shall be billed without additional markup or administrative charge;
- 2.3.2 **Per Diem.** A Call will state whether or not it includes an estimate for anticipated travel expenses. If the Call does not include an estimate for anticipated travel, then the provisions of this paragraph shall apply. A Party’s travel expenses include airfare, rental car, or mileage, lodging and meals. The Party who is receiving the services pursuant to a particular Call, is the Reimbursing Party. Prior to incurring any charge for travel, the Party planning to travel (“Traveling Party”) shall (1) confirm that the Reimbursing Party is available for meetings on the proposed dates and (2) provide (either verbally or by facsimile) a price quote to the Reimbursing Party for the anticipated airfare prior to the charge being incurred, the Reimbursing Party shall either verbally or by facsimile confirm that the airfare may be incurred; in the event that the Reimbursing Party verbally confirms that the airfare may be incurred, the Traveling Party *shall* confirm in writing (prior to incurring the charge) that the Reimbursing Party has agreed to the charge. All travel expenses shall be reimbursed at cost, with no mark-up. Hotel rooms shall not exceed a cost of \$125 per night unless otherwise agreed by Reimbursing Party. Airfare and car rentals shall be reimbursed at economy class, unless economy class is unavailable through no fault of the booking party. Mileage, if applicable, shall be reimbursed in accordance with the current IRS guidelines for mileage reimbursement. Reasonable attempts shall be made to

make plane reservations in advance in order to take advantage of lower fares. In the event that travel plans must be canceled or re-scheduled due to the fault of the Reimbursing Party, then the Reimbursing Party shall pay for any costs associated therewith; if the travel is canceled or re-scheduled due to the fault of the Traveling Party, then the Traveling Party shall bear the expense. Invoices for travel expenses shall be supported by receipts, and shall be reimbursed in accordance with paragraph 2.2.1. Meals, if reimbursed, shall not exceed fifty dollars (\$50) per day.

2.3.3 **Any authorized “Sub-contracted Services” incurred by Contractor.** Authorized Sub-contracted Services are services provided by a retained specialist or sub-contractor and may be billed to City only if specifically described and authorized in a Call. (Retained specialists and sub-contractors shall include individuals or organizations offering qualified special services to City who are particularly skilled in one or more fields and who may be occasionally employed by the Contractor to fill the need for special or unusual services. Unless otherwise provided, the cost of furnishing such special services must be approved in writing in advance by City and the costs billed to City and reimbursed to the Contractor shall be only the actual charges of the retained specialist or sub-contractor, without additional markup or administrative charge); and/or,

2.3.4 **Any other authorized “Extraordinary Expenses” incurred, if any, as set forth in the Call.** Authorized Extraordinary Expenses shall be billed without additional markup or administrative charge.

2.4 **Retainer or Flat Fee for Services.** The Parties to this Agreement may, from time to time, determine that payment for a certain Scope of Services set forth in a Call pursuant to this Agreement should be made to Contractor on a retainer or flat fee for Services basis (“Stipulated Fee”). If the Parties so agree, then the provisions of this paragraph and the provisions of paragraph 2.2.1 shall apply, unless the Call provides otherwise. The Call shall set forth the maximum monthly or annual fee agreed to by the Parties as it relates to any Agency Fee or to any Out-of-Pocket Costs, and Contractor shall not exceed the amount(s) agreed to without written approval of City. The maximum Agency Fee agreed upon by the Parties is deemed to fully compensate Contractor for all work necessary for Contractor to complete the Scope of Work set forth in a Call.

### **3. 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 three (3) years from the date of final payment under this Agreement, to audit Contractor’s books and records for the purpose of verifying any and all charges made by Contractor in connection with Contractor’s compensation under Calls made pursuant to this Agreement, including termination of Contractor’s Services. 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 expense not so recorded shall be disallowed to Contractor.

#### **4. PROSECUTION OF WORK**

Contractor shall perform the Services required under this Agreement and the Call(s) made pursuant to it in an efficient and expeditious manner. Contractor shall commence work on the Effective Date specified in the applicable Call. Contractor is responsible for any delays caused by Contractor, its agents or subcontractors, or caused by factors directly or indirectly under its control. No extension of time for performance shall be given for such delays.

#### **5. QUALIFICATIONS OF CONTRACTOR; STANDARD OF WORKMANSHIP**

Contractor represents that it has sufficient qualified personnel to furnish the Services described under this Agreement and that the Services will be furnished in accordance with generally accepted professional standards and practices in the industry.

The work furnished to the City pursuant to any of the Calls under this Agreement shall be of a quality acceptable to the City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct. The minimum standard of appearance, organization and content of the documents shall be that used by the City for similar projects.

#### **6. SUSPENSION OR TERMINATION**

City may suspend or terminate this Agreement or any or all work covered under any Call under this Agreement at any time upon thirty (30) days' prior written notice. Contractor may terminate this Agreement as set forth in paragraph 6.4. Said termination or suspension shall be effective as of the thirtieth day after the date of the notice ("Effective Date of Termination"). This Agreement, and any portion of the Scope of Services described in any Call including but not limited to any specific task, project, study, advertisement or campaign, may be terminated by the City upon written notice delivered personally or by registered mail or equivalent mail or delivery service which provides for an office signature of receipt. With regard to termination of any portion of the Scope or any specific task, termination will be effective immediately, unless economic or practical considerations result in the Parties mutually agreeing to a specific termination date.

6.1 If such termination is due to the fault of Contractor, and if City agrees to make payment for all work and Services satisfactorily rendered up to the Effective Date of Termination, payment will be made within thirty (30) days of receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City may deduct from such payment the amount of actual damage, if any, sustained by City by virtue of the failure to perform the Services or for breach of this Agreement by Contractor.

- 6.2 If such termination is not due to the fault of Contractor, then City agrees to make payment for all work and Services rendered up to the Effective Date of Termination within thirty (30) days from receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City shall reimburse Contractor for any costs, expenses or service charges incurred by Contractor as a result of canceling previously authorized outsourced services.
- 6.3 Upon termination of this Agreement, Contractor shall transfer, assign and make available to City or City's representative, all property and materials in Contractor's possession belonging to and paid for by City.
- 6.4 Contractor may suspend or terminate this Agreement upon completion of work on all outstanding Call(s). Contractor may terminate work under a particular Call if the City is in default of the terms of this Agreement or any Call.

**7. AVAILABILITY OF FUNDS**

City represents that adequate funds will be available to make payments for Services received as required by each Call.

**8. CONTRACTOR IS AN INDEPENDENT CONTRACTOR**

In performing work under this Agreement, Contractor is not an agent or employee of City, but is an independent contractor for professional Services with full rights to manage its employees subject to the requirements of the law. All persons employed by Contractor in connection with this Agreement will be employees of Contractor and not employees of City in any respect.

**9. AMENDMENTS**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

**10. HOLD HARMLESS/INDEMNIFICATION**

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissioners, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost and/or expense or damage ("Claim"), including all costs and reasonable attorney's fees in providing a defense to any such Claim which arises from Contractor's acts, errors or omissions with respect to, or in any way connected with, the prosecution of the work performed by Contractor pursuant to this Agreement.

## **11. 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 be three (3) years, beginning on the Effective Date and terminating three years later. However, this Agreement shall be deemed extended for such time as is necessary for Contractor to complete work on any Call which is issued prior to the termination date of this Agreement, but is still in progress on the termination date of this Agreement. Any incomplete Call(s) which have been issued pursuant to the terms of a previous agreement between the Parties is/are hereby reaffirmed and each such Call shall remain in full force and effect under this Agreement, subject to the terms of such Call.

## **12. INSURANCE REQUIREMENTS**

During the term of this Agreement, and for any period following the termination date as set forth in this Agreement, Contractor shall purchase and maintain in full force and effect the following insurance policies:

- 12.1 commercial general liability (including bodily injury and property damage);
- 12.2 business automobile liability insurance;
- 12.3 worker's compensation employer's liability; and
- 12.4 if applicable, professional liability insurance.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts and with the required endorsements, certificates of insurance and coverage verifications as defined in Exhibit C, attached and incorporated by this reference. Contractor shall make its best effort to secure, and thereafter maintain in effect, such insurance policies. In the event that any required insurance policy expires or is terminated for any reason, Contractor agrees to replace the policy prior to any lapse in coverage. In the event any policy required under this Agreement is allowed to lapse, City may, in its sole discretion, elect to purchase the required insurance policy and the cost of such policy shall be charged to Contractor or withheld from the payments due to Contractor from City under this Agreement.

CONTRACTOR AGREES THAT, PRIOR TO EXECUTION OF THIS AGREEMENT, CONTRACTOR SHALL PROVIDE ITS INSURANCE BROKER WITH A COPY OF THIS PAGE OF THE AGREEMENT AS WELL AS WITH A COMPLETE COPY OF EXHIBIT C, AND WILL OBTAIN ASSURANCE FROM ITS CARRIER THAT ITS INSURANCE CARRIER WILL PROVIDE: (1) THE EXACT COVERAGES IN THE REQUIRED DOLLAR AMOUNTS STATED THEREIN, (2) AN ENDORSEMENT NAMING THE CITY OF SANTA CLARA, ITS COUNCIL, EMPLOYEES AND OFFICERS AS ADDITIONAL INSURED ON THE CGL AND BAL, AND (3) AN ACCORD EXPLICITLY STATING THAT "THE CITY OF SANTA CLARA, ITS

COUNCIL, EMPLOYEES, AND OFFICERS ARE HEREBY ADDED AS ADDITIONAL INSUREDS IN RESPECT TO ALL LIABILITIES ARISING OUT OF CONTRACTOR'S PERFORMANCE OF WORK UNDER THIS AGREEMENT" AS REQUIRED BY PARAGRAPH 2 OF EXHIBIT C.

**13. OWNERSHIP OF DATA AND INFORMATION**

City shall own any written reports or other items deemed deliverables by the respective Call, as well as any documents, data or other information supplied by City to Contractor during the course of this Agreement. Contractor shall deliver said data and information to City whenever requested to do so, but in any event within thirty (30) calendar days of the completion of the task. All material, including information developed on computer(s), which shall include, but not be limited to, data, artwork, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, advertisements, pamphlets, mailers and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City whether or not used, so long as that material has been paid for by the City. City shall not be limited in any way or at any time in its use of said material. City acknowledges that it shall not own any of Contractor's proprietary, confidential or trade secret information, such as formulas, patterns, compilations, programs, devices, methods, techniques or processes through which Contractor derives independent economic value because the foregoing item[s] is not generally known to the public and is the subject of reasonable efforts to maintain its secrecy.

**14. CONFIDENTIALITY OF DATA AND MATERIAL**

14.1 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. Such data information or reports may be viewed by or distributed to third parties only after prior written approval of City. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

14.2 Contractor shall take reasonable efforts to safeguard any and all City property entrusted to Contractor's custody or control; however, Contractor shall not be liable to City for any loss, damage, or destruction of any such property unless Contractor's actions constitute negligence or reckless disregard of City's property.

- 14.3 A Party disclosing information to the other which it considers to be Confidential Information, shall clearly label that information "Confidential" before disclosing it to the other Party. Confidential Information means information which is of a non-public, proprietary or confidential nature belonging to the Disclosing Party, including without limitation, all reports and analyses, technical and economic data, studies, forecasts, trade secrets, research or business strategies, financial or contractual information, gas or coal reserve information, rates, loads, energy requirements, certain sales market information, research, developmental, engineering, manufacturing, technical, marketing, sales, financial, operating, performance, cost, business and process information or data, know-how, and computer programming or other written or oral information. Confidential Information may be in any form whatsoever, including without limitation writings, recordings, electronic or oral data, computer programs, logic diagrams, component specifications, drawings or other media. Only that information disclosed by a Party and clearly designated in writing as Confidential Information prior to its disclosure shall be deemed to be Confidential Information. Verbal information that is intended to be treated as Confidential Information shall be described in writing and identified as Confidential Information.
- 14.4 Contractor acknowledges that City is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. City acknowledges that Contractor may submit information to City that Contractor considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Contractor acknowledges that City may submit to Contractor information that City considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). 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 as practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end 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, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.
- 14.5 The Receiving Party may cooperate with the Disclosing Party in any efforts to prevent release of the Confidential Information; however, the Receiving Party shall not be required to expend any monies in excess of the cost of notifying the Disclosing Party by telephone, facsimile and/or mail of the pendency of a demand for the Confidential Information. So long as the Receiving Party complies with the

provisions of notification set forth in this Agreement, the Receiving Party shall not be liable for, and Customer and City hereby release each other from, any liability for any damages arising from any requirement under the law that the Receiving Party release Confidential Information to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, and directors, as those terms may apply to each Party hereto, without limitation.

- 14.6 The Receiving Party may, at its sole expense, institute, or intervene in any proceeding, in order to protect the Confidential Information from disclosure, and if the Disclosing Party requests and agrees in writing to indemnify the Receiving Party from any expense or liability for expenses, the Receiving Party may cooperate actively in any such action or proceeding; provided, however, that the Receiving Party shall have no duty to the Disclosing Party to actively cooperate, notwithstanding an offer by the Receiving Party to provide a complete indemnity.

**15. CORRECTION OF WORK**

The performance of Services by Contractor shall not relieve Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to City.

**16. NOTICES**

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

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050,  
or by facsimile at (408) 261-2717

and to Contractor addressed as follows:

Reichman, Karten, Sword, Inc. dba RKS Research & Consulting  
12 Main Street, Suite 279  
Brewster, New York 10509  
or by facsimile at (845) 225-0835

**17. CHANGES**

City may, from time to time, request changes in the "Scope of Services" to be performed pursuant to a Call issued under this Agreement. Such changes, including any increase or decrease in the amount of Contractor's compensation, which are mutually agreed upon by and between City and Contractor, shall be incorporated in written amendments to the Call, or included in a subsequent Call.

**18. CONTRACT FOR ADMINISTRATIVE SERVICES**

To the extent that this Agreement is a contract authorizing Calls to be made for Administrative Services, the City Council entered into such Agreement upon the recommendation of the City Manager pursuant to Section 1108 of City's Charter. The policy decision with respect to the Services to be provided under this Agreement was made exclusively by the City Council.

**19. SUB-CONTRACTING AND ASSIGNMENT**

Except as specifically provided in this Agreement, the City intends that the work described in each Call must be performed by the Contractor and not by a subcontractor or agent of the Contractor. Contractor shall not assign any interest in this Agreement, or any Call issued pursuant to this Agreement, and shall not transfer any interest in same (whether by assignment or novation) without prior written approval of City. Inclusion of a subcontractor in a proposal attached to a Call, once signed by the City, constitutes written approval.

However, claims for money due to or to become due to Contractor from City under this Agreement may be assigned to a bank, trust company or other financial institution, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to City. In case of the death of one or more members of Contractor's firm, the surviving member or members shall complete the Services covered by this Agreement or any incomplete Call. Any such assignment shall not relieve Contractor from any of its obligations or liability under the terms of this Agreement.

**20. OTHER AGREEMENTS**

This Agreement shall not prevent either Party from entering into similar agreements with others.

**21. TOTALITY OF AGREEMENT**

This Agreement embodies the entire Agreement between City and Contractor and all the terms and conditions agreed upon by the Parties to this Agreement. No other understanding, agreements, conversations, oral or otherwise, with any officer, agent, or employee of the City prior to the execution of this Agreement, regarding the subject matter of this Agreement shall affect or modify any of the forms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding on either Party to this Agreement.

**22. SERVICE WARRANTY**

Contractor warrants that Services provided hereunder shall conform with the generally accepted professional practices and standards appropriate to the nature of the Services rendered, that the personnel furnishing said Services shall be qualified to perform the Services assigned to them and that the recommendations, guidance and performance of such

personnel shall meet the standard of care normally practiced by engineers or contractors performing the same or similar Services. Contractor shall be required to correct, at no expense to City, all deficiencies in the performance of the contract service that results from Contractor's failure to observe and adhere to the above warranty and which are detected within one (1) year from the date of completion of the Services. Work performed under this warranty shall also be warranted for a one (1) year period from the date of completion of such work. Contractor shall be required to reimburse City for all misexpenditure of funds resulting from Contractor's deficient performance of its Services.

## 23. DISPUTE RESOLUTION

Any documented dispute between the Parties which arises during the performance of this Agreement and which the Parties cannot then resolve, shall be subject to the following administrative remedy prior to any litigation occurring between the Parties.

- 23.1 **Internal Resolution.** Both Parties shall attempt to resolve any controversy claim, problem or dispute arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. In the event that any problem or dispute is not resolved, by the project managers of each Party, either Party may upon written notice to the other request that the matter be referred to senior management officials within each respective organization with express authority to resolve the problem or issue. Such representatives shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within ten (10) business days of such written notice. If the parties cannot reach a mutually agreeable resolution, then the dispute or issue shall be submitted to mediation within thirty (30) calendar days of the written request of one Party after the service of that request on the other Party.
- 23.2 **Notice.** A Party with claims arising under this Agreement shall, within thirty (30) days of knowledge of said claim, begin the process of exhausting all administrative remedies, as well as any other administrative remedies required by law. If the final decision or outcome of any administrative proceeding is unacceptable to a Party, then within thirty (30) days of the date of that final decision, the dissatisfied Party shall give written notice (certified mail-return receipt requested) to the other Party of the issues it deems outstanding that must be submitted to mediation (Request for Mediation).
- 23.3 **Mediation.** Any controversies between City and Contractor regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, except those for which the appropriate remedy should be injunctive relief shall be mediated within sixty (60) days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available.

- 23.4 **Mediator.** Within twenty (20) days or less of the written Request for Mediation, the Parties shall agree on one mediator. If they cannot agree on one mediator within such twenty-day period each Party shall list the names of three (3) potential mediators affiliated with the Judicial Arbitration and Mediation Service (“JAMS”) and shall supply them to the Party demanding the mediation. The Party demanding the mediation shall merge the names of all the potential mediators into a single list, not indicating which Party submitted the name. On that same date as all names are received by the demanding Party, the Parties shall jointly sign a letter directed to the San Jose office of JAMS, requesting that JAMS appoint a mediator from the enclosed list. If a Party refuses or fails to submit three (3) names within the three day period to the Party preparing the letter, then the letter shall be sent on the fifth day without input from the Party failing to submit names. 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.
- 23.5 **Costs.** The costs of mediation shall be borne by the Parties equally.
- 23.6 **Discovery.** If, during any dispute between the Parties, a demand is made by Contractor for documents under the Public Records Act, the City shall have reciprocal rights to demand documents from Contractor.
- 23.7 **Condition Precedent to Filing Suit.** Except as provided in Article 23.3, mediation under this section is a condition precedent to a Party filing an action in any court, unless that Party has made demand for mediation and the other Party has failed or refused to engage in mediation. In the event of litigation arising out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.
- 23.8 **Work Through Disputes.** If the City and the Contractor are unable to reach agreement on disputed work, the Contractor shall nevertheless proceed with the disputed work, and Payment therefore shall be as subsequently determined pursuant to this Article.

## 24. CAPTIONS

The captions of the various paragraphs of this Agreement are for convenience or record only, and shall not be considered or referred to in resolving questions or interpretations.

## 25. APPLICABLE LAW

Any dispute regarding this Agreement, including without limitation, its validity, interpretation, performance, enforcement and damages shall be determined in accordance with the laws of the State of California without regard to California’s choice of law principles.

**26. 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.

**27. NO PLEDGING OF CITY'S CREDIT**

Under no circumstances shall Contractor have the authority or power to pledge the credit of the City of Santa Clara, or to incur any obligation in the name of the City without City's prior written agreement or confirmation. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor or its subcontractors under this Agreement. Contractor agrees to obtain City's approval of all expenditures in connection with any materials to be purchased, projects to be performed, advertising to be placed, work to be "outsourced" or other items or Services which will or might be charged to the City. Such approval, if verbal, shall be confirmed by the City in a written letter sent via facsimile and U.S. mail to Contractor in accordance with the terms of this Agreement.

**28. USE OF CITY NAME OR LOGO**

Contractor shall not use City of Santa Clara's or Silicon Valley Power's name, insignia, trademark, logo or distribute exploitative publicity pertaining to the Services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of City.

**29. MONITORING AND EVALUATION OF SERVICES**

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accordance with applicable City, county, state and federal requirements. If, in the course of monitoring and evaluation, City believes it has discovered any practice, actions, procedure or policy of Contractor which deviates from the terms of this Agreement, City may notify Contractor in writing and Contractor agrees to respond in writing to City within seven (7) calendar days regarding such action, procedure or policy. However, if any action of Contractor constitutes a breach of this Agreement, City may notify contractor in writing that the Agreement has been terminated pursuant to the provisions set forth in this Agreement.

**30. 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 state or federal law.

31. **SEVERABILITY CLAUSE**

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

32. **WAIVER**

Waiver by a Party of any one or more of the conditions of performance under this Agreement shall not be construed as a subsequent waiver(s) of that condition or of any other condition of performance under this Agreement. No delay in exercising, partial exercise, or complete failure to exercise any right, power, or privilege under this Agreement shall operate as a waiver.

33. **CONFLICT OF INTEREST**

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

34. **CONSTRUCTION AND INTERPRETATION OF AGREEMENT**

This Agreement, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the Parties. Accordingly, each of the Parties expressly acknowledges and agrees that this Agreement shall not be deemed to have been authored by, prepared by, or drafted by, any particular party, and that the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or in the resolution of disputes.

35. **COMPLIANCE WITH ETHICAL STANDARDS**

As a condition precedent to entering into this Agreement, Contractor shall:

- 35.1. Read Exhibit A, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA" incorporated by this reference; and,

(continued on page 16 of 16)

35.2. Execute the affidavit included in Exhibit B, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS" incorporated by this reference.

The Parties acknowledge and accept the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives. It is the intent of City and Contractor that this Agreement shall become operative on the Effective Date first set forth in the Preamble, above.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

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

"CITY"

**REICHMAN, KARTEN, SWORD, INC.  
DBA RKS RESEARCH & CONSULTING**

a New York corporation

By: \_\_\_\_\_

DAVID J. REICHMAN

Title: Chairman and CEO

Address: 12 Main Street, Suite 279  
Brewster, New York 10509

Telephone: (845) 228-1883

Fax: (845) 225-0835

"CONTRACTOR"

**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
REICHMAN, KARTEN, SWORD, INC.  
DBA RKS RESEARCH & CONSULTING**

**EXHIBIT A**

**ETHICAL STANDARDS FOR CONTRACTORS  
SEEKING TO ENTER INTO AN AGREEMENT WITH  
THE CITY OF SANTA CLARA, CALIFORNIA**

**Termination of Agreement for Certain Acts**

- A. City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor<sup>1</sup> does any of the following:
    - a. Is convicted<sup>2</sup> of operating a business in violation of any Federal, State or local law or regulation;
    - b. Is convicted of a crime punishable as a felony involving dishonesty<sup>3</sup>;
    - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or sub-contract;
    - 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 City Contractor or sub-contractor; and/or,
    - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

---

<sup>1</sup> For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

<sup>2</sup> For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

<sup>3</sup> As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. City may also terminate this Agreement in the event any one or more of the following occurs:
1. If City determines that Contractor no longer has the financial capability<sup>4</sup> or business experience<sup>5</sup> to perform the terms of, or operate under, this Agreement; or
  2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with city, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- 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 City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

---

<sup>4</sup> 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.

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

**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
REICHMAN, KARTEN, SWORD, INC.  
DBA RKS RESEARCH & CONSULTING**

**EXHIBIT B**

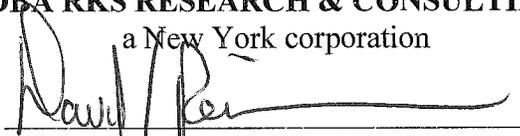
**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS  
[CITY OF SANTA CLARA]**

I, David J. Reichman, being first duly sworn, depose and say that I am the Chairman and CEO of Reichman, Karten, Sword, Inc., dba RKS Research & Consulting and I hereby state that I have read and understand the language, entitled “*ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA*” (herein “Ethical Standards”) set forth in Exhibit A. I have 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 inquiry of those individuals potentially included within the definition of “Contractor” contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit A [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 Exhibit A 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.

**REICHMAN, KARTEN, SWORD, INC.  
DBA RKS RESEARCH & CONSULTING**  
a New York corporation

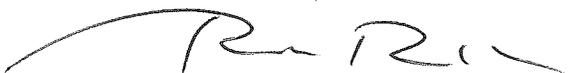
By:

  
\_\_\_\_\_  
DAVID J. REICHMAN  
Chairman and CEO

**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.

*as appeared before me  
on May 15, 2014*



**RICHARD RUCHALA**  
Notary Public - State of New York  
No. 01RU6129883  
Qualified in Putnam County  
My Comm. Expires Jul. 5, 2017

**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
REICHMAN, KARTEN, SWORD, INC.  
DBA RKS RESEARCH & CONSULTING**

**EXHIBIT C**

**INSURANCE REQUIREMENTS**

**INSURANCE COVERAGE REQUIREMENTS  
FOR PROFESSIONAL SERVICES**

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant shall purchase and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
  - \$1,000,000 Each Occurrence
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

- c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

**B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

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

**C. WORKERS' COMPENSATION**

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

**D. PROFESSIONAL LIABILITY**

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

## E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnitied may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.
3. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
  - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

## F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

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



**CALL NO. 14-1  
FOR PROFESSIONAL SERVICES  
TO BE PROVIDED TO THE  
CITY OF SANTA CLARA, CALIFORNIA  
BY REICHMAN, KARTEN, SWORD, INC. DBA RKS RESEARCH & CONSULTING**

The Parties to this Call No. 14-1 ("Call") agree that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014 this Call is made pursuant to the terms of a Call Agreement between the Parties entitled, "Call Agreement by and between the City of Santa Clara, California and "Reichman, Karten, Sword, Inc. dba RKS Research & Consulting," of the same date, the terms of which are incorporated by this reference. This Call describes the Services to be provided to the City of Santa Clara, California ("City") by Reichman, Karten, Sword, Inc. dba RKS Research & Consulting ("Contractor"), which are more fully described in Contractor's proposal to City entitled "Silicon Valley Power's Oversampling Project" ("Proposal"), attached to this Call as Exhibit A and incorporated by this reference. The Services to be performed under this Call shall be completed within the time period beginning on June 25, 2014 and ending on June 30, 2015. The attached Proposal contains a complete description of the Services, and performance dates for the completion of such Services, to be performed by the Contractor under this Call. In no event shall the amount paid to the Contractor for the Services provided to City by the Contractor under this Call, including all fees or pre-approved costs and/or expenses, exceed twenty-six thousand two hundred fifty dollars (\$26,250.00), subject to budgetary appropriations.

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

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

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

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

"CITY"

**REICHMAN, KARTEN, SWORD, INC.  
DBA RKS RESEARCH & CONSULTING**

a New York corporation

By: \_\_\_\_\_

DAVID J. REICHMAN

Title: Chairman and CEO

Address: 12 Main Street, Suite 279  
Brewster, New York 10509

Telephone: (845) 228-1883

Fax: (845) 225-0835

"CONTRACTOR"



**Scope of Work Describing  
SILICON VALLEY POWER's Proprietary Oversample**

There are two distinct parts to Silicon Valley Power's participation in this year's market and satisfaction research project. The first part covers the implementation and review of state-wide research contracted separately through the California Municipal Utilities Association (CMUA) and invoiced separately. The second part, covered by this Scope of Work and contract with Santa Clara, covers similar research but done specifically for Silicon Valley Power via an additional sample of Santa Clara-only residents. This second part also includes a very detailed analysis of the findings, a comparison of results to previous years, a comparison to the results of the state-wide surveys and distinct recommendations to improve communications and satisfaction.

• **Silicon Valley Power Proprietary Oversample**

RKS will design, conduct, analyze and report on results generated by a proprietary customer satisfaction oversample survey conducted among Santa Clara residential customers.

Methodology: RKS will utilize the same hybrid approach of conducting interviews by phone and on-line in the SVP oversample that will be used in the CMUA statewide survey.

RKS will conduct enough interviews to complete:

- 200 telephone interviews
- 200 on line (email) surveys

Questionnaire: RKS will start with the questionnaire developed for the **CMUA 2014 Statewide Survey of Residential Customers Served By Municipal Utilities** and will customize it based on issues of local importance in Santa Clara.

RKS will work with Silicon Valley Power to come up with a questionnaire that covers the subjects Silicon Valley Power desires to have covered, and does so in a telephone interview/on line survey that averages 10-12 minutes.

Interviewing: After the questionnaire is approved by Silicon Valley Power, RKS will conduct enough interviews to complete 200 telephone interviews and 200 on line surveys.

Processing, Analysis, Report Preparation: Following interviewing, RKS will analyze the data and provide a full report, showing comparisons against:

- SVP's earlier proprietary oversample benchmarks and subsequent measurements
- CMUA 2014 statewide muni results
- NCPA member utility results as a group
- California 2014 statewide IOU results

RKS' report will provide an analysis of the findings plus our conclusions and recommendation for action as they relate specifically to Silicon Valley Power. RKS agrees to make one or more on-site presentations

depending upon Silicon Valley Power's preferences and needs.

The total cost for SVP's proprietary residential customer oversample is \$20,750

- Special "Deep dive" Statistical Analysis of SVP's Customer Responses

This part of the project takes the data generated from the oversample described above and combines 2014 results with earlier waves of SVP customer research. These are then subjected to various types of statistical analyses – all with an eye to determine important relationships and provide direction to SVP's marketing and communications.

Another avenue for analysis in this "deep dive" will be an assessment of the different e mail lists that SVP is using as the basis for the on-line part of this project. RKS understands that SVP has access to multiple e mail lists and after the survey is completed, would like to know:

- Which single list or combination of lists turns out to be the most representative of the SVP residential customer base;
  - Can this methodology – relying on e mail lists for an on-line survey – be used on its own in future surveys, or must SVP also include a telephone interview component to ensure that the resulting sample is representative of the entire Santa Clara customer base
- What can SVP expect as an average response rate from its lists? (The average response across the state and for most municipalities is 1-2%. However some cities have done much better – averaging 12-15%).

The total cost for this "deep dive" statistical analysis is \$3,500.

## PROJECT FEES

~~Below, we spell out the costs associated with the items described in this SCOPE OF WORK:~~

- |  |          |
|--|----------|
| 1. SVP's proprietary oversample – complete 200 telephone interviews and<br>200 on line surveys | \$20,750 |
| 2. Deep-dive Statistical Analysis  | \$3,500  |

Total Project	\$24,250
<u>Travel;</u>	<u>\$ 2,000</u>

TOTAL NOT TO EXCEED \$26,250

~~The only additional cost is item not included would be direct travel to and from Santa Clara which must be specifically authorized by Silicon Valley Power. In those cases, RKS will invoice Silicon Valley Power for the direct travel expenses incurred not to exceed \$2,000.~~

~~Not to exceed Total~~ \$26,250

Meeting Date: 6/24/14

# AGENDA REPORT

Agenda Item # 7B-11

City of Santa Clara, California



**Date:** June 10, 2014

**To:** City Manager for Council Action

**From:** John C. Roukema, Director of Electric Utility

**Subject:** Approval of a Call Agreement with dystrick design, Inc., and Call No. 14-1 for Professional Services to Support the Electric Utility's Marketing and Communications Needs

## EXECUTIVE SUMMARY:

Economic development, utility network communications and power reliability in Santa Clara are greatly supported by the existence and promotion of the extensive fiber optic network owned and operated by the City's Electric Utility, Silicon Valley Power (SVP). Independent survey results indicate that Santa Clara customers place SVP at or near the top of all California utilities in multiple key satisfaction and performance metrics. However, satisfaction surveys show that customers are looking for SVP to increase communication and information delivery via methods accessible on mobile devices. Increasing utilization of our energy efficiency programs has been harder to achieve, especially with the residential customer segment. In the most recent fiscal year, we saw an overall decline in achieved energy savings across all customer classes. Intense pressure by state legislators to increase energy savings from municipal utilities and perceived under-performance in this area led to the passage of several bills in 2007, resulting in a clear erosion of local control and onerous new reporting requirements.

In January 2014, SVP issued an RFP for Marketing & Communications Services. Through that process, dystrick design, Inc. was selected to remain the provider of these services for SVP. Staff proposes to enter into a Call Agreement and Call No. 14-1 with dystrick design, Inc. to provide continued fulfillment of a communication plan for Santa Clara's SVP MeterConnect<sup>®</sup> program that proactively educates and informs customers, provides tools for staff to answer questions and creates visibility into our step-by-step process for customer care and program success. In addition, it provides a new approach for promotion of SVP programs, such as energy efficiency and renewable energy programs, as well as the SVP Fiber Enterprise. A copy of the Call Agreement and Call No. 14-1 for Professional Services can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

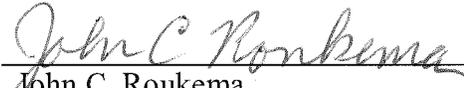
SVP requires consultant services to effectively address its communication needs. Increasing participation levels in energy efficiency programs and proactive communication regarding smart metering have become top priorities for the utility. Under Call No. 14-1, dystrick design, Inc will provide services for educating and informing the City's customers, employees and leaders, industry peers and the general public about the unique benefits and opportunities in Santa Clara, and the importance of maintaining a viable and locally-controlled electric utility.

## ECONOMIC/FISCAL IMPACT:

Call No. 14-1 shall not exceed \$272,809.00 Sufficient funds have been budgeted for FY 2014-15 in the Electric Department's Contractual Services/Not Classified account: 191-1312-87870-[F]94100 (\$129,809.00—Public Benefits); 091-1317-87870-[F]92300 (\$12,000.00—SVP Fiber Enterprise); 091-1313-87870-[F]92300 (\$103,000.00—SVP Marketing and Customer Services), and in Capital Project SVP Meter Connect Program account, 591-1313-80300-2111-[F]92100 (\$28,000.00).

**RECOMMENDATION:**

That Council approve, and authorize the City Manager to execute, a Call Agreement with dystrick design, Inc. and Call No. 14-1 for Professional Services, in an amount not to exceed \$272,809.00, to support the electric utility's marketing and communications needs.

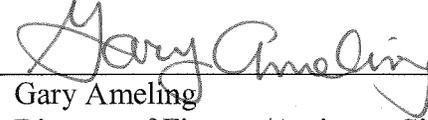
  
\_\_\_\_\_  
John C. Roukema  
Director of Electric Utility

APPROVED:

  
\_\_\_\_\_  
Julio J. Fuentes  
City Manager

Certified as to Budget Form: 

191-1312-87870	\$129,809.00
091-1317-87870	\$12,000.00
091-1313-87870	\$103,000.00
591-1313-80300-2111	\$28,000.00

  
\_\_\_\_\_  
Gary Ameling  
Director of Finance/Assistant City Manager

MAJORITY VOTE OF COUNCIL

***Documents Related to this Report:***

- 1) Call Agreement with dystrick design, Inc.***
- 2) Call No. 14-1 for Professional Services with dystrick design, Inc.***

**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
DYSTRICK DESIGN, INC.  
for Marketing and Communication Services**

**PREAMBLE**

This call agreement (“Agreement”) is made and entered into in the City of Santa Clara, California, on this \_\_\_\_ day of \_\_\_\_\_ 2014 (“Effective Date”), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”) and dystrick design, Inc., a California Corporation, with its principal place of business located at 2 North Market Street, Suite 200, San Jose, California 95113 (“Contractor”). City and Contractor may be referred to herein individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

Whereas:

- A. Contractor agrees to provide certain professional services to City on an on-call basis;
- B. Contractor has the ability and desire to provide the quality and type of professional services which meet the objectives and requirements of City as set forth in this Agreement; and,
- C. The Parties have specified in this Agreement the terms and conditions under which such services will be provided to and paid for by the City.

In consideration for the mutual promises contained in this Agreement, the Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. SCOPE OF SERVICES**

- 1.1 To the extent possible, the professional services to be provided under this Agreement shall be performed in the City of Santa Clara and the services shall be described in detail by the Contractor and submitted in a written proposal to the City (“Services”). The Contractor’s final proposal will be included as an exhibit entitled, “Scope of Services” attached to a subsequent agreement between the Parties referred to in this Agreement as a “Call” or a “Call for Services.” Each Call will incorporate the terms of this Agreement by reference and must be signed by both Parties. Contractor agrees to provide professional services to the City as specified in each respective Call, to the extent funds have been authorized by the City.

- 1.2 No Services shall be performed or paid for under this Agreement except as specifically set forth and required in a written Call. No compensation may be sought under this Agreement for work performed prior to the issuance of a Call or for work to be performed or paid for under another contract. No compensation shall be paid in excess of the maximum dollar amount indicated in each respective Call for Services.
- 1.3 The Parties acknowledge that on the Effective Date of this Agreement, they are unaware of the details of all of the services which may be needed by City or provided by Contractor during the term of this Agreement. The Parties intend to specify the details and value of such Services in a subsequent Call, if any. This Agreement does not require that any Call(s) be signed. The Parties intend to provide the details of the contractual relationship between the Parties in this Agreement, so that by incorporating the terms of this Agreement in the Call(s), the Call may be brief and address the specific Services to be provided, the details of the time when the Services are to be provided and the schedule and amount the Contractor is to be paid for such Services.

## 2. PAYMENT

- 2.1 **Not to Exceed Maximum Amount.** The total amount billed to, and paid by, City for Services provided and authorized expenses incurred under a Call shall not exceed the maximum dollar amount specified in the Call. Contractor shall complete all Services contained within the scope of a Call regardless of whether the not to exceed amount has been reached, at no extra charge to the City. However, Contractor shall not perform any Services outside the scope of the Call without prior written authorization when the amount billed for under a Call exceeds the maximum dollar authorized amounts in the Call.
- 2.2 **Monthly Invoices.** Unless provided otherwise in a particular Call, payment to Contractor shall be in accordance with the procedures in this paragraph 2.2 and in paragraph 2.3. On a monthly basis, Contractor shall prepare an invoice which includes an itemization of all time spent based on the percent of Services complete, as well as any Authorized Expenses incurred (i.e., Out-of-Pocket Costs, Sub-contracted Services and/or Extraordinary Expenses).
- 2.2.1 If a particular Call directs that an invoice be presented in a format of a time sheet rather than as a percentage of Services completed, the itemization on each monthly invoice shall set forth the amount of time (recorded in quarter hours), the name of the employee performing the task and a description of each task performed. After setting forth the time spent on a daily basis, the itemization will provide a summary, at its end, of the total hours spent by each employee for the month, the hourly rate charged for that employee, and the total value of the service rendered by that employee for the month. The amount billed for Services shall then be determined by adding the value for the Services rendered by each employee for that particular month.

- 2.2.2 All monthly invoices shall also include a written itemization of the Authorized Expenses incurred, if any, with a detail listing the cost and source of such expenses and when they were incurred.
  - 2.2.3 Contractor shall maintain documentation of such time and costs for City inspection for a period of three (3) years from the date of termination of this Agreement.
  - 2.2.4 Within thirty (30) days of receipt of an itemized written invoice from the Contractor, City shall pay Contractor the amount billed for Services performed and authorized costs incurred under the Call during that billing period.
- 2.3 **Authorized Expenses.** The amount billed for Services shall be determined as set forth in paragraph 2.2 above plus the following amounts, if allowed under the Call:
- 2.3.1 **“Out-of-Pocket Costs”.** Contractor’s Out-of-Pocket Costs are those expenditures made by Contractor, other than employees’ salaries and payment for Services of retained specialists, which are directly chargeable to the Services performed and which would not otherwise have been incurred by Contractor. Unless otherwise provided, the Out-of-Pocket Costs must be approved in writing in advance by City and may be billed to the City and reimbursed to the Contractor only as specifically authorized and set forth in each respective Call. Authorized Out-of-Pocket Costs shall be billed without additional markup or administrative charge;
  - 2.3.2 **Per Diem.** A Call will state whether or not it includes an estimate for anticipated travel expenses. If the Call does not include an estimate for anticipated travel, then the provisions of this paragraph shall apply. A Party’s travel expenses include airfare, rental car, or mileage, lodging and meals. The Party who is receiving the services pursuant to a particular Call, is the Reimbursing Party. Prior to incurring any charge for travel, the Party planning to travel (“Traveling Party”) shall (1) confirm that the Reimbursing Party is available for meetings on the proposed dates and (2) provide (either verbally or by facsimile) a price quote to the Reimbursing Party for the anticipated airfare prior to the charge being incurred, the Reimbursing Party shall either verbally or by facsimile confirm that the airfare may be incurred; in the event that the Reimbursing Party verbally confirms that the airfare may be incurred, the Traveling Party *shall* confirm in writing (prior to incurring the charge) that the Reimbursing Party has agreed to the charge. All travel expenses shall be reimbursed at cost, with no mark-up. Hotel rooms shall not exceed a cost of \$125 per night unless otherwise agreed by Reimbursing Party. Airfare and car rentals shall be reimbursed at economy class, unless economy class is unavailable through no fault of the booking party. Mileage, if applicable, shall be reimbursed in accordance with the current IRS guidelines for mileage reimbursement. Reasonable attempts shall be made to make plane reservations in advance in order to take advantage of lower fares. In the event that travel plans must be canceled or re-scheduled due to the

fault of the Reimbursing Party, then the Reimbursing Party shall pay for any costs associated therewith; if the travel is canceled or re-scheduled due to the fault of the Traveling Party, then the Traveling Party shall bear the expense. Invoices for travel expenses shall be supported by receipts, and shall be reimbursed in accordance with paragraph 2.2.1. Meals, if reimbursed, shall not exceed fifty dollars (\$50) per day.

2.3.3 **Any authorized “Sub-contracted Services” incurred by Contractor.** Authorized Sub-contracted Services are services provided by a retained specialist or sub-contractor and may be billed to City only if specifically described and authorized in a Call. (Retained specialists and sub-contractors shall include individuals or organizations offering qualified special services to City who are particularly skilled in one or more fields and who may be occasionally employed by the Contractor to fill the need for special or unusual services. Unless otherwise provided, the cost of furnishing such special services must be approved in writing in advance by City and the costs billed to City and reimbursed to the Contractor shall be only the actual charges of the retained specialist or sub-contractor, without additional markup or administrative charge); and/or,

2.3.4 **Any other authorized “Extraordinary Expenses” incurred, if any, as set forth in the Call.** Authorized Extraordinary Expenses shall be billed without additional markup or administrative charge.

2.4 **Retainer or Flat Fee for Services.** The Parties to this Agreement may, from time to time, determine that payment for a certain Scope of Services set forth in a Call pursuant to this Agreement should be made to Contractor on a retainer or flat fee for Services basis (“Stipulated Fee”). If the Parties so agree, then the provisions of this paragraph and the provisions of paragraph 2.2.1 shall apply, unless the Call provides otherwise. The Call shall set forth the maximum monthly or annual fee agreed to by the Parties as it relates to any Agency Fee or to any Out-of-Pocket Costs, and Contractor shall not exceed the amount(s) agreed to without written approval of City. The maximum Agency Fee agreed upon by the Parties is deemed to fully compensate Contractor for all work necessary for Contractor to complete the Scope of Work set forth in a Call.

### **3. 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 three (3) years from the date of final payment under this Agreement, to audit Contractor’s books and records for the purpose of verifying any and all charges made by Contractor in connection with Contractor’s compensation under Calls made pursuant to this Agreement, including termination of Contractor’s Services. 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 expense not so recorded shall be disallowed to Contractor.

#### **4. PROSECUTION OF WORK**

Contractor shall perform the Services required under this Agreement and the Call(s) made pursuant to it in an efficient and expeditious manner. Contractor shall commence work on the Effective Date specified in the applicable Call. Contractor is responsible for any delays caused by Contractor, its agents or subcontractors, or caused by factors directly or indirectly under its control. No extension of time for performance shall be given for such delays.

#### **5. QUALIFICATIONS OF CONTRACTOR; STANDARD OF WORKMANSHIP**

Contractor represents that it has sufficient qualified personnel to furnish the Services described under this Agreement and that the Services will be furnished in accordance with generally accepted professional standards and practices in the industry.

The work furnished to the City pursuant to any of the Calls under this Agreement shall be of a quality acceptable to the City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct. The minimum standard of appearance, organization and content of the documents shall be that used by the City for similar projects.

#### **6. SUSPENSION OR TERMINATION**

City may suspend or terminate this Agreement or any or all work covered under any Call under this Agreement at any time upon thirty (30) days' prior written notice. Contractor may terminate this Agreement as set forth in paragraph 6.4. Said termination or suspension shall be effective as of the thirtieth day after the date of the notice ("Effective Date of Termination"). This Agreement, and any portion of the Scope of Services described in any Call including but not limited to any specific task, project, study, advertisement or campaign, may be terminated by the City upon written notice delivered personally or by registered mail or equivalent mail or delivery service which provides for an office signature of receipt. With regard to termination of any portion of the Scope or any specific task, termination will be effective immediately, unless economic or practical considerations result in the Parties mutually agreeing to a specific termination date.

6.1 If such termination is due to the fault of Contractor, and if City agrees to make payment for all work and Services satisfactorily rendered up to the Effective Date of Termination, payment will be made within thirty (30) days of receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City may deduct from such payment the amount of actual damage, if any, sustained by City by virtue of the failure to perform the Services or for breach of this Agreement by Contractor.

6.2 If such termination is not due to the fault of Contractor, then City agrees to make payment for all work and Services rendered up to the Effective Date of Termination within thirty (30) days from receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City shall

reimburse Contractor for any costs, expenses or service charges incurred by Contractor as a result of canceling previously authorized outsourced services.

6.3 Upon termination of this Agreement, Contractor shall transfer, assign and make available to City or City's representative, all property and materials in Contractor's possession belonging to and paid for by City.

6.4 Contractor may suspend or terminate this Agreement upon completion of work on all outstanding Call(s). Contractor may terminate work under a particular Call if the City is in default of the terms of this Agreement or any Call.

## **7. AVAILABILITY OF FUNDS**

City represents that adequate funds will be available to make payments for Services received as required by each Call.

## **8. CONTRACTOR IS AN INDEPENDENT CONTRACTOR**

In performing work under this Agreement, Contractor is not an agent or employee of City, but is an independent contractor for professional Services with full rights to manage its employees subject to the requirements of the law. All persons employed by Contractor in connection with this Agreement will be employees of Contractor and not employees of City in any respect.

## **9. AMENDMENTS**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

## **10. HOLD HARMLESS/INDEMNIFICATION**

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissioners, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost and/or expense or damage ("Claim"), including all costs and reasonable attorney's fees in providing a defense to any such Claim which arises from Contractor's acts, errors or omissions with respect to, or in any way connected with, the prosecution of the work performed by Contractor pursuant to this Agreement.

## **11. 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 be three (3) years, beginning on the Effective Date and terminating three years later. However, this Agreement shall be deemed extended for such time as is necessary for Contractor to complete work on any Call which is issued prior to the termination date of this Agreement, but is still in progress on the termination date of this Agreement. Any incomplete Call(s) which have been issued pursuant to the terms of a previous agreement between the Parties

is/are hereby reaffirmed and each such Call shall remain in full force and effect under this Agreement, subject to the terms of such Call.

## **12. INSURANCE REQUIREMENTS**

During the term of this Agreement, and for any period following the termination date as set forth in this Agreement, Contractor shall purchase and maintain in full force and effect the following insurance policies:

- 12.1 commercial general liability (including bodily injury and property damage);
- 12.2 business automobile liability insurance;
- 12.3 worker's compensation employer's liability; and
- 12.4 if applicable, professional liability insurance.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts and with the required endorsements, certificates of insurance and coverage verifications as defined in Exhibit C, attached and incorporated by this reference. Contractor shall make its best effort to secure, and thereafter maintain in effect, such insurance policies. In the event that any required insurance policy expires or is terminated for any reason, Contractor agrees to replace the policy prior to any lapse in coverage. In the event any policy required under this Agreement is allowed to lapse, City may, in its sole discretion, elect to purchase the required insurance policy and the cost of such policy shall be charged to Contractor or withheld from the payments due to Contractor from City under this Agreement.

CONTRACTOR AGREES THAT, PRIOR TO EXECUTION OF THIS AGREEMENT, CONTRACTOR SHALL PROVIDE ITS INSURANCE BROKER WITH A COPY OF THIS PAGE OF THE AGREEMENT AS WELL AS WITH A COMPLETE COPY OF EXHIBIT C, AND WILL OBTAIN ASSURANCE FROM ITS CARRIER THAT ITS INSURANCE CARRIER WILL PROVIDE: (1) THE EXACT COVERAGES IN THE REQUIRED DOLLAR AMOUNTS STATED THEREIN, (2) AN ENDORSEMENT NAMING THE CITY OF SANTA CLARA, ITS COUNCIL, EMPLOYEES AND OFFICERS AS ADDITIONAL INSURED ON THE CGL AND BAL, AND (3) AN ACCORD EXPLICITLY STATING THAT "THE CITY OF SANTA CLARA, ITS COUNCIL, EMPLOYEES, AND OFFICERS ARE HEREBY ADDED AS ADDITIONAL INSURED IN RESPECT TO ALL LIABILITIES ARISING OUT OF CONTRACTOR'S PERFORMANCE OF WORK UNDER THIS AGREEMENT" AS REQUIRED BY PARAGRAPH 2 OF EXHIBIT C.

## **13. OWNERSHIP OF DATA AND INFORMATION**

City shall own any written reports or other items deemed deliverables by the respective Call, as well as any documents, data or other information supplied by City to Contractor during

the course of this Agreement. Contractor shall deliver said data and information to City whenever requested to do so, but in any event within thirty (30) calendar days of the completion of the task. All material, including information developed on computer(s), which shall include, but not be limited to, data, artwork, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, advertisements, pamphlets, mailers and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City whether or not used, so long as that material has been paid for by the City. City shall not be limited in any way or at any time in its use of said material. City acknowledges that it shall not own any of Contractor's proprietary, confidential or trade secret information, such as formulas, patterns, compilations, programs, devices, methods, techniques or processes through which Contractor derives independent economic value because the foregoing item[s] is not generally known to the public and is the subject of reasonable efforts to maintain its secrecy.

#### **14. CONFIDENTIALITY OF DATA AND MATERIAL**

- 14.1 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. Such data information or reports may be viewed by or distributed to third parties only after prior written approval of City. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.
- 14.2 Contractor shall take reasonable efforts to safeguard any and all City property entrusted to Contractor's custody or control; however, Contractor shall not be liable to City for any loss, damage, or destruction of any such property unless Contractor's actions constitute negligence or reckless disregard of City's property.
- 14.3 A Party disclosing information to the other which it considers to be Confidential Information, shall clearly label that information "Confidential" before disclosing it to the other Party. Confidential Information means information which is of a non-public, proprietary or confidential nature belonging to the Disclosing Party, including without limitation, all reports and analyses, technical and economic data, studies, forecasts, trade secrets, research or business strategies, financial or contractual information, gas or coal reserve information, rates, loads, energy requirements, certain sales market information, research, developmental, engineering, manufacturing, technical, marketing, sales, financial, operating, performance, cost, business and process information or data, know-how, and computer programming or other written or oral information. Confidential Information may be in any form whatsoever, including without limitation writings, recordings, electronic or oral data,

computer programs, logic diagrams, component specifications, drawings or other media. Only that information disclosed by a Party and clearly designated in writing as Confidential Information prior to its disclosure shall be deemed to be Confidential Information. Verbal information that is intended to be treated as Confidential Information shall be described in writing and identified as Confidential Information.

- 14.4 Contractor acknowledges that City is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. City acknowledges that Contractor may submit information to City that Contractor considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Contractor acknowledges that City may submit to Contractor information that City considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). 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 as practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end 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, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.
- 14.5 The Receiving Party may cooperate with the Disclosing Party in any efforts to prevent release of the Confidential Information; however, the Receiving Party shall not be required to expend any monies in excess of the cost of notifying the Disclosing Party by telephone, facsimile and/or mail of the pendency of a demand for the Confidential Information. So long as the Receiving Party complies with the provisions of notification set forth in this Agreement, the Receiving Party shall not be liable for, and Customer and City hereby release each other from, any liability for any damages arising from any requirement under the law that the Receiving Party release Confidential Information to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, and directors, as those terms may apply to each Party hereto, without limitation.
- 14.6 The Receiving Party may, at its sole expense, institute, or intervene in any proceeding, in order to protect the Confidential Information from disclosure, and if the Disclosing Party requests and agrees in writing to indemnify the Receiving Party from any expense or liability for expenses, the Receiving Party may cooperate actively in any such action or proceeding; provided, however, that the Receiving

Party shall have no duty to the Disclosing Party to actively cooperate, notwithstanding an offer by the Receiving Party to provide a complete indemnity.

**15. CORRECTION OF WORK**

The performance of Services by Contractor shall not relieve Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to City.

**16. NOTICES**

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

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050,  
or by facsimile at (408) 244-2990

and to Contractor addressed as follows:

dystrick design, Inc.  
2 North Market Street, Suite 200  
San Jose, California 95113  
or by facsimile at (408) 904-5019

**17. CHANGES**

City may, from time to time, request changes in the "Scope of Services" to be performed pursuant to a Call issued under this Agreement. Such changes, including any increase or decrease in the amount of Contractor's compensation, which are mutually agreed upon by and between City and Contractor, shall be incorporated in written amendments to the Call, or included in a subsequent Call.

**18. CONTRACT FOR ADMINISTRATIVE SERVICES**

To the extent that this Agreement is a contract authorizing Calls to be made for Administrative Services, the City Council entered into such Agreement upon the recommendation of the City Manager pursuant to Section 1108 of City's Charter. The policy decision with respect to the Services to be provided under this Agreement was made exclusively by the City Council.

**19. SUB-CONTRACTING AND ASSIGNMENT**

Except as specifically provided in this Agreement, the City intends that the work described in each Call must be performed by the Contractor and not by a subcontractor or agent of the Contractor. Contractor shall not assign any interest in this Agreement, or any Call issued

pursuant to this Agreement, and shall not transfer any interest in same (whether by assignment or novation) without prior written approval of City. Inclusion of a subcontractor in a proposal attached to a Call, once signed by the City, constitutes written approval.

However, claims for money due to or to become due to Contractor from City under this Agreement may be assigned to a bank, trust company or other financial institution, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to City. In case of the death of one or more members of Contractor's firm, the surviving member or members shall complete the Services covered by this Agreement or any incomplete Call. Any such assignment shall not relieve Contractor from any of its obligations or liability under the terms of this Agreement.

**20. OTHER AGREEMENTS**

This Agreement shall not prevent either Party from entering into similar agreements with others.

**21. TOTALITY OF AGREEMENT**

This Agreement embodies the entire Agreement between City and Contractor and all the terms and conditions agreed upon by the Parties to this Agreement. No other understanding, agreements, conversations, oral or otherwise, with any officer, agent, or employee of the City prior to the execution of this Agreement, regarding the subject matter of this Agreement shall affect or modify any of the forms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding on either Party to this Agreement.

**22. SERVICE WARRANTY**

Contractor warrants that Services provided hereunder shall conform with the generally accepted professional practices and standards appropriate to the nature of the Services rendered, that the personnel furnishing said Services shall be qualified to perform the Services assigned to them and that the recommendations, guidance and performance of such personnel shall meet the standard of care normally practiced by engineers or contractors performing the same or similar Services. Contractor shall be required to correct, at no expense to City, all deficiencies in the performance of the contract service that results from Contractor's failure to observe and adhere to the above warranty and which are detected within one (1) year from the date of completion of the Services. Work performed under this warranty shall also be warranted for a one (1) year period from the date of completion of such work. Contractor shall be required to reimburse City for all misexpenditure of funds resulting from Contractor's deficient performance of its Services.

**23. DISPUTE RESOLUTION**

Any documented dispute between the Parties which arises during the performance of this Agreement and which the Parties cannot then resolve, shall be subject to the following administrative remedy prior to any litigation occurring between the Parties.

- 23.1 **Internal Resolution.** Both Parties shall attempt to resolve any controversy claim, problem or dispute arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. In the event that any problem or dispute is not resolved, by the project managers of each Party, either Party may upon written notice to the other request that the matter be referred to senior management officials within each respective organization with express authority to resolve the problem or issue. Such representatives shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within ten (10) business days of such written notice. If the parties cannot reach a mutually agreeable resolution, then the dispute or issue shall be submitted to mediation within thirty (30) calendar days of the written request of one Party after the service of that request on the other Party.
- 23.2 **Notice.** A Party with claims arising under this Agreement shall, within thirty (30) days of knowledge of said claim, begin the process of exhausting all administrative remedies, as well as any other administrative remedies required by law. If the final decision or outcome of any administrative proceeding is unacceptable to a Party, then within thirty (30) days of the date of that final decision, the dissatisfied Party shall give written notice (certified mail-return receipt requested) to the other Party of the issues it deems outstanding that must be submitted to mediation (Request for Mediation).
- 23.3 **Mediation.** Any controversies between City and Contractor regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, except those for which the appropriate remedy should be injunctive relief shall be mediated within sixty (60) days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available.
- 23.4 **Mediator.** Within twenty (20) days or less of the written Request for Mediation, the Parties shall agree on one mediator. If they cannot agree on one mediator within such twenty-day period each Party shall list the names of three (3) potential mediators affiliated with the Judicial Arbitration and Mediation Service ("JAMS") and shall supply them to the Party demanding the mediation. The Party demanding the mediation shall merge the names of all the potential mediators into a single list, not indicating which Party submitted the name. On that same date as all names are received by the demanding Party, the Parties shall jointly sign a letter directed to the San Jose office of JAMS, requesting that JAMS appoint a mediator from the enclosed list. If a Party refuses or fails to submit three (3) names within the three day period to the Party preparing the letter, then the letter shall be sent on the fifth day without input from the Party failing to submit names. 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.
- 23.5 **Costs.** The costs of mediation shall be borne by the Parties equally.
- 23.6 **Discovery.** If, during any dispute between the Parties, a demand is made by Contractor for documents under the Public Records Act, the City shall have reciprocal rights to demand documents from Contractor.

23.7 **Condition Precedent to Filing Suit.** Except as provided in Article 23.3, mediation under this section is a condition precedent to a Party filing an action in any court, unless that Party has made demand for mediation and the other Party has failed or refused to engage in mediation. In the event of litigation arising out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

23.8 **Work Through Disputes.** If the City and the Contractor are unable to reach agreement on disputed work, the Contractor shall nevertheless proceed with the disputed work, and Payment therefore shall be as subsequently determined pursuant to this Article.

24. **CAPTIONS**

The captions of the various paragraphs of this Agreement are for convenience or record only, and shall not be considered or referred to in resolving questions or interpretations.

25. **APPLICABLE LAW**

Any dispute regarding this Agreement, including without limitation, its validity, interpretation, performance, enforcement and damages shall be determined in accordance with the laws of the State of California without regard to California's choice of law principles.

26. **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.

27. **NO PLEDGING OF CITY'S CREDIT**

Under no circumstances shall Contractor have the authority or power to pledge the credit of the City of Santa Clara, or to incur any obligation in the name of the City without City's prior written agreement or confirmation. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor or its subcontractors under this Agreement. Contractor agrees to obtain City's approval of all expenditures in connection with any materials to be purchased, projects to be performed, advertising to be placed, work to be "outsourced" or other items or Services which will or might be charged to the City. Such approval, if verbal, shall be confirmed by the City in a written letter sent via facsimile and U.S. mail to Contractor in accordance with the terms of this Agreement.

**28. USE OF CITY NAME OR LOGO**

Contractor shall not use City of Santa Clara's or Silicon Valley Power's name, insignia, trademark, logo or distribute exploitative publicity pertaining to the Services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of City.

**29. MONITORING AND EVALUATION OF SERVICES**

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accordance with applicable City, county, state and federal requirements. If, in the course of monitoring and evaluation, City believes it has discovered any practice, actions, procedure or policy of Contractor which deviates from the terms of this Agreement, City may notify Contractor in writing and Contractor agrees to respond in writing to City within seven (7) calendar days regarding such action, procedure or policy. However, if any action of Contractor constitutes a breach of this Agreement, City may notify contractor in writing that the Agreement has been terminated pursuant to the provisions set forth in this Agreement.

**30. 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 state or federal law.

**31. SEVERABILITY CLAUSE**

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

**32. WAIVER**

Waiver by a Party of any one or more of the conditions of performance under this Agreement shall not be construed as a subsequent waiver(s) of that condition or of any other condition of performance under this Agreement. No delay in exercising, partial exercise, or complete failure to exercise any right, power, or privilege under this Agreement shall operate as a waiver.

**33. CONFLICT OF INTEREST**

Contractor certifies that to the best of its knowledge, no City employee or officer of any public agency has any pecuniary interest in the business of Contractor and that no person associated with Contractor has any interest that would conflict in any manner or degree with

the performance of this Agreement. Contractor represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. 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 constitute a violation of said provisions. Contractor will advise City if a conflict arises.

**34. CONSTRUCTION AND INTERPRETATION OF AGREEMENT**

This Agreement, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the Parties. Accordingly, each of the Parties expressly acknowledges and agrees that this Agreement shall not be deemed to have been authored by, prepared by, or drafted by, any particular party, and that the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or in the resolution of disputes.

**35. COMPLIANCE WITH ETHICAL STANDARDS**

As a condition precedent to entering into this Agreement, Contractor shall:

- 35.1. Read Exhibit A, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA" incorporated by this reference; and,

(continued on page 16 of 16)

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35.2. Execute the affidavit included in Exhibit B, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS" incorporated by this reference.

The Parties acknowledge and accept the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives. It is the intent of City and Contractor that this Agreement shall become operative on the Effective Date first set forth in the Preamble, above.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

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

"CITY"

**DYSTRICK DESIGN, INC.**  
a California corporation

By:   
\_\_\_\_\_  
SEAN SINATRA  
Title: Managing Director  
Address: 2 North Market Street, Suite 200  
San Jose, CA 95113  
Telephone: (408) 293-0111  
Fax: (408) 904-5019

"CONTRACTOR"

# ACKNOWLEDGMENT

State of California

County of: Santa Clara

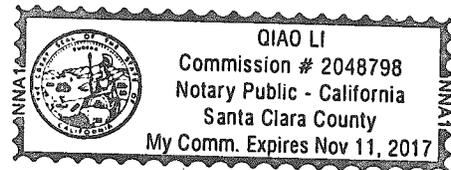
On 05-27-2014 before me, Qiao Li, Notary Public  
(insert name and title of the officer)

personally appeared Sean P. Sinatra  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Qiao Li (Seal)



**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
DYSTRICK DESIGN, INC.**

**EXHIBIT A**

**ETHICAL STANDARDS FOR CONTRACTORS  
SEEKING TO ENTER INTO AN AGREEMENT WITH  
THE CITY OF SANTA CLARA, CALIFORNIA**

**Termination of Agreement for Certain Acts**

- A. City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor<sup>1</sup> does any of the following:
    - a. Is convicted<sup>2</sup> of operating a business in violation of any Federal, State or local law or regulation;
    - b. Is convicted of a crime punishable as a felony involving dishonesty<sup>3</sup>;
    - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or sub-contract;
    - 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 City Contractor or sub-contractor; 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 the Contractor can

---

<sup>1</sup> For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

<sup>2</sup> For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

<sup>3</sup> As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

- B. City may also terminate this Agreement in the event any one or more of the following occurs:
1. If City determines that Contractor no longer has the financial capability<sup>4</sup> or business experience<sup>5</sup> to perform the terms of, or operate under, this Agreement; or
  2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with city, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- 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 City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

---

<sup>4</sup> 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.

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

**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
DYSTRICK DESIGN, INC.**

**EXHIBIT B**

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS  
[CITY OF SANTA CLARA]**

I, Sean Sinatra, being first duly sworn, depose and say that I am the Managing Director of dystrick design, Inc. and I hereby state that I have read and understand the language, entitled "*ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA*" (herein "Ethical Standards") set forth in Exhibit A. I have 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 inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit A [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 Exhibit A 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.

DYSTRICK DESIGN, INC.  
a California corporation

By: \_\_\_\_\_

  
SEAN SINATRA  
Managing Director

**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.

# ACKNOWLEDGMENT

State of California

County of Santa Clara

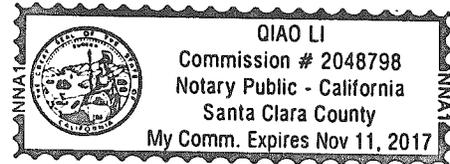
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(insert name and title of the officer)

personally appeared Sean P. Singara  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Qiao Li (Seal)



**CALL AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
DYSTRICK DESIGN, INC.**

**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 purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
  - \$1,000,000 Each Occurrence
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

**B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million

dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

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

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered

excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.



**CALL NO. 14-1  
FOR PROFESSIONAL SERVICES  
TO BE PROVIDED TO THE  
CITY OF SANTA CLARA, CALIFORNIA  
BY DYSTRICK DESIGN, INC.**

The Parties to this Call No. 14-1 ("Call") agree that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, this Call is made pursuant to the terms of a Call Agreement between the Parties entitled, "Call Agreement by and between the City of Santa Clara, California and dystrick design, Inc.," of the same date, the terms of which are incorporated by this reference. This Call describes the Services to be provided to the City of Santa Clara, California ("City") by dystrick design, Inc. ("Contractor"), which are more fully described in Contractor's proposal to City entitled "2014-2015 Scope of Work Marketing/Advertising/Public Relations Services Silicon Valley Power" dated May 1, 2014 ("Proposal"), attached to this Call as Exhibit A and incorporated by this reference. The Services to be performed under this Call shall be completed within the time period beginning on July 1, 2014 and ending on June 30, 2015. The attached Proposal contains a complete description of the Services, and performance dates for the completion of such Services, to be performed by the Contractor under this Call. In no event shall the amount paid to the Contractor for the Services provided to City by the Contractor under this Call, including all fees or pre-approved costs and/or expenses, exceed two hundred seventy two thousand eight hundred nine dollars (\$272,809), subject to budgetary appropriations.

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

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

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

"CITY"

**DYSTRICK DESIGN, INC.  
a California corporation**

By:

\_\_\_\_\_  
SEAN SINATRA  
Title: Managing Director  
Address: 2 North Market Street, Suite 200  
San Jose, CA 95113  
Telephone: (408) 293-0111  
Fax: (408) 904-5019

"CONTRACTOR"

ACKNOWLEDGMENT

State of California

County of Santa Clara

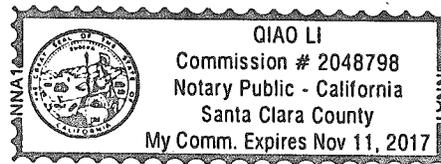
On 5-27-14 before me, Giao Li, Notary Public  
(insert name and title of the officer)

personally appeared Sean P. Sinatra  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Giao Li (Seal)





## 2014-2015 Scope of Work Marketing/Advertising/Public Relations Services

### Silicon Valley Power

dystrick design, Inc.

May 1, 2014

V1.4

### dystrick design Scope, Tasks & Descriptions

The 2014-2015 scope of work factors in our RFP response, project history, production trends and other potential work previously discussed and presented.

#### dystrick Staffing

dystrick design's personnel to manage and handle the proposed work:

- POCs: Victor Aquino, Joe Couto
  1. [vaquino@dystrick.com](mailto:vaquino@dystrick.com) 408.293.0110 x314
  2. [jcouto@dystrick.com](mailto:jcouto@dystrick.com) 408.293.0110 x303
- Public Relations: Tom Mertens
- Brand Strategy, Design Ideation, Conceptualization: Joe Couto, Mike Martinez, Josephine Voong
- Primary Designers: Joe Couto, Josephine Voong, Mandi Chase
- Social Media Specialist: Diana Dao
- Programmers & Application Developers: Bill Barbin, Mike Infantino, Alphonso Iniguez
- Account Administration & Project Management: Victor Aquino

#### dystrick Subcontractors

dystrick will subcontract for two key functions for the specified work with their itemized tasks to follow:

- Tom Mertens: PR content, consultancy and PR planning/strategy
- Alamden Press: Print production & mailing services



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## Cost Proposal Breakdown & Totals

### 2014-2015 Annual Cost

Overall annual cost not to exceed = \$272,809

dystrick design Marcom/Marketing Design Annual Cost

dystrick design's 2014-2015 costs not to exceed = \$112,250

SVP MeterConnect Campaign Marketing Support

dystrick design's Marketing, marcom and campaign support = \$ 5,000

Media Training

General media training = \$ 6,000

3<sup>rd</sup> Party 2014-2015 Costs (subcontractors)

Tom Mertens PR annual cost not to exceed = \$75,000

Almaden Press' annual cost not to exceed = \$74,559



## dystrick's Scope Breakdown

### Business Customers:

- QTY 4 - Outlet Newsletter graphics support/layout/revisions: \$ 8,800
- QTY 1 - Public Benefits Flyer: 1 page/2-sided 4 color self-mailer design/layout: \$ 2,000
- QTY 2 - Postcards: 2 versions, 4 color, 2 sided design with messaging: \$ 3,500
- QTY 2 - Case Study 4 color, 2 sided, 1 page design/layout/revisions: \$ 3,100

### Residential Customers:

- QTY 12 - 1/3 Bill Inserts: conceptualization, design/layout, 4 color, 2 sided, revisions and pre-press ready files (includes messaging work & 4 with additional print inside) \$18,400
- QTY 12 - Santa Clara Weekly Ad inserts pieces: 4 color design/layout, revisions and file prep \$ 3,600
- QTY 12 - Envelope design/layout and messaging, pre-press ready files \$ 2,000
- QTY 3 - Postcards 4 color, 2 sided design/layout with messaging content: \$ 3,500
- QTY 3 - Energy Efficient Educational flyers w/ existing template, layout and revision: \$ 1,650
- QTY 1 - Public Benefits 4-panel Brochure re-design/layout: \$ 4,500
  - Based on one page per program in existing layout
- QTY 12 - Santa Clara weekly Ads (ideation, design, revisions, messaging): \$ included w/ bill insert/ad scope above
- QTY 2 - Inside SC ad (ideation, design & revisions): \$ 5,000
- 

### Economic Development:

- QTY 3 - Economic Development Ads: ideation, design/layout, revisions and file prep: \$ 7,000

### Fiber Customers:

- QTY 3 - Fiber Case Studies: ideation, design/layout, revisions & file prep \$ 4,200

### Special Projects:

- QTY 1 each (1 campaign) - 4 color invitations, fact sheets, programs & signage design/layouts: \$ 3,500



Energy Industry video (“grassroots” style):

- QTY 3 - Storyboard and scripting and production & editing of final video of up to 2 minutes: \$ 7,500

Website Updates and Maintenance Level Support

- Social media support: 3-4 graphic options per month for postings, 1 contest or campaign setup. \$ 5,000
- Misc website updates & support i.e., landing page design, web icons and other related web maintenance \$10,000

Project Administration/Support

- Project and account mgmt., design consultation, administrative tasks, weeklies, client center mgmt. and support \$15,000

Miscellaneous Print Project Tasks

- Existing flyer/document updates, Outreach items i.e., Christmas cards, Giveaways, flyers, etc.) \$ 4,000

SVP MeterConnect Marketing Design Support

2014-2015 Marketing Support

- Campaign and marketing design for web & print \$ 5,000

Media Training

Media training sessions:

- QTY 2: ½ day general media training \$ 6,000



## Third Party Costs for Each Program Element

### Public Relations Description: (not to exceed \$75,000)

- PR work will be based on an hourly rate \$150
- A fixed \$6250 monthly retainer
- Work will be described and presented as assigned tasks in invoices

### 2014 - 2015 coverage:

1. Business Customers
  - a. 2 QTY bylined articles & op/eds
  - b. 6 QTY PRs per year
  - c. 10 QTY Outlet articles per year
2. Residential Customers
  - a. 2 QTY articles
  - b. 6 QTY PRs per year
  - c. 3 QTY article contributions per year
  - d. 6 QTY Inside Santa Clara articles per year
3. All Utility Customers
  - a. 1 QTY articles
  - b. 2 PR per year w/ Economic Development theme
4. Energy Industry
  - a. 1 QTY bylined articles & op/eds
  - b. 4 PRs per year
  - c. Video scripting
5. Fiber
  - a. 1 QTY PRs per year
  - b. 2 QTY Case Studies per year
6. Special Projects and other Functions
  - a. Handling of all media-related activities
  - b. Strategic Communications Planning
  - c. PR distribution
  - d. Media contacts upkeep
7. Website
  - a. Website content support



### Messaging and Positioning

Craft and strategize marketing and PR to establish media positioning in the market. Research includes competitive messaging analysis and media and analyst analysis. Develop and implement a comprehensive communications plan for 2014-2015.

### Media Outreach

Create a comprehensive media outreach program that includes a tiered-approach to journalist, editorial calendar creation and launch strategies. Specific attention to broadcast opportunities and relationship building will be important.

### Press Releases

Written with consistency of messaging and delivery over time. Once messaging is complete, create a calendar of press releases that link all the news with a common theme. Elevate the releases by creating Social Media releases that link back to the website, video and additional content.

### Contributing Articles

Writing and pitching a selection of contributed articles that can be submitted to the various publications that accept them. Contributed articles run from 700 to 1400 words and should be relevant to the current news climate. Expect a few to be opportunistic and reacting to current events or breaking news.



**Almaden Press printing & mail tasks breakdown:**

**Business Customers:**

- QTY 5500 per quarter Outlet Newsletters
  - 4 page 8.5"x11", 4 color, 2 sided, 80lb coated-cover, folded in half and to be mailed 4 times per year)  
\$9,350
  - Mailing preparation & service \$1,870
  - Annual Outlet Newsletter not to exceed total \$11,220
  
- QTY 6000 Public Benefit Flyer
  - 8.5"x11" w/ option fold to 5.5"x8.5" mailer, 4 color, 2-sided 80lb and adjoining envelope \$3,640
  - Mailing preparation & service \$ 500
  - Annual Public Benefit Flyer not to exceed total \$4,140
  
- QTY 2,000 total Direct Mail Target Market Pieces
  - 2 versions, 4"x6" or 5.5"x8/5", 4 color, 2 sided  
\$1,375
  - Mailing preparation & service \$ 350
  - Annual Direct Mail print costs not to exceed \$1,725
  
- QTY 1,000 total Case Studies
  - 2 case studies, 8.5"x11", 4 color, 2 sided
  - Annual Case Study print costs not to exceed \$1,500

**Residential Customers:**

- QTY 120,000 Direct Mail postcards
  - 3 versions, 4 color, house stock FSC paper \$ 7,200
  - Mailing preparation & service (3 x 40k QTY drops)  
\$ 4,350
  - Annual Direct Mail costs not to exceed \$11,550
  
- QTY 40,000 Public Benefits Brochure
  - 14-16 pages, 4 color, 2 sided \$14,975
  - Special envelopes \$ 5,850
  - Mail preparations & services \$ 7,600
  - Annual Brochure costs not to exceed \$28,425



SVP MeterConnect Printing:

- Qty 12,000 door hangers w/ foldable pockets \$ 6,789
- Qty 18,000 tri-fold brochures \$ 3,505  
(12k qty residential, 6k qty commercial)
- Qty 12,000 Survey \$ 2,445
- Qty 500 "Unsuccessful Install" door hangers \$ 600
- Annual SVP MeterConnect print costs not to exceed \$13,339

Special Projects

- QTY 400: Event Invitations/fact sheets/programs \$ 700
- QTY 300: Event giveaway \$1,000
- QTY 2: Signs \$1,000
- Annual Special Project items costs not to exceed \$2,700

dystrick design Billing Procedures

dystrick design will comply with the invoicing procedures dictated in the City of Santa Clara Agreement and produce monthly invoices itemizing any work in this scope with payment to be made on each monthly invoice within 30 days of invoice receipt.

Meeting Date: 6/24/14

# AGENDA REPORT

Agenda Item # MB-12

City of Santa Clara, California



**Date:** June 5, 2014

**To:** City Manager for Council Action

**From:** Director of Public Works/City Engineer

**Subject:** Approval of the Agreement for Services with AlliedBarton Security Services LP for the FY 2014-17 Site Security Services at the Santa Clara Convention Center Complex (Maintenance District #183)

## EXECUTIVE SUMMARY:

Cassidy Turley, the property manager retained by the City and the partners in the Convention Center Complex Maintenance District #183 (District), conducted a competitive request for proposals (RFP) to provide on-site security services for the exterior grounds and parking structure for the complex. Four cost proposals were received. Representatives from the Hyatt Regency Hotel Santa Clara, Equity Office, and the Santa Clara Convention Center evaluated the proposals. Allied Barton Security Services LP (Allied Barton)'s hourly rates are the lowest among the four proposals received through the RFP process and they were selected to perform the site security services.

AlliedBarton has previously provided site security services in the Convention Center Complex and has successfully provided good quality and customer service, and abided by all of the District's quality standards. A copy of the agreement can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of this agreement would provide security for visitors and employees, vehicles and grounds. The site security of City facilities provides safety and reduces the City's liability.

## ECONOMIC/FISCAL IMPACT:

The amount paid to AlliedBarton to provide site security services for the exterior grounds and parking structure at the Santa Clara Convention Center Complex Maintenance District #183 shall not exceed \$130,000 in FY 2014-15, \$130,000 in FY 2015-16, and \$130,000 in FY 2016-17, with a not-to-exceed amount of \$390,000 over the three-year term of the agreement, subject to budget appropriations. Funds are available in the Santa Clara Convention Center Complex Contractual Services Site Cleaning and General Maintenance account (026-2961-87870).

City Manager for Council Action

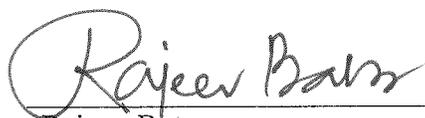
Approval of an Agreement for the Performance of Services with AlliedBarton Security Services LP for the 2014-2017 Site Security Services at the Santa Clara Convention Center Complex (Maintenance District #183)

June 5, 2014

Page 2

**RECOMMENDATION:**

That the Council approve and authorize the City Manager to execute an agreement with AlliedBarton Security Services LP to perform site security services for the exterior grounds and parking structure at the Santa Clara Convention Center Complex (Maintenance Assessment District #183) for an amount not to exceed \$130,000 for FY 2014-15, \$130,000 in FY 2015-16, and \$130,000 in FY 2016-17, for a total not-to-exceed amount of \$390,000 over the three-year term of the agreement, subject to budget appropriations.



Rajeev Batra  
Director of Public Works/City Engineer

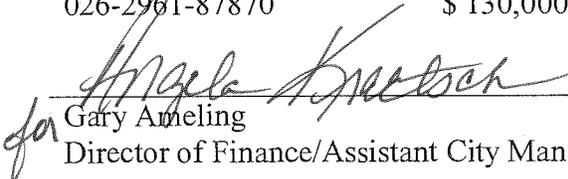
APPROVED:



Julio J. Fuentes  
City Manager

Certified as to Budget Form: 

026-2981-87870 \$ 130,000.00



Gary Ameling  
Director of Finance/Assistant City Manager

**MAJORITY VOTE OF COUNCIL**

*Documents Related to this Report:*

- 1) *Agreement with AlliedBarton Security Services LP*

**AGREEMENT FOR THE PERFORMANCE OF SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
ALLIEDBARTON SECURITY SERVICES LP  
FOR THE 2014-2017 SITE SECURITY SERVICES  
AT THE SANTA CLARA CONVENTION CENTER COMPLEX**

**PREAMBLE**

This agreement for the performance of services (“Agreement”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, (“Effective Date”) by and between AlliedBarton Security Services LP, a Delaware limited liability company located at 2540 North First Street, Suite 101, San Jose, CA 95131, with its principal place of business located at Eight Tower Bridge, 161 Washington Street, Suite 600, Conshohocken, PA 19428 (“Contractor”), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”). 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 professional services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”; and
- 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 PROVISIONS**

**1. EMPLOYMENT OF CONTRACTOR.**

City hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City’s choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

**2. SERVICES TO BE PROVIDED.**

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

**3. COMMENCEMENT AND COMPLETION OF SERVICES.**

- A. Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written Notice to Proceed from City. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.
- B. When City determines that Contractor has satisfactorily completed the Services, City shall give Contractor written Notice of Final Acceptance. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, City shall make this determination within fourteen (14) days of its receipt of such request.

**4. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.**

Contractor represents and maintains that it has the necessary expertise in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and 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.

The plans, designs, specifications, estimates, calculations, reports and other 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.

**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 shall begin on the Effective Date of this Agreement and terminate on June 30, 2017.

**6. MONITORING OF SERVICES.**

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If any action of Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

**7. 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.

**8. PERFORMANCE OF SERVICES.**

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by 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. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

**9. RESPONSIBILITY OF CONTRACTOR.**

Contractor shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City'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 City in accordance with applicable law for all damages to City caused by Contractor negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City 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 federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

**10. 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 at the rate per

hour for labor and cost per unit for materials as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

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

**11. TERMINATION OF AGREEMENT.**

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

**12. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.**

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.

**13. 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.

**14. 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, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

**15. NO PLEDGING OF CITY'S CREDIT.**

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

**16. 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.

**17. 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.

**18. 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 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.

**19. 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 three (3) 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 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.

**20. CORRECTION OF SERVICES.**

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

**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 state or federal law.

**22. HOLD HARMLESS/INDEMNIFICATION.**

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

**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 City 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 City and Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of City 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 City.

**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 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.

**28. NOTICES.**

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

City of Santa Clara  
Attention: Public Works  
1500 Warburton Avenue  
Santa Clara, California 95050  
or by facsimile at (408) 988-0237

And to Contractor addressed as follows:

Name: AlliedBarton Security Services LP  
Address: 2540 North First Street, Suite 101  
San Jose, CA 95131  
or by facsimile at (408) 954-8452

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

**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 City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to

mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

- 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 THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

**33. LIQUIDATED DAMAGES. (SECTION NOT APPLICABLE)**

**34. 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 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.

**35. PROGRESS SCHEDULE. (SECTION NOT APPLICABLE)**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

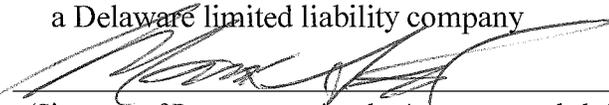
ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

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

“CITY”

ALLIEDBARTON SECURITY SERVICES ~~LLC~~ LP  
a Delaware limited liability company

By:   
(Signature of Person executing the Agreement on behalf of Contractor)

Name: Shannon Warner *Mark Strand*

Title: Senior District Manager *Client Value Manager*

Local Address: 2540 North First Street, Suite 101  
San Jose, CA 95131

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

Telephone: (408) 954-8274

Fax: (408) 954-8452

“CONTRACTOR”

S:\Attorney\AGREEMENTS\Service\OVER \$50K SERVICE AGREEMENT FORM.doc

**AGREEMENT FOR THE PERFORMANCE OF SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
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FOR THE 2014-2017 SITE SECURITY SERVICES  
AT THE SANTA CLARA CONVENTION CENTER COMPLEX**

**EXHIBIT A**

**SCOPE OF SERVICES**

The Services to be performed for the City by the Contractor under this Agreement are more fully described in Cassidy Turley's document entitled "Exhibit A, Scope of Services – Security Contract", which is attached to this Exhibit A.

## EXHIBIT A

### SCOPE OF SERVICES – SECURITY CONTRACT

The Services to be performed for the City by the Contractor under this Agreement are more fully described in the Contractor's proposal entitled dated \_\_\_\_\_, which is attached to this Exhibit A.

1. Contractor shall provide unarmed guard security services at the Santa Clara Convention Center Complex, Santa Clara, California. A Site Map – Plate A is attached to this Exhibit A. These services include roving security, vehicle patrols, patrols, monitoring security systems, supervising other security personnel, maintaining security infrastructure, and carrying out such other basic security tasks per required post orders.
2. Contractor shall be responsible for the following:
  - a. Furnish trained and qualified security personnel in sufficient number to provide service as requested by City. This service will be continuous, regardless of weather, disaster, or threatened or actual organized labor action. The services provided will included, but not be limited to the following:
    - (1) Administering site security procedures and post orders.
    - (2) Promote a customer service approach
    - (3) Site surveillance (by either foot or vehicle), and logging in at Contractor provided monitoring stations.
    - (4) Identifying and reporting security and safety violations
    - (5) Maintaining files for security-related documentation
    - (6) Assisting on-site personnel in emergency situations
3. Contractors responsible for the following :
  - a. Maintain discipline, excellent appearance, professional demeanor, integrity, and attention to duty among all security personnel.
  - b. Develop site-specific instructions and post orders to be developed and approved prior to work on site. City, prior to distribution, must approve site-specific instructions and post orders.
  - c. Require Security personnel to enforce security policies, procedures, and orders.
  - d. Ensure that prompt action is taken to prevent or minimize losses, accidents, fires, property damages, safety hazards, and security incidents, respond to all on-site emergencies and contact the appropriate emergencies as necessary.
  - e. Monitor alarms and any recording devices as directed.
  - f. Investigate unusual occurrences in and about the premises.

- g. Follow written instructions that outline specific activities and conduct of officers. These instructions will clarify and identify City agents that have authority to direct contract security employees.
  - h. Provide recordable monitoring stations at various locations on-site to verify security officer patrolling of site
4. Contractor responsible for the following:
- a. Security Officers will provide on-site patrol services (foot or security vehicle) on a continuous basis while on-duty, with the exception of break times as a visual deterrent to prevent crimes before they occur.
  - b. Security Officers will inspect perimeter lighting and report non-operation findings daily to City contact. Security Officers will maintain parking garage vehicle log sheets of vehicles which may be abandoned or damaged during shift hours (0000-0700), and turn logs over to City contact.
  - c. Security Officers will note damaged or disturbed fire extinguishers and report deficiencies to City contact within two business days.
  - d. Security Officers will monitor perimeter riser pressure, maintain log sheet, and transmit to City monthly.
  - e. Security Officers will provide security escort service as requested.
  - f. Security Officers will maintain Daily Activity Reports and Incident Reports as required and bi-monthly turns over all documents to City contact.
  - g. Security Officers will immediately report all safety issues to the City contact.
  - h. Security Officers will be required to log in at each of the various monitoring stations on-site at required schedule and intervals. Exception to schedule shall be documented and explained in the Daily Activity Report.
5. The City will provide a vehicle for the guard to use to help cover the 12 acre site more effectively. The City will be responsible for the regular maintenance and will provide Contractor with proper training to the guards on how to operate it correctly. Contractor to notify the City immediately if damage occurs to the vehicle or it is not operating properly. Contractor will be responsible for any damages that are incurred due to operator negligence or improper operation, etc. that is not due to normal wear and tear. The vehicle is to be parked on site inside the garage structure in an existing, secured (i.e. locked) fenced area on the first level or other areas specified by the City. The vehicle will only be operated on site and will not be used on any open road public street. If it needs maintenance it will either be service on site or tailored, if electric cart, or driven to the Street Corporation Yard, 1700 Walsh Avenue, Santa Clara, California.
6. Contactor may be assigned custody of keys, operating equipment, and other materials deemed necessary by City for the operation and supervision of the premises' security program. All such keys, operating equipment, and materials shall remain City's property and shall be surrendered

to City immediately upon discharge or transfer of personnel from the premises or termination of this Agreement. Contractor shall be responsible for the cost of all equipment repairs or replacement due to abuse or negligence.

7. Basic expected level of normal general on-site security services for the subject site are as following:

<u>No. of Security Officers/Shift</u>	<u>Shift</u>	<u>Days Assigned</u>
One (1) Security Officer	Swing Shift (4pm to Midnight)	7 days a week
One (1) Security Officers	Grave Shift (Midnight to 8am)	7 days a week
One (1) Security Officer	Day Shift (8am to 4pm)	Sat. and Sun. only

8. Contactor will provide additional Security Officers at sites and times as requested by City. Contactor to maintain a pool of officers - a "flex-force" – to cover turnover, planned an unplanned situations, absences, and events that occur on a daily basis. They are trained at multiple sites and are available to cover unplanned events.
9. Contractor will have representatives made available to meet with City when necessary. City staff shall determine schedule and hours of general on-site security services post orders. City staff will provide Contractor a minimum of 48 hours notice for any change of schedule and staffing.
10. Any overtime ("OT") work requests must receive written approval in advance by City staff. Any unauthorized overtime work will not be paid. The straight time per hour cost will be for all billed hours unless overtime work approved. The overtime bill rate may be billed in the event City requires a specific officer assigned to the site to remain past Security Officer's normal 8 hour shift and is paid by Contractor at an OT rate. Contractor shall use due diligence to provide any requested additional coverage request with relief workers if necessary to avoid any overtime billing charges.

The following holidays may be billed at the overtime rate subject to Contractor's OT labor agreement with employees: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Contractor shall specify all holidays by date and year for the term of the contract.

11. Contactor shall provide normal payroll verification procedures, daily sign-in sheets, and weekly log sheets, and a complete breakdown of all hours billed. Contractor's employees shall not work in excess of twelve (12) hours continuously or with a turnaround of less than eight (8) hours, or work in excess of sixty (60) hours per week under Contractor's employment without City's consent.
12. Contractor's account manager and site supervisor shall attend a regularly scheduled one-hour on-site monthly Maintenance District meeting. Rates and charges for these meetings shall be included in Exhibit B Fee Schedule to this agreement.
13. Contractor shall provide uniforms for site Security Officers, Contractor shall be responsible for all uniform costs. Contractor shall be responsible for uniform cleaning, costs of repair and replacement. City along with Contractor shall determine uniform specifications. All Security Officers will be provided with new uniforms prior to the commencement of the contract. All security personnel assigned to the property will be appropriately uniformed in accordance with

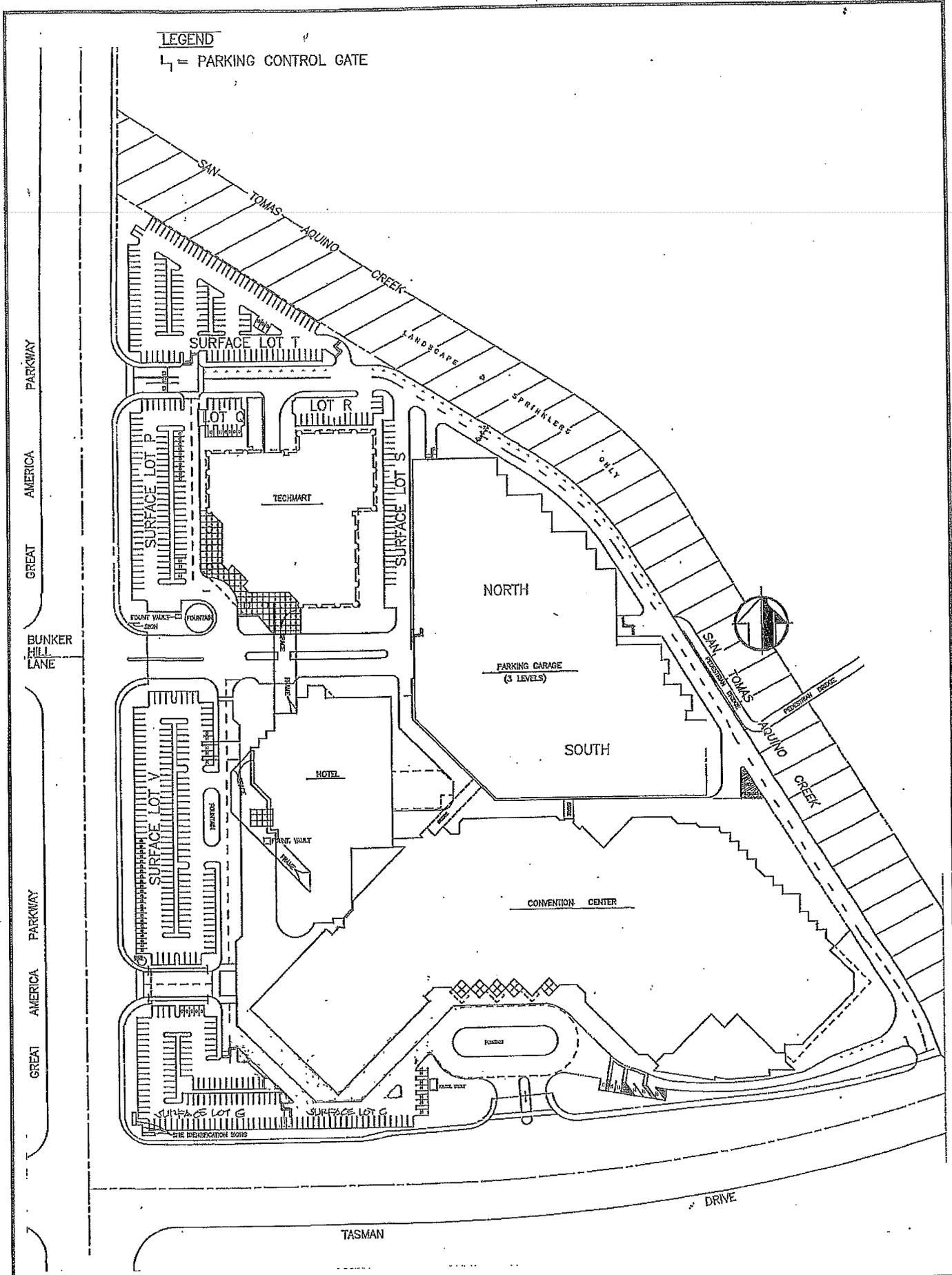
applicable local, state, and federal standards and specifications regarding the source, color, type, style and applicable components as approved by the City.

14. Contractor shall provide Security Officers with a flashlight, and cell phone, or similar communication devices able to report emergencies, or problems.
15. Minimum Hiring and Employment Standards for Contractor and Contractor employees:
  - a. U.S. Citizenship or valid U.S. work permit
  - b. Eighteen (18) years of age
  - c. Free of felony or major misdemeanor criminal record, and multiple DUI's
  - d. Valid California driver's license or valid state of California identification card.
  - e. Successfully pass Contractor's required Drug and Alcohol Pre-employment test and on-going Drug and Alcohol Abuse Prevention and Testing Program. Contractor to provide copy of program to the City.
  - f. Pass Contractor's conducted, at Contractor's expense, pre-employment background checks, previous employment check, and reference check.
  - g. Speak, read, write and understand the English language clearly.
  - h. Comprehend oral and written orders, procedures, and materials, and accept and follow directions.
  - i. Physically able to accomplish various tasks required.
  - j. Contractor responsible to conduct all testing, checks, and all costs for items in this section.
16. The use, possession, or transfer of illegal drugs, controlled substances (including medications without valid prescription) simulated (look-alike) drugs, drug paraphernalia, alcohol, firearms, knives explosives, and other weapons on premises is strictly forbidden at all times. Contractor will be required to comply with enforce this policy, with respect to Contractor's employees, as part of employment.
17. City may request Contractor to replace a Contractor-provided employee at any time. Contractor shall comply with request immediately.
18. Contractor shall provide all training necessary for personnel including general security services skills, report writing, stated local required training, emergency response, and customer service skills. A copy of Contractor's training program shall be provided to the City.
19. Contractor will provide assigned operations managers to assure adequate supervision of all contract personnel. Operations managers duties shall include, but shall not be limited to, the following;
  - a. Interviews and approve all newly hired staff for City's property.
  - b. Oversee creation and quarterly updates of the Post Orders.

- c. Ensure security personnel maintain contract compliance (i.e. training, licenses, certification, etc.)
  - d. Facilitate effective communication with City Security Officers.
  - e. Maintain discipline with Security Officers
  - f. Provide budget information as requested by City
  - g. Responsible to oversee or conduct training program for Security Officers.
  - h. Conduct on a weekly basis a minimum of one (1) unannounced randomly scheduled inspection to ensure past orders are being fulfilled. Documentation of inspections shall be discussed at least monthly with City.
  - i. Ensure all services are delivered as described in this Agreement.
20. Contractor shall provide the following code of business conduct services:
- a. Contractor reviews written policy with property manager defining disciplinary policy for Security Officers.
  - b. Oversee creation and quarterly updates of the Post Orders.
  - c. Contractor exercises disciplinary policy within 24 hours of notification/identification and verification of issue.
  - d. Contractor notifies City of disciplinary action prior to meeting with officer.
  - e. Contractor meets with City to provide an update on the outcome of the meeting, and notifies City immediately of any termination/replacement of assigned employee.
  - f. Contractor's management is available to respond 24 hours per day, 7 days per week, 365 days per year for all emergencies.
21. All post orders or other documents prepared by Contractor in connection with this Agreement shall be the property of City, and all copies of such documents shall be returned to City upon termination of this Agreement.
22. If City determines Contractor's daily services were not provided per Agreement, City may reduce payment for each day services not performed. City shall notify Contractor by phone as soon as possible concerning non-compliance. If Contractor can correct deficiencies within two (2) hours of notification no reduction in payment shall be made. If not corrected within two (2) hours on the same day of non-compliance, City shall deduct all of the daily shift payment due to Contractor. Contractor shall meet with City representative and discuss corrective actions taken to prevent future contract performance deficiencies.

LEGEND

L = PARKING CONTROL GATE



SANTA CLARA CONVENTION CENTER COMPLEX  
MAINTENANCE DISTRICT NO. 183

SITE MAP

SHEET NO.  
MD183-JM-01

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AT THE SANTA CLARA CONVENTION CENTER COMPLEX**

**EXHIBIT B**

**FEE SCHEDULE**

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and services rendered by Contractor at the billing amounts and costs as outlined below:

I. RATES AND FEES

Security Officer Service (Regular Time): \$ 17.06 per hour

Security Officer Service (Over Time): \$ 25.59 per hour

The above mentioned rates include administrative, labor burden, equipment, materials, vacation, sick leave allowances, and any life insurance costs, overhead, and profit. The number of hours and Security Officers will be determined by agreed upon schedule.

II. ADDITIVE PROPOSAL ALTERNATES

A. Proposed Alternate No. 1 – Patrol Vehicle

Contractor to provide and maintain the vehicle for guards use described in Exhibit A, Item 5. The proposed alternate cost, if elected by City, would be

\$ 750 monthly.

\*Maintenance and Fuel will be direct billed as incurred.

B. Proposed Alternate No. 2 – Additional Random Vehicle Patrol

Contractor shall provide an additional random vehicle patrol of site (off-site vehicle and security officer) during weekday shift. The proposed Alternate cost, if elected by City would be

\$ 17 per occurrence.

In no event shall the amount billed to City by Contractor for services under this Agreement exceed three hundred ninety thousand dollars and zero cents (\$390,000.00) for the three-year term, subject to budget appropriations.

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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 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:
  - \$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.

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. 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 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



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**EXHIBIT D**

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN  
AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**

**Termination of Agreement for Certain Acts.**

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor<sup>1</sup> does any of the following:
    - a. Is convicted<sup>2</sup> of operating a business in violation of any Federal, State or local law or regulation;
    - b. Is convicted of a crime punishable as a felony involving dishonesty<sup>3</sup>;
    - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
    - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
    - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

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<sup>1</sup> For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

<sup>2</sup> For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

<sup>3</sup> As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. The City may also terminate this Agreement in the event any one or more of the following occurs:

1. The City determines that Contractor no longer has the financial capability<sup>4</sup> or business experience<sup>5</sup> to perform the terms of, or operate under, this Agreement; or,
2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

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<sup>4</sup> 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.

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

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**EXHIBIT E**

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS**

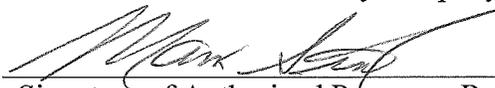
I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate 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.

**ALLIEDBARTON SECURITY SERVICES ~~LLC~~ LP**

a Delaware limited-liability company partnership

By:   
Signature of Authorized Person or Representative

Name: ~~Shannon Warner~~ Mark Strand

Title: ~~Senior District Manager~~ Client Value Manager

**NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED**

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

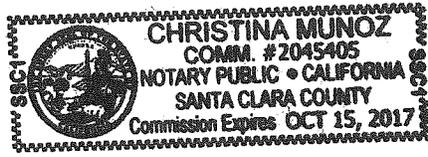
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

State of California }  
 County of Co Santa Clara }  
 On June 13, 2014 before me, Christina Muñoz,  
Date Here Insert Name and Title of the Officer  
 personally appeared Mark David Strand  
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 Above

Signature: Christina Muñoz  
Signature of Notary Public

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
 Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: _____	Signer's Name: _____
<input type="checkbox"/> Corporate Officer — Title(s): _____	<input type="checkbox"/> Corporate Officer — Title(s): _____
<input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General	<input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General
<input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact	<input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact
<input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator	<input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_

Meeting Date: 6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # MC-1

Santa Clara



**Date:** June 10, 2014

**To:** City Manager for Council Information

**From:** Director of Finance/Assistant City Manager

**Subject:** City's 2013 Comprehensive Annual Financial Report (CAFR) Award from the Government Finance Officers Association of the United States and Canada (GFOA)

The Government Finance Officers Association of the United States and Canada (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to the City of Santa Clara for its Comprehensive Annual Financial Report for fiscal year ended June 30, 2013 (2013 CAFR). To be awarded a Certificate of Achievement, a governmental entity must publish an easily readable and efficiently organized comprehensive annual financial report. This report must satisfy both generally accepted accounting principles and applicable legal requirements. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management. This is the 22nd consecutive year that the City has received the GFOA award for its CAFR.

A handwritten signature in cursive script, appearing to read "Gary Ameling".

Gary Ameling  
Director of Finance/Assistant City Manager

APPROVED:

A handwritten signature in cursive script, appearing to read "Julio J. Fuentes".

Julio J. Fuentes  
City Manager

*Documents Related to this Report:*

*1) Award Certificate*



Government Finance Officers Association

**Certificate of  
Achievement  
for Excellence  
in Financial  
Reporting**

Presented to

**City of Santa Clara  
California**

For its Comprehensive Annual  
Financial Report  
for the Fiscal Year Ended

**June 30, 2013**

Executive Director/CEO

Meeting Date: 6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # 70-1



**Date:** June 4, 2014

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**To:** City Manager for Council Information

**From:** Director of Planning and Inspection

**Subject:** Note and File: Planning Commission Minutes of April 30, 2014

On May 28, 2014, the Planning Commission approved its Minutes of April 30, 2014. These Minutes are now being brought forward to the City Council to be noted and filed. Any items on these Minutes marked for City Council Action were either brought forward already or will be brought forward under separate cover accompanied by a separate Agenda Report.

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Kevin L. Riley  
Director of Planning and Inspection

APPROVED:

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Julio J. Fuentes  
City Manager

***Documents Related to this Report:***

- 1) *Planning Commission Minutes of April 30, 2014*



## City of Santa Clara

### PLANNING COMMISSION MEETING MINUTES

Wednesday, April 30, 2014 – 7:00 P.M.

#### CITY COUNCIL CHAMBERS

1500 Warburton Avenue

Santa Clara, CA 95050

Please refer to the Planning Commission Procedural Items coversheet for information on all procedural matters.  
An audio recording of this meeting is available in the Planning Office for review or purchase the Friday following the meeting.

#### ITEMS FOR COUNCIL ACTION

The following items from this Planning Commission agenda will be scheduled for Council review following the conclusion of hearings and recommendations by the Planning Commission. Due to timing of notices for Council hearings and the preparation of Council agenda reports, these items will not necessarily be heard on the date the minutes from this meeting are forwarded to the Council. Please contact the Planning Division office for information on the schedule of hearings for these items:

- **Item 7.D.** Planning Commission Budget for Fiscal Year 2014-2015
- **Item 8.B.** File No.(s):PLN2013-11129 Location:1075 Pomeroy Avenue(Rezone)
- **Item 8.C.** File No.(s):PLN2007-06715/CEQ2007-01051 Location: 4301 Great America Parkway
- **Item 8.D.** Fiscal Year 2014-2015 Capital Improvement Program (CIP) Budget

#### **1. PLEDGE OF ALLEGIANCE and STATEMENT OF VALUES**

Vice-Chair Stattenfield initiated the Pledge of Allegiance, and the Statement of Values was read.

#### **2. ROLL CALL**

The following Commissioners responded to roll call: Deborah Costa, Yuki Ikezi, Steve Kelly, Keith Stattenfield, and Joe Sweeney. Commissioners Chahal and Champeny we excused.

Staff present were City Planner Steve Lynch, Development Review Officer Gloria Sciara, Assistant City Attorney Julia Hill, and Office Specialist IV Megan Zimmershead.

#### **3. DISTRIBUTION OF AGENDA AND STAFF REPORTS**

Copies of current agendas and staff reports for each of the items on the agenda are available from the Planning Division office on the Friday afternoon preceding the meeting and are available at the Commission meeting at the time of the hearing.

#### **4. DECLARATION OF COMMISSION PROCEDURES**

Vice-Chair Stattenfield reviewed the Planning Commission procedures for those present.

#### **5. REQUESTS FOR EXCEPTIONS, WITHDRAWALS AND CONTINUANCES**

A. Withdrawals - None

B. Continuances without a hearing: Item 8.B. was continued to a later date and will be re-noticed. Item 8.C. was continued date-certain to June 18, 2014, and will not be re-noticed.

C. Exceptions (requests for agenda items to be taken out of order) - None

## 6. ORAL PETITIONS/ ANNOUNCEMENTS AND COMMUNICATIONS

Members of the public may briefly address the Commission on any item not on the agenda.

None.

## 7. CONSENT CALENDAR

Consent Calendar items may be enacted, approved or adopted, based upon the findings prepared and provided in the written staff report, by one motion unless requested to be removed by anyone for discussion or explanation. If any member of the Planning Commission, staff, the applicant or a member of the public wishes to comment on a Consent Calendar item, or would like the item to be heard on the regular agenda, please notify Planning staff, or request this action at the Planning Commission meeting when the Chair calls for these requests during the Consent Calendar review. Items listed on the Consent Calendar with associated file numbers constitute Public Hearing items.

7.A. Planning Commission Minutes of March 12, 2014

7.B. **File No.(s):** **PLN2014-10226**  
**Location:** 3275 Stevens Creek Boulevard, a 0.61 acre parcel on the north side of Stevens Creek Boulevard approximately 75 feet east of Henry Avenue, APN: 303-18-022; property is zoned Thoroughfare Commercial (CT)  
**Applicant/Owner:** Yeganeh Amirrazi / Abe Novin  
**Request:** **Use Permit** to allow restaurant beer and wine service (Type 41 ABC License) in an existing restaurant and live entertainment (acoustic)  
**CEQA Determination:** Categorically Exempt per CEQA Guidelines 15301 (Class 1–Existing Facilities)  
**Project Planner:** Steve Le, Planning Assistant  
**Staff Recommendation:** **Approve, subject to conditions**

Item 7.B. was pulled for discussion. The applicant explained that the desire is to expand current services to include the sale of beer and wine. The applicant also described efforts to improve and monitor the parking on site. Dave Steely, neighboring resident, expressed concern about the parking in the neighborhood because of existing businesses. Steve Lynch stated that he would forward the concerns to the City Traffic Engineer and Code Enforcement to make sure the businesses are compliant with their parking requirements and to see if a time-limit parking program could be implemented.

7.C. **File No.(s):** **PLN2014-10241**  
**Location:** 2314 Talia Avenue, APN 303-05-009 a single parcel totaling 5,525 square feet.  
**Applicant/Owner:** Joe Head / John & Kate Cunningham  
**Request:** **Variance** to allow a rear yard setback of 14 feet, three inches for a 448 square-foot addition to an existing single-story house  
**CEQA Determination:** Categorical Exemption per section 15301, Class 1 Existing Facilities  
**Project Planner:** Shaun Lacey, AICP, Assistant Planner II  
**Staff Recommendation:** **Approve, subject to conditions**

7.D. Planning Commission Budget for Fiscal Year 2014-2015

**Motion/Action:** The Commission motioned to approve the Consent Calendar unanimously, (5-0-2-0, Chahal and Champeny absent).

\*\*\*\*\***END OF CONSENT CALENDAR**\*\*\*\*\*

## 8. PUBLIC HEARING ITEMS

<b>8.A. File No.(s):</b>	<b>PLN2014-10221</b>
Location:	1912 Bowers Avenue, a 38,768 square foot lot, located on the west side of Bowers Avenue, approximately 200 feet north of Barkley Avenue, APN: 220-30-012; property is zoned B (Public, Quasi Public, and Public Park or Recreation)
Applicant/Owner:	Sean Snyder for AT&T / City of Santa Clara
Request:	<b>Appeal of an Architectural Review</b> decision approving the replacement of an existing cellular antenna tower with a new 90 foot "monopine" for multi-carrier wireless service.
CEQA Determination:	Categorical Exemption per Section 15311, Accessory Structures
Project Planner:	Steve Le, Planning Intern
<b>Staff Recommendation:</b>	<b>Deny Appeal and uphold the Architectural Committee decision</b>

**Notice:** The notice of public hearing for Item 8.A. was posted and mailed to property owners within 300 feet of the project site.

**Discussion:** Steve Lynch gave a brief presentation on the project.

Julia Hill, Assistant City Attorney, clarified that the Planning Commission can only make findings on the placement and aesthetics of the cellular antenna tower.

The Commission summarized the Architectural Review Committee's meeting and motion.

The appellant stated strong opposition to installation, noting concerns about health, property values and general aesthetics. The appellant requested relocation of the tower to a less residential area.

It was noted that the original proposal had been revised to include a 75 foot tower rather than the originally approved 90 foot tower.

The applicant stated that the cellular tower that currently exists has been operating at a height for 70 feet for over 10 years and that the proposal is merely a modification to existing conditions. The applicant noted that the current tower is out of date and in poor condition, and the new tower would have a more sleek design as a faux-tree at a height only five feet taller than the existing tower.

The Commission confirmed that the City receives lease revenue from ATT for the cellular antenna tower. It was noted that the tower has been in place since 2002.

The Commission discussed the possibility of finding an alternate site for the tower to which the applicant noted that the antenna placement was integral to a larger scale plan that would require major reorganization to move a single tower location.

Bill Hammock, applicant engineer, explained that the emissions standards for cellular antenna

towers are set by the FCC, which worked with the EPA to evaluate health and safety concerns.

Fire Chief William Kelly stated that the City needs a robust cellular network for both citizens and municipal safety and that the proposed location would maximize fire operation capability. Chief Kelly added that the Fire Station would likely undergo renovations in the future, though specific plans and funding have not been identified at this time.

The Public Hearing was opened.

A member of the public stated that he understood that the public hearing could not include concerns about health and safety, but that the existing tower was installed without informing the neighborhood. It was further noted that the new location is closer to residential backyards and that the current location would not prohibit future expansion of the Fire Department.

Albert Gaxiola, neighboring resident, asked if the new tower could be placed at the nearby park rather than the proposed location. Mr. Gaxiola added that he had assumed the cellular tower was a Fire Department operational tower; however, knowing that it is commercial and that the tower is in need of an upgrade, the opportunity for a better location is available.

The appellant, applicant and Commission discussed the possibilities of moving the tower to a different site and the pros and cons related to relocation.

The Public Hearing was closed.

The Commission discussed the possibility of finding middle ground for the new cellular tower between the existing location of the current tower and the new location approved at the Architectural Review Committee. The Commission also noted the importance of the new tower design being a faux-tree to improve the aesthetic appearance.

**Motion/Action:** The Commission motioned to adopt a resolution denying the appeal of the Architectural Review Committee's approval to demolish an existing lattice tower and install a new monopole for multi-carrier wireless service at 1912 Bowers Avenue (5-0-2-0, Chahal and Champeny absent) with the following revisions:

- 1) The new monopole shall be installed at a location along the Bowers Avenue fence line, 10 to 40 feet between the existing site location and the site location approved at the March 19, 2014, Architectural Review Committee meeting.
- 2) The monopole design shall be a 75 foot stealth monopine.

<b>8.B. File No.(s):</b>	<b>PLN2013-10129</b>
Location:	1075 Pomeroy Avenue, a single parcel totaling .17 acre located near the intersection of Benton Avenue and Pomeroy Avenue, (APN: 290-69-079)
Applicant/Owner:	Dory Marhamat / Martha Polanco
Request:	<b>Rezone</b> from R3-18D (Low Density Multiple Dwelling) to PD (Planned Development) to construct five dwelling units and <b>Tentative Map</b> creating five lots
CEQA Determination:	Categorically Exempt per Section 15332, Infill Development
Project Planner:	Shaun Lacey, AICP, Assistant Planner II
<b>Staff Recommendation:</b>	<b>Continue Public Hearing</b>

**Motion/Action:** The Commission motioned to continue the Public Hearing (5-0-2-0, Chahal and Champeny absent).

<b>8.C. File No.(s):</b>	<b>PLN2007-06715/CEQ2007-01051</b>
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Location: 4301 Great America Parkway and 2441 Mission College Boulevard, APNs 104-42-09 & 104-41-030

Applicant/Owner: The Sobrato Organization

Request: **Rezone** from Planned Industrial (MP) and Planned Development/Planned Industrial (PD/MP) to Planned Development (PD) to construct up to 718,000 square feet of new office space in up to 1,018,000 square feet of office development; up to two, five-level parking structures with up to 3,360 total parking spaces;

**Adoption of an Environmental Impact Report (EIR)** and Statement of Overriding Considerations; and a **Development Agreement** between the City of Santa Clara and SI 34

CEQA Determination: Environmental Impact Report

Project Planner: Debby Fernandez, Associate Planner

**Staff Recommendation:** **Recommend City Council Approval**, subject to conditions

**Motion/Action:** The Commission motioned to continue the Public Hearing to June 18, 2014 (5-0-2-0, Chahal and Champeny absent).

**8.D. File No.(s):** **CEQ2014-01175**

Address/APN: City-wide

Applicant/Owner: City of Santa Clara

Request: **Fiscal Year 2014-2015 Capital Improvement Program (CIP) Budget** Environmental Determinations and General Plan Conformity Findings

CEQA Determination: Varies by CIP Project

Project Planner: Yen Chen, Associate Planner

**Staff Recommendation:** **Approve** Environmental Determinations and **make findings** for General Plan Conformance

**Notice:** Not applicable.

**Discussion:** Steve Lynch gave a brief presentation on the item.

The Commission inquired about various subjects in the budget including the Stadium Authority, affordable housing, and the ulistac natural area. It was noted that the details of the budget would be covered in the Council study session on the budget, which is scheduled for May 20, 2014.

**Motion/Action:** The Commission motioned to adopt a resolution to approve the Environmental Determinations and make findings for General Plan Conformance for the Fiscal Year 2014-2015 Capital Improvement Program (CIP) Budget (5-0-2-0, Chahal and Champeny absent).

## 9. OTHER BUSINESS

### 9.A. Commission Procedures and Staff Communications

#### i. Announcements/Other Items

#### ii. Report of the Director of Planning and Inspection

- City Council Actions

#### iii. Commission/Board Liaison and Committee Reports

- Architectural Committee: Commissioners Stattenfield and Chahal

- Station Area Plan: Commissioner Champeny
- General Plan sub-Committee: Commissioners Champeny and Ikezi
- Historic Preservation Ordinance Committee: Commissioner Chahal, Ikezi

**iv. Commission Activities**

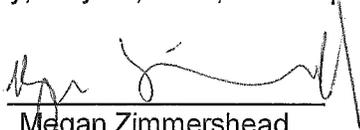
- Commissioner Travel and Training Reports; Requests to Attend Training
- Commissioner Kelly gave a brief presentation on his attendance at the Planning Commissioner's Academy

**v. Upcoming agenda items**

**10. ADJOURNMENT**

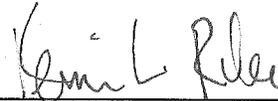
The meeting adjourned at 8:28 p.m. The next regular Planning Commission meeting will be held on Wednesday, May 28, 2014, at 7:00 p.m.

Prepared by:



Megan Zimmershead  
Office Specialist IV

Approved:



Kevin L. Riley  
Director of Planning & Inspection

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Meeting Date:

6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item #

70-2



**Date:**

June 6, 2014

**To:**

City Manager for Council Information

**From:**

Director of Planning and Inspection

**Subject:**

Note and File: Planning Commission Minutes of April 16, 2014

On May 28, 2014, the Planning Commission approved its Minutes of April 16, 2014. These Minutes are now being brought forward to the City Council to be noted and filed. Any items on these Minutes marked for City Council Action were either brought forward already or will be brought forward under separate cover accompanied by a separate Agenda Report.

Kevin L. Riley

Director of Planning and Inspection

APPROVED:

Julio J. Fuentes

City Manager

***Documents Related to this Report:***

- 1) *Planning Commission Minutes of April 16, 2014*



## City of Santa Clara

### PLANNING COMMISSION **\*\*SPECIAL MEETING\*\* MINUTES** Wednesday, April 16, 2014 – 7:00 P.M.

**CITY COUNCIL CHAMBERS**  
1500 Warburton Avenue  
Santa Clara, CA 95050

Please refer to the Planning Commission Procedural Items coversheet for information on all procedural matters.  
An audio recording of this meeting is available in the Planning Office for review or purchase the Friday following the meeting.

#### **ITEMS FOR COUNCIL ACTION**

The following items from this Planning Commission agenda will be scheduled for Council review following the conclusion of hearings and recommendations by the Planning Commission. Due to timing of notices for Council hearings and the preparation of Council agenda reports, these items will not necessarily be heard on the date the minutes from this meeting are forwarded to the Council. Please contact the Planning Division office for information on the schedule of hearings for these items:

- **Item 8.A.** File No.(s): PLN2013-09665, PLN2013-09666, PLN2013-09667 and CEQ2013-01150, Location: 3515-3585 Monroe Street (Monticello Village)

#### **1. PLEDGE OF ALLEGIANCE and STATEMENT OF VALUES**

Chair Champeny initiated the Pledge of Allegiance, and the Statement of Values was read.

#### **2. ROLL CALL**

The following Commissioners responded to roll call: Chair Ian Champeny, Raj Chahal, Deborah Costa, Yuki Ikezi, Steve Kelly, and Keith Stattenfield. Commissioner Sweeney was excused. Commissioner Kelly arrived at 7:20 pm.

Staff present were Director of Planning and Inspection Kevin Riley, City Planner Steve Lynch, Development Review Officer Gloria Sciara, Assistant City Attorney Alexander Abbe, and Office Specialist IV Megan Zimmershead.

#### **3. DISTRIBUTION OF AGENDA AND STAFF REPORTS**

Copies of current agendas and staff reports for each of the items on the agenda are available from the Planning Division office on the Friday afternoon preceding the meeting and are available at the Commission meeting at the time of the hearing.

#### **4. DECLARATION OF COMMISSION PROCEDURES**

Chair Champeny reviewed the Planning Commission procedures for those present.

#### **5. REQUESTS FOR EXCEPTIONS, WITHDRAWALS AND CONTINUANCES**

- A. Withdrawals - None
- B. Continuances without a hearing – None
- C. Exceptions (requests for agenda items to be taken out of order) - None

**6. ORAL PETITIONS/ ANNOUNCEMENTS AND COMMUNICATIONS**

Members of the public may briefly address the Commission on any item not on the agenda.

None

**7. CONSENT CALENDAR**

Consent Calendar items may be enacted, approved or adopted, based upon the findings prepared and provided in the written staff report, by one motion unless requested to be removed by anyone for discussion or explanation. If any member of the Planning Commission, staff, the applicant or a member of the public wishes to comment on a Consent Calendar item, or would like the item to be heard on the regular agenda, please notify Planning staff, or request this action at the Planning Commission meeting when the Chair calls for these requests during the Consent Calendar review. Items listed on the Consent Calendar with associated file numbers constitute Public Hearing items.

None

\*\*\*\*\*END OF CONSENT CALENDAR\*\*\*\*\*

**8. PUBLIC HEARING ITEMS**

<b>8.A. File No.(s):</b>	<b>PLN2013-09665, PLN2013-09666, PLN2013-09667 and CEQ2013-01150</b>
Location:	3515-3585 Monroe Street, single parcel totaling 116.11 acres located at the northeast corner of French Street and Monroe Street (APN: 216-25-006)
Applicant/Owner:	Carlene Matchniff, The Irvine Company
Request:	<b>Rezone</b> from Planned Industrial (MP) to Planned Development (PD), and <b>Vesting Tentative Parcel Map</b> creating two lots to allow the construction of a mixed use development comprised of 825 apartments, 43,849 square feet of retail and 16,392 square feet of amenities; Adoption of EIR and Statement of Overriding Consideration
CEQA Determination:	Environmental Impact Report
Project Planner:	Yen Chen, Associate Planner
Staff Recommendation:	<b>Recommend City Council Approval, subject to conditions</b>

**Notice:** The notice of public hearing for Item 8.A. was posted and mailed to property owners within 500 feet of the project site.

**Discussion:** Steve Lynch gave a brief presentation on the project.

The Commission inquired about condition P2 that directs the architectural review to be completed by the Director of Planning and Inspection rather than the Architectural Review Committee. It was explained that the applicant worked closely with staff to develop the plans as presented and that the project is ready for construction with the hope for an expedited timeline.

The Commission discussed the density allowed by the General Plan, noting that the project is using a density bonus for proximity to public transportation. The Commission also noted that the commercial component of the development is roughly 41 percent of what is required for the land use designation. It was explained that the applicant believed the project's percentage for the retail component was set too high as the retail will not have a regional draw and likely only serve the local neighborhood.

The Commission noted that the Environmental Impact Report (EIR) comment period had not closed. Staff confirmed that the comment period will close prior to the City Council hearing and that all comments received will be considered.

The Commission inquired about the required park and/or open space. Staff noted that the project provides open space and is also providing funding towards the City's park programs.

Commissioner Kelly arrived at 7:20 and joined the Public Hearing.

The Commission inquired about the planned improvements to Lawrence Expressway and the fair share contributions the project would provide. Staff noted that fair share contributions are calculated by projected trip generation counts.

Carlene Matchniff, Vice President of Apartment Development with The Irvine Company, gave a presentation on the project highlighting its sustainability, onsite retail, dining, and recreation facilities. Ms. Matchniff introduced Ken Nilmeier, project architect. Mr. Nilmeier highlighted the project's proximity to public transportation and major thoroughfares, layout of buildings and walkways, and parking. Mr. Nilmeier noted that the Planned Development zoning designation allowed a comprehensive design that maximizes the both aesthetic and functional aspects of the project.

The Commission inquired about the electric vehicle charging stations and it was confirmed that roughly four percent (4%) of the project's parking provides electric vehicle charging stations and that the project will be designed in such a way to have additional charging stations available to be installed if the demand increases in the future. The Commission also inquired about the car share parking spaces to which the applicant responded that the car share concept is relatively new and the number of parking spaces can be increased or decreased according to the success of the program.

The Public Hearing was opened.

Steve Van Dorn, President and CEO of the Santa Clara Chamber of Commerce and Convention-Visitor's Bureau, stated that the Industrial, Commercial & Economic Development Committee looked at and enthusiastically supports the project. Mr. Van Dorn added that the rental market does not have enough housing inventory and that this project is good for the economy. Mr. Van Dorn noted that The Irvine Company is a quality developer and property manager.

Shiloh Ballard, Silicon Valley Leadership Group, echoed Mr. Van Dorn's comments and gave support for the project. Ms. Ballard stated that housing is necessary to do business in Silicon Valley and that the Great Communities Collaborative (GCC) agrees that this location is ideal for this type of proposal.

A neighboring resident inquired about the impact the project would have on property values and if there were any plans to improve existing developments on the other side of Lawrence Expressway.

David Cement, neighboring resident, expressed a number of concerns including the safety of the neighborhood and CalTrain station, proximity of the parking structure to existing residences, number of electric vehicle charging stations, lack of solar panels, and availability of car share parking spaces to the general public. Mr. Cement expressed his overall support for the project and thanked The Irvine Company for maintaining open communication.

Shelley Relph, neighboring resident, expressed concern regarding the project's main vehicular entrance and the impacts it would have on the intersection of Nobili and Monroe.

Michael Kauffman, neighboring resident, expressed appreciation for the amenities that would serve the surrounding neighborhoods. Mr. Kauffman then expressed concern for additional traffic, parking, and noise impacts associated with the project. Mr. Kauffman added that he would like to see the car share program expanded to be available for the existing residential area, not just the new development.

Austin Robinson, neighboring resident, stated that he is supportive of the project and trusts the City and the developer to build a quality project that benefits the entire region and not just its own future residents.

In a rebuttal statement, Jon Paynter, Vice President of Development with The Irvine Company, commented that The Irvine Company has been working closely with City and County staff to optimize the improvements to Lawrence Expressway. Mr. Paynter noted that the car share parking spaces are within public access for general public use; the trees being planted along the back of the property will be as tall allowed by the height limitations of Silicon Valley Power to increase privacy; there is an existing condition of approval that prohibits construction traffic on Nobili Avenue; and that the additional through-lane on Monroe to Lawrence will help traffic, along with a dedicated right turn lane and six-foot bike path.

The Public Hearing was closed.

The Commission inquired about the findings of the traffic study. Gary Black, Hexagon Transportation Consultants, stated that the traffic study is an assessment of existing conditions which also then accounts for the project being considered along with other approved, but not yet constructed, projects. The assessment provides data that is used to make final conclusions that are included in the traffic study. Mr. Black noted that the EIR identifies a significant impact at the Lawrence and Monroe intersection and that while the applicant is making improvements to the smaller roads, the County is ultimately responsible for the grading project at Lawrence Expressway. Mr. Black added that the lane added to Monroe helps lessen vehicle queuing and that the right-hand turn lane will provide a green turn arrow to encourage safe and efficient traffic flow. The County is also implementing pedestrian crossing improvements to Lawrence Expressway. Mr. Black commented that while traffic conditions are constantly changing, people tend to alter their commuting habits to compensate for additional traffic.

The Commission noted that the level of service (LOS) for the intersection is already operating on the lowest level and that the project will intensify the existing conditions. The Commission commented that the grading system used to assess traffic does not have classifications below "F" to represent additional impacts to the intersection.

The Commission noted that CalTrain is running at full capacity, however, the system is being upgraded and CalTrain expects to be able to offer a large increase to its capacity.

The Commission inquired if the applicant had considered a bike share program, to which the applicant responded that they have looked into the program but found that it works better in regions such as San Francisco. It was noted that with improvements to public transportation, programs such as bike sharing will likely expand to areas like Santa Clara.

The public comment period was re-opened to allow the public to respond to the additional information presented after the close of the Public Hearing.

Shelly Ralph, neighboring resident, stated that she agreed with the traffic consultant in that when traffic gets really bad, people tend to change their commuting hours to compensate.

A neighboring resident stated that the traffic study was unclear and that the improvements to Monroe do not help the residents on Nobili Avenue.

A neighboring resident stated that the traffic will migrate into neighborhoods when more traffic is added to the area in an effort to avoid the increased traffic. The resident added that the additional lane is misleading because it has, in effect, existed without being an official lane.

The additional comment period was closed.

The Commission confirmed that the project requires contribution funds to the school district.

The Commission discussed the project alternatives identified in the EIR. It was noted that the reduced density options did not improve the traffic in the area. The Commission deliberated on the benefits of the current proposal versus the reduced density alternatives. Staff clarified that any given project has to meet certain objectives and that the project, as presented, met the most objectives of any alternative considered. It was also noted that without a project such as this being developed, the improvements to grading of Lawrence Expressway would not happen because of the lack of funding that gets provided through fair share contributions.

The Commission discussed the architectural review process and expressed concern for the project not going through the Architectural Review Committee. It was explained that the applicant has been working closely with City staff and the surrounding neighborhood to design a project that is ready to be built. The applicant requested to have the architecture approved with the project to expedite the timeline towards final completion of the project. The Commission expressed concern for the balconies on the third and fourth stories and urged the applicant to utilize the architectural review process.

**Motion/Action:** The Commission motioned to adopt a resolution to recommend that the City Council certify the Environmental Impact Report for the property located at 3515-3585 Monroe Street (5-1-1-0, Ikezi dissenting, Sweeney absent).

The Commission discussed a motion to recommend approval of the rezone with a modified condition that the project go through the Architectural Review Committee.

The Commission expressed concern for the commercial component of the project being less than what was designated, encouraged additional car share and electric vehicle charging parking spaces, and urged The Irvine Company to continue to work with the neighborhood to address their concerns.

**Motion/Action:** The Commission motioned to adopt a resolution to recommend that the City Council approve the rezone of the property located at 3515-3585 Monroe Street, from Planned Industrial (MP) to Planned Development (PD) (5-1-1-0, Ikezi dissenting, Sweeney absent) with the following modified condition:

P2. Submit plans for final architectural review to the Architectural Committee ~~Planning Division~~ and obtain architectural approval prior to issuance of building permits. Said plans to include, but not be limited to: site plans, floor plans, elevations, landscaping, lighting and signage. Landscaping installation shall meet City water conservation criteria in a manner acceptable to the Director of Planning and Inspection.

## 9. OTHER BUSINESS

### 9.A. Commission Procedures and Staff Communications

#### i. Announcements/Other Items

#### ii. Report of the Director of Planning and Inspection

- City Council Action

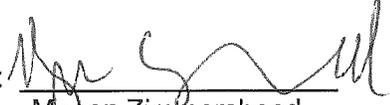
#### iii. Commission/Board Liaison and Committee Reports

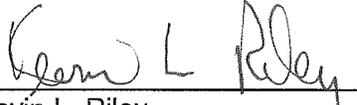
- Architectural Committee: Commissioners Stattenfield and Chahal

- Station Area Plan: Commissioner Champeny
  - General Plan sub-Committee: Commissioners Champeny and Ikezi
  - Historic Preservation Ordinance Committee: Commissioners Chahal and Ikezi
- iv. Commission Activities**
- Commissioner Travel and Training Reports; Requests to Attend Training
- v. Follow-ups to Planning Commission Action/Requests**
- Miscellaneous
- vi. Upcoming agenda items**
- 

**10. ADJOURNMENT**

The meeting adjourned at 9:51p.m. The next regular Planning Commission meeting will be held on Wednesday, April 30, 2014, at 7:00 p.m.

Prepared by:   
Megan Zimmershead  
Office Specialist IV

Approved:   
Kevin L. Riley  
Director of Planning & Inspection

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Meeting Date: 6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7D-3



**Date:** June 9, 2014

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**To:** City Manager for Council Information

**From:** Director of Planning and Inspection

**Subject:** Note and File: Historical and Landmarks Commission Minutes of March 6, 2014

On June 5, 2014, the Historical and Landmarks Commission approved its Minutes of March 6, 2014. These Minutes are now being brought forward to the City Council to be noted and filed. Any items on these Minutes marked for City Council Action were either brought forward already or will be brought forward under separate cover accompanied by a separate Agenda Report.

---

Kevin L. Riley  
Director of Planning and Inspection

APPROVED:

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Julio J. Fuentes  
City Manager

***Documents Related to this Report:***

- 1) ***Historical and Landmarks Commission Minutes of March 6, 2014***



**City of Santa Clara  
HISTORICAL AND LANDMARKS  
COMMISSION MEETING MINUTES  
Thursday, March 6, 2014 – 7:00 P.M.  
CITY COUNCIL CHAMBERS  
1505 Warburton Avenue  
Santa Clara, CA 95050**

Please refer to the Historical and Landmarks Commission Procedural Items guideline for information on all procedural matters.  
An audio recording of this meeting is available in the Planning Office for review or purchase the Friday following the meeting.

**ITEMS FOR COUNCIL ACTION**

The following items from this Historical and Landmarks Commission agenda will be scheduled for Council review following the conclusion of hearings and recommendations by the Historical and Landmarks Commission. Due to timing of notices for Council hearings and the preparation of Council agenda reports, these items will not necessarily be heard on the date the minutes from this meeting are forwarded to the Council. Please contact the Planning Division office for information on the schedule of hearings for these items:

- **None**

**1. CALL TO ORDER**

The meeting was called to order at 7:03 p.m.

**2. ROLL CALL**

Commissioners Present: Chair Brian Johns, Michael Hyams, Robert Luckinbill, Jeannie Mahan, Jerry McKee, Kris Motyka, and J.L. "Spike" Standifer

Staff Present: Yen Chen, Associate Planner

**3. DISTRIBUTION OF AGENDA AND STAFF REPORTS**

Copies of current agendas and staff reports for each of the items on the agenda are available from the Planning Division office on the Friday afternoon preceding the meeting and are available at the Commission meeting at the time of the hearing. Chair Johns reviewed this procedure.

**4. DECLARATION OF COMMISSION PROCEDURES**

Chair Johns reviewed the Historical and Landmarks Commission procedures for those present.

**5. REQUESTS FOR EXCEPTIONS, WITHDRAWALS AND CONTINUANCES**

- A. Withdrawals – None
- B. Continuances - None
- C. Exceptions – None

**6. ORAL PETITIONS/ANNOUNCEMENTS AND COMMUNICATIONS**

Sarah Doty requested that the HLC Commissioners attend the next Planning Commission meeting on March 16, 2014 to ensure HLC comments and concerns are conveyed correctly for 1593 Lexington Street project.

## 7. CONSENT CALENDAR

Consent Calendar items may be enacted, approved or adopted, based upon the findings prepared and provided in the written staff report, by one motion unless requested to be removed by anyone for discussion or explanation. If any member of the Historical and Landmarks Commission, staff, the applicant or a member of the public wishes to comment on a Consent Calendar item, or would like the item to be heard on the regular agenda, please notify Planning staff, or request this action at the Historical and Landmarks Commission meeting when the Chair calls for these requests during the Consent Calendar review.

7.A. Approval of Historical and Landmarks Commission Minutes for the meeting of January 9, 2014.

7.B. Approval of Historical and Landmarks Commission Minutes for the meeting of February 6, 2014.

### Motion/Action:

It was moved by Commissioner Luckinbill, seconded by Commissioner Hyams and was carried (5-0-2-0, Motyka and McKee abstaining) to approve the Minutes of January 9, 2014.

It was moved by Commissioner Luckinbill, seconded by Commissioner Hyams and was carried (6-0-1-0, McKee abstaining) to approve the Minutes of February 6, 2014.

\*\*\*\*\*END OF CONSENT CALENDAR\*\*\*\*\*

## 8. PUBLIC MEETING ITEMS

8.A. File No.(s):	<b>PLN2014-10223</b>
Location:	1427 Main Street, a 4,159 square foot lot located approximately 60 feet north of Lewis Street on the east side of Main Street (APN: 269-05-022). Property is zoned Single-Family, Residential (R1-6L).
Applicant:	Jerry Jameson
Owner:	Yi Ju Chen
Request:	<b>Design Review</b> of a 498 square foot addition at the rear of an existing single family residence. The property is located within 100 feet to a listed historic resource.
CEQA Determination:	Categorical Exemption per CEQA Section 15301, Existing Facilities
Project Planner:	Debby Fernandez, Associate Planner
Staff Recommendation:	Recommend Approval, subject to conditions

**Notice:** The notice of public meeting for these items was posted within 300 feet of the site and was mailed to property owners within 300 feet.

### Discussion:

Mr. Chen gave a brief presentation of the project and responded to Commissioner questions. Lorie Garcia, Honorary City Historian, noted that the 1980's inventory surveys were limited in scope and do not include the information found in current DPR historic resource forms. Mr. Jerry Jameson summarized the proposed project and noted that there was change in detailing of the house. He followed staff recommendation to keep the same pitch on the roof. The public comment period was opened. Sara Doty noted concerns over lead dust removal. The public comment period was closed.

The Commission noted that the project would not adversely impact the character of the surrounding adjoining historic residence to the south. The Commission focused discussion was on the need to prepare a historic property evaluation as part of the project. Lorie Garcia noted

that the updated evaluation would provide more information on the history of the building and who lived in the house.

**Motion/Action:**

It was moved by Commissioner Luckinbill, seconded by Commissioner Mahan and was carried (6-0-1-0, Hyams abstaining) to recommend approval of the project, subject to the preparation of a historic property survey and evaluation report (DPR Form 523).

**9. OTHER BUSINESS**

**9.A. Commission Procedures and Staff Communications**

**i. Announcements/Other Items**

- Request from Paul Anderson to relocated front door at 1251 Fremont Street
  - Mr. Chen presented Mr. Anderson's request to relocate front door. Lorie Garcia noted that Santa Clara homes were simpler in design than the colonial revivals found in San Jose. Properties in Santa Clara typically did not use oval windows.
  - It was moved by Commissioner Motyka, seconded by Commissioner Luckinbill and was carried (7-0-0-0) to recommend approval of the proposed relocation of the door and to work with the City on an appropriate replacement door.
- Annual California Preservation Conference, Asilomar, April 22-25, 2014
  - It was moved by Commissioner Motyka, seconded by Commissioner Luckinbill and was carried (7-0-0-0) to authorize two members of the HLC to attend the conference.
  - It was moved by Commissioner Motyka, seconded by Commissioner Luckinbill and was carried (7-0-0-0) to authorize HLC advisor Lorie Garcia to attend the conference.
- National Historic Preservation Month Activities, May 2014
  - The Commissioners discussed possible activities. Lorie Garcia suggested items for the City Hall display case and possible themes for the walking tour. The walking tour will be held in mid- to late May. Lorie Garcia will secure the Proclamation from Mayor's Office.
- Technical Review of Resources for Maywood Tract - Maps (verbal update)
  - Moved to future Commission meeting.
- Assessor's Office – Mills Act Workshop March 20, 2014
- Monthly Report on HT properties: Residential reversions (verbal update)
  - None
- Office of Historic Preservation – eLearning Training (Yen Chen)
  - Moved to future Commission meeting.

**ii. Report of the Liaison from the Planning and Inspection Department**

- City Council and Planning Commission Actions (verbal update)
  - None

**iii. Commission/Board Liaison and Reports**

- Santa Clara Arts and Historic Consortium (McKee / Standifer as alternate)  
[Fourth Monday of each month at 7:15 p.m. - Headen-Inman House]
  - Commissioner McKee reported there is a new edition of the "Echo".
- Historic Preservation Society of Santa Clara (Mahan / Luckinbill as alternate)  
[Second Friday of each month at 10:00 a.m. - Harris Lass Preserve]
  - Commissioner Mahan reported on efforts to maintain the orchard and to build an outhouse.
- Old Quad Residents Association (Motyka / Hyams as alternate)
- Architectural Committee (Mahan / Johns as alternate)
- Agnews Historic Cemetery Museum Committee (Standifer / Luckinbill as alternate)
- BART/ High Speed Rail/ VTA BRT Committee (Johns / McKee as alternate)
- Zoning Ordinance Update (Motyka / Johns as Alternate)

- Preservation Ordinance Ad-hoc Committee (Motyka and Mahan / Luckinbill and McKee as alternate)

**iv. Commission Activities**

- Commissioner Travel and Training Reports
  - California Preservation Annual Conference will be held at the Asilomar conference Grounds, Pacific Grove, April 22 thru 25.

**v. Upcoming Agenda Items**

- Preservation Month Activities Update – May 2014
- Technical Review of Resources for Maywood Tract Permit Records– April 2014
- Tour of the City's Mackay neighborhoods (Yen Chen) - TBD
- Franklin Post Office Update (Lorie Garcia) – TBD
- Review of Street Name List (Lorie Garcia) – TBD
- Office of Historic Preservation – eLearning Training (Yen Chen) - TBD

**10. ADJOURNMENT**

The meeting was adjourned at 9:34 p.m. The next regular Historical and Landmarks Commission meeting will be held on Thursday, April 3, 2014 at 7:00 p.m. in the City Council Chambers.

Prepared by:   
Yen Chen  
Associate Planner

Approved:   
Gloria Sciara, AICP  
Development Review Officer

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Meeting Date: 6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7D-4



**Date:** June 9, 2014

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**To:** City Manager for Council Information

**From:** Director of Planning and Inspection

**Subject:** Note and File: Historical and Landmarks Commission Minutes of April 3, 2014

On June 5, 2014, the Historical and Landmarks Commission approved its Minutes of April 3, 2014. These Minutes are now being brought forward to the City Council to be noted and filed. Any items on these Minutes marked for City Council Action were either brought forward already or will be brought forward under separate cover accompanied by a separate Agenda Report.

---

Kevin L. Riley  
Director of Planning and Inspection

APPROVED:

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Julio J. Fuentes  
City Manager

***Documents Related to this Report:***

- 1) ***Historical and Landmarks Commission Minutes of April 3, 2014***



**City of Santa Clara  
HISTORICAL AND LANDMARKS  
COMMISSION MEETING MINUTES  
Thursday, April 3, 2014 – 7:00 P.M.  
CITY COUNCIL CHAMBERS  
1505 Warburton Avenue  
Santa Clara, CA 95050**

Please refer to the Historical and Landmarks Commission Procedural Items guideline for information on all procedural matters.  
An audio recording of this meeting is available in the Planning Office for review or purchase the Friday following the meeting.

**ITEMS FOR COUNCIL ACTION**

The following items from this Historical and Landmarks Commission agenda will be scheduled for Council review following the conclusion of hearings and recommendations by the Historical and Landmarks Commission. Due to timing of notices for Council hearings and the preparation of Council agenda reports, these items will not necessarily be heard on the date the minutes from this meeting are forwarded to the Council. Please contact the Planning Division office for information on the schedule of hearings for these items:

- **Agenda Item No. 8A.: File No.(s): PLN2013-1011/CEQ2014-01169; Location: 166 Saratoga Avenue (Rezone)**

**1. CALL TO ORDER**

The meeting was called to order at 7:04 p.m.

**2. ROLL CALL**

Commissioners Present: Chair Brian Johns, Michael Hyams, Robert Luckinbill, Jeannie Mahan, Jerry McKee, Kris Motyka and J.L. "Spike" Standifer

Staff Present: Yen Chen, Associate Planner, Shaun Lacey, AICP, Assistant Planner II

**3. DISTRIBUTION OF AGENDA AND STAFF REPORTS**

Copies of current agendas and staff reports for each of the items on the agenda are available from the Planning Division office on the Friday afternoon preceding the meeting and are available at the Commission meeting at the time of the hearing. Chair Johns reviewed this procedure.

**4. DECLARATION OF COMMISSION PROCEDURES**

Chair Johns reviewed the Historical and Landmarks Commission procedures for those present.

**5. REQUESTS FOR EXCEPTIONS, WITHDRAWALS AND CONTINUANCES**

- A. Withdrawals – None
- B. Continuances - None
- C. Exceptions – The Commission reversed the order of Item 8.A. and 8.B. on the agenda.

**6. ORAL PETITIONS/ANNOUNCEMENTS AND COMMUNICATIONS**

- Sarah Doty from the Old Quad Residents Association noted that members in the Park Ct and Hilmar Neighborhood are concerned about project at 2325 Park Avenue. Commissioner Johns noted that a letter to the neighborhood was prepared by the Planning Director.

- Joe Hastings, Nick Louis and David Keith voiced concerns over the 2325 Park Avenue project.

**Motion/Action:**

It was moved by Commissioner Motyka, seconded by Commissioner Mahan and was carried (5-1-1-0, Standifer opposed, Hyams abstaining), that the 2325 Park Avenue project to be placed on next month's agenda for discussion.

**7. CONSENT CALENDAR**

Consent Calendar items may be enacted, approved or adopted, based upon the findings prepared and provided in the written staff report, by one motion unless requested to be removed by anyone for discussion or explanation. If any member of the Historical and Landmarks Commission, staff, the applicant or a member of the public wishes to comment on a Consent Calendar item, or would like the item to be heard on the regular agenda, please notify Planning staff, or request this action at the Historical and Landmarks Commission meeting when the Chair calls for these requests during the Consent Calendar review.

- None

\*\*\*\*\*END OF CONSENT CALENDAR\*\*\*\*\*

**8. PUBLIC MEETNG ITEMS**

<b>8A.</b>	File No.(s):	<b>PLN2013-10111 &amp; CEQ2014-01169</b>
	Location:	166 Saratoga Avenue, a 74,052 square foot parcel located near the southwest corner of Saratoga Avenue and San Tomas Expressway (APN: 294-38-001). Property is zoned Single-Family, Residential (R1-6L).
	Applicant:	Charles McKeag
	Owner:	Jack Bayto Family Trust
	Request:	<b>General Plan Amendment, Rezone and Vesting Tentative Map</b> to construct 33 townhomes
	CEQA Determination:	Mitigated Negative Declaration
	Project Planner:	Shaun Lacey, AICP, Assistant Planner II
	<b>Recommendation:</b>	<b>Motion to recommend approval of the General Plan Amendment, Rezone, Vesting Tentative Map and Mitigated Negative Declaration to the Planning Commission</b>

**Notice:** The notice of public meeting for these items was posted within 300 feet of the site and was mailed to property owners within 300 feet.

**Discussion:**

Mr. Lacey gave a brief presentation of the project and answered questions from the Commission. The applicant was called up to the dais, where he spoke in favor of the project and answered questions from the Commission.

The public comment period was opened. Several members of the community noted concerns about the project, including the loss of a remnant orchard as a resource to the neighborhood and the surrounding community. The applicant's historical consultant approached the dais and clarified that although the parcel is a remnant of a previous orchard belonging to the Bayto family and may have sentimental value to nearby residents, it should not be considered eligible for listing on the basis that the majority of the original property was sold off and subdivided several times over many decades. The public comment period was closed.

The Commission discussed the proposal before them. A majority of the Commission felt that the property should be preserved on the basis that the site is one of the last remaining remnant

orchard parcels in the City, and that the integrity of the two structures on the lot have retained their integrity over the years. Commissioner Standifer added that the fruit trees on the site also add an important feature to the property in that they represent a link to the City's agricultural past. A minority of the Commission noted that the applicant should not be penalized for designing a project that complies with the City's land use policies, but that they would support continuing the project to a later date to allow the applicant time to provide additional information about the historical merits of the orchard itself.

**Motion/Action:**

It was moved by Commissioner Luckinbill, seconded by Commissioner Mahan and was carried (7-0-0-0), to continue the project, subject to direction that the applicant evaluate the subject property in relationship to other agricultural properties throughout the City and provide a methodology as to how land once used for agriculture is evaluated in the context of local historic listings.

<b>8B.</b>	File No.(s):	<b>PLN2014-10267</b>
	Location:	500 El Camino Real, between Walsh Hall and McLaughlin Hall on the Santa Clara University campus near the southeast corner of Santa Clara Street and Lafayette Street(APN: 269-38-110). Project site is zoned Public/Quasi-Public
	Applicant:	Joe Sugg, Santa Clara University
	Owner:	Santa Clara University
	Request:	<b>Design Review</b> of a three-story lobby building connecting Walsh Hall and McLaughlin Hall
	CEQA Determination:	Categorically Exempt per CEQA Section 15303, New Construction or Conversion of Small Structures
	Project Planner:	Debby Fernandez, Associate Planner
	<b>Recommendation:</b>	<b>Recommend approval to Architectural Committee</b>

**Notice:** The notice of public meeting for these items was posted within 300 feet of the site and was mailed to property owners within 300 feet.

**Discussion:**

Mr. Chen gave a brief presentation of the project and responded to Commissioner questions. Commissioner Standifer noted factual errors on the existing historic survey. Mr. Chen noted that the report was not prepared by the Santa Clara University. He commented on the need to update the survey. Mr. Chen noted that the University is comprised of multiple parcels and that is why staff was not recommending a new survey for this property. The historical quadrangle is located north of the subject project site. Mr. Joe Sugg commented on the University's Master Plan and the relationship of the residences and learning halls. Mr. Sugg commented he was not aware of other reports that are available for the public. No comments were received from the public during the public comment period.

**Motion/Action:**

It was moved by Commissioner Luckinbill, seconded by Commissioner Motyka and was carried (7-0-0-0) to recommend approval of the project, subject conditions of approval, with a recommendation to Santa Clara University that historical surveys for these properties be updated.

**9. OTHER BUSINESS**

**9.A. Commission Procedures and Staff Communications**

**i. Announcements/Other Items**

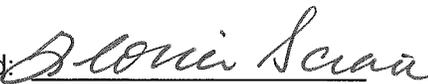
- 1460 Monroe Street – Updated Historical Evaluation and Survey
- Mr. Chen noted that the updated Historical Evaluation and Survey was requested

- by the Commission. The applicant has complied with this condition of approval.
- National Historic Preservation Month Activities, May 2014
  - No Discussion
  - Monthly Report on HT properties: Residential reversions (verbal update)
    - None
    - Office of Historic Preservation – eLearning Training (Yen Chen)
      - The Commission set July 10, 2014 for eLearning Training.
- ii. **Report of the Liaison from the Planning and Inspection Department**
  - City Council and Planning Commission Actions (verbal update)
- ii. **Commission/Board Liaison and Committee Reports**
  - Santa Clara Arts and Historic Consortium (McKee / Standifer as alternate)
    - [Fourth Monday of each month at 7:15 p.m. - Headen-Inman House]
  - Historic Preservation Society of Santa Clara (Mahan / Luckinbill as alternate)
    - [Second Friday of each month at 10:00 a.m. - Harris Lass Preserve]
  - Old Quad Residents Association (Motyka / Hyams as alternate)
  - Architectural Committee (Mahan / Johns as alternate)
  - Agnews Historic Cemetery Museum Committee (Standifer / Luckinbill as alternate)
  - BART/ High Speed Rail/ VTA BRT Committee (Johns / McKee as alternate)
  - Zoning Ordinance Update (Motyka / Johns as Alternate)
  - Preservation Ordinance Ad-hoc Committee (Motyka and Mahan / Luckinbill and McKee as alternate)
  - NURC Meeting (Johns)
- iv. **Commission Activities**
  - Commissioner Travel and Training Reports
- v. **Upcoming Agenda Items**
  - Preservation Month Activities Update – May 2014
  - Technical Review of Resources for Maywood Tract – June 2014
  - Tour of the City’s Mackay neighborhoods (Yen Chen) - TBD
  - Franklin Post Office Update (Lorie Garcia) – TBD
    - Prepare thank you letter for Mike Honda
  - Review of Street Name List (Lorie Garcia) – TBD
  - Office of Historic Preservation – eLearning Training (Yen Chen) – July 10, 2014

**10. ADJOURNMENT**

The meeting was adjourned at 9:43 p.m. The next regular Historical and Landmarks Commission meeting will be held on Thursday, May 1, 2014 at 7:00 p.m. in the City Council Chambers.

Prepared by:   
 Yen Chen  
 Associate Planner

Approved:   
 Gloria Sciara, AICP  
 Development Review Officer

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Meeting Date:

6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item #

MD-5



**Date:**

June 9, 2014

**To:**

City Manager for Council Information

**From:**

Director of Planning and Inspection

**Subject:**

Note and File: Historical and Landmarks Commission Minutes of May 1, 2014

On June 5, 2014, the Historical and Landmarks Commission approved its Minutes of May 1, 2014. These Minutes are now being brought forward to the City Council to be noted and filed. Any items on these Minutes marked for City Council Action were either brought forward already or will be brought forward under separate cover accompanied by a separate Agenda Report.

Kevin L. Riley

Director of Planning and Inspection

APPROVED:

Julio J. Fuentes

City Manager

***Documents Related to this Report:***

- 1) *Historical and Landmarks Commission Minutes of May 1, 2014*



**City of Santa Clara  
HISTORICAL AND LANDMARKS  
COMMISSION MEETING MINUTES**

**Thursday, May 1, 2014 – 7:00 P.M.  
CITY COUNCIL CHAMBERS  
1505 Warburton Avenue  
Santa Clara, CA 95050**

Please refer to the Historical and Landmarks Commission Procedural Items guideline for information on all procedural matters.  
An audio recording of this meeting is available in the Planning Office for review or purchase the Friday following the meeting.

**ITEMS FOR COUNCIL ACTION**

The following items from this Historical and Landmarks Commission agenda will be scheduled for Council review following the conclusion of hearings and recommendations by the Historical and Landmarks Commission. Due to timing of notices for Council hearings and the preparation of Council agenda reports, these items will not necessarily be heard on the date the minutes from this meeting are forwarded to the Council. Please contact the Planning Division office for information on the schedule of hearings for these items:

- **Agenda Item No. 8A.: File No.(s): PLN2013-1011/CEQ2014-01169; Location: 166 Saratoga Avenue (Rezone)**

**1. CALL TO ORDER**

The meeting was called to order at 7:07 p.m.

**2. ROLL CALL**

Commissioners Present: Chair Brian Johns, Michael Hyams, Robert Luckinbill, Jeannie Mahan, Kris Motyka and J.L. "Spike" Standifer

Commissioner Excused: Jerry McKee

Staff Present: Yen Chen, Associate Planner, Shaun Lacey, AICP, Assistant Planner II (Item 8.A.)

**3. DISTRIBUTION OF AGENDA AND STAFF REPORTS**

Copies of current agendas and staff reports for each of the items on the agenda are available from the Planning Division office on the Friday afternoon preceding the meeting and are available at the Commission meeting at the time of the hearing. Chair Johns reviewed this procedure.

**4. DECLARATION OF COMMISSION PROCEDURES**

Chair Johns reviewed the Historical and Landmarks Commission procedures for those present.

**5. REQUESTS FOR EXCEPTIONS, WITHDRAWALS AND CONTINUANCES**

- A. Withdrawals – None
- B. Continuances - None
- C. Exceptions – Agenda items 7.B. and 7.C. moved to follow Item 8.D.

**6. ORAL PETITIONS/ANNOUNCEMENTS AND COMMUNICATIONS**

- Judy Tucker passed out letter from Donald Soukop in reference to his Victorian at Benton and Madison. She noted that Mr. Soukop was asked to change the triplex into a duplex. She noted Mr. Soukop would prefer to rent to families at below market than to change to student housing with the reduction in units.
- Sarah Doty asked whether there will be a final historic review of 1091 Harrison Street before the HLC. Mr. Chen noted that the Preservation Plan is part of the building plans. He noted that the Planning Division and Building Inspection will be responsible for the final historic review. Ms. Doty requested that Craig Mineweaser, HLC Advisor, be included in the historic review process.
- Lou Faria noted that neighborhood concern over Mr. Soukop's property. Mr. Faria commented that many of the historic features required on the Plans for 1091 Harrison Street have not been installed. Mr. Faria noted that the neighborhood is concerned over the Netos property, specifically over the height, lack of parking, density of the project and impact to surrounding historic properties. He noted that the neighborhood did not look upon the project favorably as reported by Planning staff. Mr. Faria noted that Historic booklets are nice handouts for those moving into the neighborhood and asked the Commission to allocate funds to reprint this resource.

**7. CONSENT CALENDAR**

Consent Calendar items may be enacted, approved or adopted, based upon the findings prepared and provided in the written staff report, by one motion unless requested to be removed by anyone for discussion or explanation. If any member of the Historical and Landmarks Commission, staff, the applicant or a member of the public wishes to comment on a Consent Calendar item, or would like the item to be heard on the regular agenda, please notify Planning staff, or request this action at the Historical and Landmarks Commission meeting when the Chair calls for these requests during the Consent Calendar review.

**7.A. Approval of FY 2014-15 Commission Budget**

Mr. Chen gave a brief overview of the proposed budget. He referred to the 2014-2015 Budget Memo from Director of Finance/Assistant City Manager.

**Motion/Action:** It was moved by Commissioner Motyka seconded by Commissioner Luckinbill and was carried (6-0-1-0, McKee absent), to approved FY 2014-15 Commission Budget.

**7.B. Approval of Historical and Landmarks Commission Minutes for the meeting of March 6, 2014.**

**7.C. Approval of Historical and Landmarks Commission Minutes for the meeting of April 3, 2014.**

**Motion/Action:** It was moved by Commissioner Johns seconded by Commissioner Mahan and was carried (6-0-1-0, McKee absent), to move the review of minutes to next meeting.

\*\*\*\*\***END OF CONSENT CALENDAR**\*\*\*\*\*

**PUBLIC MEETING ITEMS**

<b>8.A. File No.(s):</b>	<b>PLN2013-10111 &amp; CEQ2014-01169</b>
Location:	166 Saratoga Avenue, a 74,052 square foot parcel located near the southwest corner of Saratoga Avenue and San Tomas Expressway (APN: 294-38-001); Property is zoned Single-Family, Residential (R1-6L)
Applicant:	Charles McKeag
Owner:	Jack Bayto Family Trust

Request: **General Plan Amendment, Rezone and Vesting Tentative Map** to construct 33 townhomes  
CEQA Determination: Mitigated Negative Declaration  
Project Planner: Shaun Lacey, AICP, Assistant Planner II  
Staff Recommendation: Recommend approval of the General Plan Amendment, Rezone, Vesting Tentative Map and Mitigated Negative Declaration to the Planning Commission

**Notice:** The notice of public meeting for these items was posted within 300 feet of the site and was mailed to property owners within 300 feet.

**Discussion:**

Mr. Lacey gave a brief presentation of the project. The applicant was then called up to speak on the item and requested that the Commission arrive at a conclusion for the project so that the development review process may continue.

Chair Johns opened the item for public comments. Members of the Vista del Lago Homeowners' Association requested that the property be retained as a historic orchard and provided presentations pertaining to the history of the site. The presentations included information pre-dating the Boyto family's ownership of the site and detailed the agricultural heritage associated with the property. Other residents living near the property noted concerns about the project, including the loss of the remnant orchard as a resource to the neighborhood and the surrounding community. A descendant of the Shartzter family, who owned the land prior to the Boyto family, noted that the parcel had sentimental value given that it was the last remaining parcel of the original tract of land owned by his ancestors. A descendant of the Boyto family also spoke about the property, adding that the older house on the site was moved to the location from San Jose, but that the farm owned by her ancestors had little relevance in guiding the City's growth and development over the years. Chair Johns then closed the item for public comments.

The Commission discussed the proposal before them. Commissioners Motyka, Mahan and Standifer felt that the property qualified for local historical significance and should be preserved based on the testimony presented by the public, as it represented a link to the City's agricultural heritage. Commissioner Mahan added that there may be an opportunity to find a compromise between preserving portions of the remnant orchard and redeveloping the site. Commissioners Motyka and Hyams noted that although the older house on the property was not original to the site, efforts should be made to move it to an alternative location or to salvage it. In response to the Commission's comments, the applicant offered to consider moving the house to an off-site location but was not comfortable with a significant redesign to the site. Commissioner Luckinbill stated that he could make the findings that the property is ineligible for historic listing and could also support the project based on the historical evaluation conducted on the property.

**Motion/Action:**

It was moved by Commissioner Luckinbill seconded by Commissioner Mahan and was carried (5-1-1-0, Standifer dissenting, McKee absent), to approve the project, with a recommendation to provide as much preserved open space as possible.

It was moved by Commissioner Luckinbill seconded by Commissioner Hyams and was carried (5-0-1-1, McKee absent, Standifer abstaining), to name the driveway access to the site after the Shartzter and Boyto family.

It was moved by Commissioner Motyka seconded by Commissioner Luckinbill and was carried (6-0-1-0, McKee absent), that prior to final inspection, the applicant reconvene with the Historical & Landmarks Commission to review identifier proposals throughout the property to memorialize the agricultural heritage of the property.

It was moved by Commissioner Standifer seconded by Commissioner Motyka and was carried (3-2-1-1, Luckinbill and Hyams dissenting, McKee absent, Johns abstaining), to declare the property historically-significant in a local context.

**8B.** File No.(s): **PLN2014-10346**  
Location: 500 El Camino Real, Nobili Residence Hall located between Homestead Road and Lexington Street on the Santa Clara University campus (APN: 269-23-073); Project site is zoned Public/Quasi-Public  
Applicant: Joe Sugg, Santa Clara University  
Owner: Santa Clara University  
Request: **Design Review of structural repairs to arcade columns**  
CEQA Determination: Categorically Exempt per CEQA Section 15331, Historical Resource Restoration Rehabilitation  
Project Planner: Debby Fernandez, Associate Planner  
Staff Recommendation: Recommend Approval, subject to conditions

**Notice:** The notice of public meeting for these items was posted within 300 feet of the site and was mailed to property owners within 300 feet.

**Discussion:**

Mr. Chen gave a brief presentation of the project. He noted that this project is to repair unreinforced columns. Mr. Joe Sugg from Santa Clara University was present to answer questions. Mr. Chen noted that the University has done a good job to document the repair and replacement materials. No comments were received from the public during public comment period.

**Motion/Action:**

It was moved by Commissioner Luckinbill seconded by Commissioner Hyams and was carried (6-0-1-0, McKee absent), to approve the project, subject to the following conditions:

1. Retain a geotechnical engineer to determine the nature and suitability of the underlying soils to support the arcade. This will require soil borings and determinations by the engineer as to the type of foundations that will be appropriate for construction.
2. Replace walkway with new slabs on grade where settlement has created cracks and offsets.
3. Implement the adopted Cultural Resources Treatment Plan for Santa Clara University during excavation, grading and ground disturbance activities.

**8C.** File No.(s): **PLN2014-10267**  
Location: 500 El Camino Real, Dunne Residence Hall located at the northeast corner of Market Street and Lafayette Street of the Santa Clara University campus (APN: 269-38-110). Project site is zoned Public/Quasi-Public  
Applicant: Joe Sugg, Santa Clara University  
Owner: Santa Clara University  
Request: Design Review for installation of solar shade awnings on all exterior windows of the Dunne Residence Hall facing Market Street and Lafayette Street  
CEQA Determination: Categorically Exempt per CEQA Section 15301, Existing Facilities  
Project Planner: Debby Fernandez, Associate Planner  
Staff Recommendation: Recommend Approval

**Notice:** The notice of public meeting for these items was posted within 300 feet of the site and was mailed to property owners within 300 feet.

**Discussion:**

Mr. Chen gave a brief presentation of the project. He noted the proposal is to install solar shade awnings on the exterior windows facing Market Street and Lafayette Street. The applicant commented that the shade panels are painted blades and will not cause glare impacts. No comments were received from the public during public comment period.

**Motion/Action:**

It was moved by Commissioner Motyka seconded by Commissioner Luckinbill and was carried (6-0-1-0, McKee absent), to approve the project.

<b>8D. File No.(s):</b>	<b>PLN2014-10283</b>
Location:	788 Jackson Street, a 7,015 square foot parcel near the corner of Lexington Street and Jackson Street; (APN:269-26-096); Project site is zoned Single Family (R1-6L)
Applicant:	David Perng
Owner:	Lisa Liang
Request:	<b>Design Review</b> of a 129 square foot rear addition to add a third bedroom and one bathroom.
CEQA Determination:	Categorically Exempt per CEQA Section 15301, Existing Facilities
Project Planner:	Steve Le, Planning Intern
Staff Recommendation:	Recommend Approval, subject to conditions

**Notice:** The notice of public meeting for these items was posted within 300 feet of the site and was mailed to property owners within 300 feet.

**Discussion:**

Mr. Chen noted that the applicant was going to be present, but did not see Ms. Liang in the audience. He gave a brief history of past request and approvals. He presented the proposed project. The addition is located at the back of the building with Hardie siding and is not visible from the public right-of-way. Mr. Chen noted that the applicant felt that the addition did not warrant an updated DPR. A letter was received from adjacent property owner noting concern over location of property line. Mr. Chen noted that the proposed addition is not affected by the boundary dispute.

The Commission discussed the need to update the DPR. Commissioner Motyka noted that it has been 5 years since the Historic Survey and Evaluation was requested. She commented that time and cost is not a valid reason for not providing an updated DPR. Commissioner Mahan questioned whether the proposal would have an effect on the historic integrity. The Commission discussed the rear addition and design.

Commission Motyka recalled the high interest from the neighborhood on past requests at this site. Commissioner Johns noted that the project is a totally different project from that of the past. Mr. Chen noted that a petition was circulated on the 1½ story barn proposal. He noted this was not distributed to the Commission as it was not relevant to the proposed project.

Mr. Chen reviewed the parking requirements with the Commission and noted the parking meets the two covered parking spaces and one space for the accessory unit. No comments were received from the public during public comment period. Mr. Chen noted that the project will be referred to the Architectural Committee for consideration.

**Motion/Action:**

It was moved by Commissioner Johns seconded by Commissioner Luckinbill and was carried (5-1-0-1, Motyka dissenting, McKee absent), to approve the project, subject 5 ½ inch wood trim for the window.

**8. OTHER BUSINESS****9.A. Commission Procedures and Staff Communications****i. Announcements/Other Items**

- 2014-2015 Budget Memo From Director of Finance/Assistant City Manager
- Status Update on 2325 Park Avenue – (verbal update)
  - Correspondence from Joe Hastings
  - Mr. Chen gave an update and noted that this matter was brought before the City Council.
- National Historic Preservation Month Activities, May 2014
  - Activities, Display Case, Walking Tour, Advertisement
  - Mr. Chen distributed a copy of the Mayor's Proclamation.
  - It was moved by Commissioner Luckinbill seconded by Commissioner Mahan and was carried (6-0-0-1, McKee absent), to spend up to \$800 on the promotion in the Weekly for the walking tour.
- Monthly Report on HT properties: Residential reversions (verbal update)
  - Commission asked for a status update on Mr. Soukop property and requested that it be added to the next HLC agenda.
- Reappointments to the HLC
  - Brian Johns term ending June 30, 2018
  - Regina "Jeannie" Mahan term ending June 30, 2018
- Neighborhood Preservation Ordinance Ad-hoc Committee
  - City Council requested that HLC appoint a member to Ad-hoc Committee
  - It was moved by Commissioner Luckinbill seconded by Commissioner Motyka and was carried (6-0-1-0, McKee absent), to appoint Johns to the Ad-hoc Committee with Standifer as alternate.

**ii. Report of the Liaison from the Planning and Inspection Department**

- City Council and Planning Commission Actions (verbal update)

**ii. Commission/Board Liaison and Committee Reports**

- Santa Clara Arts and Historic Consortium (McKee / Standifer as alternate)  
[Fourth Monday of each month at 7:15 p.m. - Headen-Inman House]
- Historic Preservation Society of Santa Clara (Mahan / Luckinbill as alternate)  
[Second Friday of each month at 10:00 a.m. - Harris Lass Preserve]
  - Orchard project is still in the works
- Old Quad Residents Association (Motyka / Hyams as alternate)
  - Selected Officers and Board of Directors
- Architectural Committee (Mahan / Johns as alternate)
- Agnews Historic Cemetery Museum Committee (Standifer / Luckinbill as alternate)
- BART/ High Speed Rail/ VTA BRT Committee (Johns / McKee as alternate)
- Zoning Ordinance Update (Motyka / Johns as Alternate)
- Preservation Ordinance Ad-hoc Committee (Motyka and Mahan / Luckinbill and McKee as alternate)
- NURC Meeting (Johns)
- Neighborhood Preservation Ordinance Ad-hoc Committee (Johns / Standifer as alternate)

**iv. Commission Activities**

- Commissioner Travel and Training Reports
  - California Preservation Conference, April 22nd thru 25<sup>th</sup> (verbal update)
  - Commissioner Johns and Standifer provided an update on the Preservation Conference training sessions.

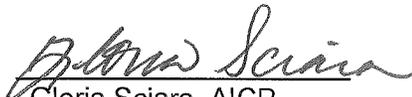
**v. Upcoming Agenda Items**

- Preservation Month Activities Update – June 2014
- Technical Review of Resources for Maywood Tract – June 2014
- Office of Historic Preservation – eLearning Training (Yen Chen) – July 2014
- Franklin Post Office Update (Lorie Garcia) – TBD
- Review of Street Name List (Lorie Garcia) – TBD
- Tour of the City's Mackay neighborhoods (Yen Chen) - TBD

**9. ADJOURNMENT**

The meeting was adjourned at 10:33 p.m. The next regular Historical and Landmarks Commission meeting will be held on Thursday, June 5, 2014 at 7:00 p.m. in the City Council Chambers.

Prepared by:   
Yen Chen  
Associate Planner

Approved:   
Gloria Sciara, AICP  
Development Review Officer

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Meeting Date: 6/24/14

# AGENDA REPORT

Agenda Item # 7E-1

City of Santa Clara, California



**Date:** June 14, 2014

**To:** City Manager for Council Action

**From:** Director of Planning and Inspection

**Subject:** Special Permit Request to Allow Use of a Temporary Office Trailer for Two Years on a Portion of The Gallery at Central Park Development Located at 2855 Kaiser Drive (PLN2014-10395)

## EXECUTIVE SUMMARY:

The applicant, Eric Keller, on behalf of D.R. Horton, is requesting a Special Permit for two years to place a 60 by 24 foot temporary office trailer on a portion of The Gallery at Central Park Development located at 2855 Kaiser Drive. The temporary location of the trailer will include ADA accessibility, fencing, landscaping, signage and parking for customers. The trailer will be temporary offices for new home display and sales. The application signed by the property owner and site plan are attached.

The temporary trailer was installed on Friday, May 16, 2014 and will remain through May 15, 2016. The trailer location is within a later phase of the Gallery townhome development and does not occupy any parking spaces nor obstruct circulation on the site. The Special Permit application was submitted in between regularly scheduled City Council meetings and was processed administratively to allow the applicant to acquire the necessary permits, subject to Council approval and conditions. This practice allows the applicant to pay all fees and move forward with the proposal. Staff is requesting that the Council formally approve this Special Permit retroactively through May 15, 2016.

Approval of the Special Permit is subject to the following conditions:

1. This Special Permit shall be valid from May 16, 2014 through May 15, 2016;
2. The applicant shall obtain temporary sign permits for all temporary signs, if applicable;
3. The applicant shall comply with all Zoning Ordinance regulations regarding temporary and permanent structures and obtain all necessary Building and/or Fire Department permits;
4. The applicant shall comply with Fire Department directives and requirements;
5. There shall be no other temporary structures used in conjunction with the trailer;
6. The applicant shall comply with City Code Section 9.10.040, noise and sound regulation; and
7. Upon conclusion of the Special Permit, the temporary trailer shall be removed and the parking lot shall be cleaned and returned to its prior condition.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

None associated with this request.

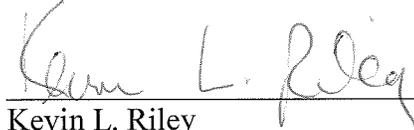
City Manager for Council Action  
Subject: Temporary Office Trailer Use at The Gallery at Central Park Development  
June 14, 2014  
Page 2

**ECONOMIC/FISCAL IMPACT:**

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

**RECOMMENDATION:**

That the Council approve the Special Permit request to allow use of a temporary office trailer for two years on a portion of The Gallery at Central Park Development located at 2855 Kaiser Drive (PLN2014-10395), subject to conditions.



Kevin L. Riley  
Director of Planning and Inspection

APPROVED:



Julio J. Fuentes  
City Manager

***Documents Related to this Report:***

- 1) Planning Application***
- 2) Site Plan***

I:\PLANNING\2014\SPERMIT\2855 Kaiser Dr\CC agnd rpt 061014.doc



# PLANNING APPLICATION

CITY OF SANTA CLARA PLANNING DIVISION

1500 Warburton Avenue, Santa Clara, California 95050

(408) 615-2450 Fax: (408) 247-9857

E-mail [Planning@santaclaraca.gov](mailto:Planning@santaclaraca.gov)

Website: [www.santaclaraca.gov](http://www.santaclaraca.gov)

See reverse side for application requirements

### APPLICATION FOR:

(Please check all applicable boxes)

- VARIANCE
- USE PERMIT
- ZONING CHANGE
- TENTATIVE MAP
- TENTATIVE PARCEL MAP
- LOT LINE ADJUSTMENT
- MODIFICATION
- SPECIAL PERMIT
- HISTORICAL & LANDMARKS COMMISSION
- GENERAL PLAN AMENDMENT
- OFF-SITE PARKING PERMIT
- (OTHER):

### ARCHITECTURAL REVIEW FOR:

- RESIDENTIAL
- NON-RESIDENTIAL
- MIXED-USE
- LANDSCAPE
- SIGNS
- TEMPORARY SIGNS

### FOR PLANNING STAFF USE ONLY

Checked in by: JOE on 05-14-14

Fee: 1800 Receipt number: \_\_\_\_\_

PCC-SC meeting date: \_\_\_\_\_

Tentative Commission date: \_\_\_\_\_

Tentative AC meeting date: \_\_\_\_\_

File number(s): PL2014-10395

### ENVIRONMENTAL REVIEW:

EXEMPT  NEG DEC  EIR

Fax to: \_\_\_\_\_

Fax #: \_\_\_\_\_

Project Address: 2855 KAISER DRIVE

Building area: \_\_\_\_\_ square feet

County Assessor's Parcel Number (APN): 290-26-022

Gross lot area: \_\_\_\_\_ acres / square feet

Development Project Description: SALES TRAILER / PAVILLION FOR THE HOMES AT CENTRAL PARK INCLUDES PARKING LOT, LANDSCAPE, SALES FLABS, SIGNAGE ADA BATHROOM AND SALES OFFICES

Hazardous Wastes and Substances Statement (Calif. Gov. Code 65962.5):

- This site is not included on the Hazardous Wastes and Substances Sites List
- This site is on the Hazardous Wastes and Substances Sites List.  
(A copy of this list is available in the Planning Office)

Date of list: \_\_\_\_\_

Regulatory ID #: \_\_\_\_\_

Urban Runoff Pollution Prevention Program (URPPP) information provided to applicant  
Please print all information legibly, including correct zip code.

*please e-mail approval to*

Applicant: \_\_\_\_\_ Mailing address: \_\_\_\_\_ Day phone: \_\_\_\_\_

Company: \_\_\_\_\_ City: \_\_\_\_\_ Fax #: \_\_\_\_\_

Signature: \_\_\_\_\_ Zip code: \_\_\_\_\_ E-Mail (Optional): \_\_\_\_\_

Property Owner: D.R. Horton, c/o Eric Keller Mailing address: 5050 Topyard Dr, #180 Day phone: 650 544 5504

Company: SAME City: Pleasanton, CA Fax #: \_\_\_\_\_

Signature: [Signature] Zip code: 94588 E-Mail (Optional): etkeller@Drhorton.com

NOTE: Please attach the names and full addresses, including zip codes, of all other involved parties to which you would like agendas and minutes sent.

Statement of justification for the above APPLICATION (this statement will be included in the staff report to the Planning Commission; a separate statement may be attached, if necessary): Contact staff for assistance on preparing a statement.

SALES PAVILLION FOR UP TO TWO YEARS FROM OPENING DATE -

Tentative Map / Tentative Parcel Map / Lot-Line Adjustment application only:

Engineering firm: \_\_\_\_\_ Engineer's name: \_\_\_\_\_

Address: \_\_\_\_\_ Phone #: \_\_\_\_\_

Internet E-Mail (Optional) \_\_\_\_\_ Fax #: \_\_\_\_\_

STAFF COMMENTS: \_\_\_\_\_ Engineer's signature \_\_\_\_\_

60'

Stone circle medallion

LED recessed lighting above entry doors

Community font recessed in stucco above entry doors

the homes at central park

12'

Community logos  
by Sign Tech

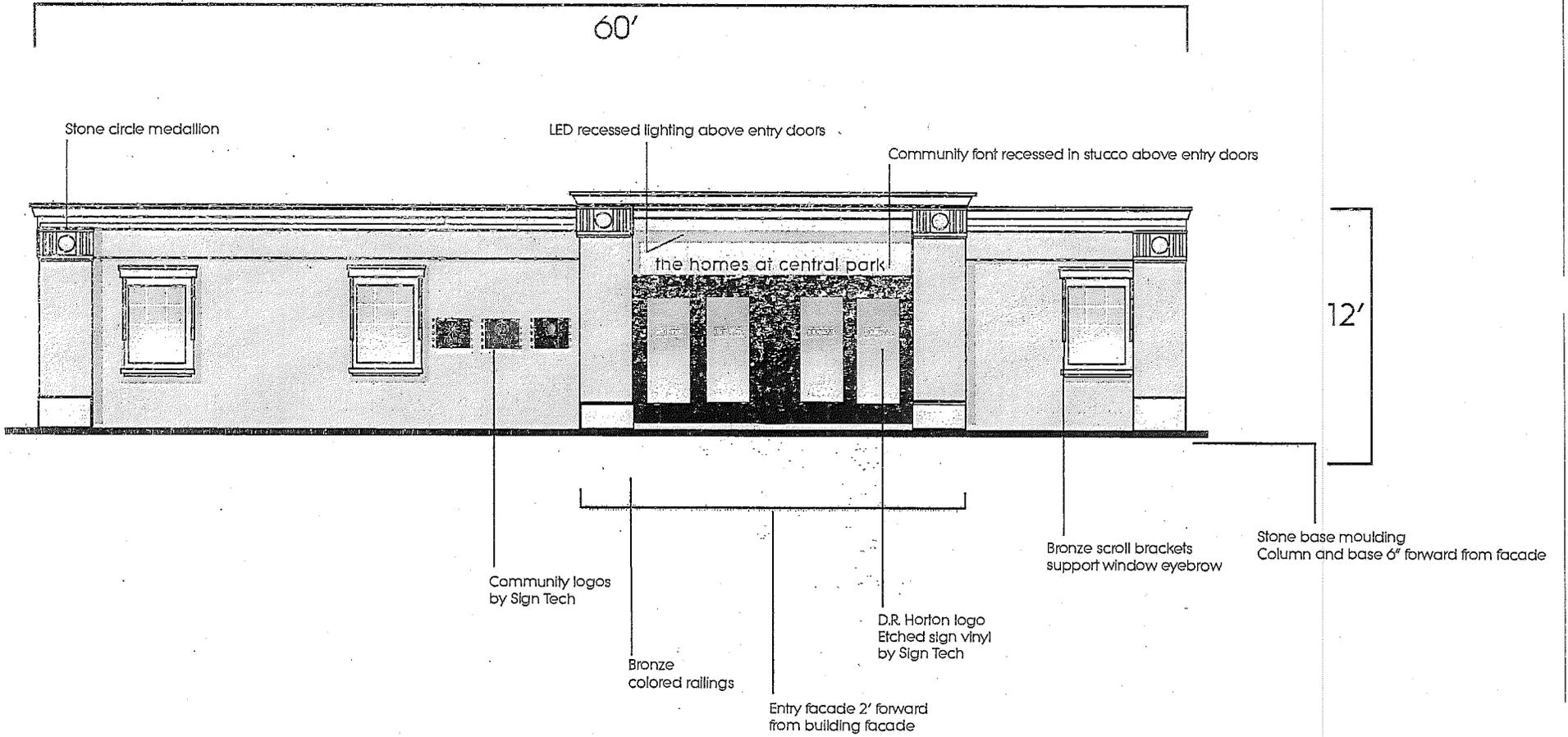
Bronze  
colored railings

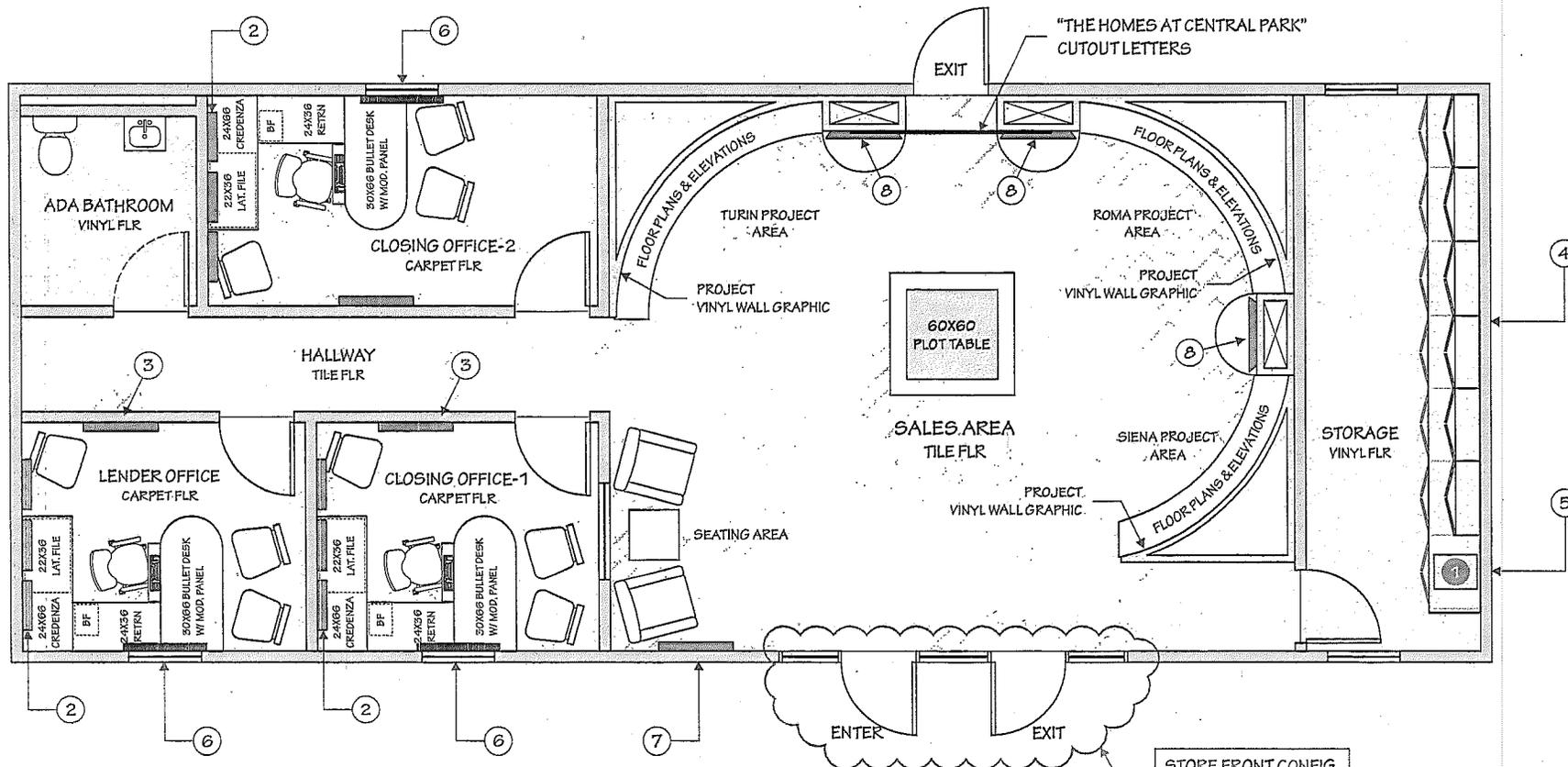
Entry facade 2' forward  
from building facade

D.R. Horton logo  
Etched sign vinyl  
by Sign Tech

Bronze scroll brackets  
support window eyebrow

Stone base moulding  
Column and base 6" forward from facade





"THE HOMES AT CENTRAL PARK"  
CUTOUT LETTERS

**SignTech**  
SIGN TECHNOLOGY, INC.

sacramento,

916-372-1200

fresno, ca

559-834-6454

W/O 24655/179

DATE: 3-28-14

REVISION# / DATE / DESIGNER

CLIENT  
DR HORTON

PROJECT  
THE HOMES AT  
CENTRAL PARK

DESCRIPTION  
SALES TRAILER

SCALE  
AS NOTED

SALES  
DW

DESIGNER  
DD

**A-1**

 <p>1 DEL C3765 LASER PRINTER TO GO ON TOP OF (2) DRAWER LATERAL FILE IN CLOSING OFFICE-1</p>	2	PROJECT IMAGE DISPLAYS
	3	DR. LOGO
	4	36" WIDE MELAMINE UPPER & LOWER CABINETS
	5	HOME RUN TO GO HERE
	6	WINDOW VALANCE
	7	30x40 AERIAL DISPLAY
	8	INTERACTIVE TOUCH SCREEN TVS

STORE FRONT CONFIG.  
REV. 4-10-14

SPACE PLAN SCALE: 3/16"

Meeting Date: 6/24/14

# AGENDA REPORT

Agenda Item # 11A

City of Santa Clara, California



**Date:** June 9, 2014

**To:** City Manager for Council Action

**From:** Fire Chief

**Subject:** Acceptance of \$500 Donation from San Jose Pioneer Lions Club for the Community Emergency Response Team Program

**EXECUTIVE SUMMARY:**

As part of their Community Safety Award Program, the San Jose Pioneer Lions Club would like to donate \$500 to the City to purchase supplies for the Community Emergency Response Team (CERT) program, which offers emergency preparedness and response training for citizens and City employees.

**ADVANTAGES AND DISADVANTAGES OF ISSUE:**

Acceptance of this donation will enhance the existing level of service provided by the Santa Clara Fire Department to our citizens, without impacting the Operating Budget. There are no known disadvantages.

**ECONOMIC/FISCAL IMPACT:**

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

**RECOMMENDATION:**

That the Council:

- Accept the donation of \$500 to the City from the San Jose Pioneer Lions Club to purchase supplies for the Community Emergency Response Team Program.
- Approve Estimated Revenue of \$500 in the Donation - Fire Safety account (067-7822-59650-(G) 00491, appropriations of \$500 in account (067-7822-87500-(I)7460-(G)00491) and carry forward of the unspent funds to future years.
- Authorize the transmission of a letter of appreciation by the Mayor and City Manager to the San Jose Pioneer Lions Club.

*William G. Kelly*

William G. Kelly  
Fire Chief

APPROVED:

*Julio J. Fuentes*

Julio J. Fuentes  
City Manager

Certified as to Budget Form: *AK*

067-7822-59650-(G)00491 \$ 500.00

*Gary Ameling*

Gary Ameling  
Director of Finance

**FIVE COUNCIL VOTES**

***Documents Related to this Report:***

- 1) None

I:/Admin/Agenda Reports/Donation – Lions Club 6-2014

Meeting Date: 6/24/14

# AGENDA REPORT

Agenda Item # 11-B

City of Santa Clara, California



**Date:** June 24, 2014

**To:** City Manager for Council Action

**From:** Chief of Police

**Subject:** Authorization to Adopt a Resolution Accepting the California Department of Alcoholic Beverage Control Grant

## EXECUTIVE SUMMARY:

The mission of the Department of Alcoholic Beverage Control (ABC) is to administer the provisions of the Alcoholic Beverage Control Act in a manner that fosters and protects the health, safety, welfare, and economic well-being of the people of the State.

In 1995, ABC embarked on a new approach to broaden and increase the level of alcoholic beverage law enforcement by working in partnership with cities and counties through a grant assistance project. The mission of the Grant Assistance to Local Law Enforcement Program is to work with law enforcement agencies to develop an effective, comprehensive and strategic approach to eliminating the crime and public nuisance problems associated with problem alcoholic beverage outlets and then institutionalize those approaches within the local police agency.

The ABC Grant Assistance Program has awarded the Santa Clara Police Department (SCPD) \$75,000 to fund multiple initiatives to curb alcohol-related challenges in the community, which may include training of law enforcement personnel, community involvement, prevention, enforcement, records management and data systems, liaison with the ABC district office, and media involvement.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

Acceptance of this donation will allow the Santa Clara Police Department to enhance its efforts to enforce ABC licensing and regulatory mandates and combat alcohol-related incidents in Santa Clara, therefore improving the safety and quality of life for our residents.

The Police Department will be responsible to fulfill standard grant requirements, such as monthly invoicing and reporting statistics.

ABC requires that grant recipients prepare a resolution outlining the terms and conditions of the grant.

There are no disadvantages to accepting this grant.

## ECONOMIC/FISCAL IMPACT:

The Police Department was notified on May 12, 2014, that it has been awarded \$75,000. These funds will be used to allow officers to work overtime to address ABC education initiatives and enforcement issues.

There is no cost to the City other than staff time and expense to manage the grant and fulfill the reporting requirements.

City Manager for Council Action

Subject: Authorization to Adopt a Resolution Accepting the California Department of Alcoholic Beverage Control Grant

June 24, 2014

Page 2

**RECOMMENDATION:**

That the Council:

1. Authorize the adoption of the attached Resolution;
2. Approve the revenue in the amount of \$75,000 (177-7752-55580-(G)ABC14) and appropriations to Field Operation Overtime (177-7752-87030-(G)ABC14) and Conference and Travel (177-7752-87820-(G)ABC14); and
3. Authorize the transmission of a letter of appreciation by the Mayor and City Manager to the California Department of Alcoholic Beverage Control (ABC) Grant Assistance Program.
4. Authorize the City Manager, or his designee, to execute all related documents.



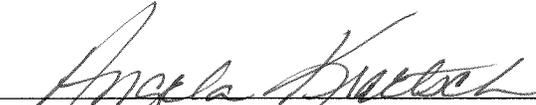
FOR Michael J. Sellers  
Chief of Police

APPROVED:



Julio J. Fuentes  
City Manager

Certified as to Budget Form: 

  
for Gary Ameling  
Director of Finance/  
Assistant City Manager

FIVE COUNCIL VOTES

*Documents Related to this Report:*

- 1) ABC Resolution

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

**A RESOLUTION OF THE CITY OF SANTA CLARA,  
CALIFORNIA, AUTHORIZING THE ACCEPTANCE OF A  
CALIFORNIA DEPARTMENT OF ALCOHOLIC  
BEVERAGE CONTROL (ABC) GRANT TO BE UTILIZED  
TO FUND A VARIETY OF OVERTIME ASSIGNMENTS TO  
CURB ALCOHOL-RELATED CHALLENGES IN THE  
COMMUNITY.**

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

**WHEREAS**, the City Council of the City of Santa Clara desires to undertake a certain project designated as ABC Education Initiative and Enforcement Campaign to curb alcohol-related challenges in the community to be funded in part from funds made available through the Grant Assistance Program (GAP) administered by the Department of Alcoholic Beverage Control (hereafter referred to as ABC);

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

1. That the City Manager of the City of Santa Clara is authorized to execute on behalf of the City Council the attached contract, including any extensions or amendments thereof and any subsequent contract with the State in relation thereto.
2. IT IS AGREED that any liability arising out of the performance of this contract, including civil court actions for damages, shall be the responsibility of the grant recipient and the authorizing agency. The State of California and ABC disclaim responsibility for any such liability.
3. BE IT FURTHER RESOLVED that grant funds received hereunder shall not be used to supplant expenditures controlled by this body.
4. IT IS ALSO AGREED that this award is not subject to local hiring freezes.

5. 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.

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 24th DAY OF JUNE, 2014, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:
NOES:	COUNCILORS:
ABSENT:	COUNCILORS:
ABSTAINED:	COUNCILORS:

ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:  
1. Alcoholic Beverage Control Grant Contract

Meeting Date: 6/24/14

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # 11c



**Date:** June 24, 2014

**To:** City Manager for Council Action

**From:** Chief of Police

**Subject:** Authorization to Apply for the 2014 Byrne Justice Assistance Grant (JAG) Funds; Accept Estimated Appropriations in the Amount of \$15,847 to be used for the Cost of Purchasing Police Equipment; and to Fulfill the Requirement that the Application be Approved by the Governing Body Thirty Days Before the Grant is Submitted

## EXECUTIVE SUMMARY:

In early 2005 the Bureau of Justice Administration (BJA) made the decision to combine the Byrne Formula Grant and the Local Law Enforcement Block Grant (LLEBG) Programs. These were combined into the Justice Assistance Grant (JAG). An Agenda Report was submitted on March 8, 2005, which outlined these changes. During the past few years, either the County of Santa Clara or the City of San Jose has been responsible for submitting a joint application. This year, as in the past four years, the City of Santa Clara is allowed to submit a stand alone application.

We have recently been notified that we are eligible for the 2014 JAG. The amount that we are eligible for during this grant cycle is \$15,847. We will have until September 30, 2018, to expend these funds.

The application process requires approval by the governing body thirty days before the grant is submitted. This Agenda Report will serve as that notice.

The Police Department will use the 2014 JAG Grant to replace rechargeable batteries on existing LIDAR units to be deployed in the Patrol Unit and purchase new LIDAR units for use in the Traffic Unit. LIDAR has proven itself to be an effective speed measurement tool and accident investigation instrument. Santa Clara has a number of traffic corridors where roadways are congested and speed is a primary factor in collisions. To effectively protect school zones, increase speed enforcement efforts and provide for a safer driving environment in the City of Santa Clara, LIDAR is the best tool to equip officers with.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

The acceptance of these funds will allow the Police Department to continue to improve the quality of its front line police services. These funds must supplement, not supplant, existing funding, as required by law. This year's funding of \$15,847 will go towards purchasing six (6) new LIDAR units and five (5) battery packs for existing LIDAR units.

The Police Department will have to fulfill the standard grant requirements (such as quarterly reporting, fiscal accountability, etc.).

There are no disadvantages to accepting this grant.

City Manager for Council Action

Subject: Authorization to Apply for the 2014 Byrne Justice Assistance Grant (JAG) and Accept Appropriations

June 24, 2014

Page 2

**ECONOMIC/FISCAL IMPACT:**

The amount of \$15,847 from the Byrne Justice Assistance Grant (177-7752-55580-(G)JAG14) will go towards funding the project.

**RECOMMENDATION:**

That the Council:

1. Authorize the City Manager and the Chief of Police to submit an application for the 2014 Byrne Justice Assistance Grant (JAG) from the Bureau of Justice Assistance, which funds will be used to purchase items to provide a safer environment for the citizens of Santa Clara and will provide the Patrol and Traffic Divisions with the needed equipment;
2. Authorize the City Manager, or his designee, to execute all documents related to the grant;
3. Approve estimated Police Grants Revenue from Other Agencies (177-7752-55580-(G)JAG14) in the amount of \$15,847 and appropriations in the amount of \$15,847 to (177-7752-88040-(G)JAG14-(I)4795);
4. Approve the rollover of unexpended appropriation to future years.

Certified as to Budget Form: 

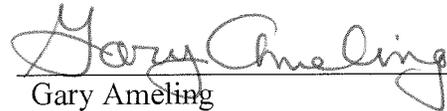


Michael J. Sellers  
Chief of Police

APPROVED:



Julio J. Fuentes  
City Manager



Gary Ameling  
Director of Finance

FIVE COUNCIL VOTES

*Documents Related to this Report: None*

6/24/14

# CLOSED SESSION REQUEST

City of Santa Clara, California

15B



It is requested the **CITY COUNCIL OF THE CITY OF SANTA CLARA** meet in closed session on **Tuesday, July 1, 2014, at 6:00 p.m.**, or as soon thereafter as the matter can be discussed, in the Council Conference Room located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to it/them:

**CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION**

Pursuant to Gov. Code § 54956.9(a)

*Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.*, Sacramento County Superior Court Case No. 34-2013-80001396

Date: June 20, 2014

  
\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney