



AMENDED 9-6-19
City of St. Helena
Regular City Council Meeting
Tuesday, September 10, 2019 @ 6:00 PM
Vintage Hall Board Room - Second Floor
465 Main Street, St. Helena

PLEASE NOTE: Any person who wishes to speak regarding an item on the agenda or make a comment under the "Oral Communication" portion of the agenda may do so, but please observe the time limit of four minutes.

Page

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Mayor: Geoff Ellsworth, Vice Mayor: Paul Dohring, City Council Members: Anna Chouteau, David Knudsen and Mary Koberstein

4. PUBLIC FORUM:

Members of the public are entitled to speak on matters of municipal concern not on the agenda during Public Forum. Each person's comments shall be limited to 4 minutes. Each person is entitled to speak on any non-agendized item only once at any meeting. Brief questions by Council Members for clarifications may be posed and answered, and Council Members may make requests that items be placed on future agendas, but in accordance with state law, no substantive discussion or action may take place unless and until the matter properly appears on the agenda.

4.1. Public comment

9 - 13

[*Public Comment Paul Asmuth \(*Provided during meeting\)](#)

5. REPORTS BY STAFF AND CITY COUNCIL, FUTURE AGENDA ITEMS, AND AB 1234 REPORTS:

Reports by staff and/or Council Members on items of general interest. Brief questions for clarification may be posed and answered, and Council Members may request that items be placed on a future agenda. Except under certain circumstances, the Brown Act prohibits any other discussion or action by the City Council.

6. PRESENTATIONS AND PUBLIC RECOGNITIONS

6.1. Proclamation recognizing Napa County Latino Heritage Month
September 15 - October 15, 2019

15

[Proclamation](#)

7. STAFF BRIEFING

7.1. None

8. CONSENT ITEMS

Members of the Council or the public may ask that any items be considered individually for purposes of considering alternative action, for extended discussion, or for public comment. Unless that is done, one motion may be

used to adopt all recommended actions. (Roll Call Vote)

- 8.1. Consideration and proposed approval of a resolution approving the Mexican flag to be flown on the City's ceremonial flag pole during the month of September in honor of Napa Valley Latino Heritage Month 17 - 21

CEQA Determination: Not a CEQA project

Prepared By: Cindy Tzaopoulos, City Clerk

Recommendation:

Approve Resolution authorizing the Mexican flag to be flown on the City's ceremonial flag pole during the month of September in honor of Napa Valley Latino Heritage Month.

[Staff Report - Pdf](#)

- 8.2. Consideration of a resolution approving Revision #2 to City Council Policy P-FI-0016 Financial Policy related to definition of a balanced budget and reducing the check reporting Limit from \$100,000 to \$50,000, and repealing and rescinding any previous policies or administrative memoranda which are inconsistent with City Council Policy P-FI-0016 Financial Policy, Revision #2. 23 - 43

CEQA Determination: Not a CEQA project

Prepared By: April Mitts, Finance Director

Recommendation:

Staff recommends City Council adopt a Resolution approving Revision #2 to City Council Policy P-FI-0016 Financial Policy and repealing and rescinding any previous policies or administrative memoranda which are inconsistent with City Council Policy P-FI-0016, Revision #2.

[Staff Report - Pdf](#)

- 8.3. Conduct second reading and proposed adoption of an ordinance amending Chapter 3.04, Title 3 of the St. Helena Municipal Code In Its Entirety to Effectuate Changes to Sections 3.04.100, 3.04.110, 3.04.120 and 3.04.170 of Article 2, Chapter 3.04, Title 3 of the St. Helena Municipal Code Regarding Increases to Purchase Order Limits for Supplies, General Services and Equipment and Sections 3.04.210, 3.04.230, 3.04.240 and 3.04.250 of Article 3, Chapter 3.04, Title 3 of the St. Helena Municipal Code Regarding Increases to Bidding Limits Under the Uniform Public Construction Cost Accounting Act for Public Works Projects. 45 - 94

CEQA Determination: Not a CEQA project

Prepared By: April Mitts, Finance Director

Recommendation:

Staff recommends the City Council conduct the second reading, adopting the ordinance by title only and waiving further reading.

[Staff Report - Pdf](#)

- 8.4. Consideration and proposed approval of a Resolution approving an agreement for continuing library automation services with the County of Solano and authorizing the St. Helena City Manager to execute the agreement and up to two one-year extensions to the agreement 95 - 113

CEQA Determination: Not a CEQA project

Prepared By: Chris Kreiden, Library Director

Recommendation:

Staff recommends City Council adopt a resolution approving an agreement for continuing library automation services with the County of Solano and authorizing the St. Helena City Manager to execute the agreement and up to two one-year extensions of the agreement.

[Staff Report - Pdf](#)

- 8.5. Consideration and proposed adoption of a resolution approving a Professional Services Agreement with Britton Tree Services Inc for tree pruning in Baldwin Park, Mennen Park, Mary Fryer Park, and Jacob Meily Park in an amount not to exceed \$35,616 and authorizing the City Manager to execute the agreement 115 - 137

CEQA Determination: Class I Categorical Exemption under Section 15301 of CEQA

Prepared By: Carlos Uribe, Maintenance Manager

Recommendation:

Staff recommends City Council adopt a resolution approving a Professional Services Agreement with Britton Tree Services Inc. for tree pruning in Baldwin Park, Mennen Park, Mary Fryer Park, and Jacob Meily Park in an amount not to exceed \$ 35,616 and authorize the City Manager to execute the agreement.

[Staff Report - Pdf](#)

- 8.6. *NEW ITEM 9-6-19 139 - 197
Consideration and adoption of a Resolution: (1) Awarding the W-26 Upper York Creek Ecosystem Restoration and Aquatic Habitat Enhancement Project Phase 1 to Suulutaaq, Inc. in the amount of \$601,865; (2) Authorizing the City Manager to execute the Construction Contract with Suulutaaq, Inc.; and (3) Authorizing the Director of Public Works to approve Change Orders not to exceed 20% of the contract amount

CEQA Determination: Final Environmental Impact Report (SCH. No. 2006092096); Addendum to Final EIR

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Recommendation:

Staff recommends that the Council adopt the Resolution: (1) Awarding the W-26 Upper York Creek Ecosystem Restoration and Aquatic Habitat Enhancement Project Phase 1 to Suulutaaq, Inc. in the amount of \$601,865; (2) Authorizing the City Manager to execute the Construction Contract with Suulutaaq, Inc.; and (3) Authorizing the Director of Public Works to approve Change Orders not to exceed 20% of the contract amount.

[Staff Report - Pdf](#)

- 8.7. *NEW ITEM 9-6-19 199 - 222
City Council meeting minutes:

January 31, 2019 Special Meeting
July 22, 2019 Special Meeting
July 23, 2019 Regular Meeting
August 5, 2019 Special Meeting
August 12, 2019 Special Meeting
August 13, 2019 Special Meeting

[1-31-19 Special City Council -Governance Meeting - Minutes](#)
[7-22-19 Special City Council - Minutes](#)
[7-23-19 Regular City Council - AMENDED 7-19-19 - Minutes](#)
[8-5-19 Special City Council - Public Works Reorg Workshop - AMENDED 8-1-19 at 5 00 PM - Minutes](#)
[8-12-19 Special City Council - Governance Meeting - Minutes](#)
[8-13-19 Special City Council - Applicant Interview - Minutes](#)

9. PUBLIC HEARINGS

- 9.1. Consideration of Proposed Approval of a Resolution Establishing a Home Generator Permit Fee in the amount of \$582.50 with the Effective Date of April 1, 2019 and Authorize Refunds in the Amount of \$146.50 for any Home Generator Permits Issued Since April 1, 2019. 223 - 231

CEQA Determination: Not a CEQA project

Prepared By: April Mitts, Finance Director

Recommendation:

Adopt a resolution establishing a Home Generator Permit fee in the amount of \$582.50 with the effective date of April 1, 2019 and authorize refunds in the amount of \$146.50 for each home generator permit issued since April 1, 2019.

[Staff Report - Pdf](#)

[Public Comment.Jerry Hyde](#)

[Public Comment Jerry Hyde\(2\)](#)

10. OLD BUSINESS

- 10.1. Discussion and possible direction on the re-opening of Pratt Avenue post-construction of the County of Napa Silverado Trail Slide Repair Project 233 - 239

CEQA Determination: Exempt from the requirements of CEQA pursuant to Section 15301, Class 1, which exempts the operation, leasing, or minor alteration of existing facilities

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Recommendation:

Discuss and provide direction to staff.

[Staff Report - Pdf](#)

[Public Comment Anthony Micheli](#)

[*Public Comment Ross Allen \(*Provided during meeting\)](#)

- 10.2. Consideration and proposed adoption of a Resolution approving a Professional Services Agreement with Grindline Skateparks, Inc. for the C20-03 Skatepark Improvements Project for an amount not-to-exceed \$124,420 and authorizing the City Manager to execute the agreement. 241 - 275

CEQA Determination: Exempt from the requirements of CEQA pursuant to Section 15301, Class 1, which exempts the operation, leasing, or minor alteration of existing facilities

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Recommendation:

Staff recommends City Council adopt the Resolution approving a Professional Services Agreement with Grindline Skateparks, Inc. for the C20-03 Skatepark Improvements Project for an amount not-to-exceed \$124,420 and authorizing the City Manager to execute the agreement.

[Staff Report - Pdf](#)

10.3. *NEW ITEM 9-6-19

277 - 314

Consideration and proposed approval of a resolution approving and authorizing the City Manager to execute, enter into and carry out the terms of a Revised 2018 Extension Of Raw Water Agreement between the City of St. Helena and Spring Mountain Vineyards, Inc. for property located at 2805 Spring Mountain Road, Napa County, California (APN 009-450-001; 022-180-021; 022-180-020; 022-180-058; 022-180-017; 022-180-015; 022-180-053; 022-260-012; 022-260-013)

CEQA Determination: Not a “project” as defined by State CEQA Guidelines Section 15378(a); Further, even if deemed a “project”, otherwise exempt from CEQA under the common sense exemption set forth in Section 15061(b)(3).

Prepared By: Michael G. Biddle, City Attorney

Recommendation:

Staff recommends City Council adopt the attached resolution (Attachment 2) authorizing the City Manager to execute, enter into and carry out the terms of the Revised 2018 Extension Of Raw Water Use Agreement (Attachment 1) between the City of St. Helena and Spring Mountain Vineyards for the provision of raw water for vineyard irrigation purposes to property located at 2805 Spring Mountain Road, commonly referred to as “Spring Mountain Vineyard”, and identified by Napa County Assessor’s Parcel Nos. 009-450-001; 022-180-021; 022-180-020; 022-180-058; 022-180-017; 022-180-015; 022-180-053; 022-260-012; and 022-260-013. The Revised Agreement is in redline format so the Council can see the changes made to the version approved on June 26, 2018.

[Staff Report - Pdf](#)

10.4. *NEW ITEM 9-6-19

315 - 369

Consideration and proposed approval of a resolution approving and authorizing the City Manager to execute, enter into and carry out the terms of a Revised Loan Agreement between the City of St. Helena and Our Town St. Helena in an amount not to exceed \$450,000 from the Affordable Housing Trust Fund for the acquisition of property located at 963 Pope Street, St. Helena, California (APN 009-090-012-000; 009-090-013-000)

CEQA Determination: Approval of resolution authorizing the Loan Agreement for the acquisition of 963 Pope Street is governed by

Section 15310 of State CEQA Guidelines which exempts the approval of mortgages for the purchase of existing structures where the loan will not be used for new construction.

Prepared By: Michael G. Biddle, City Attorney

Recommendation:

Staff recommends City Council adopt the attached resolution (Attachment 2) authorizing the City Manager to execute, enter into and carry out the terms of the Revised Loan Agreement (Attachment 1) between the City of St. Helena and Our Town St. Helena in an amount not to exceed \$450,000 from the Affordable Housing Trust Fund for the acquisition of property located at 963 Pope Street, St. Helena, California (APN 009-090-012-000; 009-090-013-000). Note that the enclosed Revised Loan Agreement is in redline format so that the Council can see the changes made to Section 11 of the Loan Agreement and the Subordination Agreement (Exhibit E to Loan Agreement) in comparison to the final version approved on August 27, 2019.

[Staff Report - Pdf](#)

[*Supplemental Information OTSH \(*Provided during meeting\)](#)

11. NEW BUSINESS

11.1. None

12. ITEMS LIKELY TO BE PLACED ON THE NEXT OR FUTURE MEETING AGENDA:

12.1.

September City Council Meetings:

9/24 (staff reports due 9/6)

9/24 5pm (Tentative) Special CC Mtg Antonio's Project

9/18/19 (NVTA) Transportation Summit 2019

PROCLAMATIONS AND PUBLIC RECOGNITION:

9/24 Presentation - 2018 Economic Impact Study and our Annual Report

9/24 VNV proclamation

CONSENT:

9/24 NVTA Contract

OLD BUSINESS:

9/24 Will-serve discussion

9/24 Crane Park Light Study Presentation

PH or NEW BUSINESS:

9/24 Adopt speed survey - PW

9/24 Elm Tunnel Update

9/24 LOCC annual conference voting delegate and resolutions

9/24 Sewer Annexation – 1057 Pratt

Mid Managers, Exec Staff and SHEA Mou's

9/24 Housing Strategy – Andrea Clark

October City Council Meetings:

10/8 (staff reports due 9/20)

10/22 (staff reports due 10/4)

PROCLAMATIONS AND PUBLIC RECOGNITION:

Movember Proclamation
National Friends of the Library Week
CONSENT:
Cell tower lease renewal - Finance
Joint use agreement with SHUSD for the use of Vintage Hall (Expires February 2020)
OLD BUSINESS:
9/24 Legal Services RFP award
PH or NEW BUSINESS:
Zoning Code Update

13. ADJOURNMENT

The next Regular City Council meeting is scheduled for September 24, 2019, at 6:00 p.m. in the Vintage Hall Board Room located at 465 Main Street.

This agenda was posted at City Hall, 1480 Main Street, and at Vintage Hall, 465 Main Street, St. Helena, California on ~~August 30, 2019~~. Reposted September 6, 2019



Cindy Tzaopoulos, City Clerk

In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please call the City Clerk's Office (707) 967-2792. Notification 72 hours prior to the meeting as required by Section 202 of the Americans with Disabilities Act will enable the City to make reasonable arrangements to ensure accessibility to this meeting

CHALLENGING DECISIONS OF CITY ENTITIES

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City of St. Helena is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision, including without limitation Government Code section 65009 applicable to many land use and zoning decisions, Government Code section 66499.37 applicable to the Subdivision Map Act, and Public Resources Code section 21167 applicable to the California Environmental Quality Act (CEQA). Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. Government Code section 65009 and 66499.37, and Public Resources Code section 21167, impose shorter limitations periods and requirements, including timely service in addition to filing.

If a person wishes to challenge the above actions in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of St. Helena, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA

Any supplemental writings or documents distributed to a majority of the City Council regarding any item on this Agenda, after the posting of the Agenda, will be available for public review in the City Clerk's Office located at 1480 Main Street, St. Helena, California, during normal business hours. In addition, such writings or documents will be made available on the City's web site at <https://sthelena.civicweb.net> and will be available for public review at the respective meeting.

St. Helena Redwood Forest Update

September 10, 2019



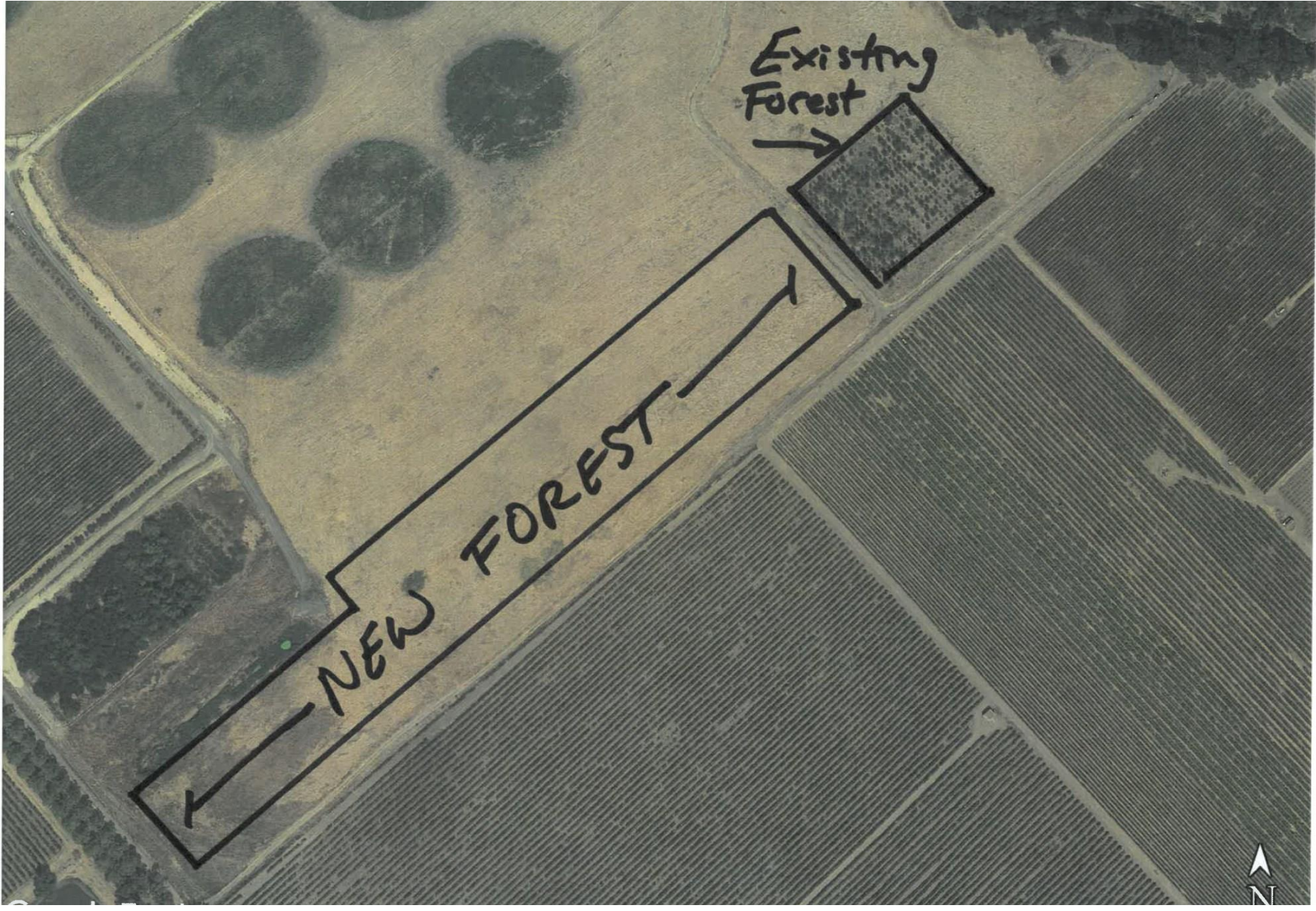
Rapid Growth of Coast Redwood Trees

2013



2019





Benefits of Expanded Coast Redwood Forest

- **Spray field buffer between irrigated effluent areas and vineyards along the southern border**
- **Carbon sequestration increased to approximately 10 acres including existing forest**
- **Re-establishment of a forest ecosystem**
- **Potential for future selective timber harvest**

CITY OF CITY OF ST. HELENA

Proclamation recognizing Napa County Latino Heritage Month

SEPTEMBER 15 - OCTOBER 15, 2019

Whereas, in 1968, President Lyndon B. Johnson first recognized Hispanic Heritage week, later expanded by President Reagan to one month, and each successive United States President has continued this tradition of declaring September 15 through October 15 to be National Hispanic Heritage Month and who has called upon the people of our country to observe this month with appropriate respect, ceremonies, and activities; and

Whereas, Napa County and City of St. Helena has a long history of welcoming immigrants and is home to a growing multi-ethnic and multicultural Latino population, including citizens originating from Mexico, the Caribbean, Central and South America, all of whom are welcome and very much appreciated; and

Whereas, in 2014 the Latino population became the largest ethnic group in California. In Napa County and the City of St. Helena, the Latino population grew by 50 percent in the past 10 years; and

Whereas, the diverse Latino population of the City of St. Helena and Napa County make a significant economic contribution and has other profound positive influences on our community through their strong commitment to family, faith, education, hard work, culture and service; and

Whereas, the City of St. Helena and Napa County, which thrives on the diversity and ingenuity of all our people, also depends on the continued support and success of our diverse Latino population. We will continue to be enriched by the transcultural contributions of our Latino friends and neighbors for many decades to come, and we will continue to make efforts to create an inclusive environment where we can all thrive.

Now, therefore, be it resolved, that I, Geoff Ellsworth, Mayor of the City of City of St. Helena, do hereby proclaim September 15-October 15, 2019, as Napa County Latino Heritage Month in the City of City of St. Helena.

IN WITNESS WHEREOF, I do hereby set my hand, and cause the Seal of the City of City of St. Helena to be affixed this 10th day of September, 2019.

Geoff Ellsworth, Mayor
City of St. Helena



Report to the City Council
Council Meeting of September 10, 2019

Agenda Section: Consent

Subject: Consideration and proposed approval of a resolution approving the Mexican flag to be flown on the City's ceremonial flag pole during the month of September in honor of Napa Valley Latino Heritage Month

CEQA Determination: Not a CEQA project

Prepared By: Cindy Tzafopoulos, City Clerk

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The City Council adopted policy P-CC-0001 Outdoor Display of Governmental and Non-Governmental Flags on City Property, which authorizes the display of non-governmental flags on City property (attached).

Per City Council adopted policy Vice Mayor Dohring formally requested in writing to the City Manager for the Mexican flag to be flown on the City's ceremonial flag pole during the month of September in honor of Napa Valley Latino Heritage Month.

FISCAL IMPACT

There is no fiscal impact

RECOMMENDED ACTION

Approve Resolution authorizing the Mexican flag to be flown on the City's ceremonial flag pole during the month of September in honor of Napa Valley Latino Heritage Month.

ATTACHMENTS

[Resolution Mexican Flag](#)

[Policy P-CC-0001 Outdoor Display of Governmental and Non-Governmental Flags on City Property and Authorizing a Ceremonial Flag](#)

CITY OF ST. HELENA

RESOLUTION No. 2019-

**Authorizing a Ceremonial Flag for Napa Valley Latino
Heritage Month**

RECITALS

- A. On May 28, 2019, the St. Helena City Council adopted policy P-CC-0001 Outdoor Display of Governmental and Non-Governmental Flags on City Property, which authorizes the display of non-governmental flags on City property.
- B. Vice Mayor Dohring formally requested in writing to the City Manager for the request to fly the Mexican flag during the month of September in honor of Napa Valley Latino Heritage Month be considered by the City Council.

RESOLUTION

The City Council of the City of St. Helena hereby resolves:

- 1. Authorizes a ceremonial flag recognizing Napa Valley Latino Heritage Month during the month of September.

Approved at a Special Meeting of the St. Helena City Council on September 10, 2019, by the following vote:

Mayor Ellsworth: _____
Vice Mayor Dohring: _____
Councilmember Chouteau: _____
Councilmember Knudsen: _____
Councilmember Koberstein: _____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafoopoulos, City Clerk



City of St. Helena
Council Policy
 Administration

Policy
**Outdoor Display of Governmental and
 Non-Governmental Flags on City Property**

Page 1 of 2

Title: Outdoor Display of Governmental and Non-Governmental Flags on City Property	Policy #	P-CC-0001
	Revision #	1
	Implementation Date	2017-06-13
	Last Update Date	2019-05-28
Approval by City Council Resolution No. 2019-66	Date Approved	2019-05-28

I. Purpose, Overview and Scope of this Policy

The purpose of this administrative policy is to establish a uniform policy to govern Outdoor Display of Governmental and Non-Governmental Flags on City Property.

Nothing set forth in this Policy is intended to prohibit or curtail individuals from displaying a flag on private property under his or her control or to wear or carry a flag.

This policy rescinds the previous Outdoor Display of Governmental and Non-Governmental Flags on City Property policies and remains in effect until rescinded by City Council.

II. Authority

The City Council has authority to update this policy.

III. Policy - Flying Flags on City Property at Half-Staff

1. National flags and/or California flags on City-owned property shall be flown at half-staff upon order of the President of the United States or authorization by the Governor of California.
2. National, California, and/or City flags on City-owned property may also be flown at half-staff at the direction of the Mayor upon the death of:
 - a. A City Councilmember, past or present;
 - b. A City employee whose death occurred during the discharge of duty;
 - c. A City employee or retiree having served the City for 25 or more years; and/or
 - d. A prominent citizen not holding or having held elected public office, whose accomplishments and contributions to the community clearly demonstrated a commitment over and beyond that which would be normally associated with the performance of work.
3. For the above circumstances, flags will be flown at half-staff as soon as practicable following the notification of a death, and will ordinarily be continued for 48 hours.



City of St. Helena
Council Policy
 Administration

Policy
**Outdoor Display of Governmental and
 Non-Governmental Flags on City Property**

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IV. Policy – Display of Non-Governmental Flags on City Property

1. The Mayor and/or a member of the City Council may submit a request to the City Manager in writing to display a Non-Governmental Flag on a Ceremonial Flagpole in conjunction with official actions, ceremonial items, or proclamations of the City Council. The request shall specify:
 - a. the type of flag to be displayed
 - b. how display of the flag would relate to a prior or proposed official action, ceremonial item, or proclamation of the City Council, and
 - c. the proposed time and manner of display.
2. Following consideration of a request, if the Council approves the request, either by minute order or in conjunction with adoption of some other official action, ceremonial item, or proclamation, the City shall display the requested Non-Governmental Flag on a Ceremonial Flagpole at the time, place, and manner so directed by the Council. If the Council does not approve a request, it shall be deemed to have been denied and shall not be reconsidered for a period of six (6) months.
3. When a Ceremonial Flagpole is not displaying a Non-Governmental Flag, the City Flag may be flown upon the order of the City Manager, in his or her discretion.
4. The Ceremonial Flag Pole will be located beside the existing governmental designated flag pole outside of City Hall.



Report to the City Council
Council Meeting of September 10, 2019

Agenda Section: Consent

Subject: Consideration of a resolution approving Revision #2 to City Council Policy P-FI-0016 Financial Policy related to definition of a balanced budget and reducing the check reporting Limit from \$100,000 to \$50,000, and repealing and rescinding any previous policies or administrative memoranda which are inconsistent with City Council Policy P-FI-0016 Financial Policy, Revision #2.

CEQA Determination: Not a CEQA project

Prepared By: April Mitts, Finance Director

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On November 27, 2018 City Council adopted Financial Policy P-FI-0016 which provides a structured, central repository for a variety of fiscal policies which include: General Financial Principals, Annual Operating Budget Policy, Capital Improvement Program, Revenues, Expenditures, Cash Management, Debt Management, Fund Definitions and Classifications, fund Balance Levels, Financial Reporting, and Review and Update requirements. Updates to this policy require City Council approval.

DISCUSSION

Staff is recommending City Council approval of two updates to the current Financial Policy P-FI-0016.

Update #1

Financial Policy P-FI-0016, Section B. Annual Operating Budget Policy establishes the policy for the adoption of the annual budget. To provide clarification, as recommended

by the Government Finance Officers Association (GFOA), staff recommends an update to Section B.1.d. to include specific language on the definition of a balanced budget.

Update #2

Financial Policy P-FI-0016, Section K. Financial Reporting establishes various financial reporting mechanisms for the City of St. Helena. One requirement is quarterly - the Finance Department prepares and presents to City Council detailed information for the General, Water, and Wastewater Funds and provides summary report for all other funds. Additionally, the quarterly report includes a list of checks over \$100,000. At the July 23, 2019 meeting, City Council asked staff to review and evaluate lowering the check reporting limit to either \$50,000 or \$75,000.

A sample report of all checks over \$50,000 and all checks over \$75,000 was generated from the City's financial software system. The total number of checks issued over \$50,000 for FY 2018-19 was 98 and the total number of checks issued over \$75,000 for the same period was 45. This was an average of 24.5 and 11.25 checks each quarter - respectively. Changing the parameters of the report does not create any additional work.

Staff recommends City Council update the Financial Policy to include all checks over \$50,000 issued during the reporting period and presented to City Council as an attachment to the quarterly report. A sample quarterly report for all checks over \$50,000 is included as Attachment A.

Staff recommends City Council approve both recommended updates to the current Financial Policy - P-FI-0016. The recommended updates are included in Attachment B in track changes.

FISCAL IMPACT

None

RECOMMENDED ACTION

Staff recommends City Council adopt a Resolution approving Revision #2 to City Council Policy P-FI-0016 Financial Policy and repealing and rescinding any previous policies or administrative memoranda which are inconsistent with City Council Policy P-FI-0016, Revision #2.

ATTACHMENTS

[Attachment A - Checks by Date](#)

[Attachment B - P-FI-0016 Financial Policy, Revision #2](#)

[Attachment C - Resolution No. 2019- Amendment #2 to P-FI-0016 Financial Policy](#)

Accounts Payable

Checks by Date - Summary by Check Date

User: aprilm
Printed: 8/28/2019 1:10 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
104063	REMIF	REMIF	01/09/2019	77,296.00
Total for 1/9/2019:				77,296.00
104201	NAP05	Westamerica Bank	01/23/2019	64,689.74
Total for 1/23/2019:				64,689.74
104231	KAISER	Kaiser Foundation Health Plan, Inc.	01/24/2019	50,668.68
Total for 1/24/2019:				50,668.68
104274	NAP05	Westamerica Bank	01/28/2019	66,112.82
Total for 1/28/2019:				66,112.82
104296	NAP06	NAPA, CITY OF	01/31/2019	104,397.84
104300	REMIF	REMIF	01/31/2019	56,731.80
Total for 1/31/2019:				161,129.64
104323	BURKEWIL	Burke, Williams & Sorensen LLP	02/08/2019	57,611.18
104361	NAP05	Westamerica Bank	02/08/2019	69,326.79
Total for 2/8/2019:				126,937.97
104365	GHILOTTI	Ghilotti Construction	02/12/2019	341,281.97
Total for 2/12/2019:				341,281.97
104452	NORCAL	Nor-Cal Overhead	02/20/2019	87,415.64
104485	WILMING	Wilmington Trust NA	02/20/2019	110,986.65
Total for 2/20/2019:				198,402.29
104498	NAP05	Westamerica Bank	02/21/2019	70,165.23
Total for 2/21/2019:				70,165.23
104531	NAP05	Westamerica Bank	03/04/2019	69,023.25
Total for 3/4/2019:				69,023.25
104560	KAISER	Kaiser Foundation Health Plan, Inc.	03/06/2019	50,443.32

Check No	Vendor No	Vendor Name	Check Date	Check Amount
Total for 3/6/2019:				50,443.32
104631	NAP06	NAPA, CITY OF	03/15/2019	93,299.31
104643	REMIF	REMIF	03/15/2019	85,371.00
104675	GHILOTTI	Ghilotti Construction	03/15/2019	65,247.19
Total for 3/15/2019:				243,917.50
104724	NAP05	Westamerica Bank	03/20/2019	78,670.43
104754	KAISER	Kaiser Foundation Health Plan, Inc.	03/20/2019	51,218.80
Total for 3/20/2019:				129,889.23
104813	BRIDGES	Bridges Construction	03/29/2019	86,857.93
104814	BURKEWIL	Burke, Williams & Sorensen LLP	03/29/2019	68,441.52
Total for 3/29/2019:				155,299.45
Report Total (21 checks):				1,805,257.09

	City of St. Helena Administrative Policy Finance	Policy Financial Policy
		Page 1 of 15

Title: Financial Policy		Policy #	P-FI-0016
		Revision #	Revision # 12
		Implementation Date	2019- 02-12 09-10
		Last Update Date	2019- 02-12 09-10
Approval by City Council	Resolution No. 2019-12	Date Approved	2018-11-27

I. Purpose, Overview and Scope of this Policy

This document establishes policies of overall financial management, budget development, and fiscal administration for the City of St. Helena. Included herein are statements and principles designed to guide the City in maintaining its financial stability and delivering high-quality services to the public.

Formally adopted financial policies assist elected officials and City staff in the development of fiscal management practices, save time, and provide structure for financial decisions, promote public confidence, enhance transparency, and provide continuity over time. These policies will be updated periodically, but are designed with a long-term perspective and provide the basic framework and road map for addressing a wide variety of financial and economic conditions that the City will encounter. A fiscal policy supports long-term planning and enhances the City's effectiveness in implementing long-term strategies to deliver efficient public services.

This document provides a structured, central repository for a variety of fiscal policies which are organized into the following categories:

- A. General Financial Principles
- B. Annual Operating Budget Policy
- C. Capital Improvement Program
- D. Revenues
- E. Expenditures
- F. Cash Management
- G. Debt Management
- H. Fund Definitions
- I. Fund Balance Classifications
- J. Fund Balance Levels
- K. Financial Reporting
- L. Review and Update

II. Authority

Updates to this policy require City Council approval.

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III. Policy

A. General Financial Principals

It is the overall policy of the City of St. Helena to build upon a sound conceptual framework to:

1. Manage its financial resources in a responsible and prudent manner.
2. Provide financial information in a relevant, thorough and timely manner, and in a format that effectively communicates financial status to the Council, citizens, and City employees.
3. Establish and maintain prudent fund balance levels.
4. Maintain financial reporting in compliance with current governmental accounting standards.
5. Promote and implement a relevant and strong system of internal financial controls to manage significant risks and monitor the reliability and integrity of financial and operating reporting.
6. Promote constructive and proactive financial decision making that includes, and is responsive to, citizens input and guidance.
7. Integrate long-term operating and capital resources planning into the annual budget process.
8. Allow for uncertainties and maintain a posture of financial flexibility.
9. Develop programs in a manner that support the City's long-term ability to cover costs and provide the level and quality of service expected by its citizens.
10. Manage debt responsibly.
11. Establish and implement investment policies in accordance with City code and State law.

B. Annual Operating Budget Policy

1. Adoption of Annual Operating Budget
 - a. Per Municipal Code 2.12.060.B.9, the City Manager supervises the preparation of a detailed, proposed municipal budget and submit the same to the Council on or before May 15th of each year, and to offer their recommendations as to such increases, decreases, cancellations, transfers, or changes in any of the items included in the proposed budget as in their judgment should be made before the adoption of the budget.
 - b. An annual operating budget will be adopted by the City Council no later than June 30th of each fiscal year. The budget will include appropriations that provide expenditure authority to public officials responsible for operating their respective departments to fulfill obligations to provide public services as delegated by the City Council.

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- c. Funds may not be expended for a new fiscal year until the budget for that fiscal year has been adopted by City Council or special provisions have been adopted by the City Council.
 - d. The budget presented must be balanced, which is when Total projected expenditures shall do not exceed total estimated revenues. If projected expenditures exceed total estimated revenues, Should this occur, City Council may approve a planned use of accumulated fund balances in prior years for inclusion in the budget.
 - e. The City should maintain a multi-year financial forecast (Long Range Financial Forecast) that is updated as part of the annual budget development process.
 - f. One-time revenue sources are not to be relied upon to fund on-going operations.
2. Controlling and Adjusting the Annual Budget
- a. The City structures and controls its budget by use of the following funds:
 - General Fund - is the primary operating fund of the City. It accounts for the receipt of property tax, general sales tax, transient occupancy tax, and other general revenues available to finance City operations. The General Fund accounts for all revenues and expenditures that do not fit the criteria to be accounted for in other funds with external restrictions imposed by their respective financing sources.
 - Special Funds - account for resources externally restricted for use by their respective funding sources, such as grant programs financed by the State and Federal governments.
 - Enterprise Funds - account for water and wastewater systems, and may be used for fee-based programs if the intention is to recoup almost all City costs through fees or other charges.
 - Internal Service Funds - account for centralized service costs (such as vehicle services made available to all operating departments). Charges from the internal service funds appear as an expenditure in the user department, and as revenue in the central service department.
 - b. The City's budget is controlled at the fund level by the City Council.
 - The City Council, as representatives of the public, is the sole authority for creating or increasing expenditure appropriations within a fund. The City Council is also the exclusive authority for approving changes in revenue estimates with funds.
 - c. Department Directors will be held directly responsible and accountable for their budgets as originally adopted by the City Council

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or as thereafter revised in accordance with this policy. The level of expenditure control for departments is at the departmental level.

- d. Departments that operate programs among different funds are limited to the appropriation levels within any one fund. This policy also describes the level of authority needed to amend the adopted budget.

3. Transfers and revisions to the adopted budget:

a. The City Council approves:

- All increases in appropriations within a fund.
- All transfers of appropriations between funds.
- All decreases in appropriations, with the exception that the City Manager may direct Department Directors to suspend expenditures pending Council consideration of decreases in appropriations needed to respond to fiscal emergency.

b. The City Manager approves:

- The City Manager may make budget transfers between departments or programs as long as those changes do not increase overall appropriations within any one given fund. Transfers between funds, overall increases in fund appropriations, and overall increases in project budgets can only be made through City Council action.

- c. Department Directors may authorize the transfer of appropriations within a department, except transfers: (1) that would purport an increase in the number of regular personnel, and (2) that would decrease appropriations for capital outlay.

d. Finance Department:

- The Finance Department is responsible for providing forms and instructions for requesting appropriation adjustments, and for analyzing and recommending adjustments to the City Manager. The Finance Department will record approved budgets and adjustments into the City's financial system.
- The Finance Department will ensure that the City's Comprehensive Annual Financial Report (CAFR) includes a comparison of actual expenditures against the final budget, as amended and adjusted under the authorities of this policy.

4. Operating expenditure appropriations not spent during the fiscal year lapse at year-end, except for:

- a. Encumbrances or commitments, as in the form of finalized purchase orders made during the fiscal year that have not been completed at year-end.

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- b. Appropriations for capital improvement projects and ongoing grants with a life-cycle beyond one year.
- 5. Governmental funds use the modified accrual basis of accounting while proprietary and fiduciary fund types are budgeted on a full accrual basis of accounting. The CAFR presents City's finances on a Generally Accepted Accounting Principles (GAAP) basis and the City's budget is prepared in conformance with these standards.
- 6. The City's budget must comply with the annual determination of the City's appropriations limit (GANN Limit) calculated in accordance with Article XIIB of the Constitution of the State of California and the City shall adopt an annual resolution to this effect.

C. Capital Improvement Program

- 1. The City will develop and maintain a five-year Capital Improvement Program (CIP) to be updated annually in conjunction with the operating budget. The CIP should reflect the current and changing needs of the community as well as enhance the community's quality of life.
- 2. All projects within the CIP are to be tracked systematically and reports should clearly display budget-to-actual performance by project, fund category, and project status.
- 3. Capital improvements that specifically benefit a select group of users and/or are fee-for-service based are to be financed through user fees, service charges, special assessments and taxes, or development impact fees.
- 4. Capital improvements that specifically benefit a fee-for-service enterprise operation (such as Water/Wastewater) are to be financed through the service fees generated within that operation and fund. Such fees should be supported by periodic updates to the related utility master plan.
- 5. Transfers of resources to the CIP fund will be evaluated on an annual basis dependent upon the existence of available surplus dollars.
- 6. The City should strive to maximize the use of capital grants and State assistance in funding capital improvements before utilizing general revenue sources.

D. Revenues

- 1. The City will strive to maintain a diversified and stable revenue base to minimize the impact of economic fluctuation.
- 2. The City will seek out, apply for, and effectively administer Federal, State, and other grants that address the City's current operating and capital priorities in accordance with P-FI-0007 – Grant Application and Management Policy.
- 3. The City will pursue revenue collection and auditing to assure that funds due to the City are accurately received in a timely manner.

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4. The City will seek reimbursement for State mandated costs whenever possible.
5. The City will adopt user fees with appropriate levels of cost recovery.
6. User fee studies should be performed and updated every five years to ensure the proper balance of costs and service charges. The City should strive to cover the full cost of providing non-tax and discretionary fee-based service operations except to the extent that City Council approves defined subsidy levels by program area.
7. Operating departments are to review public services to identify and determine those appropriate for fee collection. Recommendations for new fees are to be presented to the City Council for adoption to ensure fees reflect all direct and reasonable indirect costs of providing such services.
8. Enterprise operations will be self-supporting.

E. Expenditures

1. Expenditures are to be budgeted and controlled so as to not exceed estimated revenues plus the approved and planned use of fund balances accumulated in prior years.
2. The City will conduct a mid-year financial status review to determine if projected revenues and expenditures meet target levels. If an operating deficit is projected at year-end, the City should evaluate the need for immediate corrective and/or mitigating actions, including operating or capital expenditure reductions and/or activate the use of established contingency balances. The deferral of essential and scheduled operational expenditures into the following fiscal year or the use of short-term loans and transfers to balance the budget should be avoided.
3. The City implements a formal purchasing system, principles, and guidelines to ensure that expenditure levels are monitored throughout the course of any fiscal year.

F. Cash Management

1. Annually the City's Investment Policy P-FI-0002 is reviewed and presented to City Council for adoption.
2. Investments for the City are reported at fair value (generally based on quoted market prices). The State Treasurer's Investment Pool and California Asset Management Program (CAMP) operate in accordance with appropriate state laws and regulations. The reported value of the pool is the same as the fair value of the pool shares.

G. Debt Management

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1. The types of debt appropriate for the City include the following: general obligation bonds, bond or grant anticipation notes, lease revenue bonds, certificates of participation and lease-purchase transactions, other revenue bonds and certificates of participation, land-secured financings, such as special tax revenue bonds issued under the Mello-Roos Community Facilities Act of 1982, as amended, and limited obligation bonds issued under applicable assessment statutes, and tax increment financing to the extent permitted under state law. The City may from time to time find that other forms of debt would be beneficial to further its public purposes and may approve such debt without an amendment of this policy.
2. The City should plan the use of debt in a manner that sustains financial payments at manageable levels.
3. The City will strive to integrate its debt issuances with the goals of its capital improvement program by timing the issuance of debt to ensure that projects are available when needed in furtherance of public purposes. Normal wear and tear, upkeep and maintenance of its infrastructure and facilities should be paid from available operating revenues so as to avoid the use of debt to fund infrastructure and facilities improvements that are the result of normal wear and tear.
4. The purposes for which long term debt may be appropriate include the following: (i) the project to be financed is necessary to provide basic services, (ii) the project to be financed will provide benefit to constituents over multiple years, (iii) total debt does not constitute an unreasonable burden to the City or its taxpayers and ratepayers, (iv) the debt is used to refinance outstanding debt in order to produce debt service savings or to realize the benefits of a debt restructuring. The City will not issue long-term debt to fund current operations and will seek to avoid the use of debt to fund infrastructure and facilities improvements in circumstances when the sole purpose of such debt financing is to reduce annual budgetary expenditures. Debt financing should only be used for long-term capital improvement projects with a useful life exceeding the term of the financing and for which the project revenues or specific identified revenue sources are sufficient to service the long-term debt. Debt Financing can be used if the cost of financing is favorable as compared to the use of City investment holdings over the financing term.
5. It is a policy goal of the Issuer to protect taxpayers, ratepayers and constituents by utilizing conservative financing methods and techniques so as to obtain the highest practical credit ratings (if applicable) and the lowest practical borrowing costs. The City will seek to maintain a high credit rating through sound financial practices as a basis for minimizing borrowing costs.

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6. Internal control procedures shall include monitoring all forms of debt annually in conjunction with the budget preparation process and report concerns and remedies, if necessary, to the City Council, to ensure that proceeds of debt will be directed to the intended use.
7. The City will diligently comply with and monitor compliance with all bond covenants.
8. The City will cause to be prepared and will timely post to the Electronic Municipal Market Access database (EMMA) all required annual continuing disclosures and, if needed, any material event notices.
9. The City will monitor all debt obligations for ongoing tax compliance and arbitrage reporting.
10. The City will not incur general obligation indebtedness for public improvements which exceed in aggregate 15% of the assessed value of all real and personal property of the City as specified in the California Government Code Section 43605.
11. The City will maintain a minimum net revenue coverage ratio for the Water and Wastewater funds (all annual revenues remaining after operating and maintenance expenses, net of pass-through grants, to annual debt service requirements net of excess appropriations required for variable rate debt) as required by each funding source.

H. Fund Definitions

1. Governmental Fund Type Definitions
Governmental fund types include the General Fund, special revenue funds, capital projects funds, debt service funds, and permanent funds. The Governmental Accounting Standards Board (GASB) has clarified the definitions of these funds as follows:
 - a. General Fund – The General Fund should be used to account for and report all financial resources not accounted for and reported in another fund.
 - b. Special Revenue Funds – Special revenue funds are used to account for and report the proceeds of specific revenue sources that are restricted or committed to expenditure for specified purposes other than debt service or capital projects. The restricted or committed proceeds of specific revenue sources should be expected to continue to comprise a substantial portion of the inflows reported in the fund. Other resources (investment earnings and transfers from other funds, for example) also may be reported in the fund if those resources are restricted, committed, or assigned to the specific purpose of the fund. Governments should discontinue reporting a special revenue fund, and instead report the fund's remaining resources in the general fund, if

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the government no longer expects that a substantial portion of the inflows will derive from restricted or committed revenue sources.

- c. Capital Projects Funds – Capital projects funds are used to account for and report financial resources that are restricted, committed, or assigned to expenditure for capital outlays, including the acquisition or construction of capital facilities and other capital assets. Capital projects funds exclude those types of capital-related outflows financed by proprietary funds or for assets that will be held in trust for individuals, private organizations, or other governments.
- d. Debt Service Funds – Debt service funds are used to account for and report financial resources that are restricted, committed, or assigned to expenditure for principal and interest, even if it is being accumulated for further years' payments. Debt service funds should be used to report resources if legally mandated.
- e. Permanent Funds – Permanent funds should be used to account for and report resources that are restricted to the extent that only earnings, and not principal, may be used for purposes that support the reporting government's programs. Permanent funds do not include private-purpose trust funds, which should be used to report situations in which the government is required to use the principal or earnings for the benefit of individuals, private organizations, or other governments.

2. Proprietary Fund Type Definitions

Proprietary fund types include enterprise funds and internal service funds.

GASB has clarified the definitions of these funds as follows:

- a. Enterprise Funds – GAAP provide that enterprise funds may be used to report any activity for which a fee is charged to external users for goods or services. Furthermore, a given activity must be accounted for in an enterprise fund if it meets any of the following criteria (in the context of its principal revenue sources):
 - a. There is outstanding debt that is backed solely by fees and charges;
 - b. Laws or regulations require that fees and charges be set to recover costs, including capital costs (depreciation or debt service); or
 - c. There is a pricing policy that fees and charges be set to recover costs, including capital costs (depreciation or debt service).
- b. Internal Service Funds – Internal service funds are used to report any activity that provides goods or services to other funds, departments,

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or agencies of the primary government and its component units, or to other governments, on a cost-reimbursement basis.

3. Fiduciary Fund Type Definitions

Generally Accepted Accounting Principles (GAAP) require fiduciary funds to report assets held in trustee or agency capacity for others cannot be used to support the government's own programs. Fiduciary funds, as reported in GAAP financial statements, never should include resources that can be used to support the government's own programs. Within the fiduciary funds category, funds that involve a trust agreement that affects the degree of management involvement and the length of time that the resources are held are distinguished from funds that involve only the receipt, temporary investment and remittance of fiduciary resources. Fiduciary fund types include pension, investment trust funds, private-purpose trust funds, and agency funds.

- c. Pension Funds – Used to report resources that are required to be held in trust for the members and beneficiaries of defined benefit pension plans, defined contribution plans, or other postemployment benefit plans, or other employee benefit plans.
- d. Investment Trust Funds – Used to report the external portion of investment pools reported by the sponsoring government.
- e. Private-purpose Trust Funds – Used to report all other trust arrangements under which principal and income benefit individuals, private organizations, or other governments.
- f. Agency Funds – Used to report resources held by the reporting government in a purely custodial capacity.

I. Fund Balance Classifications

1. Governmental Fund Balances

- a. Fund balance is defined as the difference between assets and liabilities and in Governmental funds is reported as fund balance.

GASB No. 54 classified fund balances into the following categories:

- Nonspendable: The nonspendable fund balance classification includes amounts that cannot be spent because they are either (a) not in spendable form or (b) legally or contractually required to be maintained intact. The “not in spendable form” criterion includes items that are not expected to be converted to cash, for example, inventories and prepaid amounts. It also includes the long-term amount of loans and notes receivable, as well as property acquired for resale.

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- **Restricted:** The restricted portion of fund balance is restricted to specific purposes. Examples are Gas Tax revenues and grant proceeds.
- **Committed:** The committed portion of fund balance is constrained by the limitations imposed through formal City Council action. Only formal City Council action can remove or modify a previously committed account.
- **Assigned:** The assigned portion of fund balance is established for intended use by either the City Council or its designee, such as the City Manager. No formal City Council action is needed to remove the intended use. GAAP required reserves, such as the Other Post-Employment Benefits (OPEB) reserve, belong to this category.
- **Unassigned:** The unassigned portion of fund balance is that remaining after the non-spendable, the restricted, the committed, and the assigned fund balances are identified and recorded.

The City of St. Helena will use GASB's definitions of fund balance for the annual CAFR and for all other financial reporting. For all financial planning purposes, the term Net Position or Fund Balance will be used and will include any portion of the fund balance that is available for appropriation.

Preferred order of use of governmental fund balances:

The City shall strive to use the most restricted fund balances prior to utilizing those that are less restricted. The following order of use reflects this guideline:

- Non-spendable (if funds become spendable)
 - Restricted
 - Committed
 - Assigned
 - Unassigned
- Proprietary and Fiduciary Fund Balances (Net Position)
 - Fund balance is defined as the difference between assets and liabilities and in Proprietary and Fiduciary fund is reported as net position. GASB No. 63 classified reporting of net position into the following categories:
 - **Net Investment in Capital Assets:** The net investment in capital assets component of net position consists of capital assets, net

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of accumulated depreciation, reduced by the outstanding balances of bonds, mortgages, notes, or other borrowings that are attributable to the acquisition, construction, or improvement of those assets.

- **Restricted for Capital Projects:** The restricted component of net position consists of restricted assets reduced by liabilities and deferred inflows of resources related to those assets. Generally, a liability relates to restricted assets if the asset results from a resource flow that also results in the recognition of a liability or if the liability will be liquidated with restricted assets reported.
- **Unrestricted:** The unrestricted component of net position is the net amount of the assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the determination of net investment in capital assets or the restricted component of net position.

J. Fund Balance Levels

The City of St. Helena has enacted the Fund Balance policies in an effort to ensure financial security through the maintenance of a healthy fund contingency balance that guides the creation, maintenance, and use of resources for financial stabilization purposes. The City's primary objective is to maintain a prudent level of financial resources to protect against reducing service levels or raising taxes and fees due to temporary revenue shortfalls or unpredicted one-time expenditures. The City also seeks to maintain the highest possible credit ratings which are dependent, in part, on the City's maintenance of a healthy fund balance.

1. General Fund

The City's fiscal goal is to maintain annual expenditure increases at a sustainable growth rate, and to limit expenditures to anticipated revenues in order to maintain a balanced budget. The Council's directed target is to maintain an unassigned fund balance of thirty percent (30%) of annual operating expenditures for the fiscal year.

2. Buildings, Facilities, & Infrastructure Reserve

Building, facilities, and infrastructure replacement reserve should be established and maintained to provide for the timely replacement of City owned fixed assets. The balance is hereby defined as assigned by the City Council to allow the City to maintain an infrastructure reserve with a target balance equivalent to the projected annual cost of the first year Capital Improvement Plan fund expenditures.

3. Equipment, Technology, & Vehicle Replacement Reserve

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The balance is hereby defined as assigned by the City Council to allow the City to set aside an appropriate amount of money to property fund equipment, technology, and vehicle replacement. The City shall set aside funding annually in this reserve based on the vehicle, technology, and equipment replacement schedule.

4. Other Benefit Reserves

The City's policy permits employees to accumulate earned but unused vacation and sick leave benefits which are eligible for payment upon separation from service. Retiring employees have the option of applying 100% of their unused sick leave accrued towards the payment of continuation insurance premiums, to the extent allowed by law. The City should set aside funding annually in this reserve to match the current liabilities.

5. Unassigned Operating Reserve

These balances are hereby defined as unassigned by the City Council to allow the City to weather unpredicted cyclical and rapid downturns in the economy. These funds would be available for use in such conditions to mitigate negative economic fiscal impacts or State takeaways and can be activated within any one budget cycle through Council action. An economic downturn would entail a projected and/or sudden drop in core revenues (major tax and service revenue loss) of equal to or greater than 10% (including the impact of inflation) and/or a change in economic parameters (such as interest rates, debt service rates, pension and health rates) that cause a material change in expenditures of 10% or more, or the occurrence of a local natural disaster or unexpected financial claim requiring the immediate use of cash balances.

6. Water and Wastewater Operating Fund Balances

The City should maintain balances in the Water and Wastewater Funds at a level sufficient to accommodate operating and capital needs. City Council's directed target for the Water Fund is 10-14 months (83%-106%) of annual operating expenditures in cash and the Wastewater Fund 6-8 months (50%-67%) of annual operating expenditures in cash. These amounts include cash balances in the Water and Wastewater Capital Improvement Project Funds. Multi-year fee studies for these funds should be updated periodically as a basis for defining the revenue sources necessary to maintain system infrastructure and required service levels. As a result of the periodic fee or master plan studies, adjustments to user charges may be necessary to maintain recommended fund balance levels.

K. Financial Reporting

Budget decisions are of primary concern for the City Council, City Management, the public, and various stakeholders. When considering the budget, staff presents updated projections for revenues and expenditures/expenses and the reports

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indicate whether prior estimates are tracking with the approved budget. Additionally, the external annual financial reporting for local governments involves producing the Comprehensive Annual Financial Report (CAFR) which is audited and produced by an independent, third party CPA/auditor. Throughout the year, the following reports are to be presented to City Council.

1. The City's accounting and financial reports are to be maintained in conformance with GAAP.
2. Long Range Financial Forecast
 - a. A Long Range Financial Forecast (LRFF) for the City's General Fund will be presented to City Council as part of the development of the annual budget.
 - b. The LRFF provides a current and long-range financial assessment of revenues, expenditures, fund balance, and emergency reserves. The primary objective is to provide the City Council and the community with a financial forecast and identify any significant issues that may need to be addressed in the annual budget development process.
 - c. The LRFF will consist of a baseline forecast, a recession forecast, and any other forecasts deemed necessary.
 - d. The LRFF is a ten-year forecast.
 - e. The LRFF will be updated as necessary throughout the fiscal year.
3. Internal Financial Reporting
 - a. Internal financial reports help City Council, the public, and management to monitor budgetary compliance on a timely basis.
 - b. Internal financial reports often provide more detail on individual departments than does general purpose external financial reporting (Section 4 below) and does not require an independent auditor review and audit.
 - c. Internal financial reporting for all funds are to be issued on a periodic and timely basis – no less than quarterly and no more than 30 days after the close of the period. The report will provide detailed information for the General, Water, and Wastewater Funds and summary information for all funds will be included as attachments to the report. The report will include a summary of all checks over \$50,000 issued during that quarter.
 - d. An end of the fiscal year unaudited report will be issued no more than 60 days after the close of Q4 with end of year estimates for revenues and expenditures/expenses for all funds.
 - e. Periodic reports will compare the adopted budget (Original Budget), adjusted budget (Final Budget), and the year to date actuals (Actual Amounts).
4. External Financial Reporting - Comprehensive Annual Financial Report (CAFR)

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- a. An annual financial audit will be performed by an independent public accounting firm familiar with municipal government activities. The independent auditor will issue an audit opinion to be included in the City's Comprehensive Annual Financial Report (CAFR). Additionally, the CAFR and Independent Auditor's Report on Internal Control over Financial Reporting and Compliance will be presented to the City Council.
- b. The CAFR is a set of financial statements for a state, municipality, or other governmental entity that comply with the accounting requirements established by the Governmental Accounting Standards Board (GASB).
- c. In addition to the General, Water, and Wastewater Funds, the City also accounts for activities in approximately 70 special revenue funds that account for monies received from external parties with restrictions on their respective uses. The audit process ensures that the purposes of the various funds were carried out and the relative authorities to spend were honored.
- d. The external auditor prepares financial reports for each fund based on the requirements of the funding source and once all funds are audited, they are accounted for in the financial statements, combining schedules, and notes to the financial statements.
- e. Unless extraneous circumstances occur, the City will rotate audit service providers every five years. If an auditor is being retained for longer than five years, the reason must be included in a staff report to City Council at the time of the contract execution or renewal.
- f. The CAFR will be completed no later than December 31st following the close of the fiscal year.
- g. The City is encouraged to submit the Annual CAFR to State and/or national government finance professional organizations (Governmental Finance Officers' Association's Certification of Achievement for Excellence in Financial Reporting, California Society of Municipal Finance Officers CAFR Award) for independent review and evaluation.

L. Review and Update

This financial policy will be reviewed periodically and updated, if necessary, to reflect any changing requirements.

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CITY OF ST. HELENA

RESOLUTION NO. 2019-__

Resolution approving Revision #2 to City of St. Helena City Council Policy P-FI-0016 Financial Policy and repealing and rescinding Resolution 2019-12 and any previous policies or administrative memoranda which are inconsistent with City Council Policy P-FI-0016, Revision #2.

RECITALS

- A. The City recognizes that fiscal policies and procedures are necessary for efficient, effective, and proper accounting of City spending; and
- B. On November 27, 2018, City Council adopted City Council Policy P-FI-0016 Financial Policy via Resolution 2018-161; and
- C. On February 12, 2019, City Council adopted Policy P-FI-0016 Revision #1 Financial Policy via Resolution 2019-12 updating Section G. Debt Management to ensure compliance with SB 1029; and
- D. After review of the current policy, Financial Policy P-FI-0016 Section B. Annual Operating Budget Policy has been updated to add a clear definition of “balanced budget” and Section K. Financial Reporting has been updated include a requirement that all checks over \$50,000 are reported to City Council during the quarterly finance report; and
- E. The above referenced changes are presented to City Council for adoption; and
- F. To avoid any inconsistencies with policy application, it is necessary to repeal and rescind any previous policies and procedures which conflict with City Council Policy P-FI-0016 Financial Policy, Revision #2.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

- 1. Approves Revision #2 to City of St. Helena City Council Policy P-FI-0016 Financial Policy; and
- 2. Repeals and rescinds any previous policies or administrative memoranda which are inconsistent with City Council Policy P-FI-0016 Financial Policy, Revision #2.

Approved at a Regular Meeting of the St. Helena City Council on September 10, 2019, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Councilmember Chouteau:

Councilmember Knudsen:

Councilmember Koberstein:

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk



Report to the City Council
Council Meeting of September 10, 2019

Agenda Section: Consent

Subject: Conduct second reading and proposed adoption of an ordinance amending Chapter 3.04, Title 3 of the St. Helena Municipal Code In Its Entirety to Effectuate Changes to Sections 3.04.100, 3.04.110, 3.04.120 and 3.04.170 of Article 2, Chapter 3.04, Title 3 of the St. Helena Municipal Code Regarding Increases to Purchase Order Limits for Supplies, General Services and Equipment and Sections 3.04.210, 3.04.230, 3.04.240 and 3.04.250 of Article 3, Chapter 3.04, Title 3 of the St. Helena Municipal Code Regarding Increases to Bidding Limits Under the Uniform Public Construction Cost Accounting Act for Public Works Projects.

CEQA Not a CEQA project
Determination:

Prepared By: April Mitts, Finance Director

Reviewed By: Mark T. Prestwich, City Manager

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On August 5, 2019, a special meeting of the City Council was held to discuss and provide direction on three operational recommendations by the City Manager. (1) Public Works reorganization, (2) transition to bi-monthly utility billing, and (3) revision of the City's purchase order limits. Each operational recommendation was intended to improve accountability of specific functions and create additional operational capacity within the departments. Following discussion by the City Council, a resolution was adopted acknowledging and supporting the City Manager's recommendation for the Public Works reorganization and direction was provided to the City Manager to proceed with revising the City's Municipal Code as it relates to utility billing cycles and purchase order limits. Additionally, effective January 1, 2019, Assembly Bill 2249 went to effect

increasing the bid limits for public works projects under the Uniform Public Construction Cost Accounting Act, which the City adheres to.

At the August 27, 2019, regular meeting of the City Council, the item was discussed and direction was provided to move forward with an ordinance amending Chapter 3.04, Title 3 of the St. Helena Municipal Code.

DISCUSSION

There are recommended changes to two articles of the City's Municipal Code being recommended for City Council consideration. The first set of changes relate to increasing purchase order limits for supplies, general services and equipment as set forth in Article 2, Chapter 3.04, Title 3 of the St. Helena Municipal Code (SHMC). The second set of proposed changes are not related to the City Council meeting held on August 5, 2019; however, they are a result of Assembly Bill 2249 which increased the bid limits for public works projects under the Uniform Public Construction Cost Accounting Act (UPCCAA), which the City adheres to. Because the UPCCAA changes are located within the same chapter and title of the SHMC as the proposed revisions to purchase order limits (i.e. Chapter 3.04, Title 3 of the SHMC), staff determined it was appropriate to incorporate these changes into the same staff report.

PURCHASE OF SUPPLIES, EQUIPMENT AND SERVICES

The procurement of goods and services is one of the key staff activities impacting the quality and timeliness related to the delivery of City services. On August 5, 2019, staff presented a review of the current purchasing process and purchasing requirements in local jurisdictions of approximately the same size. Staff compared the impacts of increasing the current purchase order limit by two different amounts: \$2,500 and \$5,000. Changing the purchase order limits will provide additional staff resource efficiencies that impact the quality and timeliness of City service delivery as it will reduce the purchase order processing workload by approximately 81-84%. The current purchasing process for supplies, equipment, and services is cumbersome and can sometimes delay the purchase of a necessary supply, equipment, or service by two weeks due to the need to obtain three quotes and the processing time for Purchase Orders. To increase capacity and create more efficiencies, the City Council provided direction to make changes to Article 2 Supplies, General Services and Equipment, Chapter 3.04, Title 3 of the SHMC as follows:

- Eliminate the need for Purchase Order Requisitions and Purchase Orders for budgeted, departmental purchases under \$5,000.

While the elimination of Purchase Order Requisitions and Purchase Orders for amounts below \$5,000 is being recommended, the need for prudence in purchasing is cited in Section 3.04.110 A. which, "requires that, for purchases of less than five thousand dollars, the requester must receive a verbal/written approval from the supervisor, and the department keeps a record of such purchases and exercises reasonable prudence in seeking price quotes and purchasing such items." An additional safeguard being followed to ensure prudence in purchasing includes department head approval of all

invoices, unless authorization has been given for a manager or supervisor to approve invoices up to a certain dollar amount.

As set forth in the attached draft ordinance with redline (Attachment A), to effectuate the changes, Sections 3.04.100, 3.04.110, 3.04.120, and 3.04.170 of Article 2, Chapter 3.04, Title 3 of the SHMC are being amended. Note that the revision to Section 3.04.170 is merely to correct an internal reference error.

UNIFORM CONSTRUCTION COST ACCOUNTING PROCEDURE (UCCAP)

Public Contract Code was updated by AB 2249, effective January 1, 2019. This update raises the ceiling on the value of public works projects that the City can perform with its own forces or contract for with a purchase order. With this update, amendments to Sections 3.04.210, 3.04.230, 3.04.240 and 3.04.250 of Article 3, Chapter 3.04, Title 3 of the SHMC regarding Public Works Projects is being recommended. The proposed changes to Title 3 will update the SHMC to conform with the increased limits set by Assembly Bill 2249. In summary, this provides:

- Public projects of \$60,000 or less may be performed by negotiated contract or by purchase order. This is increased from the prior amount of \$45,000.
- Public projects of \$200,000 or less may be let to contract by the informal procedures set forth. This is up from the prior amount of \$175,000.
- Public projects of more than \$200,000 shall be let to contract by formal bidding procedures. This is up from the prior amount of \$175,000.
- Bids in excess of the statutory amount of \$200,000 may be awarded by passage of a resolution of four-fifths vote up to \$212,500. This is up from \$175,000 and \$187,500 respectively.

FISCAL IMPACT

There is no direct fiscal impact to the first reading of the recommended changes to St. Helena Municipal Code Section 3.04. If the City Council adopts the ordinance the amount of staff time to process Purchase Orders and Purchase Order Requisitions will be reduced by approximately 81-84%.

RECOMMENDED ACTION

Staff recommends the City Council conduct the second reading, adopting the ordinance by title only and waiving further reading.

ATTACHMENTS

[Attachment A - Ordinance with Exhibit A with Markups](#)

[Attachment B - Ordinance with Exhibit A clean](#)

CITY OF ST. HELENA

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ST. HELENA, CALIFORNIA, AMENDING CHAPTER 3.04, TITLE 3 OF THE ST. HELENA MUNICIPAL CODE IN ITS ENTIRETY TO EFFECTUATE CHANGES TO SECTIONS 3.04.100, 3.04.110, 3.04.120 AND 3.04.170 OF ARTICLE 2, CHAPTER 3.04, TITLE 3 OF THE ST. HELENA MUNICIPAL CODE REGARDING INCREASES TO PURCHASE ORDER LIMITS FOR SUPPLIES, GENERAL SERVICES AND EQUIPMENT AND SECTIONS 3.04.210, 3.04.230, 3.04.240 AND 3.04.250 OF ARTICLE 3, CHAPTER 3.04, TITLE 3 OF THE ST. HELENA MUNICIPAL CODE REGARDING INCREASES TO THE BIDDING LIMITS UNDER THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT FOR PUBLIC WORKS PROJECTS

The City Council of the City of St. Helena does hereby ordain as follows:

SECTION 1. Amendment of Chapter 3.04, Title 3 of the St. Helena Municipal Code.

Chapter 3.04, Title 3 of the St. Helena Municipal Code is hereby amended to read in its entirety as shown on Exhibit A, attached hereto and incorporated herein by reference.

SECTION 2. Compliance with CEQA.

The City Council hereby finds that the action to adopt this ordinance to amend Chapter 3.04, title 3 of the St. Helena Municipal Code is not a Project subject to the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA). Further, even if the adoption of the ordinance is found to be a Project subject to CEQA, it is nevertheless exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because the City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment.

SECTION 3. Severability.

The City Council hereby declares every section, paragraph, sentence, clause and phrase of this ordinance is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such

invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 4. Inclusion in the St. Helena Municipal Code.

It is the intention of the St. Helena City Council that the text in Exhibit A of this ordinance be made a part of the St. Helena Municipal Code and that the text may be renumbered or re-lettered and the word "Ordinance" may be changed to "Section," "Chapter," or such as appropriate word or phrase to accomplish this intention.

SECTION 5. Effective Date.

This ordinance shall take effect and be in force 30 days after its adoption, and a summary of this ordinance shall be published once with the names of the members of the Council voting for and against the ordinance in the St. Helena Star, a newspaper of general circulation published in the City of St. Helena.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on the 27th day of August 2019, and was adopted at a regular meeting of the St. Helena City Council on the ____th day of _____, 2019, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Councilmember Koberstein:

Councilmember Chouteau:

Councilmember Knudsen:

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

I, CINDY TZAFPOULOS, CITY CLERK of the City of St. Helena, California, do hereby certify that the foregoing Ordinance was regularly introduced and passed upon its first reading at a regular meeting of the City Council on the 27th day of August, 2019. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the ____th day of _____, 2019, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Councilmember Koberstein:

Councilmember Chouteau:

Councilmember Knudsen:

EXHIBIT A

**Chapter 3.04
PURCHASE OF SUPPLIES, EQUIPMENT AND SERVICES, AND PROCEDURES FOR
PUBLIC WORKS PROJECTS**

Article 1

Generally

Sections:

- 3.04.010 Purpose—Objectives—Scope—Responsibilities.**
- 3.04.020 Definitions.**
- 3.04.030 Staging prohibited.**
- 3.04.040 Appeals.**

Article 2

Supplies, General Services and Equipment

Sections:

- 3.04.050 Purchasing officer—Powers and duties.**
- 3.04.060 Requisitions.**
- 3.04.070 Purchase orders.**
- 3.04.080 Contracts.**
- 3.04.090 Encumbrance of funds.**
- 3.04.100 Bidding procedures for various purchase amounts.**
- 3.04.110 Departmental purchases.**
- 3.04.120 Informal bid procedure.**
- 3.04.130 Formal bid procedure.**
- 3.04.140 Special equipment/supplies, sole source purchases, and bid exceptions.**
- 3.04.150 Cooperative purchasing with other agencies.**
- 3.04.160 Recycled supply products specification.**
- 3.04.170 Emergencies.**
- 3.04.175 Declared emergencies.**
- 3.04.180 Surplus supplies and equipment.**

3.04.190 Inspection and tests.

Article 3

Public Works Projects

Sections:

- 3.04.200 Uniform construction cost accounting procedures.**
- 3.04.210 Bidding procedures for various project amounts.**
- 3.04.220 Negotiate contract or purchase order procedures.**
- 3.04.230 Informal bidding procedures.**
- 3.04.240 Formal bidding procedures.**
- 3.04.250 Bonds.**
- 3.04.260 No bids received.**
- 3.04.270 Tie bids.**
- 3.04.280 Rejection of bids.**
- 3.04.290 Emergencies.**
- 3.04.300 Prevailing wages required.**
- 3.04.310 Pre-qualification of bidders.**

Article 4

Professional Services

Sections:

- 3.04.320 Award of professional service contracts based upon competence.**
- 3.04.330 Request for proposal/qualification.**
- 3.04.340 Contracting authority.**

Article 1

Generally

3.04.010 Purpose—Objectives—Scope—Responsibilities.

The purpose of this chapter is to establish an efficient procedure for the purchase of supplies, equipment, and services, and to establish a procedure for performing or contracting for the construction of public works consistent with state law. These procedures are intended to allow the city to obtain the best professional services, to acquire quality supplies, general services and equipment, to construct public works at the lowest possible cost commensurate with quality needed, and to exercise positive financial control over purchases and also to define authority for the purchasing function. These procedures apply to all city employees. These procedures apply to all purchases of supplies, equipment and services,

including purchases made online or over the phone. Employees are responsible for reading and understanding the requirements of this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.010)

3.04.020 Definitions.

As used in this chapter:

“Bidder’s list” means a list of responsible prospective vendors capable of providing the items being bid upon.

“Contract” means an agreement, regardless of how titled, for the procurement of supplies, equipment or services, including without limitation a verbal or written agreement between the city and a contractor, the city and a service provider, and/or the city and a vendor.

“Emergency” means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

“Equipment” means furnishings, machinery, vehicles, rolling stock, and other personal property used in the city’s business.

“General services” are services such as janitorial, uniform cleaning, maintenance work and other services which do not require any unique skill, special background, or training. Obtaining such services at the lowest cost is the single most important factor in selection, as opposed to personal performance.

“Maintenance work” means:

1. Routine, recurring, and usual work for the cleaning, preservation or protection of any publicly owned or publicly operated facility for its intended purposes;
2. Minor repainting;
3. Resurfacing of streets and highways at less than one inch;
4. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems;
5. Work performed to keep, operate, and maintain publicly owned water or waste disposal systems including, but not limited to, dams and reservoirs.

“Professional or special services” means any work performed by an attorney, doctor, architect, engineer, land surveyor, construction manager, appraiser, expert, accounting firm, planner, consultant or those services such as computer services, and other services which require special performance criteria, specific experience, training, personal judgement, quality of work or factors other than simply obtaining the service at the lowest cost to the city.

“Public work” means a type of public construction project subject to the regulation of the State Public Contract Code, such as:

1. The erection, construction of, alteration, major painting, repair, or demolition of public buildings, streets, walkways, water and sewer facilities, drainage facilities, or other public facilities, whether owned, leased, or operated by the city;
2. Furnishing supplies for any of the above works or projects;
3. Public work does not include “maintenance work” as defined in this chapter.

“Purchase” includes the renting, leasing, purchasing, licensing, or a trade of equipment or supplies.

“Purchase order” is a written contract for equipment, supplies, or services with a specified consultant, contractor, or vendor and is initiated by a purchase order requisition. A purchase order submitted by an authorized person becomes a legally binding contract. It can stand alone or include attachments for clarification purposes. A purchase order encumbers the specified amounts to provide specified equipment, supplies, services, and/or fixed assets. Regular purchasers may be paid through a one-time payment of an amount up to the purchase order amount at the conclusion of performance (delivery of supplies, services, etc.), and/or incremental (progress) payments as provided in the contract for each time items are purchased.

“Purchasing officer” means the finance director or his or her designated representative.

“Requisition” is a request to authorize the acquisition of equipment, supplies or services from a specified consultant, contractor, or vendor.

“Services” means the furnishing of labor, time or effort to perform or complete a designated task.

“Special equipment/supplies” means unique supplies, machinery, computers, or other equipment which are not generally and regularly ordered in bulk by the city and which must perform complex tasks, or integrate efficiently with existing equipment or supplies.

“Supplies” means office supplies, janitorial supplies, materials, goods, tools, or other commodities used in the general conduct of the city’s business, excepting supplies for a public work which is regulated under Section [3.04.210](#).

“Uniform construction cost accounting procedures” means those procedures and rules established by the State Uniform Construction Cost Accounting Commission pursuant to the Public Contract Code Section [22030](#) et seq. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.020)

3.04.030 Staging prohibited.

Purchases and public works contracts shall not be knowingly staged or separated into smaller units or segments solely for the purpose of evading the competitive formal or informal bidding requirements of this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.030)

3.04.040 Appeals.

Any dispute, contention, or disagreement relative to interpretation, application or enforcement of this chapter shall be submitted to the city council for determination in accordance with the appeal provisions of Chapter [1.16](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.040)

Article 2

Supplies, General Services and Equipment

3.04.050 Purchasing officer—Powers and duties.

The duties of the purchasing officer may be combined with those duties of any other officer or position in the city. The purchasing officer shall have the authority to:

- A. Purchase needed city supplies, general services, equipment and special equipment/supplies which are not included within the construction contract or proposed specifications for a construction contract of a public work being administered by any other city department;
- B. Investigate, keep knowledgeable about, negotiate, and recommend on the execution of contracts or the purchasing of supplies, general services, and equipment pursuant to the procedures of this chapter and such administrative rules and regulations as prescribed by the city;
- C. To keep informed of current developments concerning purchasing, prices, market conditions, and new products;
- D. To prescribe and maintain such forms as necessary for the proper operation of this purchasing system;

- E. To supervise the inspection of all supplies, general services, and equipment purchased under this chapter in order to assure conformance with city specifications;
- F. To supervise the transfer of surplus and unused supplies and equipment or sale or disposal of such;
- G. To maintain up-to-date bidder's list, vendors' catalogs, files and such other records as needed to perform these duties;
- H. To ensure that purchasing specifications are open and nonrestrictive to encourage full competition; and
- I. To perform such other tasks as may be necessary for the proper conduct of purchasing of supplies, general services, and equipment. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.010)

3.04.060 Requisitions.

Except as authorized under Section [3.04.100\(A\)](#), any department requesting supplies, general services, equipment, or special equipment/supplies shall submit to the immediate supervisor a requisition on the purchasing officer's approved form prior to initiating any procurement. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.020)

3.04.070 Purchase orders.

Except for departmental purchases as authorized in Section [3.04.100\(A\)](#), purchases of supplies, general services, most special equipment/supplies and general equipment not covered within a construction contract or public works specification, may be made only by purchase orders issued by the purchasing officer and any other contractual document he or she determines is necessary. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.030)

3.04.080 Contracts.

The purchasing officer does not have the authority to sign contracts, nor to bind the city contractually. Contracts may only be entered into by the city manager. Subject to Section [3.04.340](#) contracts may only be entered into by the city manager; contracts in excess of city manager authority require city council approval, without which such contract is not valid. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.040)

3.04.090 Encumbrance of funds.

Except in case of an emergency or where specific authority is first obtained from the city council or the city manager, the purchasing officer shall not issue any purchase order for purchasing of supplies, general services or equipment unless there exists an unencumbered appropriation in the fund account

against which the purchase is to be charged. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.050)

3.04.100 Bidding procedures for various purchase amounts.

Except as authorized in Sections [3.04.140](#) and [3.04.150](#), or in the case of emergencies as described in Sections [3.04.170](#) and [3.04.175](#), the purchase of supplies, general services, equipment and special equipment/supplies, not included in a construction contract or bid specification for a public work, shall be made as follows:

- A. A purchase of five ~~hundred-thousand~~ dollars (\$5,000.00) or less may be made by departmental purchase in accordance with Section [3.04.110](#).
- B. A purchase greater than five ~~hundred- thousand~~ dollars (\$5,000.00) to ~~one-twenty-five~~ thousand ~~five hundred~~ dollars ~~(\$1,500.00)-(\$25,000)~~ may be made ~~by an informal bid procedure in accordance with Section 3.04.120, by departmental purchase in accordance with Section 3.04.110.~~
- ~~—A purchase greater than one thousand five hundred dollars (\$1,500.00) to twenty-five thousand dollars (\$25,000.00) may be made by an informal bid procedure in accordance with Section 3.04.120.~~
- ~~DC.~~ A purchase of more than twenty-five thousand dollars (\$25,000.00) shall be made by formal bid procedure in accordance with Section [3.04.130](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.060)

3.04.110 Departmental purchases.

A department may, independently of the purchase officer, purchase specified and limited supplies, equipment, special equipment/supplies and general services not included in a construction contract or bid specification for a public work, as follows:

- A. Purchases of five ~~hundred-thousand~~ dollars (\$5,000.00) or less: requestor receives a verbal/written approval from supervisor, ~~department~~ keeps a record of such purchases and exercises reasonable prudence in seeking price quotes and purchasing such items. All purchases shall be made with funds in an unencumbered appropriation.
- ~~B. —Purchases greater than five hundred dollars (\$500.00) to one thousand five hundred dollars (\$1,500.00): requestor receives a verbal/written approval from supervisor, attempt to obtain at least three oral or written bids or quotes, requires requisition approved by supervisor, department keeps a record of such purchases and exercises reasonable prudence in seeking price quotes and purchasing such items.~~

~~All such purchases shall be made with funds in an unencumbered appropriation.~~ (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.070)

3.04.120 Informal bid procedure.

The purchase of supplies, equipment, special equipment/supplies and general services not included in a construction contract or bid specification for a public work with the estimated value greater than ~~one-five~~ thousand ~~five hundred~~ dollars ~~(\$1,500.00)(\$5,000.00)~~, but not exceeding twenty-five thousand dollars (\$25,000.00), shall be made by a purchase order as required by this chapter. Said purchases, subject to the department head's discretion, based upon a small amount, or urgent need and timeliness, may be let without the formal bidding procedures described in Section [3.04.130](#). In such case, the following procedures shall be followed:

- A. Solicitation of Bids. If it is determined that the request is of a sufficient size and time allows, the purchasing officer or designee, before issuing the purchase order to a specific contractor/vendor, shall: ~~for purchases greater than one thousand five hundred dollars (\$1,500.00) to five thousand dollars (\$5,000.00) must obtain at least three oral or written bids or price quotes;~~ for purchases greater than five thousand dollars (\$5,000.00) to twenty-five thousand dollars (\$25,000.00), ~~shall~~ obtain at least three written bids or price quotes. The purchasing officer or designee may negotiate to obtain the lowest possible contract amount from any vendor contacted who can provide supplies, general service, or equipment within the time constraints of the department's request. The purchasing officer or designee may solicit or determine bids of prospective vendors by written request, telephone, or may base award recommendations upon current catalogs or advertisements.
- B. Local Preference. Quality and service being equal, a local preference of one percent shall be given to local bidders located within the city, the difference being the sales tax the city would receive on the sale in the case of vendors.
- C. Maintenance of Records. After placing the order, a written record of the contract, bids, quotes or advertisements used or received shall be open public records and maintained by the purchasing officer or the department for a period of two years.
- D. Award. The purchasing officer or designee shall award the contract to the lowest responsive and responsible bidder, vendor or offeror whose quote, bid, or proposal fulfills the purpose intended, provided the amount is within the unencumbered appropriation for that item, or reject such bids or proposals, or negotiate further for terms more favorable to the city. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.080)

3.04.130 Formal bid procedure.

For supplies, equipment, special equipment/supplies and general services not included in a construction contract or bid specification for a public work with an estimated value in excess of twenty-five thousand dollars (\$25,000.00), purchases shall be made in accordance with the following formal written bid procedures:

A. Published Notices. A notice inviting bids shall be published at least ten (10) calendar days before the date of the opening of bids. The notice shall be published at least once in a newspaper of general circulation printed and published in the city, and also in appropriate trade publications, if any, circulated within the general area. Such other notice as the purchasing officer or designee deems appropriate shall be made.

B. Notices Inviting Bids. Notices inviting bids shall include a general description of the goods, articles, services or equipment to be purchased, any required bidder's security or performance bonds, state where bid blanks and specifications may be secured and the time and place for the opening of bids.

C. Bidder's List. The purchasing officer or designee shall maintain a list of responsible bidders for various categories of supplies, equipment, and general services. A solicitation for a bid shall be sent to all responsible prospective contractors or suppliers whose names are on the bidder's list for the category of equipment, supplies or general services subject to the bid request.

D. Bidder's Security/Failure to Sign Contract. If the city requires a bidder's bond or other form of security, the bidder's security shall be prescribed in the notice inviting bids in an amount equal to ten percent (10%) of the bid amount. Bidder's security shall be either a cash deposit with the city, a cashier's or certified check payable to the city, or a bidder's bond. Unsuccessful bidders shall be entitled to the return of bid security within sixty (60) days of the date of the award. However, the lowest responsive and responsible bidder shall forfeit all or part of its bid security, as may be determined by the city council, upon the bidder's refusal or failure to execute the contract within ten (10) days after the date of the award of the contract. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the council may award the contract to the next lowest responsive, responsible bidder.

E. Bid Opening Procedure. Sealed bids shall be submitted to the city clerk's office and shall be identified as to bidder, project, and "Bid" on the envelope. Bids shall be opened by city staff in public at the time and place stated and as described in the notice inviting bids. A written record and tabulation shall be made at that time of all bids received, and shall be open for public inspection during regular business hours for a period of two years after the bid opening.

F. Local Preference. Quality and service being equal, a local preference of one percent shall be given to local bidders located within the city, the difference being the sales tax the city would receive on the sale in the case of vendors.

G. Bid Evaluation Procedures. All bids and bidders shall be analyzed by purchasing officer or designee and the responsible department for bidder's qualifications and compliance with bid specifications. The purchasing officer or designee shall prepare a recommendation to the department for award or rejection; the department shall then prepare a recommendation for award or rejection to the city council.

H. Rejection of Bids. In its discretion, the city council may reject all bids and readvertise. If no bids are received, the city council may proceed with the procurement without further complying with this chapter using whatever method it deems appropriate, such as rebid, abandon acquisition, or negotiate a contract.

I. Award of Contracts. Contracts shall be awarded by the city council to the lowest responsive and responsible bidder whose bid fulfills the purpose intended according to criteria designated in the solicitation, provided the award amount is within the unencumbered appropriation for that item. The city council may waive any minor bid irregularities.

J. Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the council may accept either bid or accept the lowest bid made by negotiation with the tied bidders.

K. Performance Bonds. The city may require a performance bond in such amount as it shall find reasonably necessary to protect the public interest. If the city requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.090)

3.04.140 Special equipment/supplies, sole source purchases, and bid exceptions.

A. Special Equipment/Supplies. In purchasing any special equipment or supplies needed to be compatible with existing equipment, or to perform complex or unique functions, the purchasing officer or department head may:

1. Limit bidding to a specific product type, or a brand name product; or
2. Utilize a request for proposal approach where warranties, servicing obligations, and product performance will be evaluated in addition to the price of the product, and the award of the contract is made by the council to the proposer it deems is in the best public interest.

B. Sole Source Purchases. Commodities or services that can be obtained from only one vendor, or one distributor authorized to sell in this area, are exempt from the competitive bidding requirements in Section [3.04.100](#) and are deemed sole source purchases. Sole source purchases may include proprietary items sold direct from the manufacturer. All sole source purchases shall be supported by written documentation indicating the facts and nature supporting the determination of a sole source, signed by the appropriate department head and forwarded to the purchasing officer. Approval of any sole source acquisition shall be obtained from the city council for an award of a contract or purchase order greater than twenty-five thousand dollars (\$25,000.00).

C. Bid Exceptions. The competitive bid process is not applicable to certain purchases. The following are exempt from bid processes of this chapter:

1. Departmental purchases, as defined in Section [3.04.110](#);
2. Subscriptions;
3. Trade circulars or books;
4. Newspaper advertisements and notices;
5. Utility payments;
6. Land. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.100)

3.04.150 Cooperative purchasing with other agencies.

The bidding requirements of Section [3.04.100](#) shall not apply to the purchasing of any equipment or supplies which the purchasing officer decides to obtain through a cooperative competitive bidding procedure prepared by and processed through another public, local, state, or federal governmental agency. If it is determined to be in the best interest of the city, the purchasing officer is authorized to “piggy-back” onto or join into an existing written purchase contract, which contract was obtained within the last twelve (12) months through a competitive bidding process prepared by and awarded by another public, local, state or federal government agency. However, the city council’s approval shall be required prior to and for the joining of a “piggy-back” purchase or cooperative purchase for a purchase greater than twenty-five thousand dollars (\$25,000.00). (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.110)

3.04.160 Recycled supply products specification.

If in procuring supplies a recycled product can achieve the necessary city performance standard, and if such recycled product is readily available, specifications should, if economically feasible, require products

made with recycled materials be bid. If the department head determines that: (A) a recycled product lacks performance capabilities or needed quality levels; or (B) a sufficient amount of such recycled or reusable product is not currently available in the market, then a reduced percentage can be required, or the supply specification can be limited to nonrecycled or virgin materials. When recycled products are required, reasonable efforts shall be made to label the products as containing recycled materials. As used in this section, recycled products does not mean used products, but is limited to new products made with materials which have been recycled. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.120)

3.04.170 Emergencies.

Bidding procedures may be dispensed with in the case of an emergency. The city council delegates to the city manager the authority to declare a public emergency and enter into contracts for any purchase in accordance with Section ~~3.04.340~~175. The city manager's authority is subject to confirmation by the city council at its next meeting for any purchase in excess of twenty-five thousand dollars (\$25,000.00). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.130)

3.04.175 Declared emergencies.

A. Purpose. This section modifies the city's normal purchasing practices only during a proclaimed emergency. With this revised policy, the city is able to acquire goods and services required to address an immediate threat to life, public health or safety, or an immediate threat of significant damage to improved public and private property while maintaining an effective purchasing policy.

B. Definitions. For the purposes of this section, the following definitions are applicable:

A proclaimed disaster or emergency exists if (1) the Governor has declared a state of emergency for an area which includes the geographic territory of the city, or (2) the city manager or his or her designee has declared an emergency in the city.

"Exigent circumstances" are situations in which (1) a disaster or emergency has been proclaimed, and (2) the public exigency for goods and services required to address an immediate threat to life, public health or safety, or improved public and private property will not permit competitive solicitation.

C. Delegation of Purchasing Authority in Exigent Circumstances. If the city manager or his or her designee determines that goods and services must be procured before the city council is to assemble and approve purchases, the city manager or his or her designee has the authority, subject to the limitations set forth below to approve the immediate rental and/or purchase of any equipment, supplies, services, or

other items necessary to respond to an immediate threat to life, public health or safety, or improved public and private property.

1. Limits of Single Purchase Authority. The city manager or his or her designee shall have the authority to make individual purchases up to one hundred thousand dollars (\$100,000.00) on his or her signature alone. The city manager or his or her designee shall have the authority to make purchases in excess of one hundred thousand dollars (\$100,000.00) up to a maximum of five hundred thousand dollars (\$500,000.00) when countersigned by the mayor or, in the mayor's absence, countersigned by another council member.

2. Limits of Aggregate Purchase Authority. The city manager or his or her designee shall have the authority to make aggregate purchases up to one million five hundred thousand dollars (\$1,500,000.00) on his or her signature alone per disaster declaration. The city manager or his or her designee shall have the authority to make aggregate purchases in excess of one million five hundred thousand dollars (\$1,500,000.00) and up to a maximum of two million five hundred thousand dollars (\$2,500,000.00) per disaster declaration when countersigned by the mayor or, in the mayor's absence, countersigned by another council member.

- a. Sub-delegation to the Emergency Operations Center (EOC) Director. The EOC director shall be a designee of the city manager at any time that the city manager is not available to approve purchases as allowed in this section.

- b. Sub-delegation of Purchasing Authority to Department Heads. If neither the city manager or his or her designee nor the EOC director is available, then any city department head has the authority to rent or purchase from the nearest source, any equipment supplies, services, or other items necessary for any department to respond to an immediate threat to health, safety, or improved property, up to a maximum of fifty thousand dollars (\$50,000.00).

- c. Sub-delegation of Purchasing Authority to Mid-Managers. If neither the city manager or his or her designee, EOC director, or any department head is not available, then any employee classified as a mid-manager has the authority to rent or purchase from the nearest source, any equipment, supplies, services, or other items necessary for any department to respond to an immediate threat to health, safety, or improved property, up to a maximum of twenty-five thousand dollars (\$25,000.00).

D. Administrative Procedures and Reporting Requirements.

1. As soon as possible after purchases are made under subsection C of this section, the city manager or his or her designee, EOC director, department head or midmanager shall submit to the finance director or designee a purchase order requisition and a notation that the commodity has been ordered on an emergency basis from the vendor designated.
2. The finance director will inform the city manager or his or her designee and the city council of any individual purchase under this section with a contract amount greater than twenty-five thousand dollars (\$25,000.00), and also whenever the aggregate of purchases under this section is greater than two hundred fifty thousand dollars (\$250,000.00).
3. The finance director will obtain the city manager's or his or her designee's (or EOC director as the city manager's designee) approval prior to any purchase by a department head if the amount is twenty-five thousand dollars (\$25,000.00) or more.
4. If the city manager or his or her designee and the EOC director are unavailable, and the delay in getting his or her signature would imperil life, public health or safety, or improved public or private property, then any department head (except the requestor) may approve the emergency purchase of fifty thousand dollars (\$50,000.00) or more.
5. The finance director or designee shall have the authority to approve all disaster related purchases under fifty thousand dollars (\$50,000.00).
6. The finance director or designee will expedite the verification of funds available and complete the preparation of the purchase order.

E. Procurement Procedures in Exigent Circumstances. Upon receipt of the requisitions under subsection D of this section, the finance director or designee shall prepare purchase orders for emergency equipment, supplies, services or other items in accordance with the requirements of this section.

1. Exempt Purchases. Purchases of two hundred fifty thousand dollars (\$250,000.00) or less shall not be required to be formally bid. Purchases greater than two hundred fifty thousand dollars (\$250,000.00) may be made following the procedures specified in this section. The signature(s) of the city manager or his or her designee, finance director, or department head are still required as provided in subsections C and D of this section.

2. Justification of “Sole Source” or “No Bid” Contracts. Where exigent circumstances require immediate procurement from the nearest available source, the finance director or designee shall justify the emergency sole source purchase or no bid purchase on the purchase order.
 - a. Procurement should be limited to that portion of the work that must be performed immediately, and subsequent procurement by competitive proposal for the remainder of the work under the city’s normal purchasing policy (this chapter).
 - b. “Sole source” or “no bid” acquisitions shall be necessary for one of the following reasons: placement of emergency protective measures; procurement of scarce commodities, goods, or services; or acquisition or rental of emergency equipment, emergency consulting services, emergency road clearance, or other emergency requirements.
 3. Provision for Alternate Bid Solicitation Procedures. The city’s normal requirements for quotes, sealed bids, or local preference shall not apply to this section (Declared emergencies). However, the finance director or designee shall conduct telephonic or other electronic bid solicitation from potential vendors or suppliers, in lieu of written and/or sealed bids, in an effort to obtain multiple competitive proposals when and if time allows in light of the exigent circumstances.
 4. Posting Locations for Requests for Proposals or Solicitations of Bids. The finance director or designee may waive normal requirements for public posting of requests for proposals or solicitation of bids for the procurement of emergency equipment, goods or services. Notices soliciting bids or requests for proposals shall be posted, at minimum, at the emergency operations center or the alternate emergency operations center, if the primary emergency operations center is not being used.
 5. Length of Time for Posting Requests for Proposals or Solicitation of Bids. The finance director or designee shall determine the posting period. The finance director or designee will make reasonable efforts to ensure that multiple suppliers are able to place a bid during the shortened time period.
- F. Notification and Ratification.
1. Posting of Contract Awards. All contracts awarded that exceed twenty-five thousand dollars (\$25,000.00) shall be presented to the city council for ratification and thereafter shall be publicly posted within sixty (60) days of the award.

2. Authority to Cancel Emergency Procurements. The city manager has the absolute authority to rescind a contract for nonperformance within twenty-four (24) hours when a contractor or vendor, once awarded a contract, is unable to perform under the terms of the contract and the resulting delay or nonperformance presents an immediate threat to life, public health or safety, or improved public or private property.

3. Notification Requirement for Emergency Services. For any purchase in excess of twenty-five thousand dollars (\$25,000.00), the city manager shall report all such purchases to the city council within thirty (30) days of the onset of the disaster.

4. Requirement for Separate Invoicing. All purchases or rentals made during the proclaimed emergency or disaster conditions shall require separate invoicing from routine (nondisaster) purchases. All invoices must state the goods, services, or equipment provided and must specify the location where the goods or services were delivered.

5. Limitations of Declared Emergencies Purchasing Policy. Any purchases that do not meet the standard of being necessary for responding to an immediate threat to life, public health or safety, or improved public or private property as outlined in this section shall follow the city's regular purchasing provisions. (Ord. 16-5 § 1 (Exh. A))

3.04.180 Surplus supplies and equipment.

All departments shall submit to the purchasing officer, at such times and in such forms as he or she may prescribe, reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The purchasing officer may direct that the designated supplies or equipment be:

- A. Transferred to another city department or agency;
- B. Exchanged or traded in on new supplies and equipment; or
- C. Disposed of in some other suitable manner, which may include sale at auction or deposit at a landfill. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.140)

3.04.190 Inspection and tests.

The purchasing officer or designee or department requesting the item shall inspect all deliveries of supplies and equipment to assure conformance with the contract or order specifications. The purchasing officer or designee, at his or her discretion, may require such reasonable chemical and physical tests of samples of supplies and equipment as he or she deems necessary to determine the quality in

conformance with those specifications. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.150)

Article 3 Public Works Projects

3.04.200 Uniform construction cost accounting procedures.

The city council has elected to become subject to the Uniform Public Construction Cost Accounting Act and procedures as established by the California Uniform Construction Cost Accounting Commission in Public Contract Code Section [22000](#) et seq. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.010)

3.04.210 Bidding procedures for various project amounts.

- A. A public work project of ~~forty-five-sixty~~ thousand dollars (\$~~4560~~,000.00) or less may be performed by city force account, by negotiated contract, or by purchase order in accordance with Section 3.04.220.
- B. A public work project greater than ~~forty-five-sixty~~ thousand dollars (\$~~4560~~,000.00) and less than or equal to ~~one-two~~ hundred ~~seventy-five~~ thousand dollars (\$~~175200~~,000.00) may be let to contract by informal bid procedures in accordance with Section 3.04.230.
- C. A public work project of more than ~~one-two~~ hundred ~~seventy-five~~ thousand dollars (\$~~175200~~,000.00) shall, except as otherwise provided in this chapter, be let to contract by formal bidding procedure in accordance with Section 3.04.240.

The described project cost limits of subsections A through C of this section shall be increased automatically as authorized pursuant to the adjustments made by the California Uniform Construction Cost Accounting Commission under Public Contract Code Section [22034](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.020)

3.04.220 Negotiate contract or purchase order procedures.

For those projects qualifying under Section [3.04.210](#)(A), the applicable department head shall obtain a cost estimate from the project engineer or architect prior to issuing a purchase order or negotiating a contract with a responsible contractor. For any city force account work, the department head shall first comply with the guidelines established by the California Uniform Construction Cost Accounting Commission in determining the cost of the public work. The city manager shall have the authority to award and to execute any contract for the public work qualifying under Section [3.04.210](#)(A). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.030)

3.04.230 Informal bidding procedures.

For those projects which qualify under Section [3.04.210](#)(B) for informal bidding, the following procedures shall be used:

A. Bidder's List. The city shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors' list shall be consistent with the Uniform Public Construction Cost Accounting Act rules.

B. Notice. The city clerk shall prepare a notice inviting bids.

1. Contents of Notice. The notice inviting bids shall include a general description of the services and/or articles to be purchased, where bid blanks and specifications may be obtained, the time and place for bid openings, and whether bid deposit or bond and faithful performance ~~and/or warranty~~ bond will be required.

2. Mailing of Notice. Unless the product or service is proprietary, all contractors on the city's list for the category of work being bid shall be mailed a notice inviting informal bids, or an announcement/advertisement shall be placed in all construction trade journals, or both such mailing and advertising. The trade journals shall be those identified by the California Uniform Construction Cost Accounting Commission as appropriate for this area, in accordance with California Public Contract Code Section [22036](#).

3. Ten (10) Day Notice. Notices inviting informal bids shall be posted at the city hall and mailed at least ten (10) calendar days before the due date of submission of bids to all firms or suppliers on the bidder's list for the category of ~~equipment, supplies, or general services~~work being bid and to such other vendors as the public works director deems appropriate.

4. Proprietary Products or Services. If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting bids may be sent exclusively to such contractor or contractors.

C. Award. The city council shall award the contract to the lowest responsive and responsible bidder whose bid or proposal fulfills the purpose intended according to criteria designated in the solicitation. The council may waive any minor bid irregularities.

D. Bids in Excess of Statutory Amount. If all bids received are in excess of ~~one~~[two](#) hundred ~~seventy-five~~ thousand dollars (~~\$175~~[200](#),000.00), the city council may, by passage of a resolution by a four-fifths vote, award the contract ~~to the lowest responsive and responsible bidder~~ up to ~~an amount not to exceed one~~

~~hundred eighty-seven thousand five~~two hundred twelve thousand five hundred ~~hundred~~ dollars (\$~~187,212~~,500.00) ~~to the lowest responsible bidder~~ if it determines the cost estimate of the city was reasonable. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.92.040)

3.04.240 Formal bidding procedures.

For those projects which qualify under Section [3.04.210](#)(C) for formal bidding, the following procedures shall be used:

A. Adoption of Plans. Prior to soliciting bids, ~~unless otherwise delegated by the city council to the public works director~~, the city council shall approve and adopt the plans, specifications and working details, and authorize the bid request for all public work projects in excess of ~~one two~~ hundred ~~seventy-five~~ thousand dollars (\$~~175,200~~,000.00).

B. Notice. The city clerk shall prepare a notice inviting bids.

1. Contents of Notice. The notice inviting bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.

2. Publication of Notice. The notice shall be published at least once fourteen (14) calendar days before the date of opening the bids in a newspaper of general circulation, which is circulated within the jurisdiction of the city.

3. Mailing of Notice. The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail and mailed to all construction trade journals specified by the California Uniform Construction Cost Accounting Commission as appropriate for the area. The notice shall be mailed at least fifteen (15) calendar days before the date of opening the bids.

4. Other Notice. In addition to notice required by this section, the city may give other notice as it deems proper.

C. Bid Opening Procedure. Sealed bids shall be submitted to the city clerk's office and shall be identified as to bidder, project and bid on the envelope. Bids shall be opened by the city clerk's staff in public at the time and place stated and as described in the notice inviting bids. A written record and tabulation shall be made at that time of all bids received, and shall be open for public inspection during regular business hours for a period of two years after the bid opening. The public works director shall make an analysis of the bids for compliance with bid specifications and thereafter make a recommendation for award or rejection.

D. Award. Contracts shall be awarded by the city council to the lowest responsive and responsible bidder whose bid fulfills the purpose intended, according to criteria designated in the solicitation. The council may waive minor bid irregularities. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.050)

3.04.250 Bonds.

A. The city shall require ~~labor and materials~~ payment bonds for projects in excess of twenty-five thousand dollars (\$25,000.00) in accordance with California Civil Code Section 9550, as may be amended from time to time. The city council may require bid security or bid bonds and ~~or~~ performance and/or warranty bonds from an acceptable surety in such amounts as it finds reasonably necessary to protect the public interest. If the city requires a bond, the form and amount of the bond shall be described in the notice inviting bids.

B. Unsuccessful bidders shall be entitled to the return of bid security within sixty (60) days of the date of the award. However, the lowest responsive and responsible bidder shall forfeit all or part of its bid security, as may be determined by the council, upon the bidder's refusal or failure to execute the contract within ten (10) days after the date of the award of the contract. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the city council may award the contract to the next lowest responsible bidder. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.060)

3.04.260 No bids received.

If no bids are received through the formal or informal procedure, the project may be performed by city employees by force account or by negotiated contract without further complying with this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.070)

3.04.270 Tie bids.

If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the city council may accept either bid or accept the lowest bid made by negotiation with the tied bidders. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.080)

3.04.280 Rejection of bids.

In its discretion, the council may reject any bids presented. If after the first invitation of bids all bids are rejected, the city shall state the reasons for the rejection and after reevaluating its cost estimates of the project, the city shall have the option of any of the following:

A. Abandoning the project;

B. Readvertising for bids in the manner described in this chapter; or

C. By passage of a resolution by a four-fifths vote of the council declaring that the project can be performed more economically by city employees, may have the project done by force account without further complying with this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.090)

3.04.290 Emergencies.

A. In cases of emergency as defined in this chapter, the city, pursuant to a four-fifths vote of the council, may proceed at once to replace or repair any public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without adopting plans, specifications, working details, or giving notice for bids to provide contracts. The work may be done by day labor under the direction of the council, by contractor, or by a combination of the two.

B. The city manager may order any action under this section subject to the provisions of California Public Contract Code Section [22050](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.100)

3.04.300 Prevailing wages required.

Public works contracts are subject to prevailing wage requirements as set forth in Labor Code Section [1720](#) et seq., as may be amended from time to time. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.110)

3.04.310 Pre-qualification of bidders.

Prospective bidders on a public works contract may be required to be pre-qualified in accordance with procedures adopted by city council resolution, subject to the provisions of California Public Contract Code Section [20101](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.120)

Article 4

Professional Services

3.04.320 Award of professional service contracts based upon competence.

In contracting for those professional services as defined in Section [3.04.020](#), contracts should only be awarded to firms or persons who have demonstrated an adequate level of experience, competence, staffing and other professional qualifications necessary for more than a satisfactory performance of the services required. Once the department requesting the service has determined a firm has an adequate level of competence, the cost of the service may be considered. However, the lowest cost may not be the

sole factor in deciding which firm or who shall be awarded the contract. It may be in the city's best interest to award the contract to a higher priced professional services provider based on the scope of services available, unique skills, staffing levels, timing, prior experience, past working relationship and other factors required by the department or proposed by that professional services provider. The information needed for determining that level of competence, other qualifications and the procedure for selecting such services shall be determined by each city department responsible for recommending the professional service contract. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.93.010)

3.04.330 Request for proposal/qualification.

The acquiring of professional services shall be procured through negotiated contract and may include requests for proposals/qualifications. Contracting for professional services is decentralized and shall be the responsibility of the department head requesting the service. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.93.020)

3.04.340 Contracting authority.

The city manager shall approve professional service or consulting contracts up to and including twenty-five thousand dollars (\$25,000.00). The city council shall approve professional service or consulting contracts greater than twenty-five thousand dollars (\$25,000.00). (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.93.030)

CITY OF ST. HELENA

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ST. HELENA, CALIFORNIA, AMENDING CHAPTER 3.04, TITLE 3 OF THE ST. HELENA MUNICIPAL CODE IN ITS ENTIRETY TO EFFECTUATE CHANGES TO SECTIONS 3.04.100, 3.04.110, 3.04.120 AND 3.04.170 OF ARTICLE 2, CHAPTER 3.04, TITLE 3 OF THE ST. HELENA MUNICIPAL CODE REGARDING INCREASES TO PURCHASE ORDER LIMITS FOR SUPPLIES, GENERAL SERVICES AND EQUIPMENT AND SECTIONS 3.04.210, 3.04.230, 3.04.240 AND 3.04.250 OF ARTICLE 3, CHAPTER 3.04, TITLE 3 OF THE ST. HELENA MUNICIPAL CODE REGARDING INCREASES TO THE BIDDING LIMITS UNDER THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT FOR PUBLIC WORKS PROJECTS

The City Council of the City of St. Helena does hereby ordain as follows:

SECTION 1. Amendment of Chapter 3.04, Title 3 of the St. Helena Municipal Code.

Chapter 3.04, Title 3 of the St. Helena Municipal Code is hereby amended to read in its entirety as shown on Exhibit A, attached hereto and incorporated herein by reference.

SECTION 2. Compliance with CEQA.

The City Council hereby finds that the action to adopt this ordinance to amend Chapter 3.04, title 3 of the St. Helena Municipal Code is not a Project subject to the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA). Further, even if the adoption of the ordinance is found to be a Project subject to CEQA, it is nevertheless exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because the City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment.

SECTION 3. Severability.

The City Council hereby declares every section, paragraph, sentence, clause and phrase of this ordinance is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such

invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 4. Inclusion in the St. Helena Municipal Code.

It is the intention of the St. Helena City Council that the text in Exhibit A of this ordinance be made a part of the St. Helena Municipal Code and that the text may be renumbered or re-lettered and the word "Ordinance" may be changed to "Section," "Chapter," or such as appropriate word or phrase to accomplish this intention.

SECTION 5. Effective Date.

This ordinance shall take effect and be in force 30 days after its adoption, and a summary of this ordinance shall be published once with the names of the members of the Council voting for and against the ordinance in the St. Helena Star, a newspaper of general circulation published in the City of St. Helena.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on the 27th day of August 2019, and was adopted at a regular meeting of the St. Helena City Council on the ____th day of _____, 2019, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Councilmember Koberstein:

Councilmember Chouteau:

Councilmember Knudsen:

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

I, CINDY TZAFPOULOS, CITY CLERK of the City of St. Helena, California, do hereby certify that the foregoing Ordinance was regularly introduced and passed upon its first reading at a regular meeting of the City Council on the 27th day of August, 2019. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the ____th day of _____, 2019, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Councilmember Koberstein:

Councilmember Chouteau:

Councilmember Knudsen:

EXHIBIT A

**Chapter 3.04
PURCHASE OF SUPPLIES, EQUIPMENT AND SERVICES, AND PROCEDURES FOR
PUBLIC WORKS PROJECTS**

Article 1

Generally

Sections:

- 3.04.010 Purpose—Objectives—Scope—Responsibilities.**
- 3.04.020 Definitions.**
- 3.04.030 Staging prohibited.**
- 3.04.040 Appeals.**

Article 2

Supplies, General Services and Equipment

Sections:

- 3.04.050 Purchasing officer—Powers and duties.**
- 3.04.060 Requisitions.**
- 3.04.070 Purchase orders.**
- 3.04.080 Contracts.**
- 3.04.090 Encumbrance of funds.**
- 3.04.100 Bidding procedures for various purchase amounts.**
- 3.04.110 Departmental purchases.**
- 3.04.120 Informal bid procedure.**
- 3.04.130 Formal bid procedure.**
- 3.04.140 Special equipment/supplies, sole source purchases, and bid exceptions.**
- 3.04.150 Cooperative purchasing with other agencies.**
- 3.04.160 Recycled supply products specification.**
- 3.04.170 Emergencies.**
- 3.04.175 Declared emergencies.**
- 3.04.180 Surplus supplies and equipment.**

3.04.190 Inspection and tests.

Article 3

Public Works Projects

Sections:

- 3.04.200 Uniform construction cost accounting procedures.**
- 3.04.210 Bidding procedures for various project amounts.**
- 3.04.220 Negotiate contract or purchase order procedures.**
- 3.04.230 Informal bidding procedures.**
- 3.04.240 Formal bidding procedures.**
- 3.04.250 Bonds.**
- 3.04.260 No bids received.**
- 3.04.270 Tie bids.**
- 3.04.280 Rejection of bids.**
- 3.04.290 Emergencies.**
- 3.04.300 Prevailing wages required.**
- 3.04.310 Pre-qualification of bidders.**

Article 4

Professional Services

Sections:

- 3.04.320 Award of professional service contracts based upon competence.**
- 3.04.330 Request for proposal/qualification.**
- 3.04.340 Contracting authority.**

Article 1

Generally

3.04.010 Purpose—Objectives—Scope—Responsibilities.

The purpose of this chapter is to establish an efficient procedure for the purchase of supplies, equipment, and services, and to establish a procedure for performing or contracting for the construction of public works consistent with state law. These procedures are intended to allow the city to obtain the best professional services, to acquire quality supplies, general services and equipment, to construct public works at the lowest possible cost commensurate with quality needed, and to exercise positive financial control over purchases and also to define authority for the purchasing function. These procedures apply to all city employees. These procedures apply to all purchases of supplies, equipment and services,

including purchases made online or over the phone. Employees are responsible for reading and understanding the requirements of this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.010)

3.04.020 Definitions.

As used in this chapter:

“Bidder’s list” means a list of responsible prospective vendors capable of providing the items being bid upon.

“Contract” means an agreement, regardless of how titled, for the procurement of supplies, equipment or services, including without limitation a verbal or written agreement between the city and a contractor, the city and a service provider, and/or the city and a vendor.

“Emergency” means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

“Equipment” means furnishings, machinery, vehicles, rolling stock, and other personal property used in the city’s business.

“General services” are services such as janitorial, uniform cleaning, maintenance work and other services which do not require any unique skill, special background, or training. Obtaining such services at the lowest cost is the single most important factor in selection, as opposed to personal performance.

“Maintenance work” means:

1. Routine, recurring, and usual work for the cleaning, preservation or protection of any publicly owned or publicly operated facility for its intended purposes;
2. Minor repainting;
3. Resurfacing of streets and highways at less than one inch;
4. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems;
5. Work performed to keep, operate, and maintain publicly owned water or waste disposal systems including, but not limited to, dams and reservoirs.

“Professional or special services” means any work performed by an attorney, doctor, architect, engineer, land surveyor, construction manager, appraiser, expert, accounting firm, planner, consultant or those services such as computer services, and other services which require special performance criteria, specific experience, training, personal judgement, quality of work or factors other than simply obtaining the service at the lowest cost to the city.

“Public work” means a type of public construction project subject to the regulation of the State Public Contract Code, such as:

1. The erection, construction of, alteration, major painting, repair, or demolition of public buildings, streets, walkways, water and sewer facilities, drainage facilities, or other public facilities, whether owned, leased, or operated by the city;
2. Furnishing supplies for any of the above works or projects;
3. Public work does not include “maintenance work” as defined in this chapter.

“Purchase” includes the renting, leasing, purchasing, licensing, or a trade of equipment or supplies.

“Purchase order” is a written contract for equipment, supplies, or services with a specified consultant, contractor, or vendor and is initiated by a purchase order requisition. A purchase order submitted by an authorized person becomes a legally binding contract. It can stand alone or include attachments for clarification purposes. A purchase order encumbers the specified amounts to provide specified equipment, supplies, services, and/or fixed assets. Regular purchasers may be paid through a one-time payment of an amount up to the purchase order amount at the conclusion of performance (delivery of supplies, services, etc.), and/or incremental (progress) payments as provided in the contract for each time items are purchased.

“Purchasing officer” means the finance director or his or her designated representative.

“Requisition” is a request to authorize the acquisition of equipment, supplies or services from a specified consultant, contractor, or vendor.

“Services” means the furnishing of labor, time or effort to perform or complete a designated task.

“Special equipment/supplies” means unique supplies, machinery, computers, or other equipment which are not generally and regularly ordered in bulk by the city and which must perform complex tasks, or integrate efficiently with existing equipment or supplies.

“Supplies” means office supplies, janitorial supplies, materials, goods, tools, or other commodities used in the general conduct of the city’s business, excepting supplies for a public work which is regulated under Section [3.04.210](#).

“Uniform construction cost accounting procedures” means those procedures and rules established by the State Uniform Construction Cost Accounting Commission pursuant to the Public Contract Code Section [22030](#) et seq. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.020)

3.04.030 Staging prohibited.

Purchases and public works contracts shall not be knowingly staged or separated into smaller units or segments solely for the purpose of evading the competitive formal or informal bidding requirements of this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.030)

3.04.040 Appeals.

Any dispute, contention, or disagreement relative to interpretation, application or enforcement of this chapter shall be submitted to the city council for determination in accordance with the appeal provisions of Chapter [1.16](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.040)

Article 2

Supplies, General Services and Equipment

3.04.050 Purchasing officer—Powers and duties.

The duties of the purchasing officer may be combined with those duties of any other officer or position in the city. The purchasing officer shall have the authority to:

- A. Purchase needed city supplies, general services, equipment and special equipment/supplies which are not included within the construction contract or proposed specifications for a construction contract of a public work being administered by any other city department;
- B. Investigate, keep knowledgeable about, negotiate, and recommend on the execution of contracts or the purchasing of supplies, general services, and equipment pursuant to the procedures of this chapter and such administrative rules and regulations as prescribed by the city;
- C. To keep informed of current developments concerning purchasing, prices, market conditions, and new products;
- D. To prescribe and maintain such forms as necessary for the proper operation of this purchasing system;

- E. To supervise the inspection of all supplies, general services, and equipment purchased under this chapter in order to assure conformance with city specifications;
- F. To supervise the transfer of surplus and unused supplies and equipment or sale or disposal of such;
- G. To maintain up-to-date bidder's list, vendors' catalogs, files and such other records as needed to perform these duties;
- H. To ensure that purchasing specifications are open and nonrestrictive to encourage full competition; and
- I. To perform such other tasks as may be necessary for the proper conduct of purchasing of supplies, general services, and equipment. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.010)

3.04.060 Requisitions.

Except as authorized under Section [3.04.100](#)(A), any department requesting supplies, general services, equipment, or special equipment/supplies shall submit to the immediate supervisor a requisition on the purchasing officer's approved form prior to initiating any procurement. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.020)

3.04.070 Purchase orders.

Except for departmental purchases as authorized in Section [3.04.100](#)(A), purchases of supplies, general services, most special equipment/supplies and general equipment not covered within a construction contract or public works specification, may be made only by purchase orders issued by the purchasing officer and any other contractual document he or she determines is necessary. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.030)

3.04.080 Contracts.

The purchasing officer does not have the authority to sign contracts, nor to bind the city contractually. Contracts may only be entered into by the city manager. Subject to Section [3.04.340](#) contracts may only be entered into by the city manager; contracts in excess of city manager authority require city council approval, without which such contract is not valid. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.040)

3.04.090 Encumbrance of funds.

Except in case of an emergency or where specific authority is first obtained from the city council or the city manager, the purchasing officer shall not issue any purchase order for purchasing of supplies, general services or equipment unless there exists an unencumbered appropriation in the fund account

against which the purchase is to be charged. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.050)

3.04.100 Bidding procedures for various purchase amounts.

Except as authorized in Sections [3.04.140](#) and [3.04.150](#), or in the case of emergencies as described in Sections [3.04.170](#) and [3.04.175](#), the purchase of supplies, general services, equipment and special equipment/supplies, not included in a construction contract or bid specification for a public work, shall be made as follows:

- A. A purchase of five thousand dollars (\$5,000.00) or less may be made by departmental purchase in accordance with Section [3.04.110](#).
- B. A purchase greater than five thousand dollars (\$5,000.00) to twenty-five thousand dollars (\$25,000) may be made by an informal bid procedure in accordance with Section 3.04.120.
- C. A purchase of more than twenty-five thousand dollars (\$25,000.00) shall be made by formal bid procedure in accordance with Section [3.04.130](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.060)

3.04.110 Departmental purchases.

A department may, independently of the purchase officer, purchase specified and limited supplies, equipment, special equipment/supplies and general services not included in a construction contract or bid specification for a public work, as follows:

- A. Purchases of five thousand dollars (\$5,000.00) or less: requestor receives a verbal/written approval from supervisor, department keeps a record of such purchases and exercises reasonable prudence in seeking price quotes and purchasing such items. All purchases shall be made with funds in an unencumbered appropriation. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.070)

3.04.120 Informal bid procedure.

The purchase of supplies, equipment, special equipment/supplies and general services not included in a construction contract or bid specification for a public work with the estimated value greater than five thousand dollars (\$5,000.00), but not exceeding twenty-five thousand dollars (\$25,000.00), shall be made by a purchase order as required by this chapter. Said purchases, subject to the department head's discretion, based upon a small amount, or urgent need and timeliness, may be let without the formal bidding procedures described in Section [3.04.130](#). In such case, the following procedures shall be followed:

A. Solicitation of Bids. If it is determined that the request is of a sufficient size and time allows, the purchasing officer or designee, before issuing the purchase order to a specific contractor/vendor, shall: for purchases greater than five thousand dollars (\$5,000.00) to twenty-five thousand dollars (\$25,000.00), obtain at least three written bids or price quotes. The purchasing officer or designee may negotiate to obtain the lowest possible contract amount from any vendor contacted who can provide supplies, general service, or equipment within the time constraints of the department's request. The purchasing officer or designee may solicit or determine bids of prospective vendors by written request, telephone, or may base award recommendations upon current catalogs or advertisements.

B. Local Preference. Quality and service being equal, a local preference of one percent shall be given to local bidders located within the city, the difference being the sales tax the city would receive on the sale in the case of vendors.

C. Maintenance of Records. After placing the order, a written record of the contract, bids, quotes or advertisements used or received shall be open public records and maintained by the purchasing officer or the department for a period of two years.

D. Award. The purchasing officer or designee shall award the contract to the lowest responsive and responsible bidder, vendor or offeror whose quote, bid, or proposal fulfills the purpose intended, provided the amount is within the unencumbered appropriation for that item, or reject such bids or proposals, or negotiate further for terms more favorable to the city. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part): prior code § 2.91.080)

3.04.130 Formal bid procedure.

For supplies, equipment, special equipment/supplies and general services not included in a construction contract or bid specification for a public work with an estimated value in excess of twenty-five thousand dollars (\$25,000.00), purchases shall be made in accordance with the following formal written bid procedures:

A. Published Notices. A notice inviting bids shall be published at least ten (10) calendar days before the date of the opening of bids. The notice shall be published at least once in a newspaper of general circulation printed and published in the city, and also in appropriate trade publications, if any, circulated within the general area. Such other notice as the purchasing officer or designee deems appropriate shall be made.

B. Notices Inviting Bids. Notices inviting bids shall include a general description of the goods, articles, services or equipment to be purchased, any required bidder's security or performance bonds, state where bid blanks and specifications may be secured and the time and place for the opening of bids.

C. Bidder's List. The purchasing officer or designee shall maintain a list of responsible bidders for various categories of supplies, equipment, and general services. A solicitation for a bid shall be sent to all responsible prospective contractors or suppliers whose names are on the bidder's list for the category of equipment, supplies or general services subject to the bid request.

D. Bidder's Security/Failure to Sign Contract. If the city requires a bidder's bond or other form of security, the bidder's security shall be prescribed in the notice inviting bids in an amount equal to ten percent (10%) of the bid amount. Bidder's security shall be either a cash deposit with the city, a cashier's or certified check payable to the city, or a bidder's bond. Unsuccessful bidders shall be entitled to the return of bid security within sixty (60) days of the date of the award. However, the lowest responsive and responsible bidder shall forfeit all or part of its bid security, as may be determined by the city council, upon the bidder's refusal or failure to execute the contract within ten (10) days after the date of the award of the contract. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the council may award the contract to the next lowest responsive, responsible bidder.

E. Bid Opening Procedure. Sealed bids shall be submitted to the city clerk's office and shall be identified as to bidder, project, and "Bid" on the envelope. Bids shall be opened by city staff in public at the time and place stated and as described in the notice inviting bids. A written record and tabulation shall be made at that time of all bids received, and shall be open for public inspection during regular business hours for a period of two years after the bid opening.

F. Local Preference. Quality and service being equal, a local preference of one percent shall be given to local bidders located within the city, the difference being the sales tax the city would receive on the sale in the case of vendors.

G. Bid Evaluation Procedures. All bids and bidders shall be analyzed by purchasing officer or designee and the responsible department for bidder's qualifications and compliance with bid specifications. The purchasing officer or designee shall prepare a recommendation to the department for award or rejection; the department shall then prepare a recommendation for award or rejection to the city council.

H. Rejection of Bids. In its discretion, the city council may reject all bids and readvertise. If no bids are received, the city council may proceed with the procurement without further complying with this chapter using whatever method it deems appropriate, such as rebid, abandon acquisition, or negotiate a contract.

I. Award of Contracts. Contracts shall be awarded by the city council to the lowest responsive and responsible bidder whose bid fulfills the purpose intended according to criteria designated in the solicitation, provided the award amount is within the unencumbered appropriation for that item. The city council may waive any minor bid irregularities.

J. Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the council may accept either bid or accept the lowest bid made by negotiation with the tied bidders.

K. Performance Bonds. The city may require a performance bond in such amount as it shall find reasonably necessary to protect the public interest. If the city requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.090)

3.04.140 Special equipment/supplies, sole source purchases, and bid exceptions.

A. Special Equipment/Supplies. In purchasing any special equipment or supplies needed to be compatible with existing equipment, or to perform complex or unique functions, the purchasing officer or department head may:

1. Limit bidding to a specific product type, or a brand name product; or
2. Utilize a request for proposal approach where warranties, servicing obligations, and product performance will be evaluated in addition to the price of the product, and the award of the contract is made by the council to the proposer it deems is in the best public interest.

B. Sole Source Purchases. Commodities or services that can be obtained from only one vendor, or one distributor authorized to sell in this area, are exempt from the competitive bidding requirements in Section [3.04.100](#) and are deemed sole source purchases. Sole source purchases may include proprietary items sold direct from the manufacturer. All sole source purchases shall be supported by written documentation indicating the facts and nature supporting the determination of a sole source, signed by the appropriate department head and forwarded to the purchasing officer. Approval of any sole source acquisition shall be obtained from the city council for an award of a contract or purchase order greater than twenty-five thousand dollars (\$25,000.00).

C. Bid Exceptions. The competitive bid process is not applicable to certain purchases. The following are exempt from bid processes of this chapter:

1. Departmental purchases, as defined in Section [3.04.110](#);
2. Subscriptions;
3. Trade circulars or books;
4. Newspaper advertisements and notices;

5. Utility payments;

6. Land. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.100)

3.04.150 Cooperative purchasing with other agencies.

The bidding requirements of Section [3.04.100](#) shall not apply to the purchasing of any equipment or supplies which the purchasing officer decides to obtain through a cooperative competitive bidding procedure prepared by and processed through another public, local, state, or federal governmental agency. If it is determined to be in the best interest of the city, the purchasing officer is authorized to “piggy-back” onto or join into an existing written purchase contract, which contract was obtained within the last twelve (12) months through a competitive bidding process prepared by and awarded by another public, local, state or federal government agency. However, the city council’s approval shall be required prior to and for the joining of a “piggy-back” purchase or cooperative purchase for a purchase greater than twenty-five thousand dollars (\$25,000.00). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.110)

3.04.160 Recycled supply products specification.

If in procuring supplies a recycled product can achieve the necessary city performance standard, and if such recycled product is readily available, specifications should, if economically feasible, require products made with recycled materials be bid. If the department head determines that: (A) a recycled product lacks performance capabilities or needed quality levels; or (B) a sufficient amount of such recycled or reusable product is not currently available in the market, then a reduced percentage can be required, or the supply specification can be limited to nonrecycled or virgin materials. When recycled products are required, reasonable efforts shall be made to label the products as containing recycled materials. As used in this section, recycled products does not mean used products, but is limited to new products made with materials which have been recycled. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.120)

3.04.170 Emergencies.

Bidding procedures may be dispensed with in the case of an emergency. The city council delegates to the city manager the authority to declare a public emergency and enter into contracts for any purchase in accordance with Section [3.04.175](#). The city manager’s authority is subject to confirmation by the city council at its next meeting for any purchase in excess of twenty-five thousand dollars (\$25,000.00). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.130)

3.04.175 Declared emergencies.

A. Purpose. This section modifies the city's normal purchasing practices only during a proclaimed emergency. With this revised policy, the city is able to acquire goods and services required to address an immediate threat to life, public health or safety, or an immediate threat of significant damage to improved public and private property while maintaining an effective purchasing policy.

B. Definitions. For the purposes of this section, the following definitions are applicable:

A proclaimed disaster or emergency exists if (1) the Governor has declared a state of emergency for an area which includes the geographic territory of the city, or (2) the city manager or his or her designee has declared an emergency in the city.

"Exigent circumstances" are situations in which (1) a disaster or emergency has been proclaimed, and (2) the public exigency for goods and services required to address an immediate threat to life, public health or safety, or improved public and private property will not permit competitive solicitation.

C. Delegation of Purchasing Authority in Exigent Circumstances. If the city manager or his or her designee determines that goods and services must be procured before the city council is to assemble and approve purchases, the city manager or his or her designee has the authority, subject to the limitations set forth below to approve the immediate rental and/or purchase of any equipment, supplies, services, or other items necessary to respond to an immediate threat to life, public health or safety, or improved public and private property.

1. Limits of Single Purchase Authority. The city manager or his or her designee shall have the authority to make individual purchases up to one hundred thousand dollars (\$100,000.00) on his or her signature alone. The city manager or his or her designee shall have the authority to make purchases in excess of one hundred thousand dollars (\$100,000.00) up to a maximum of five hundred thousand dollars (\$500,000.00) when countersigned by the mayor or, in the mayor's absence, countersigned by another council member.

2. Limits of Aggregate Purchase Authority. The city manager or his or her designee shall have the authority to make aggregate purchases up to one million five hundred thousand dollars (\$1,500,000.00) on his or her signature alone per disaster declaration. The city manager or his or her designee shall have the authority to make aggregate purchases in excess of one million five hundred thousand dollars (\$1,500,000.00) and up to a maximum of two million five hundred thousand dollars (\$2,500,000.00) per disaster declaration when countersigned by the mayor or, in the mayor's absence, countersigned by another council member.

- a. Sub-delegation to the Emergency Operations Center (EOC) Director. The EOC director shall be a designee of the city manager at any time that the city manager is not available to approve purchases as allowed in this section.
- b. Sub-delegation of Purchasing Authority to Department Heads. If neither the city manager or his or her designee nor the EOC director is available, then any city department head has the authority to rent or purchase from the nearest source, any equipment supplies, services, or other items necessary for any department to respond to an immediate threat to health, safety, or improved property, up to a maximum of fifty thousand dollars (\$50,000.00).
- c. Sub-delegation of Purchasing Authority to Mid-Managers. If neither the city manager or his or her designee, EOC director, or any department head is not available, then any employee classified as a mid-manager has the authority to rent or purchase from the nearest source, any equipment, supplies, services, or other items necessary for any department to respond to an immediate threat to health, safety, or improved property, up to a maximum of twenty-five thousand dollars (\$25,000.00).

D. Administrative Procedures and Reporting Requirements.

- 1. As soon as possible after purchases are made under subsection C of this section, the city manager or his or her designee, EOC director, department head or midmanager shall submit to the finance director or designee a purchase order requisition and a notation that the commodity has been ordered on an emergency basis from the vendor designated.
- 2. The finance director will inform the city manager or his or her designee and the city council of any individual purchase under this section with a contract amount greater than twenty-five thousand dollars (\$25,000.00), and also whenever the aggregate of purchases under this section is greater than two hundred fifty thousand dollars (\$250,000.00).
- 3. The finance director will obtain the city manager's or his or her designee's (or EOC director as the city manager's designee) approval prior to any purchase by a department head if the amount is twenty-five thousand dollars (\$25,000.00) or more.
- 4. If the city manager or his or her designee and the EOC director are unavailable, and the delay in getting his or her signature would imperil life, public health or safety, or improved public or private property, then any department head (except the requestor) may approve the emergency purchase of fifty thousand dollars (\$50,000.00) or more.

5. The finance director or designee shall have the authority to approve all disaster related purchases under fifty thousand dollars (\$50,000.00).

6. The finance director or designee will expedite the verification of funds available and complete the preparation of the purchase order.

E. Procurement Procedures in Exigent Circumstances. Upon receipt of the requisitions under subsection D of this section, the finance director or designee shall prepare purchase orders for emergency equipment, supplies, services or other items in accordance with the requirements of this section.

1. Exempt Purchases. Purchases of two hundred fifty thousand dollars (\$250,000.00) or less shall not be required to be formally bid. Purchases greater than two hundred fifty thousand dollars (\$250,000.00) may be made following the procedures specified in this section. The signature(s) of the city manager or his or her designee, finance director, or department head are still required as provided in subsections C and D of this section.

2. Justification of "Sole Source" or "No Bid" Contracts. Where exigent circumstances require immediate procurement from the nearest available source, the finance director or designee shall justify the emergency sole source purchase or no bid purchase on the purchase order.

a. Procurement should be limited to that portion of the work that must be performed immediately, and subsequent procurement by competitive proposal for the remainder of the work under the city's normal purchasing policy (this chapter).

b. "Sole source" or "no bid" acquisitions shall be necessary for one of the following reasons: placement of emergency protective measures; procurement of scarce commodities, goods, or services; or acquisition or rental of emergency equipment, emergency consulting services, emergency road clearance, or other emergency requirements.

3. Provision for Alternate Bid Solicitation Procedures. The city's normal requirements for quotes, sealed bids, or local preference shall not apply to this section (Declared emergencies). However, the finance director or designee shall conduct telephonic or other electronic bid solicitation from potential vendors or suppliers, in lieu of written and/or sealed bids, in an effort to obtain multiple competitive proposals when and if time allows in light of the exigent circumstances.

4. Posting Locations for Requests for Proposals or Solicitations of Bids. The finance director or designee may waive normal requirements for public posting of requests for proposals or solicitation

of bids for the procurement of emergency equipment, goods or services. Notices soliciting bids or requests for proposals shall be posted, at minimum, at the emergency operations center or the alternate emergency operations center, if the primary emergency operations center is not being used.

5. Length of Time for Posting Requests for Proposals or Solicitation of Bids. The finance director or designee shall determine the posting period. The finance director or designee will make reasonable efforts to ensure that multiple suppliers are able to place a bid during the shortened time period.

F. Notification and Ratification.

1. Posting of Contract Awards. All contracts awarded that exceed twenty-five thousand dollars (\$25,000.00) shall be presented to the city council for ratification and thereafter shall be publicly posted within sixty (60) days of the award.

2. Authority to Cancel Emergency Procurements. The city manager has the absolute authority to rescind a contract for nonperformance within twenty-four (24) hours when a contractor or vendor, once awarded a contract, is unable to perform under the terms of the contract and the resulting delay or nonperformance presents an immediate threat to life, public health or safety, or improved public or private property.

3. Notification Requirement for Emergency Services. For any purchase in excess of twenty-five thousand dollars (\$25,000.00), the city manager shall report all such purchases to the city council within thirty (30) days of the onset of the disaster.

4. Requirement for Separate Invoicing. All purchases or rentals made during the proclaimed emergency or disaster conditions shall require separate invoicing from routine (nondisaster) purchases. All invoices must state the goods, services, or equipment provided and must specify the location where the goods or services were delivered.

5. Limitations of Declared Emergencies Purchasing Policy. Any purchases that do not meet the standard of being necessary for responding to an immediate threat to life, public health or safety, or improved public or private property as outlined in this section shall follow the city's regular purchasing provisions. (Ord. 16-5 § 1 (Exh. A))

3.04.180 Surplus supplies and equipment.

All departments shall submit to the purchasing officer, at such times and in such forms as he or she may prescribe, reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The purchasing officer may direct that the designated supplies or equipment be:

- A. Transferred to another city department or agency;
 - B. Exchanged or traded in on new supplies and equipment; or
 - C. Disposed of in some other suitable manner, which may include sale at auction or deposit at a landfill.
- (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.140)

3.04.190 Inspection and tests.

The purchasing officer or designee or department requesting the item shall inspect all deliveries of supplies and equipment to assure conformance with the contract or order specifications. The purchasing officer or designee, at his or her discretion, may require such reasonable chemical and physical tests of samples of supplies and equipment as he or she deems necessary to determine the quality in conformance with those specifications. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.150)

Article 3

Public Works Projects

3.04.200 Uniform construction cost accounting procedures.

The city council has elected to become subject to the Uniform Public Construction Cost Accounting Act and procedures as established by the California Uniform Construction Cost Accounting Commission in Public Contract Code Section [22000](#) et seq. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.010)

3.04.210 Bidding procedures for various project amounts.

- A. A public work project of sixty thousand dollars (\$60,000.00) or less may be performed by city force account, by negotiated contract, or by purchase order in accordance with Section 3.04.220.
- B. A public work project greater than sixty thousand dollars (\$60,000.00) and less than or equal to two hundred thousand dollars (\$200,000.00) may be let to contract by informal bid procedures in accordance with Section 3.04.230.
- C. A public work project of more than two hundred thousand dollars (\$200,000.00) shall, except as otherwise provided in this chapter, be let to contract by formal bidding procedure in accordance with Section 3.04.240.

The described project cost limits of subsections A through C of this section shall be increased automatically as authorized pursuant to the adjustments made by the California Uniform Construction Cost Accounting Commission under Public Contract Code Section [22034](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.020)

3.04.220 Negotiate contract or purchase order procedures.

For those projects qualifying under Section [3.04.210](#)(A), the applicable department head shall obtain a cost estimate from the project engineer or architect prior to issuing a purchase order or negotiating a contract with a responsible contractor. For any city force account work, the department head shall first comply with the guidelines established by the California Uniform Construction Cost Accounting Commission in determining the cost of the public work. The city manager shall have the authority to award and to execute any contract for the public work qualifying under Section [3.04.210](#)(A). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.030)

3.04.230 Informal bidding procedures.

For those projects which qualify under Section [3.04.210](#)(B) for informal bidding, the following procedures shall be used:

A. Bidder's List. The city shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors' list shall be consistent with the Uniform Public Construction Cost Accounting Act rules.

B. Notice. The city clerk shall prepare a notice inviting bids.

1. Contents of Notice. The notice inviting bids shall include a general description of the services and/or articles to be purchased, where bid blanks and specifications may be obtained, the time and place for bid openings, and whether bid deposit or bond and faithful performance and/or warranty bond will be required.

2. Mailing of Notice. Unless the product or service is proprietary, all contractors on the city's list for the category of work being bid shall be mailed a notice inviting informal bids, or an announcement/advertisement shall be placed in all construction trade journals, or both such mailing and advertising. The trade journals shall be those identified by the California Uniform Construction Cost Accounting Commission as appropriate for this area, in accordance with California Public Contract Code Section [22036](#).

3. Ten (10) Day Notice. Notices inviting informal bids shall be posted at the city hall and mailed at least ten (10) calendar days before the due date of submission of bids to all firms or suppliers on

the bidder's list for the category of work being bid and to such other vendors as the public works director deems appropriate.

4. Proprietary Products or Services. If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting bids may be sent exclusively to such contractor or contractors.

C. Award. The city council shall award the contract to the lowest responsive and responsible bidder whose bid or proposal fulfills the purpose intended according to criteria designated in the solicitation. The council may waive any minor bid irregularities.

D. Bids in Excess of Statutory Amount. If all bids received are in excess of two hundred thousand dollars (\$200,000.00), the city council may, by passage of a resolution by a four-fifths vote, award the contract to the lowest responsive and responsible bidder up to an amount not to exceed two hundred twelve thousand five hundred dollars (\$212,500.00) if it determines the cost estimate of the city was reasonable. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.040)

3.04.240 Formal bidding procedures.

For those projects which qualify under Section [3.04.210](#)(C) for formal bidding, the following procedures shall be used:

A. Adoption of Plans. Prior to soliciting bids, unless otherwise delegated by the city council to the public works director, the city council shall approve and adopt the plans, specifications and working details, and authorize the bid request for all public work projects in excess of two hundred thousand dollars (\$200,000.00).

B. Notice. The city clerk shall prepare a notice inviting bids.

1. Contents of Notice. The notice inviting bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.

2. Publication of Notice. The notice shall be published at least once fourteen (14) calendar days before the date of opening the bids in a newspaper of general circulation, which is circulated within the jurisdiction of the city.

3. Mailing of Notice. The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail and mailed to all construction trade journals specified by the California Uniform Construction Cost Accounting Commission as appropriate for the area. The notice shall be mailed at least fifteen (15) calendar days before the date of opening the bids.

4. Other Notice. In addition to notice required by this section, the city may give other notice as it deems proper.

C. Bid Opening Procedure. Sealed bids shall be submitted to the city clerk's office and shall be identified as to bidder, project and bid on the envelope. Bids shall be opened by the city clerk's staff in public at the time and place stated and as described in the notice inviting bids. A written record and tabulation shall be made at that time of all bids received, and shall be open for public inspection during regular business hours for a period of two years after the bid opening. The public works director shall make an analysis of the bids for compliance with bid specifications and thereafter make a recommendation for award or rejection.

D. Award. Contracts shall be awarded by the city council to the lowest responsive and responsible bidder whose bid fulfills the purpose intended, according to criteria designated in the solicitation. The council may waive minor bid irregularities. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.050)

3.04.250 Bonds.

A. The city shall require payment bonds for projects in excess of twenty-five thousand dollars (\$25,000.00) in accordance with California Civil Code Section [9550](#), as may be amended from time to time. The city council may require bid security or bid bonds and performance and/or warranty bonds from an acceptable surety in such amounts as it finds reasonably necessary to protect the public interest. If the city requires a bond, the form and amount of the bond shall be described in the notice inviting bids.

B. Unsuccessful bidders shall be entitled to the return of bid security within sixty (60) days of the date of the award. However, the lowest responsive and responsible bidder shall forfeit all or part of its bid security, as may be determined by the council, upon the bidder's refusal or failure to execute the contract within ten (10) days after the date of the award of the contract. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the city council may award the contract to the next lowest responsible bidder. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.060)

3.04.260 No bids received.

If no bids are received through the formal or informal procedure, the project may be performed by city employees by force account or by negotiated contract without further complying with this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.070)

3.04.270 Tie bids.

If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the city council may accept

either bid or accept the lowest bid made by negotiation with the tied bidders. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.080)

3.04.280 Rejection of bids.

In its discretion, the council may reject any bids presented. If after the first invitation of bids all bids are rejected, the city shall state the reasons for the rejection and after reevaluating its cost estimates of the project, the city shall have the option of any of the following:

- A. Abandoning the project;
- B. Readvertising for bids in the manner described in this chapter; or
- C. By passage of a resolution by a four-fifths vote of the council declaring that the project can be performed more economically by city employees, may have the project done by force account without further complying with this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.090)

3.04.290 Emergencies.

A. In cases of emergency as defined in this chapter, the city, pursuant to a four-fifths vote of the council, may proceed at once to replace or repair any public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without adopting plans, specifications, working details, or giving notice for bids to provide contracts. The work may be done by day labor under the direction of the council, by contractor, or by a combination of the two.

B. The city manager may order any action under this section subject to the provisions of California Public Contract Code Section [22050](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.100)

3.04.300 Prevailing wages required.

Public works contracts are subject to prevailing wage requirements as set forth in Labor Code Section [1720](#) et seq., as may be amended from time to time. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.110)

3.04.310 Pre-qualification of bidders.

Prospective bidders on a public works contract may be required to be pre-qualified in accordance with procedures adopted by city council resolution, subject to the provisions of California Public Contract Code Section [20101](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.120)

Article 4
Professional Services

3.04.320 Award of professional service contracts based upon competence.

In contracting for those professional services as defined in Section [3.04.020](#), contracts should only be awarded to firms or persons who have demonstrated an adequate level of experience, competence, staffing and other professional qualifications necessary for more than a satisfactory performance of the services required. Once the department requesting the service has determined a firm has an adequate level of competence, the cost of the service may be considered. However, the lowest cost may not be the sole factor in deciding which firm or who shall be awarded the contract. It may be in the city's best interest to award the contract to a higher priced professional services provider based on the scope of services available, unique skills, staffing levels, timing, prior experience, past working relationship and other factors required by the department or proposed by that professional services provider. The information needed for determining that level of competence, other qualifications and the procedure for selecting such services shall be determined by each city department responsible for recommending the professional service contract. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.93.010)

3.04.330 Request for proposal/qualification.

The acquiring of professional services shall be procured through negotiated contract and may include requests for proposals/qualifications. Contracting for professional services is decentralized and shall be the responsibility of the department head requesting the service. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.93.020)

3.04.340 Contracting authority.

The city manager shall approve professional service or consulting contracts up to and including twenty-five thousand dollars (\$25,000.00). The city council shall approve professional service or consulting contracts greater than twenty-five thousand dollars (\$25,000.00). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.93.030)



Report to the City Council
Council Meeting of September 10, 2019

Agenda Section: Consent

Subject: Consideration and proposed approval of a Resolution approving an agreement for continuing library automation services with the County of Solano and authorizing the St. Helena City Manager to execute the agreement and up to two one-year extensions to the agreement

CEQA Determination: **Not a CEQA project**

Prepared By: Chris Kreiden, Library Director

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

In 1996, the City of St. Helena entered into contract with the County of Solano for the provision of library automation services. This agreement helped result in a consortium known as SNAP (Solano Napa and Partners), which was a partnership between Solano County Library, Napa County Library, Benicia Public Library, Napa Valley College Library, Solano Community College Library, and the St. Helena Public Library. Since that time the Solano County Library's automation department, based in Fairfield, has managed the St. Helena Public Library's integrated library system which includes collection and patron information management, acquisitions and cataloging modules, and online access to the library's catalog. The contract for services includes staffing for system support, database management, equipment, hardware and software, vendor licenses, subscriptions to electronic databases (including online magazines), etc.

This arrangement has not only allowed the St. Helena Public Library to provide computerized library service at a fraction of the amount it would cost to do so in-house, it has also created new resource sharing opportunities by joining St. Helena with other public and academic libraries in Napa and Solano counties. As of July 1, 2016, Napa County Library, Napa Valley College Library, and Solano Community College Library

have left the SNAP consortium. The remaining partners, which include Solano County Library, Benicia Public Library, and Dixon Public Library, have continued to share their collections and resources and are known as SPLASH (Solano Partner Libraries and St. Helena).

The cost of the consortium is shared by all partner libraries based on a formula that calculates population served, collection size, and library usage data. The St. Helena Public Library pays 6.91% of shared consortium costs.

DISCUSSION

Besides providing an Integrated Library System (ILS), St. Helena's partnership in SPLASH provides easier access to a larger collection of materials for the users of the St. Helena Public Library. Besides the 74,000 items owned by St. Helena, library patrons have direct access to the 715,000 owned by the other members of the SPLASH consortium.

This new agreement has no changes from the prior contract between the City of St. Helena and the County of Solano beyond extending the term of the contract to June 30, 2022. Unless terminated by either party, this agreement can continue to June 30, 2024, with two one-year extensions.

It is recommended the City Council authorize the City Manager to execute this agreement and up to two one-year extensions to the agreement. The Library Director reviews services periodically and will inform the City Manager if terms of the contract were not being met.

FISCAL IMPACT

The fiscal impact of the agreement for FY 2019-20 is \$76,000 and has been included in the adopted FY 2019-20 budget.

RECOMMENDED ACTION

Staff recommends City Council adopt a resolution approving an agreement for continuing library automation services with the County of Solano and authorizing the St. Helena City Manager to execute the agreement and up to two one-year extensions of the agreement.

ATTACHMENTS

[Resolution Solano Library ILS agreement](#)
[SPLASH Contract - STH 2019-2022](#)

CITY OF ST. HELENA

RESOLUTION NO. 2019-

Consideration and proposed approval of a Resolution approving an agreement for continuing library automation services with the County of Solano and authorizing the St. Helena City Manager to execute the agreement and up to two one-year extensions to the agreement

RECITALS

WHEREAS, In 1996, the City of St. Helena entered into contract with the County of Solano for the provision of library automation services; and

WHEREAS, This contract provides an ILS (Integrate Library System), which helps in the sharing and inventorying of library materials, this contract also provides additional shared resources, including databases, which greatly benefit all partners, these benefits and services are periodically reviewed by the Library Director; and

WHEREAS, Since 1996, there have been several contract amendments however all have had no significant changes beyond the extension of the term of contract.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. Approval of this agreement is not a CEQA project; and
2. Approves the agreement with the County of Solano and authorizing the City Manager to execute the agreement; and
3. Authorizes the City Manager to execute up to two one-year extensions to the agreement.

Approved at a Regular Meeting of the St. Helena City Council on September 10, 2019 by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Koberstein:	_____
Councilmember Chouteau:	_____
Councilmember Knudsen:	_____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

**AGREEMENT TO PROVIDE INTEGRATED LIBRARY SYSTEM SERVICES
TO THE ST. HELENA PUBLIC LIBRARY
BY COUNTY OF SOLANO LIBRARY DEPARTMENT**

THIS AGREEMENT is made on _____, 2019, between the COUNTY OF SOLANO, a political subdivision of the State of California, (hereinafter “Solano County”) for exclusive benefit of the Solano County Library, (hereinafter “Solano”) and the CITY OF ST. HELENA for the benefit of the St. Helena Public Library (hereinafter “Contractee”).

WHEREAS, Solano and Contractee are legally authorized to enter into intergovernmental agreements for services; and

WHEREAS, Solano and Contractee are interested in cooperating to their mutual advantage through centralization of, and the sharing of costs for, library automation services; and

WHEREAS, Solano owns an integrated library (ILS) automation system capable of providing library automation services to Contractee; and

WHEREAS, Contractee is desirous of contracting with Solano for library automation services; and

WHEREAS, Solano is qualified to perform such services.

THE PARTIES MUTUALLY AGREE as follows:

SECTION 1.0 DUTIES AND RESPONSIBILITIES

Contractee and Solano County each agree to perform the services described in Exhibit A, which is attached and incorporated by this reference.

SECTION 2.0 DEFINITIONS

Unless the context otherwise requires, the words and terms defined shall, for the purpose of the Agreement, have the meaning specified below.

2.1 Acquisitions

Acquisitions means the software module used to automate the processes of acquiring library materials, including, but not limited to, establishing and maintaining accounts with vendors, ordering, receiving, claiming, fund accounting and reporting on these and related processes.

2.2 TLC

TLC means Solano County’s automation vendor, The Library Corporation.

2.3 Central site CPU

Central site CPU means any computer or device required for daily operation or backup, whether on site or in a hosted environment. This shall include processors, controllers, disk drives required for online operation or backup, tape drives required to load data or provide backup, printers used at the central site, system operator consoles or terminals and any other computer or equipment (e.g. gateway server) that work in conjunction with the ILS mainframe for the purpose of accessing other databases.

2.4 Circulation control

Circulation control means the software module used to automate the processes of loaning and retrieving library materials, including, but not limited to, maintaining records of registered borrowers, recording and controlling loans of library materials, and tracking fines, over due materials, and borrower hold requests. The subsystem also provides the means to generate notices to borrowers, including but not limited to, overdue notices and hold notices.

2.5 Database

Database means the machine-readable fields of bibliographic, item, patron and transaction records created and stored by the system.

2.6 Database management

Database management means the software module used to provide a means of creating and maintaining bibliographic records and their associate item records.

2.7 Fiscal year

Fiscal year means the period from July 1 to and including the following June 30.

2.8 Integrated Library System (ILS)

This is a set of fully integrated software modules used to automate library processes, including circulation cataloging, acquisitions, serials control, database maintenance and the public access catalog.

2.9 Library director

Library director means the individual who is officially charged by a legal governing entity such as a County Board of Supervisors, a city council or other governing body to oversee and direct library service for that entity's library or library jurisdiction. For example, for Solano Library, that person is the Director of Library Services.

2.10 Machine-readable

Machine-readable means information in a form that can be directly assimilated by computer equipment.

2.11 MARC

MARC means machine-readable cataloging.

2.12 Module

Module means a subsystem within the system software that allows the library to perform automated tasks.

2.13 NLS

NLS means the NorthNet Library System.

2.14 Online database

Online database means any machine-readable file of information, whether locally produced or licensed from a commercial vendor, which is loaded onto the ILS or accessed from a terminal on the ILS that can be researched by a user of the online public access catalog.

2.15 Online public access catalog (OPAC)

Online public access catalog means the software module designed to be used by the public and staff of the library to search the database of bibliographic and item records.

2.16 Participating user

Participating user means those libraries that contract directly with Solano Library for library automation services.

2.17 Peripheral equipment

Peripheral equipment means any personal computer, printer, or barcode reader connected to the ILS.

2.18 Record

Record means any machine-readable information kept about a title, item or borrower that is arranged and stored in files on the ILS.

2.19 Serials control

Serials control means the software module used to automate the processes of acquiring and controlling materials issued in successive parts including but not limited to, establishing and maintaining accounts with vendors, ordering, receiving, claiming, fund accounting and reporting on these and related processes.

2.20 Services

Services means all applicable work and arrangements needed to provide the automation system described in the agreement to a contracting library jurisdiction.

2.21 SPLASH

SPLASH means Solano Partner Libraries and St. Helena

2.22 SPLASH Users Group

SPLASH Users Group means the policy advisory group, comprised of the director of each of the SPLASH partner libraries.

2.23 Software

Software means the machine-readable programs, routines, codes and other information provided by the vendor for use with the central CPU or other types of hardware.

2.24 Supplies

Supplies means the paper, ribbons, notice stock, envelopes, forms, barcode labels or other consumable items used in conjunction with operating or accessing the system.

2.25 System

System means the central site CPU, all telecommunications equipment, the license to use the software and machine-readable files created as a result of the use of the software.

2.26 Telecommunications equipment

Telecommunications equipment means the equipment needed to transmit and receive data over a distance from the central site CPU to any remote site. Equipment may be for digital or analog communication.

2.27 User input

User input means the method by which Solano Library solicits input from participating users when determining the rules under which the system shall be operated, the services that shall be provided and the way the libraries shall cooperate and share the system.

2.28 Vendor

Vendor means the provider of the integrated library system (ILS), including the license to use the software, hardware and system maintenance.

SECTION 3.0 TERM OF AGREEMENT

The initial term of this Agreement is thirty-six (36) months, beginning July 1, 2019 and ending June 30, 2022, and may not be terminated except under the provision of Section 19 Termination. Unless terminated by either party under Section 19 Termination, this Agreement continues from year to year after the expiration date for up to two (2) one-year renewal periods.

SECTION 4.0 OWNERSHIP

Solano has full title to the system, which is composed of the central site CPU and all telecommunications equipment. Solano and each participating user shall each independently own their own bibliographic, item and borrower records contained within the database to the extent that the system can identify these records. Title to all peripheral equipment purchased for use by Contractee shall be held by Contractee.

The system shall be used by Solano and all participating users. Solano and all participating users shall determine whether to provide similar services to other libraries. Such determination shall be made by an affirmative vote of the majority of the users. Any library provided such services shall be required to pay costs, as determined by the Cost Sharing Formula in Exhibit B which is attached and incorporated by this reference. If Solano provides automation services to other libraries, Solano will notify the participating users. Solano shall also require these other libraries to conform to the operating standards and the respective duties and responsibilities described in Exhibit A.

SECTION 5.0 USER INPUT

There are two methods of input for users of the system:

5.1 SPLASH Users Group

The SPLASH Users Group is composed of the library directors of Solano and the participating users. On those occasions when the director is not available to attend a meeting, s/he may designate a senior member of his or her staff to represent that library. Solano Library's Deputy Director of Support Services provides technical expertise and staff support to this group. The group is responsible for advising Solano on overall policy decisions regarding cost formula issues, issues of vendor compliance, system and software upgrades, future functional acquisitions, Operations Group recommendations and other major issues, including adding other libraries. Solano accepts advice from the Users Group and gives due consideration to said advice. Solano takes all due measure to make reasonable decisions that do not place an undue financial burden on participating users. The group meets on a fixed schedule determined by the group and on an as needed basis.

5.2 Operations Group

The Operations Group is composed of staff member(s) from Solano and the participating users and Solano's Deputy Director of Support Services. The group is responsible for advising Solano and the Users Group on decisions regarding operations and implementation for the various system modules.

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SECTION 6.0 FUNCTIONALITY

Solano County and its Solano Library make the following automated modules available to Contractee and its Library:

- circulation control
- online public access catalog
- database management
- acquisitions
- online databases
- print management
- serials control
- other modules as available

The specific functionality of each of the above modules is defined by the vendor contract. The availability of all modules shall be contingent on the contract with the vendor and vendor performance. In the case of vendor non-performance, Contractee agrees that Solano shall hold the vendor responsible and Contractee agrees not to hold Solano responsible. Further, Contractee agrees to assist Solano to seek appropriate redress. However, this assistance shall not be construed to be a direct financial commitment.

SECTION 7.0 SERVICE AVAILABILITY

Solano, through its contracts for hardware and software maintenance, shall maintain the equipment to provide for minimal downtime, excluding communications lines. No liability shall be assumed by Solano if the system experiences downtime. The parties recognize that on occasion it may be necessary to temporarily suspend system availability because of operational or maintenance requirements. Solano agrees to provide Contractee with prior notice of system unavailability, except for unavoidable downtime with system failure, if it will affect library operations and/or business hours, and further agrees to make every effort to schedule maintenance when libraries are not open to the public. Such temporary suspension of system availability shall not be deemed an unreasonable prevention or postponement of system use by Contractee.

SECTION 8.0 MAINTENANCE**8.1 Hardware**

Solano will contract for hardware maintenance service on behalf of Contractee and all participating users for all remote site equipment including telecommunications and peripheral equipment as well as central site equipment. Solano shall maintain an annual maintenance contract on all site equipment.

8.2 Software

Solano shall maintain a software maintenance contract at all times.

8.3 Communication Networks

Contractee recognizes that Solano does not control, therefore cannot warrant, the communication networks used to communicate data from a remote site to the central computer.

8.4 Interruptions of Service or Loss of Data

Solano will regularly duplicate all data maintained in the system database and store such duplicate copies of disks in a location physically apart from the site of the central system. There is the chance, however remote, that some or all of the data may be lost or destroyed. Solano does

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not warrant that such a data loss will not occur and Contractee agrees to hold Solano and its employees and agents harmless for loss, which is not the result of their willful, negligent, intentional or malicious effort.

SECTION 9.0 COST FORMULA

The cost to Contractee is determined by the composite percentage among SPLASH users. The agreed upon formula developed by the library directors of the initial members is detailed in Exhibit B which is attached and incorporated by this reference. This formula is designed to reimburse Solano for the true costs of all services rendered to Contractee and all participating users. Such formula is subject to annual review. If, upon the advice of the Users Group, the cost formula is modified, it shall become part of this Agreement as a revised Exhibit B during the annual renewal period and attached herein, notwithstanding any other provisions to the contrary.

When agreed to by SPLASH Users Group, one-time start-up costs for new members may be phased in over a multi-year period not to exceed three (3) years.

SECTION 10.0 PAYMENTS

Solano shall invoice all contractees on a quarterly basis. An estimated quarterly invoice for the fourth quarter shall be sent on or before June 1, followed by a supplemental quarterly invoice once all expenses for the 4th quarter have been received. All payments shall be made within 30 days of the invoice date.

SECTION 11.0 COST ALLOCATION

Contractee recognizes that substantial capital investment has been made by Solano in acquiring the necessary system hardware, software and peripherals and these acquisitions are necessary for Contractee to participate effectively as an integral part of this system. Contractee further recognizes these acquisitions have been made in the contemplation that Contractee shall remain participating and an integral unit of this system for the entire term of this Agreement. In contemplation of the hardship which will be incurred by Solano if Contractee breaches this Agreement, it is agreed by the parties that Contractee shall remain responsible for payment of the cost allocation as specified under Section 9 – Cost Formula during the term of the agreement as defined by Section 3 – Terms of Agreement less any saving to Solano Library occasioned by the reduction of service to Contractee.

SECTION 12.0 CORRECTIVE AND REMEDIAL MEASURES

Whenever any party believes that another party has committed a remediable breach of any material obligation set forth in this Agreement, it shall give written notice of the alleged breach to the other party, setting forth with reasonable specificity the nature of the alleged breach. The party receiving such notice shall use its best efforts to promptly remedy the breach and (1) shall inform the party giving written notice of the nature of the remedial actions planned and taken, or (2) shall respond to any such notice, with an explanation that sets forth reasonable cause of the breach. When a breach does exist that will not be remedied within thirty (30) days or if a breach requires more than 30 days to remedy and the party does not commence the remedy within 30 days after the party received written notice of it, the parties agree to enter into mediation as specified below. If mediation does not resolve this dispute, the party giving the notice shall be entitled to seek appropriate relief under this Agreement or otherwise under the law, which includes without limitation, termination of the terms of the agreement without liability for that termination. Until such time as the issue is resolved, Solano reserves the right to “lock out,” specific operators or terminals when substantial system damage is occurring, or the security and/or confidentiality of the database is breached.

SECTION 13.0 UNFORESEEN CIRCUMSTANCES

Solano shall not be responsible for any delay beyond the time named for performance of Solano's contract with the vendor when such delay is caused by a natural disaster, war, civil disturbance, labor dispute, or other cause beyond Solano reasonable control, provided Solano gives written notice to Contractee of the cause of the delay within ten (10) days of the start of the delay. In the event the need for services provided for herein is terminated by a natural disaster, war, civil disturbance, labor dispute, or other cause beyond Contractee's reasonable control, Contractee shall only be responsible for payment for services actually received prior to said event and those specified in Section 19 - Termination.

SECTION 14.0 INDEMNIFICATION AND HOLD HARMLESS

Contractee agrees to indemnify and hold harmless Solano, its employees, agents and elective and appointive boards from and against any damages including costs and attorney's fees arising out of negligent or intention acts or omissions of Contractee, its employees or agents.

Solano agrees to indemnify and hold harmless Contractee, its employees, agents and elective and appointive boards from and against any damages including costs and attorney's fees arising out of negligent or intention acts or omissions of Solano, its employees or agents.

SECTION 15.0 INSURANCE

A. Without limiting Solano's and Contractee's obligation to mutually indemnify each other, each shall maintain the following insurance coverage during term of this Agreement:

(1) Commercial General Liability coverage, including but not limited to, premises and operations, independent contractor, products and complete operations, contractual liability and personal liability, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence and in the aggregate. Said coverage shall be endorsed with the following language:

Solano and St. Helena, its officers, agents, and employees, shall be named as additional insured for all liability arising out of the operations by or on behalf of the other as named insured for all activities arising out of or in connection with the Agreement.

(2) Automobile liability coverage for bodily injury and property damage for all activities arising out of or in connection with the Agreement, including coverage for hired and non-owned vehicles, in an amount no less than three hundred thousand dollars (\$300,000) combined single limit for each occurrence.

(3) As required by the Labor Code of the State of California, Workers' Compensation coverage for all employees providing services in connection with this Agreement.

(4) Property and casualty coverage on all property owned, purchased and maintained by Solano located on Contractee's property.

B. All coverage required above may be provided through purchased insurance, self-insurance, and/or participation in a public entity risk-sharing pool, or any combination.

C. This agreement shall be of no force or effect until proof of appropriate required coverage is provided by each party and approved by its Risk Management.

SECTION 16.0 DRUG FREE WORKPLACE

Both parties warrant that they are knowledgeable of Government Code section 8305, et seq. regarding a drug free workplace and shall abide by and implement its statutory requirements.

SECTION 17.0 NONDISCRIMINATION

Both parties shall comply with all applicable federal, state and local laws, rules, and regulations and shall not discriminate on the basis of age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion or sexual orientation.

SECTION 18.0 MODIFICATION

This Agreement may be modified or amended only by written instrument signed by the parties.

SECTION 19.0 TERMINATION

This Agreement may be terminated by either party by giving written notice to the other party no later than January 1 for termination on or after the following July 1. Time is of the essence and a failure to notify by January 1 constitutes an automatic renewal for the following year.

If Contractee withdraws from this Agreement, according to the terms and conditions set forth in it, Contractee shall be entitled to retrieve from the database a machine-readable copy of their bibliographic file, patron file, item file and transaction file to the degree to which such records have been converted to a machine-readable format and loaded into the database, contingent on the system's capability. In the event that the process of creating these files incurs cost, Contractee shall pay that cost.

If Solano withdraws from this Agreement, according to the terms and conditions set forth in it, Solano shall provide Contractee with a machine-readable copy of their bibliographic file, patron file, item file and transaction file to the degree to which such records have been converted to a machine-readable format and loaded into the database, contingent on the system's capability. In the event that the process of creating these files incurs cost, Solano shall pay that cost.

Following termination by either party, Solano shall be reimbursed, as specified in Section 11 – Cost Allocation, for all expenditures made in good faith in accordance with the terms of this Agreement that are unpaid at the time of termination.

Following termination by either party, Contractee shall be reimbursed a portion of the SPLASH reserve fund in the amount equal to the cost allocation, calculated pursuant to Section 9 above, in place for Contractee at the time of termination.

Notice of termination by Contractee shall be given by the Contractee's designated officer.

SECTION 20.0 NOTICE

Any notice necessary to the performance of this Agreement shall be given in writing by personal delivery or by prepaid first-class mail addressed as follows:

SOLANO
Director of Library Services
Solano County Library
1150 Kentucky Street
Fairfield, CA 94533

CONTRACTEE
Library Director
St. Helena Public Library
1492 Library Lane
St. Helena, CA 94574

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If notice is given by personal delivery, notice is effective as of the date of personal delivery. If notice is given by mail, notice is effective as of the day following the date of mailing or the date of delivery reflected upon a return receipt, whichever occurs first.

SECTION 21.0 CHOICE OF LAW

This Agreement has been executed and delivered in the County of Solano, State of California. The validity, enforceability or interpretation of this Agreement shall be governed by the laws of the State of California. Solano County shall be the venue for any action or proceeding, in law or equity that may be brought in connection with this Agreement.

SECTION 22.0 ENTIRE AGREEMENT

This Agreement, including any exhibits, constitutes the entire agreement between the parties and there are no inducements, promises, terms, conditions or obligations made or entered into by the parties other than those contained in it.

COUNTY OF SOLANO, a
Political Subdivision of the
State of California

CITY OF ST. HELENA, a
Political Subdivision of the
State of California

By _____
Birgitta E. Corsello, County Administrator

By _____
Mark T. Prestwich, City Manager

APPROVED AS TO CONTENT

APPROVED AS TO CONTENT

By _____
Bonnie A. Katz
Director of Library Services

By _____
Chris Kreiden
Library Director

APPROVED AS TO FORM

APPROVED AS TO FORM

By _____
Bernadette Curry
Solano County Counsel

By _____
Michael G. Biddle
City Attorney

County of Solano

Exhibit A
Agreement to Provide Integrated Library System Services

EXHIBIT A

SCOPE OF WORK

A. DUTIES AND RESPONSIBILITIES OF SOLANO COUNTY

Pursuant to the Agreement between Solano and the ILS vendor, and with the advice of the Policy Group, Solano shall:

1. Manage the system, pursuant to the terms and conditions of this Agreement and all agreements concerning system operation.
2. Regularly review the operations of the system, evaluate system performance and develop plans for modifications, upgrades and new services.
3. Purchase all central site system equipment, house such equipment in a suitable environment and maintain said equipment in good operating condition.
4. Administer contracts with all service vendors relating to the system, including contracts with such vendors.
5. Purchase and maintain all telecommunications equipment.
6. Provide reports to the SPLASH Users Group on the status and performance of the system.
7. Enforce rules and regulations necessary to coordinate orderly use of the system by Contractee and participating users.
8. Purchase forms, postage supplies and utilities, which may be required to operate the central site equipment.
9. Maintain sound relationships with other libraries, networks, utilities and vendors, where necessary, to provide services.
10. Employ all personnel needed to maintain and operate the central site equipment.
11. Maintain equipment purchased from, and under maintenance contract with, the vendor. Solano County's intent is to respond to peripheral equipment maintenance problems within two working days.
12. Attend vendor training and meetings to maintain an up-to-date technical skill level in order to provide training to participating users; to solve system problems; and to conduct in-depth discussions on the system issues and/or new products as they pertain to SPLASH.
13. Coordinate and provide training as determined by the SPLASH Users Group. Such training shall include, but not be limited to, training for a designated staff trainer in each participating library for the modules of Circulation, Patron Access Catalog, Acquisitions

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County of Solano

Exhibit A
Agreement to Provide Integrated Library System Services

and Database Management. Training shall also be provided for designated staff trainers for new modules and releases as needed.

14. Provide authority control services for Solano County and participating users.
15. Maintain user manuals.
16. Maintain membership in the North Net Library System (NLS).

B. DUTIES AND RESPONSIBILITIES OF CONTRACTEE

1. Participate in the use and operations of the system under the terms and conditions of this contract and the rules and regulations which may be, upon the advice of the SPLASH Users Group, adopted by Solano.
2. Regularly review system operations and advise Solano in writing when modifications or improvements appear necessary.
3. The system, as installed, shall provide sufficient capacity for the terminals and required communications equipment by Contractee and participating users. However, the addition of terminals over and above the specified numbers must be authorized in writing by Solano. Such authorization shall be requested by January 1 of any given year for equipment to be installed during the following fiscal year. The authorization shall only be granted if the addition of the new equipment is in conformance with the operating standards. Contractee shall be liable for damage to the system caused by Contractee's use or addition of unauthorized equipment or software.
4. Input and delete all data into the system according to the rules and regulations established, upon the advice of the SPLASH Users Group, by Solano for the system.
5. Keep records and statistics which may be necessary to document the maintenance and performance.
6. Take reasonable measures necessary for protecting telecommunications equipment in participating user's library from abuse, theft or misuse.
7. Maintain database records according to standards established by the SPLASH Users Group.
8. Provide AC, wiring, access and space (specified by the vendor) for system telecommunications equipment.
9. Receive training from Solano for a designated staff trainer in each participating library for the modules of the integrated library system. Receive training from Solano for a designated staff trainer in each participating library for new modules and releases as needed. Responsibility for training of subsequent staff belongs to Contractee.
10. Contractee shall designate a staff member whom Solano may contact concerning installation, conversion, operations and training matters.

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Page 2 of 3

County of Solano

Exhibit A
Agreement to Provide Integrated Library System Services

11. Protection of Vendor Proprietary Software – Contractee agrees that the software, together with all materials and knowledge related to it obtained by Solano, shall be held in confidence and shall not at any time, either during the term of the license or thereafter, be made available in any form to any person or entity (except as may be required by law or legal process) other than to employees of Contractee or consultants or contractors retained by or responsible to Contractee to the extent that such disclosure is reasonably necessary to Contractee's use of the software authorized hereunder, without the express written consent of the vendor. Contractee agrees that in the event of its employing any consultants or contractors who would have access to the software, it will make all reasonable efforts to ensure that such consultants or contractors execute an agreement or agreements whereby they recognize, accept and agree to observe the protection agreements afforded to the vendor by this paragraph.
12. New members must input their records, representing at least 95% of their circulating collections, into the joint database and make materials available for loan within one year of contracting with Solano.
13. Contractee recognizes that it is neither cost effective nor administratively feasible for Solano's IT personnel to provide support for ILS software running on multiple PC operating systems. Therefore, it is the responsibility of Contractee to upgrade PC operating systems as deemed necessary by Solano. Solano will provide reasonable notice of three (3) months prior to upgrading software platforms. Solano will continue to support partner's old operating systems for up to one (1) year from date of install of Solano's upgrade. It is Contractee's responsibility to either upgrade to coincide with the most current supported software programs(s) within the initial year of use or take responsibility for administering and supporting an older operating system. Conversely, Contractee is responsible for administering and supporting any upgrades to its own system that are not yet supported by Solano.

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Page 3 of 3

County of Solano

Exhibit B
Agreement to Provide Integrated Library System Services**EXHIBIT B
COST SHARING FORMULA****I. ELEMENTS OF COST SHARING FORMULA**

The cost sharing formula for the Solano, Partner Libraries and St. Helena (SPLASH) shared automation system will consist of initial costs, ongoing costs, improvement and local costs as follows:

A. Initial Costs

Elements of the costs associated with the initial start-up and installation of the system included:

- Central site preparation
- Central site equipment
- Telecommunications equipment
- System software
- Proprietary software licensing
- Installation charges
- Training (provided by vendor)
- Performance bond
- Data circuit installation
- Uninterruptible power supply
- Associated administrative overhead

As of FY2002/03, new partners must pay an initial fee of \$50,000, which will be adjusted using the San Francisco Bay Area CPI in future years. Other adjustments will be determined based on the number of additional, if any buildings.

B. Ongoing costs

These are the costs associated with the system to keep it operating on an ongoing basis. Elements of required ongoing costs are:

- Telecommunications line charges
- Maintenance on hardware and software
- Training
- System equipment needs
- Report generation and related costs (e.g. postage)
- Automation staff
- Central site supplies
- Shared delivery costs
- Shared printing and duplicating
- Authority control costs associated with maintaining database
- Associated administrative overhead
- ILS software upgrades
- ILS hosted services

Optional ongoing costs are those that a user library would pay only if they elected to use that particular service or module. Elements of optional ongoing costs are:

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Page 1 of 3

County of Solano**Exhibit B
Agreement to Provide Integrated Library System Services**

Online database access and licenses
 Internet access costs
 Customized software
 Specialized training
 Specialized non-standard reports
 Associated administrative overhead

C. Improvements

Additionally, there is a fund contributed by participating members for the purpose of providing a pool of money to be used for system enhancements and upgrades. The fund would be 14% of the initial cost of the system per year with an annual cost of living indicator to account for inflation. The cost of living indicator will be recommended by the Policy Group to Solano County during the annual contract review.

D. Local costs

These are costs that each participating library must cover for its individual needs. These local costs might include the following dependent upon each local participants' needs and system:

Data conversion
 Peripheral equipment
 Supplies
 Site preparation
 Specialized data loading software
 Associated administrative overhead if library uses Solano resources

Future local costs might include, but not be limited to:

Additional peripheral equipment
 Associated administrative overhead if library uses Solano resources

II. COMPOSITE PERCENTAGE FORMULA

Costs will be determined as follows:

A. Initial costs

Initial costs and ongoing costs for the first three years were determined by taking the average percent of:

1. Registered borrowers as reported to the State Librarian in 1990 State Report
2. Volumes held as reported to the State Librarian in the 1990 State Report
3. Annual circulation as reported to the State Librarian in the 1990 State Report

The average of these three averages was applied to the total initial cost and the required ongoing costs for the year. Beginning FY1994/95, the ongoing cost figures were determined using a modified formula as outlined in the section below entitled:

B. Ongoing costs

County of Solano**Exhibit B
Agreement to Provide Integrated Library System Services**

Beginning with year three of the project, the above factors were reviewed to determine if they were the indicators that give the truest reflection of system usage. In FY1994/95, the formula was modified to factor in the following:

1. Total population served as certified by the State Librarian for the most recent fiscal year.
2. Volumes held in the system as calculated from reports generated by the system and run on December 31st of each year.
3. Annual circulation as calculated from reports generated by the system for the most recently completed fiscal year.
4. Buildings in separate physical sites that house their own telecommunications equipment.
5. Ports assigned to a library jurisdiction. Excluded are shared ports for dial access or those used solely by automation staff.

The average of these five factors was applied to the ongoing costs for the year.

In FY2000/01, the formula was further modified to eliminate the number of ports assigned to a library jurisdiction. Unless specifically tied to a fiscal year, calculations are reported for the most currently available information.

In the future, the above factors will be reviewed to determine if they are the indicators that give the truest reflection of system and automation staff resources. If this is found not to be the case, the formula might be modified, as provided in Section 9, Cost Formula, to include other factors.

Optional ongoing costs will be determined using these factors but will only be applied to the libraries using those options or will be a straight billable cost if only one library is choosing that option.

C. Improvements

The share that each library contributes to this fund will be calculated using the formula noted under ongoing required costs.

D. Local costs

The costs will be borne directly by the individual participating users.

III. METHOD OF PAYMENT

Upon submission of an invoice and supporting documentation by Solano, Contractee shall pay Solano quarterly in arrears for fees and expenses incurred during the prior quarter. Each year, an estimated fourth quarter invoice will be submitted in early June. This invoice will be supplemented by an in-arrears invoice for the fourth quarter, which will be prepared in early August following the close of the prior fiscal year.



Report to the City Council
Council Meeting of September 10, 2019

Agenda Section: Consent

Subject: Consideration and proposed adoption of a resolution approving a Professional Services Agreement with Britton Tree Services Inc for tree pruning in Baldwin Park, Mennen Park, Mary Fryer Park, and Jacob Meily Park in an amount not to exceed \$35,616 and authorizing the City Manager to execute the agreement

CEQA Determination: **Class I Categorical Exemption under Section 15301 of CEQA**

Prepared By: Carlos Uribe, Maintenance Manager

Reviewed By: Erica Ahmann Smithies, Public Works Director and City Engineer

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The City of St Helena has an established pruning schedule that ensures trees are maintained for the health of the trees as well and minimizing hazards to park patrons. This maintenance schedule recommends trees be on a 5 or a 7 year cycle and takes into consideration the location, type, and age of trees in each park. Regular tree pruning is critical for the structural integrity and health of the tree and helps to mitigate the risk of broken limbs and falling branches. The parks trees in need of pruning in this cycle 19/20 are as follows:

1. Baldwin Park (1701 Spring street)
2. Jacob Meily Park (821 Pope Street)
3. Mennen Park (1600 Voorhees Circle)
4. Mary Fryer Park (1485 Mitchel Drive)

The City packaged a bid proposal listing pruning objectives that included a reduction in hazards as well as maintenance pruning for:

- Deadwood removal on all branches one inch and larger
- Canopy reduction to reduce weight and windsail
- All pruning cuts conform to ANSI A300 standards

- Perform root collar inspections
- Provide written report of all hazards.
- 48-hour notice before any work can begin to allow for any noticing and arrange for any closures if needed

DISCUSSION

On March 14, 2019, the City of St. Helena solicited a bid for its pruning program from Britton Trees Services Inc. (Britton) utilizing the City's 2019 California Uniform Construction Cost accounting list for professional tree services. The list was established using the procedures set in the St. Helena Municipal Code section 3.04.200 for Uniform Construction Cost Accounting and Britton was the only qualified professional tree company that submitted an application. While the City could have requested additional bids, the proposal amount of \$35,616 is in line with other bid proposals received for similar work and Britton has completed satisfactory work with the City on a regular basis.

FISCAL IMPACT

Total fiscal impact is \$35,616 and has been included in the Fiscal Year 2019-20 Adopted Budget.

RECOMMENDED ACTION

Staff recommends City Council adopt a resolution approving a Professional Services Agreement with Britton Tree Services Inc. for tree pruning in Baldwin Park, Mennen Park, Mary Fryer Park, and Jacob Meily Park in an amount not to exceed \$ 35,616 and authorize the City Manager to execute the agreement.

ATTACHMENTS

[PSA Britton Tree 091019](#)

[Resolution 2019 Britton Tree Services](#)

[Britton Tree Services Insurance and CUCCA info](#)

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on _____, 2019 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Britton Tree Services Inc (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Tree Pruning in four City of St Helena Parks.

B. Consultant has represented that Consultant has the necessary expertise, experience, and qualifications to perform the required duties.

NOW, THEREFORE, in consideration of the mutual premises, covenants, and conditions herein contained, the parties agree as follows:

SECTION 1 – BASIC SERVICES

Consultant agrees to perform the services set forth in **Exhibit A, “Scope of Services”** and made part of this Agreement.

SECTION 2 – ADDITIONAL SERVICES

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in this Agreement or **Exhibit A, “Scope of Services”** (the “Services”), unless such additional Services and compensation are authorized in advance and in writing by the City Council or City Manager of the City.

SECTION 3 – TIME FOR COMPLETION

The time for completion of Services shall be as identified in **Exhibit A, “Scope of Services”**. The parties expressly agree that time is of the essence in the performance of this Agreement.

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in Exhibit B, “Compensation” attached hereto and made a part hereof. Total compensation shall not exceed \$35,616.00, unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories if applicable: labor (by sub-category), travel, materials, equipment, supplies, subconsultant contracts, and miscellaneous expenses. Each original invoice furnished shall include the expenses incurred during the preceding month, the cumulative Agreement amount, and the amount remaining on the Agreement. City shall independently review each invoice submitted to determine whether the work performed and expenses incurred are in compliance with the

provisions of this Agreement. If no charges or expenses are disputed, the invoice shall be approved, and City will use its best efforts to cause Consultant to be paid within 30 days of receipt of invoice. If the City disputes any charges or expenses, the City will return the original invoice to Consultant for correction and resubmission. If the City reasonably determines, in its sole judgment, that the invoiced charges and expenses exceed the value of the Services performed to date and that it is probable that the Agreement will not be completed satisfactorily within the contract price, City may retain all or a portion of the invoiced charges and expenses. Within thirty (30) days of satisfactory completion of the project, City shall pay the retained amount, if any, to Consultant.

C. Payment to the Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

SECTION 5 – STANDARD OF PERFORMANCE

A. Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons in the same or similar geographical area engaged in providing Services similar to those required of Consultant under this Agreement.

B. In order to induce Owner to enter into this Agreement, Consultant represents that it is duly organized, existing and in good standing under applicable state law; Consultant is licensed to perform all aspects of the Services; Consultant will employ only persons and Subconsultants with all required licenses and certifications; that Consultant is duly qualified to conduct business in the State; that Consultant has duly authorized the execution, delivery and performance of this Agreement and the Services to be performed herein; and that the Agreement does not violate or create a default under any instrument, agreement, order or decree binding on Consultant.

SECTION 6 – INSPECTION AND FINAL ACCEPTANCE

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within sixty (60) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject work by a timely written explanation, otherwise Consultant's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects and fraud. Acceptance of any of Consultant's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections pertaining to indemnification and insurance.

SECTION 7 – INSURANCE REQUIRED

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees, as indicated:

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$2,000,000 per accident for bodily injury or disease.

C. Professional Liability Insurance. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, environmental engineer or other professional engineer, or land surveyor ("design professional"), Consultant shall maintain at least \$2,000,000 of professional liability insurance. When Consultant is not a design professional, Consultant shall maintain at least \$1,000,000 of professional liability insurance combined single limit for each occurrence, insuring against professional errors and omissions in the Services performed by Consultant under this Agreement, including, without limitation, claims for negligence, misrepresentation, violation of good faith and fair dealing, and inaccurate advice arising out of, resulting from, or in connection with Services performed by Consultant under this Agreement.

D. Excess Limits. If Consultant maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

E. Primary Coverage. For any claims related to this contract the Consultants insurance coverage shall be primary insurance as respects to City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Consultants insurance and shall not contribute with it.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions of \$25,000 or greater must be declared to and approved by the City.

G. Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its agent, officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of work or operations performed by the Consultant or Consultant's subconsultants; or automobile owned, leased, hired or borrowed by the Consultant.

2. For any claims related to Consultant's conduct while performing the work of this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its agents, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its agents, officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.

H. Waiver of Subrogation. Consultant's commercial general liability, automobile liability, workers' compensation, and employer's liability policies shall be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its agents, officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the work performed by the named insured for the City.

I. The Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

J. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on forms that conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

SECTION 8 – INDEMNIFICATION

A. To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), as may be applicable, Consultant shall indemnify, defend, and hold harmless City, its agents, officers, officials, employees, representatives, and volunteers from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith, including legal fees and expert witness costs) (collectively, "Liabilities"), incurred by reason of any negligent or otherwise wrongful act or omission of Consultant, its officers, agents, employees, subconsultants, and subcontractors, or any of them, under or in connection with this Agreement; and Consultant agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against City, its agents, officers, officials, employees and volunteers, or any of them, arising out of, pertaining to, or relating to such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

B. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, professional engineer, or land surveyor (i.e., a "design professional," pursuant to Civil Code § 2782.8(c)), the provisions of this section regarding Consultant's duty to defend and indemnify apply only to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant.

C. If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultant's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to Indemnification in order to be so indemnified. The insurance required to be maintained by Consultant shall ensure Consultant's obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

D. The provisions of this section do not apply to claims to the extent occurring as a result of the City's sole negligence, active negligence, or willful acts or misconduct.

E. Duty to Cooperate. Each party shall notify the other party immediately in writing of any claim or damage related to activities or Services performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of all Liabilities arising out of the activities or Services under this Agreement.

F. In the event that Consultant executes any subconsulting agreements in connection with the Services performed under this Agreement, Consultant shall place in all such subconsulting agreements, and cause its subconsultants to agree to, the indemnity and insurance obligations in favor of Owner and other Indemnitees, as provided herein, in the exact form and substance of those contained in this Agreement.

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner or to incur an obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

B. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City.

C. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 10 – CONFLICTS OF INTEREST AND ANTI-FRAUD AND ANTI-CORRUPTION POLICIES

A. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of Services under this

Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts with the interests of City in the performance of this Agreement.

B. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related Services for other governmental agencies and private parties. Consultant is aware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

C. Consultant understands and acknowledges City maintains an anti-fraud and anti-corruption policy to protect the City, its operations, and its employees from and against financial risks, operational breaches, and unethical, fraudulent and corrupt activities. Consultant represents and warrants that Consultant, its subcontractor(s) / subconsultant(s) and their respective employees providing Services pursuant to the Agreement are (1) in good standing; (2) have not been previously investigated, convicted, or debarred for fraudulent or corrupt activities; (3) will not participate in fraudulent or corrupt activities, and (4) will take steps to ensure that its employees and subcontractor(s) / subconsultant(s) employees do not participate in any fraudulent or corrupt activities. Consultant acknowledges and agrees further that it has a duty to and will report to City any information or incident(s) about possible fraudulent or corrupt activities Consultant may discover, and will cooperate in any fraud or corruption investigation conducted, with respect to Consultant's service provided pursuant to this Agreement.

SECTION 11 – OWNERSHIP OF DOCUMENTS

A. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in the course of providing any Services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. When requested by City, but no later than three years after project completion, Consultant shall deliver to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

B. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, improvements, developments, works of authorship, or other products developed or created by Consultant during the course of providing Services (collectively the "Work Product") shall belong exclusively to City. The Work Product shall be considered a "work made for hire" within the meaning of Title 17 of the United States Code. Without reservation, limitation, or condition, Consultant hereby assigns, at the time of creation of the Work Products, without any requirement of further consideration, exclusively and perpetually, any and all right, title, and interest Consultant may have in the Work Product throughout the world, including without limitation any copyrights, patents, trade secrets, or other intellectual property rights, all rights of reproduction, all rights to create derivative works, and the right to secure registrations, renewals, reissues, and extensions thereof.

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

A. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided consultant gives City notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys' fees, caused by or incurred as a result of Consultant's conduct.

D. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.

SECTION 13 – SUSPENSION OF WORK

City may, at any time, by ten (10) days written notice suspend further performance by Consultant. All suspensions shall extend the time schedule for performance in a mutually satisfactory manner and Consultant shall be paid for Services performed and reimbursable expenses incurred prior to the suspension date.

SECTION 14 – COMPLIANCE WITH LAW

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the Services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

During the performance of this contract, Consultant agrees as follows:

A. Equal Employment Opportunity. In connection with the execution of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, age, sexual orientation, gender, gender identity and gender expression as protected categories specifically and expressively in that category, physical handicap, medical condition, marital status, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship.

B. Nondiscrimination Civil Rights Act of 1964. Consultant will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

C. Solicitations for Subcontractors including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations, made by Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by Consultant of Consultant's obligations under this Agreement and the regulations relative to nondiscrimination.

SECTION 16 – AUDIT AND INSPECTION OF RECORDS

A. Records of Consultant's direct labor costs, payroll costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on a generally recognized accounting basis and made available to City if and when required for a period of up to 3 years from the date of Consultant's final invoice.

B. Consultant shall maintain all documents and records prepared by or furnished to Consultant during the course of performing the Services for at least three (3) years following completion of the Services. Such records include, but are not limited to, correspondence, internal memoranda, technical reports and investigations, calculations, books and accounts, accounting records documenting its work under its Agreement, and invoices, payrolls, records and all other data related to matters covered by this Agreement.

C. Consultant shall permit Owner to audit, examine and make copies, excerpts and transcripts from such records, and the Consultant shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any matter whatsoever for three (3) years after Owner makes the final or last payment or within three (3) years after any pending issues between Owner and Consultant with respect to this Agreement are closed, whichever is later.

SECTION 17 – LIMITATION OF LIABILITY

A. Consultant agrees that any liability of Owner arising in connection with this Agreement shall be limited exclusively to the Owner-entity identified as the "Owner" under this Contract. Under no circumstance shall any other Owner-entity be liable to Consultant under any theory, whether in contract, tort, or otherwise, and Consultant waives unconditionally any such claims. Consultant hereby waives and release other Owner-entities from any liability under this Agreement.

B. Notwithstanding any other provision of this Agreement, in no event shall Owner be liable, regardless of whether any claim is based on contract or tort, for any special, consequential,

indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed hereunder.

SECTION 18 – COOPERATION BY CITY

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Exhibit A, “Scope of Services”, shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement.

SECTION 19 – NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by facsimile or first class mail, addressed as follows:

To City: City Manager
 1480 Main Street
 St. Helena, California 94574

To Consultant: Britton Tree Services Inc
 PO Box 424
 St Helena, CA 94574
 Joseph T Borden
 707-963-7578

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or, if mailed, three (3) days after deposit in the custody of the U.S. Postal Service.

SECTION 20 – TERMINATION

A. City may terminate this Agreement, with or without cause, at any time by giving ten (10) days written notice of termination to Consultant. If such notice is given, Consultant shall cease immediately all work in progress.

B. If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

C. Upon termination of this Agreement by either Consultant or City, all property belonging to City which is in Consultant’s possession shall be delivered to City. Consultant shall furnish to City a final invoice for work performed and expenses incurred by Consultant, prepared as set forth in this Agreement.

SECTION 21 – ATTORNEYS’ FEES

If litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled. In addition, any legal fees, costs and expenses incurred to enforce the provisions of this Agreement shall be reimbursed to the prevailing party.

SECTION 22 – ENTIRE AGREEMENT

This Agreement, including the attached Exhibits, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 23 – SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties. However, this Agreement shall not be assigned by Consultant without written consent of the City.

SECTION 24 – CONTINUITY OF PERSONNEL

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the Services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff assigned to perform the Services required under this Agreement, prior to any such performance.

SECTION 25 – DEFAULT

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default and may terminate this Agreement immediately by written notice to Consultant.

SECTION 26 – WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or Services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 27 – LAW TO GOVERN; VENUE

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Napa. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 28 – SEVERABILITY

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 29 – THIRD PARTY BENEFICIARIES

Consultant's subconsultants shall agree to be bound to the terms of the Agreement to the extent of their scope of Services, including but not limited to, terms regarding indemnity and dispute resolution, and shall agree that Owner is deemed an express third party beneficiary of their subconsultant agreements. Nothing contained in this Agreement, however, shall operate to confer such or similar rights or benefits on persons or entities not party to this Agreement.

SECTION 30 – STATUTES OF LIMITATION

As between the parties to this Agreement, any applicable statute of limitations for action arising out of, pertaining to, or relating to any act or failure to act in connection with this Agreement shall commence to run on the date of Owner's issuance of the final Certificate for Payment, or termination of this Agreement, whichever is earlier, except for latent defects and/or deficiencies, for which the applicable statute of limitation shall begin to run upon discovery of the defect and/or deficiency and its cause.

SECTION 31 – SPECIAL PROVISIONS

This Agreement is subject to the following special provisions: none.

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

Consultant:

City:

By: Donna Colburn
 Name: Donna Colburn
 Title: Sec. Treas.

By: _____
 Name: Mark T. Prestwich
 Title: City Manager

Approved as to Form:

By: _____
 Name: Michael G. Biddle
 Title: City Attorney

EXHIBIT A - 10/10/2010

The following information was provided to the Board of Directors of the City of San Jose on October 10, 2010, by the City Manager, and is being provided to the Board of Directors for their information and use.

EXHIBIT B - 10/10/2010

The following information was provided to the Board of Directors of the City of San Jose on October 10, 2010, by the City Manager, and is being provided to the Board of Directors for their information and use.

EXHIBIT C - 10/10/2010

The following information was provided to the Board of Directors of the City of San Jose on October 10, 2010, by the City Manager, and is being provided to the Board of Directors for their information and use.

EXHIBIT D - 10/10/2010

The following information was provided to the Board of Directors of the City of San Jose on October 10, 2010, by the City Manager, and is being provided to the Board of Directors for their information and use.

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Exhibit A
“Scope of Services”

Baldwin Park, 1701 Spring Street

Each tree will have a root collar inspection. Each tree will be pruned for crown cleaning, crown thinning, and to improve structure. A written report will be provided for any negative findings.

1. 10”-12” DBH¹ Liquidambar (*Liquidambar styraciflua*) three trees.
2. 10”-18” DBH Red maple (*Acer rubrum*) four trees.
3. 14”-24” DBH Valley oak (*Quercus lobata*) three trees.
4. 6”-20” DBH Valley oak, ten trees.
5. 20” DBH Coast live oak (*Quercus agrifolia*).
6. 18”-20” DBH Tulip poplar (*Liriodendron tulipifera*) two trees.
7. 14”-24” DBH Callery pear (*Pyrus calleryana*) three trees.
8. 14” DBH Southern live oak (*Quercus virginiana*).
9. 6”-10” DBH Red maple, two trees.
10. 4”-6” DBH Chinese pistache (*Pistacia chinensis*) six trees.

Jacob Meily Park, 821 Pope Street

Each tree will have a root collar inspection. Each tree will be pruned for crown cleaning, crown thinning, and to improve structure. A written report will be provided for any negative findings.

1. Ten maple (*Acer sp.*).
2. Three valley oak (*Quercus lobata*).
3. Two coast live oak (*Quercus agrifolia*).
4. Two coast live oak.
5. 10”-26” DBH² Valley oak located off south corner of gardens (not tagged). The trunks are weakly attached and subject to failure.
Recommendation:
Install a three piece box cable system to reduce failure potential.
6. 10”-22” DBH Valley oak, two trees behind bleachers (not tagged).

7. 20"-42" DBH Coast live oak, a multi trunk tree near the center of the north edge of park (not tagged). This tree has poor trunk attachments that are subject to failure.

Recommendation:

Install a six piece box cable system to reduce failure potential.

8. 18"-22" DBH Coast live oak, a three trunk tree across path from #7. The trunk attachments are weak and subject to failure.

Recommendation:

Install a three piece box cable system to reduce failure potential.

9. 10" DBH Valley oak, 20" DBH Coast live oak.

10. 48" DBH Coast live oak at bathroom (not tagged). This tree has weak branch attachments that are subject to failure.

Recommendation:

Install a three piece box cable system to reduce the failure potential.

11. 22"-24" DBH Coast live oak, two trees in south corner of park.

12. 10" DBH Maple.

Mary Fryer Park, 1485 Mitchel Drive

Each tree will have a root collar inspection. Each tree will be pruned for crown cleaning, crown thinning, and to improve structure. A written report will be provided for any negative findings.

1. Six valley oak (*Quercus lobata*), six coast live oak (*Quercus agrifolia*), one maple (*Acer sp.*), eight pin oak (*Quercus palustris*).

Mennen Park, 1600 Voorhees Circle

Each tree will have a root collar inspection. Each tree will be pruned for crown cleaning, crown thinning, and to improve structure. A written report will be provided for any negative findings.

1. 10" DBH³ Chinese pistache (*Pistacia chinensis*) two trees, one English walnut (*Juglans regia*), one valley oak (*Quercus lobata*), one coast live oak (*Quercus agrifolia*), and two pecan (*Carya illinoensis*). \$1200.00

Chip brush and haul debris. IN ALL FOUR LOCATIONS.

Exhibit B
"Compensation"

Baldwin Park, 1701 Spring Street	\$9400.00
Jacob Meily Park, 821 Pope Street	\$21,760.00
Mary Fryer Park, 1485 Mitchel Drive	\$3256.00
Mennen Park, 1600 Voorhees Circle	\$1,200.00
Total \$ 35,616.00	

Item		Description	
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CITY OF ST. HELENA RESOLUTION

NO. 2019-

Resolution approving a Professional Services Agreement with Britton Tree Services for tree pruning at Baldwin Park, Mary Fryer Park, Mennen Park and Jacob Meily Park for an amount not to exceed \$35,616 and authorizing the City Manager to execute the agreement

RECITALS

- A. The City of St Helena has an established tree pruning schedule to ensure the health of its trees in City parks; and
- B. The City of St. Helena requested bids for tree pruning at Baldwin Park, Mary Fryer Park, Mennen Park and Jacob Lyman Park, and
- C. Britton Tree Services is on the City of St Helena's 2019 California Uniform Construction Cost accounting list for professional tree service; and
- D. The proposal from Britton Tree Services is \$35,616; and
- E. Sufficient funding for the tree pruning is available in the Public Works budget for Fiscal Year 2019/2020.
- F. The project is categorically exempt as a Class I Categorical Exemption from the requirements of CEQA pursuant to Section 15301.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

- 1. The City Council approves the Professional Service Agreement with Britton Tree Services, in the amount of \$35,616.
- 2. The City Council authorizes the City Manager to execute the agreement with Britton Tree Services.

Approved at a Regular Meeting of the St. Helena City Council on September 10, 2019 by the following vote:

Mayor Ellsworth: _____
Vice Mayor Dohring: _____
Councilmember Koberstein: _____
Councilmember Chouteau: _____
Councilmember Knudsen: _____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

Annual Bidders List Notice

City of St. Helena
Public Works Department
1572 Railroad Ave.
St. Helena, CA 94574
(707) 968-2658



Remit Application Via Email To
CCOOK@CITYOFSTHELENA.ORG
Call (707) 968-2658 With Questions.

NOTICE TO ALL LICENSED CONTRACTORS:

The City of St. Helena hereby invites all licensed contractors to complete this form and submit it to the St. Helena Public Works Director if they wish to be included on the City's List of Qualified Bidders for Public Works projects for the 2019 calendar year. Contractors must be able to complete the City's Construction Contract, City Insurance Requirements, and comply with State Prevailing Wage Law.

THIS NOTICE is to any individual or firm wishing to be added to the City of St. Helena's ("City") list of qualified bidders ("List") for the 2019 calendar year pursuant to the California Uniform Public Construction Cost Accounting Act (CUPCCAA). Interested individual/firm(s) must submit the CUPCCAA contractor/vendor application ("Application Form").

To be considered for placement on the List, the City must receive the completed Application Form no later than October 31, 2018.

Please be advised that submission of an Application Form does not guarantee placement on the List or that the applicant will be informed of, or included in, all requests for proposals ("RFP"), requests for qualifications ("RFQ"), or bid requests. The City will either issue notices of RFQ, RFP, or bid requests to qualified bidders on the List based on the category of work being bid, or announce project opportunities in designated trade journals, or both.

The City reserves the right to reject any and all requests solicited, to waive minor irregularities, and to make such decisions as deemed necessary in the best interest of the City in accordance with the law.

Interested individual/firm(s) are encouraged to inquire about current City project opportunities by checking the local newspaper, trade journals, and City website for publicly advertised RFPs, RFQs, or bid solicitations.

The City is an equal opportunity owner/employer and will not discriminate against any bidder and/or contractor because of race, creed, color, religion, sex, national origin or ADA disability.

Company Name: <u>Bon Home Tree Services, Inc.</u>		Contact Name: <u>Joe Borden</u>
Address: <u>PO Box 424</u>		City: <u>St Helena</u> State: <u>CA</u> Zip: <u>94574</u>
Email: <u>donna.btsi@stcglobal.net</u>		Phone #: <u>707 963 7578</u>
CA Contractor License Number: <u>049693047</u>		
Type of Specialty Work in which contractor is interested and currently licensed to do: <u>tree service</u>		
APPLICATION CERTIFICATION: I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THAT THE INFORMATION PROVIDED ABOVE IS ACCURATE AND TRUE AS OF THIS DATE. I AM LICENSED IN THE STATE OF CALIFORNIA AND SKILLED TO PERFORM THE ABOVE WORK AS STATED, I AM ALSO ABLE TO SECURE BONDS IF REQUIRED BY THE CITY TO PERFORM THE WORK IF SELECTED. MY COMPANY SHALL COMPLY WITH ALL CITY, STATE AND FEDERAL REQUIREMENTS.		

For Additional Information, or Documents Please Visit the Public Works Website @ <http://www.cityofsthelema.org/publicworks>

Annual Bidders List Application

City of St. Helena
Public Works Department
1572 Railroad Ave.
St. Helena, CA 94574
(707) 968-2658



Remit Application Via Email To
CCOOK@CITYOFSTHELENA.ORG
Call (707) 968-2658 With Questions.

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Company Name: <u>Britton Tree Services Inc</u>		Contact Name: <u>Joe Borden</u>
Address: <u>PO Box 424</u>		
City: <u>St. Helena</u>	State: <u>CA</u>	Zip: <u>94574</u>
Email: <u>donna.btsi@sbglobal.net</u>		Phone #: <u>707 963 7578</u>

Please fill out the following for each trade your firm is proposing to be listed on:

1. CA. License Number- State issued Contractors license Number
2. Type of Classification: General "A", General "B" or Specialty Classification "C"
3. Brief description of work associated with License.

Please attach sheet to add more trades if needed.

1. CA. Contractor License Number (s): <u>693647</u>	2. Class of License (s) held: <u>D49</u>
3. Description of work: <u>tree work</u>	
1. CA. Contractor License Number (s): _____	2. Class of License (s) held: _____
3. Description of work: _____	
1. CA. Contractor License Number (s): _____	2. Class of License (s) held: _____
3. Description of work: _____	

Print Name: <u>Donna</u>	Title: <u>office</u>	Signature: <u>[Signature]</u>
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APPLICATION CERTIFICATION: I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THAT THE INFORMATION PROVIDED ABOVE IS ACCURATE AND TRUE AS OF THIS DATE. I AM LICENSED IN THE STATE OF CALIFORNIA AND SKILLED TO PERFORM THE ABOVE WORK AS STATED, I AM ALSO ABLE TO SECURE BONDS IF REQUIRED BY THE CITY TO PERFORM THE WORK IF SELECTED. MY COMPANY SHALL COMPLY WITH ALL CITY, STATE AND FEDERAL REQUIREMENTS.

For Additional Information or Documents Please Visit the Public Works Website @ <http://www.cityofstheleena.org/publicworks>



BRITTRE-01

MGENTRY

CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)
 7/18/2019

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 have ADDITIONAL INSURED provisions or 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).

PRODUCER Malloy Imrie & Vasconi Insurance Services, LLC 899 Adams Street Suite C St. Helena, CA 94574		CONTACT NAME: PHONE (A/C, No, Ext): (707) 963-2777 FAX (A/C, No): (707) 963-4073 E-MAIL ADDRESS: myagency@mivinsurance.com	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: Hartford Fire Insurance Company	19682
		INSURER B: Hartford Casualty Insurance Company	29424
		INSURER C: State Compensation Insurance Fund of CA	35076
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES		CERTIFICATE NUMBER:		REVISION NUMBER:		
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 INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC OTHER:	X	57UUNQY8638	10/14/2018	10/14/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY	X	57UUNQY8638	10/14/2018	10/14/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000		57HHUQY8639	10/14/2018	10/14/2019	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y N/A	X 9063543-2019	7/1/2019	7/1/2020	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) The City of St. Helena, its Agents, Officers, Officials, Employees & Volunteers are named as Additional Insured per the attached endorsement HG00010916 and HA 99 16 03 12 regarding Permit/Contract. Primary wording and waiver of subrogation is also included. This certificate replaces the one issue out on 10-16-2018.						

CERTIFICATE HOLDER

 City of St. Helena, its Agents
 Officers, Employees & Volunteers
 1480 Main Street
 St. Helena, CA 94574

CANCELLATION

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

ACORD 25 (2016/03)

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Report to the City Council
Council Meeting of September 10, 2019

Agenda Section: Consent

Subject: *NEW ITEM 9-6-19

Consideration and adoption of a Resolution: (1) Awarding the W-26 Upper York Creek Ecosystem Restoration and Aquatic Habitat Enhancement Project Phase 1 to Suulutaaq, Inc. in the amount of \$601,865; (2) Authorizing the City Manager to execute the Construction Contract with Suulutaaq, Inc.; and (3) Authorizing the Director of Public Works to approve Change Orders not to exceed 20% of the contract amount

**CEQA Final Environmental Impact Report (SCH. No. 2006092096);
Determination: Addendum to Final EIR**

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The City has been working for several years to remove the Upper York Creek Dam and restore the riparian habitat of the York Creek watershed. The Dam was originally constructed in 1900, and gravel and fine sediments produced by the watershed above the Dam that become trapped behind it has reduced the storage capacity of the reservoir. Sediment accumulates in the reservoir at a rate of 1,000 to 5,000 cubic yards per year depending on the magnitude of winter storm events, which necessitates regular maintenance, including annual debris removal and periodic removal of accumulated sediment. Four documented incidents of accidental, catastrophic releases of fine sediment have occurred during maintenance activities. These low-flow sediment discharges have resulted in mortality of fish and other aquatic organisms over the entire stretch of York Creek below the Dam.

The Upper York Creek Ecosystem Restoration Project (“Project”) proposes to restore the ecological connectivity between habitats upstream and downstream of the Dam and provide for natural sediment transport. Steelhead migration would be restored to the level provided by the natural channels above and below the Dam. The Project proposes to modify the upper Dam to allow for fish passage and habitat connectivity, reduce potential for downstream habitat degradation and fish kills, and restore the local ecology of York Creek. The Project will provide access to spawning and rearing habitat for steelhead trout and habitat connectivity for both anadromous and resident fish and other aquatic and riparian species, and potentially detrimental sediment releases during summer low-flow conditions will be prevented.

The Project will restore approximately 3.5 acres of degraded riparian and aquatic habitat within the existing Dam and reservoir area. Two acres of this will be native riparian forest. The Project will also provide access to 1.5 miles of high-quality in-stream habitat. Restoration of natural sediment transport processes will occur through the Project site, with potential habitat improvements occurring in downstream reaches of York Creek and the Napa River. Areas within the Project site disturbed during construction activities will be revegetated with a palette of multi-story native plants to provide diverse habitats for aquatic, riparian, and terrestrial species.

The Project has been split into two phases. Phase 1 involves the construction of a series of sediment traps within York Creek below the existing dam to capture some of the sediment that will be released through removal of the dam. The installation of such sediment traps had already been included in the certified Final EIR and adopted mitigation and monitoring plan as a component of Mitigation Measure MM H&H-PA1 that was adopted to address significant and unavoidable Impact H&H-PA1, which recognized that sediment aggradation in lower York Creek associated with the removal of the dam may increase the frequency and severity of flooding. Phase 2 will be advertised in 2020 and involves the removal of a portion of the dam to facilitate gradual sediment movement, excavation and disposal of approximately 8,000 cu/yds of sediment from behind the dam, as well as the remaining habitat restoration and improvement measures considered in the Final EIR.

DISCUSSION

On April 23, 2019, the City Council approved an Addendum to the Final EIR that analyzed the aforementioned modifications to the Project as a two phase undertaking. Further, that evening the City Council approved an access agreement between the City and Spring Mountain Vineyards, upon whose property the sediment traps are to be installed, and authorized the Public Works Director to finalize and approve the plans and specifications and to solicit public bids.

The Notice to Contractors for Phase 1 was posted on August 14, 2019 and was also published in the Napa Valley Register.

On Friday, September 6, 2019 at 2:00 PM the City Clerk received 1 sealed bid which was read aloud. The bid was as follows:

Company	Total
Suulutaaq, Inc. of Suisun City	\$601,865.00

A detailed bid tabulation is included as Attachment 3. Suulutaaq, Inc. is the lowest responsible, responsive bid, and holds a valid Class A General Contractor's License No. 898727 in the State of California, with no enforcement actions listed. Their license expires on 06/30/2021. Suulutaaq, Inc.'s bid is above the engineer's estimate of \$330,000.

The Project Plans and Manual remain available for review at the Public Works Department at 1572 Railroad Avenue and at www.blueprintexpress.com/sthelenah, but will be removed from the site once the project is awarded.

FISCAL IMPACT

The W-26 – Upper York Creek Ecosystem Restoration Project Phase 1 is included in the May 2019 adopted five-year Capital Improvement Program (Attachment 2). A summary of anticipated expenditures for Phase I are presented below:

W-26 Upper York Creek Phase I Estimated Project Costs

Estimated Construction Costs	\$601,865.00
Construction Contingency (20%)	\$120,373.00
Construction Management & Inspection	\$60,186.50
Estimated Total Project Cost	\$782,424.50

City funds budgeted for this project include Water Bonds, EPA Grant, California Proposition 84 Grant, and General Funds.

RECOMMENDED ACTION

Staff recommends that the Council adopt the Resolution: (1) Awarding the W-26 Upper York Creek Ecosystem Restoration and Aquatic Habitat Enhancement Project Phase 1 to Suulutaaq, Inc. in the amount of \$601,865; (2) Authorizing the City Manager to execute the Construction Contract with Suulutaaq, Inc.; and (3) Authorizing the Director of Public Works to approve Change Orders not to exceed 20% of the contract amount.

ATTACHMENTS

[Attachment 1: W-26 Phase 1 Award Reso](#)

[Attachment 2: W-26 5-yr CIP Budget](#)

[Attachment 3: W-26 Bid Tabulation](#)

[Attachment 4: The bid from Suulutaaq, Inc.](#)

CITY OF ST. HELENA

RESOLUTION NO. 2019-

Awarding the W-26 Upper York Creek Ecosystem Restoration and Aquatic Habitat Enhancement Phase 1 to Suulutaaq, Inc in the amount of \$601,865; (2) Authorizing the City Manager to execute the Construction Contract with Suulutaaq, Inc; and (3) Authorizing the Director of Public Works to approve Change Orders not to exceed 20% of the contract amount

RECITALS

A. The City of St. Helena ("City") currently maintains the Upper York Creek Dam (the "Dam"), which facility was constructed in approximately 1900 along York Creek and acts as a barrier for fish and other aquatic organisms to access upstream habitat. The Dam restrains the natural and gradual flow of gravel and fine sediments produced by the watershed above the Dam, and the resulting accumulation of sediment deposits has filled the reservoir behind the Dam. Thus, the Dam is no longer used by City to provide water for the needs of its residents. Further, the Dam requires regular maintenance and these activities have resulted in several accidental discharges of large volumes of sediment that have proven catastrophic to fish and other aquatic organisms downstream of the Dam. Finally, the lack of gravel and sediment dispersal through natural and gradual hydraulic processes has negatively impacted habitat along York Creek; and

B. In 2006, the City entered into an agreement with the Department of Commerce National Oceanic and Atmospheric Administration to remove the Dam; and

C. A Notice of Preparation for the Draft Environmental Impact Report ("Draft EIR"), which initiated the environmental review process for the Upper York Creek Habitat Restoration Project ("Project") under the

requirements of the California Environmental Quality Act (“CEQA”), was distributed to responsible agencies, interested parties, and the public on September 19, 2006, and the 30-day Draft EIR scoping comment period concluded in October 18, 2006; and

D. The Draft EIR was prepared and circulated for public review from April 19, 2007 to November 14, 2007, and on April 28, 2015, the City Council of the City of St. Helena, by resolution, certified the Final Environmental Impact Report (“FEIR”) (State Clearinghouse #2006092096) for the Project (which included the Draft EIR), adopted CEQA findings, including a Statement of Overriding Considerations, and adopted a Mitigation Monitoring and Reporting Plan, and approved the Project; and

E. Subsequent to the certification of the FEIR and approval of the Project, City staff met and conferred with various state and federal regulatory permitting agencies in pursuit of the additional permits required to construct and operate the Project, which, as requested by those agencies, resulted in the need to consider modifications to the Project and the timing of its implementation, specifically including securing access rights for and the construction of a series of sediment traps (up to 30) (the “Sediment Trap Facilities”) within York Creek below the existing Dam that will serve to capture some of naturally occurring sediments that will travel downstream after removal of the Dam; and

F. On April 23, 2019, the City Council of the City of St. Helena approved the Addendum to the Final EIR addressing modifications to the Project relating to the phasing of certain Project elements described above pursuant to the requirements of Sections 15162 - 15164 of the CEQA Guidelines; and

G. On April 23, 2019, the City of St. Helena City Council adopted a Resolution authorizing the Public Works Director to finalize and approve the plans and specifications and to solicit public bids; and

H. Pursuant to St. Helena Municipal Code Chapter 3.04; Article 3 Public Works Projects; Section 3.04.220 on May 29, 2019 a notice inviting bids was posted and mailed to contractors inviting bids for the W-26 Upper York Creek Ecosystem Restoration and Aquatic Habitat Enhancement Phase 1; and

I. On September 6, 2019, one bid was received by the City Clerk and opened in accordance with applicable law; and

J. The lowest responsive and responsible bidder for the Project was Suulutaaq, Inc. of Suisun City, CA in the amount of \$601,865; and

K. City staff has determined that Suulutaaq, Inc.'s bid satisfies the bidding requirements for the Project; and

L. City staff has verified that Suulutaaq, Inc. possesses a valid Contractor's License, Class A, number 898727 that qualifies Suulutaaq, Inc. to complete the Project

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. The City Council has independently reviewed, analyzed and considered the FEIR and Addendum thereto, the staff report and all attachments thereto, as well as all written documentation and public comments thereto regarding the Project and approved said Addendum prior to considering approval of the Upper York Creek Habitat Restoration Project and the modifications to the Project. The previously-certified FEIR, together with the Addendum are adequate to serve as the required environmental documentation for the Upper York Creek Ecosystem Restoration and Aquatic Habitat Enhancement Project; and
2. Awarding the W-26 Upper York Creek Ecosystem Restoration and Aquatic Habitat Enhancement Phase 1 Project to Suulutaaq, Inc. in the amount of \$601,865; and
3. Authorizing the City Manager to execute a construction contract in the amount of \$601,865 with Suulutaaq, Inc for W-26 Upper York Creek Ecosystem Restoration and Aquatic Habitat Enhancement Phase 1 Project; and
4. Authorizing the City Manager and Director of Public Works to approve change orders not to exceed 20% of the contract account without prior City Council approval.

Approved at a Regular Meeting of the St. Helena City
Council on September 10, 2019 by the following vote:

Mayor Ellsworth: _____
Vice Mayor Dohring: _____
Councilmember Koberstein: _____
Councilmember Chouteau: _____
Councilmember Knudsen: _____

APPROVED: ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

OAK #4815-4725-9044 v2

Upper York Creek Ecosystem Restoration

Project No: 0301-W-26

Category: Water

Project Location: Spring Mtn Rd. (APN 022-180-013)



PROJECT PURPOSE & DESCRIPTION: Complete collaboration with the US Army Corp of Engineers, NOAA-Fisheries, the California department of Fish and Game, and the California regional Water Quality Control Board to remove the dam and restore fish passage in York Creek.

FISCAL IMPACT: The estimated cost for this project is \$8,030,074 with actual cost to-date of \$2,606,074. Costs in prior fiscal years are due to design and removal of sediment build-up upstream of the dam, ongoing design coordination with agencies and pursuing grants funds to move the complete dam removal forward.

EXPENDITURE ACCOUNTS:

Fund: 763 **Dept:** 5030

EXPENDITURES	2019-20	2020-21	2021-22	2022-23	2023-24	Five Year
3140 - Legal Services	20,000					20,000
3150 - Construction Management	295,000	59,000	150,000	150,000		654,000
3160 - Construction Contract	4,200,000	450,000				4,650,000
3170 - Contingency		100,000				100,000
EXPENDITURE TOTALS	4,515,000	609,000	150,000	150,000		5,424,000
FUNDING SOURCES	2019-20	2020-21	2021-22	2022-23	2023-24	Five Year
211-Grant EPA SFBWQIF	907,953					907,953
763-Water Capital Improvement	1,163,124	609,000	150,000	150,000		2,072,124
763-Water Capital Improvement - Grant Prop 84	800,000					800,000
763-Water Capital Improvement - Water Bond	1,643,923					1,643,923
FUNDING TOTALS	4,515,000	609,000	150,000	150,000		5,424,000

W-26 Upper York Creek Phase I
Bid Opening September 6, 2019 at 2:00 PM

Item No.	Bid Item	Quantity	Units	Engineers Estimate		Suulutaaq, Inc.	
				Unit Cost	Total Cost	Unit Cost	Total Cost
1	Mobilization	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 59,200.00	\$ 59,200.00
2	Sediment Trap Type 1	12	EA	\$ 3,000.00	\$ 36,000.00	\$ 7,117.00	\$ 85,404.00
3	Sediment Trap Type 4	5	EA	\$ 3,000.00	\$ 15,000.00	\$ 5,930.00	\$ 29,650.00
4	Establishing Creek Access	5	EA	\$ 3,000.00	\$ 15,000.00	\$ 18,917.00	\$ 94,585.00
5	Reseeding/Invasive Plant Removal/Erosion Control	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 40,081.00	\$ 40,081.00
6	Environmental Compliance	1	LS	\$ 50,000.00	\$ 50,000.00	\$ 9,500.00	\$ 9,500.00
7	Demobilization/Site Restoration	1	LS	\$ 10,000.00	\$ 10,000.00	\$ 6,800.00	\$ 6,800.00
8	Encroachment Permit/Traffic control	1	LS	\$ 15,000.00	\$ 15,000.00	\$ 36,030.00	\$ 36,030.00
9	Remove/replace permanent and temporary guard rail	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 38,315.00	\$ 38,315.00
10	Permanent Stakes	60	EA	\$ 30.00	\$ 1,800.00	\$ 248.00	\$ 14,880.00
11	Temporary Construction Fencing and Gates	6,780	LF	\$ 3.00	\$ 20,340.00	\$ 4.75	\$ 32,205.00
12	Supplemental Survey 1: Topographic Survey	1	LS	\$ 40,000.00	\$ 40,000.00	\$ 10,755.00	\$ 10,755.00
13	Supplemental Survey 2: Creek Sections and Thalweg	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 10,755.00	\$ 10,755.00
14	Sediment Trap Type 2 w/ Imported Rocks (Optional)	2	EA	\$ 3,500.00	\$ 7,000.00	\$ 11,000.00	\$ 22,000.00
15	Sediment Trap Type 3 w/ Imported Rocks (Optional)	11	EA	\$ 3,500.00	\$ 38,500.00	\$ 10,155.00	\$ 111,705.00
				Totals	\$ 328,640		\$601,865.00



PROPOSAL TO THE CITY OF ST. HELENA

DEPARTMENT OF PUBLIC WORKS

W-26 – PHASE I UPPER YORK CREEK ECOSYSTEM RESTORATION & AQUATIC HABITAT ENHANCEMENT

Name of Bidder Suulutaaq, Inc.
 Address 110 Railroad Avenue, Suite A
 City, State, Zip Code Suisun City, CA 94585
 Phone No.: (707) 437-3209
 Email Address: john.hurd@suulutaaq.com
 Contractor License Number 898727 A & B

The work for which this proposal is submitted is for construction in conformance with the special provisions (including the payment of not less than the State general prevailing wage rates), the project plans described below, including any addenda thereto, the contract annexed hereto, and also in conformance with the City of St. Helena Standard Specifications and Standard Plans dated July 1998, the California Department of Transportation Standard Plans, dated 2015, the Standard Specifications, dated 2015, and the most current Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished.

The special provisions for the work to be done are dated **August 2019** and are entitled:

CITY OF ST. HELENA PUBLIC WORKS DEPARTMENT NAPA COUNTY, CALIFORNIA PROJECT MANUAL (NOTICE INVITING BIDS, PROPOSAL, CONTRACT AND SPECIAL PROVISIONS) FOR W-26 – PHASE I UPPER YORK CREEK ECOSYSTEM RESTORATION & AQUATIC HABITAT ENHANCEMENT

The project plans for the work to be done were approved by the Director of Public Works pursuant to authority conferred by resolution of the St. Helena City Council adopted on **April 23, 2019** and are entitled:

UPPER YORK CREEK ECOSYSTEM RESTORATION PROJECT – DAM REMOVAL, CHANNEL RESTORATION & AQUATIC HABITAT ENHANCEMENT – NAPA COUNTY, CA – PHASE 1 PLANS.

Bids are to be submitted for the entire work. The amount of the bid for comparison purposes will be the total of all items.

The bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the "Item Total" column shall be the product of the unit price bid and the estimated quantity for the item.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, except as provided in (a) or (b), as follows:

- (a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount as the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;

W-26 PHASE I UPPER YORK CREEK

P-1



- (b) (Decimal Errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be resolved by using the entered unit price or item total, whichever most closely approximates percentage-wise the unit price or item total in the Copy of Engineer's Estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular unless the project being bid has only a single item and a clear, readable total bid is provided.

Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number of digits and, if applicable, decimal placement. Cents symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in dollars and/or decimal fractions of a dollar. Bids on lump sum items shall be item totals only; if any unit price for a lump sum item is included in a bid and it differs from the item total, the items total shall prevail.

The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of the City of St. Helena, and that discretion will be exercised in the manner deemed by the City of St. Helena to best protect the public interest in the prompt and economical completion of the work. The decision of the City of St. Helena respecting the amount of a bid, or the existence or treatment of an irregularity in a bid, shall be final.

If this proposal shall be accepted and the undersigned shall fail to enter into the contract and furnish the two bonds in the sums required by the State Contract Act, with surety satisfactory to the City of St. Helena, and the insurance certificates within seven calendar days after the bidder has received notice from the City of St. Helena that the contract has been awarded, the City of St. Helena may, at its option, determine that the bidder has abandoned the contract, and thereupon this proposal and the acceptance thereof shall be null and void and the forfeiture of the security accompanying this proposal shall operate and the same shall be the property of the City of St. Helena.

The Bidder has familiarized itself with the nature and extent of the Contract Documents, the Work, the site, the locality where the Work is to be performed, the legal requirements (federal, state and local laws, ordinances, rules, and regulations), and the conditions affecting cost, progress or performance of the Work, and has made such independent investigations as Bidder deems necessary.

The undersigned, as bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, or corporation; that he has carefully examined the location of the proposed work, the annexed proposed form of contract, and the plans therein referred to; and he proposes, and agrees if this proposal is accepted, that he will contract with the City of St. Helena, in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements of the Engineer as therein set forth, and that he will take in full payment therefor the following prices, to wit:

* * * *

BID SCHEDULE

W-26 – PHASE 1 UPPER YORK CREEK ECOSYSTEM RESTORATION & AQUATIC HABITAT
ENHANCEMENT PROJECT

Item No.	Item Description	Estimated Quantity	Unit	Unit Price	Total Cost
1	Mobilization	1	LS	59,200	\$59,200
2	Sediment Trap Type 1	12	EA	7,117	\$85,404
3	Sediment Trap Type 4	5	EA	5,930	\$29,650
4	Establishing Creek Access	5	EA	18,917	\$94,585
5	Reseeding/Invasive Plant Removal/Erosion Control	1	LS	40,081	\$40,081
6	Environmental Compliance	1	LS	9,500	\$9,500
7	Demobilization/Site Restoration	1	LS	6,800	\$6,800
8	Encroachment Permit/Traffic control	1	LS	36,030	\$36,030
9	Remove/replace permanent and temporary guard rail	1	LS	38,315	\$38,315
10	Permanent Stakes	60	EA	248	\$14,880
11	Temporary Construction Fencing and Gates	6,780	LF	4.75	32,205
12	Supplemental Survey 1: Topographic Survey	1	LS	10,755	\$10,755
13	Supplemental Survey 2: Creek Sections and Thalweg	1	LS	10,755	\$10,755
14	Sediment Trap Type 2 w/ Imported Rocks (Optional)	2	EA	11,000	\$22,000
15	Sediment Trap Type 3 w/ Imported Rocks (Optional)	11	EA	10,155	\$111,705

* Note: In case of error in extension of price into the total price column, the unit price will govern.

Total Amount of Bid including Optional Items (written in words) is: Six hundred one-thousand, eight hundred sixty-five Dollars and no/100 Cents.

In the event of discrepancy between words and figures, the words shall prevail.

\$ 601,865.00
Total in Figures



BID SCHEDULE, continued

110 Railroad Avenue, Suite A

Address of Bidder

Suisun City

City

(707) 427-3209

Telephone Number of Bidder

898727 A & B

Contractor's License Number

Signature of Bidder

John Hurd

Name of Bidder (Print)

(707) 419-4851

Fax Number of Bidder

6/30/2021

License's Expiration Date

ADDENDUM ACKNOWLEDGMENT

Bidder acknowledges receipt of the following addenda, which are attached to the proposal:

Addendum No.	1	Date:	8/30/19
Addendum No.	2	Date:	9/3/19
Addendum No.		Date:	
Addendum No.		Date:	



QUESTIONNAIRE AND FINANCIAL ASSURANCE STATEMENT FORM

The following statements as to experience and financial qualifications of the Bidder are submitted in conjunction with the proposal as a part thereof, and the truthfulness and accuracy of the information is guaranteed by the Bidder.

The Bidder has been engaged in the contracting business under the present business for 15 years. Experience in work of a nature similar to that covered in the proposal extends over a period of 13 years.

The Bidder, as a contractor, has never failed to satisfactorily complete a contract awarded to contractor, except as follows:

None.

List all claims and lawsuits presented or filed in the last five (5) years, regardless of the form, regarding any public works project:

None.

The following contracts for work have been completed in the last three (3) years for the persons, firm or authority indicated and to whom reference is made:

Year	Type of Work-Size, Length and Contract Amount	Location and For Whom Performed
2018	<u>owder Valley Connector, \$1,077,353</u> <u>5/2018- 2/2019</u>	<u>Powder Valley, OR</u> <u>Powder Valley Water Control Dist.</u>
2018	<u>Gerber Creek Phase 3 Improvements</u> <u>\$2,644,976 6/2018- 8/2018</u>	<u>Sacramento, CA</u> <u>Sacramento County</u>
2017	<u>Hyatt Dam Modifications, \$5,068,390</u> <u>5/2017-2/2018</u>	<u>Jackson County, OR</u> <u>Bureau of Reclamation</u>
2016	<u>Berryessa Flood Control, \$20,528,016</u> <u>10/2016-11/2017</u>	<u>Milpitas, CA</u> <u>US Army Corp of Engineers</u>

The following complaints have been made against the Bidder's contractor's license within the past ten (10) years:

Date: _____ Nature of Complaint _____

None



Reference is hereby made to the following bank or banks as to the financial responsibility of the bidder:

NAME OF BANK	ADDRESS
<u>Sun Trust Bank</u>	<u>276 East Bay Street, Charleston, SC 29401</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

Reference is hereby made to the following surety companies as to the financial responsibility and general reliability of the bidder:

NAME OF SURETY COMPANY:

Marsh & McLennan Agency

I, the undersigned, declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

SIGNATURE OF BIDDER

John Hurd, President of Sulutaag, Inc.

NAME OF BIDDER



LIST OF SUBCONTRACTORS

Attention is directed to the section titled "Subcontracting" of the Special Provisions. The Contractor shall perform work equaling at least _____ percent (_____ %) of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.

As required under Section 4100, et seq., of the Public Contract Code, the Bidder shall list below the name and business address of each subcontractor who will perform Work under this Bid in excess of one-half of one percent of the Contractors Total Bid Price or \$10,000, whichever is greater, and shall also list the portion of the Work which will be done by such subcontractor. After the opening of Bids, no changes or substitutions will be allowed except as otherwise provided by law. The listing of more than one subcontractor for each item of Work to be performed with the words "and/or" will not be permitted. Failure to comply with this requirement will render the Bid as non-responsive and may cause its rejection.

[illegible]

* * *

NONCOLLUSION DECLARATION TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the President of Suulutaaq, Inc., the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 9/4/2019 [date], at Suisun City [city], CA [state].

Note: The above Noncollusion Declaration is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Declaration. Notarizing this Noncollusion Declaration is not required. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.



**SITE VISIT AFFIDAVIT
TO BE EXECUTED
BY BIDDER, NOTARIZED AND SUBMITTED WITH BID**

(To Accompany Bid)

State of California)
) ss.
County of Solano)

Katie Reineck, being first duly sworn, deposes and says that he or
(Contractor's Authorized Representative)

she is

Project manager of Sunlutaag Inc., the party making the foregoing
(Title of Representative) (Contractor's Name)

bid, has visited the Site of the Work as described in the Contract and has examined and familiarized themselves with the existing conditions, as well as all other conditions relating to the construction which will be performed. The submitting of a bid shall be considered an acknowledgement on the part of the Bidder of familiarity with conditions at the site of Work. The Bidder further acknowledges that the site examination has provided adequate and sufficient information related to existing conditions which may affect cost, progress or performance of the Work.

 Katie Reineck, Project manager for Sunlutaag, Inc.
Signature Name of Bidder



CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

☒ See Attached Document (Notary to cross out lines 1–6 below)

☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], not Notary)

1 _____
 2 _____
 3 _____
 4 _____
 5 _____
 6 _____

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

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

State of California

County of Solano

Subscribed and sworn to (or affirmed) before me

on this 5th day of September, 2019
 by _____ Date _____ Month _____ Year _____

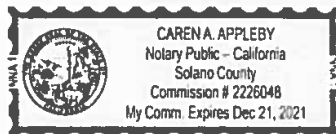
(1) Katie Reineck

(and (2) _____),
 Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature Caren Appleby
 Signature of Notary Public

Place Notary Seal and/or Stamp Above



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: Site Visit Affidavit

Document Date: 9/5/19 Number of Pages: 2

Signer(s) Other Than Named Above: N/A



SIGNATURE SHEET

Accompanying this proposal is [Insert the words "cash(~~\$~~idders bond," "cashier's check," "certified check," or "bidder's bond," as the case may be] in amount equal to at least ten percent of the total of the bid.

IMPORTANT NOTICE

If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager authorized to sign contracts; if a copartnership, state true name of firm, also names of all individual copartners composing firm authorized to sign contracts; if bidder or other interested person is an individual, state first and last names in full.

The names of all persons interested in the foregoing proposal as principals are as follows:

John Hurd, President

Licensed in conformance with an act providing for the registration of Contractors,

License No. <u>898727</u>	Classification(s) <u>A & B Licenses</u>	
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ADDENDA

This Proposal is submitted with respect to the changes to the contract included in addenda number/s [Fill in addenda numbers if addenda have been received and insert, in this Proposal, any Engineer's Estimate sheets that were received as part of the addenda].

To all the foregoing, and including all Bid Schedule(s), List of Subcontractors, Non-collusion Affidavit, Bidder's General Information and Bid Bond contained in these Bid Forms, said Bidder further agrees to complete the Work required under the Contract Documents within the Contract Time stipulated in said Contract Documents and to accept in full payment therefore the Contract Price based on the Lump Sum or Unit Bid Price(s) named in the aforementioned Bidding Schedule(s).

By my signature on this proposal I certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Noncollusion Affidavit required by Public Contract Code Section 7106 is true and correct.

Date: 9/6/2019

Bidder: Suulutaaq, Inc.

By: 
Signature

Title: President





ADDENDUM NO. 1
to
PROJECT PLANS AND SPECIAL PROVISIONS
FOR CONSTRUCTION OF

W-26 -- UPPER YORK CREEK ECOSYSTEM RESTORATION PROJECT -- PHASE 1

IN THE CITY OF ST. HELENA

DATE: August 30, 2019
TO: Plan Holders
SUBJECT: Revised Specifications and Plan Changes
BID OPENING DATE September 6, 2019 at 2:00 pm at St. Helena City Clerk – 1480 Main Street, St. Helena, CA 94574

This Addendum forms a part of the Bidding and Contract Documents and modifies the Special Provisions as described below:

SPECIFICATIONS

1. **PROJECT MANUAL COVER SHEET, Bid Opening Date and NOTICE TO CONTRACTORS, first paragraph:** The bid opening date is changed from September 4, 2019 at 2:00 pm to September 6, 2019 at 2:00 pm.
2. **GENERAL CONDITIONS, Section B – PROPOSAL REQUIREMENTS AND CONDITIONS,** is hereby amended by adding Paragraph B-10 Bid Protest Procedure thereto to read as follows:

B-10 BID PROTEST PROCEDURE

Any Bidder may protest the City's proposed Contract award by submitting a letter detailing the grounds for the protest no later than two (2) calendar days following the date of opening of all bid proposals. The letter should be addressed to:

Erica Ahmann Smithies
Director of Public Works
1480 Main Street
St. Helena, CA 94574
ESmithies@cityofstheleena.org

Any protest submitted after the deadline will be untimely and may be rejected by the City. The Director of Public Works will respond in writing to any timely protest prior to the City Council meeting at which

the Contract award will be considered. The Director of Public Works' decision on the protest shall be final, and the City will not consider any appeals of the decision.

3. **GENERAL CONDITIONS**, Section F – Insurance, Paragraphs F-01 through F-10, is hereby amended in its entirety by deleting said language therein and replacing Section F – Insurance to read as follows:

SECTION F – INSURANCE

Comply with the requirements set forth in Section 5.4.01 INSURANCE of the Special Provisions.

4. **GENERAL CONDITIONS**, Paragraph G-04 Responsibility of Contractor, of Section G – Responsibility and Rights Of Contractor, is hereby amended in its entirety by deleting said language therein and replacing Paragraph G-04 Responsibility of Contractor to read as follows:

G-04 Responsibility of Contractor.

Comply with the requirements set forth in Section 5.4.02 INDEMNIFICATION of the Special Provisions.

5. **GENERAL CONDITIONS**, Paragraph J-06 Extension of Time, of Section J – Prosecution of Work, is hereby amended in its entirety by deleting said language therein and replacing Paragraph J-06 Extension of Time in its entirety to read as follows:

J-06 Extension of Time.

- (1) **Avoidable Delays.** In case the work called for under this Contract is not finished and completed in all parts and requirements within the time specified, including such extra time as may have been allowed for unavoidable delays, subject to the limitations set forth in the permits identified in Section 2 of the Technical Specifications, the City shall have the right to grant a further extension of time to the Contractor, as may seem best to serve the interests of the City, in which to complete the Contract. During such extension of time, the Contractor shall be charged for engineering and inspection services as provided in Paragraph K-03, but shall not be charged liquidated damages as provided in Paragraph K-04.
- (2) **Unavoidable Delays.** For delays which the City considers to be unavoidable, the Contractor shall, pursuant to its application and subject to the limitations set forth in the permits identified in Section 2 of the Technical Specifications, be allowed an extension of time beyond the time herein set forth, proportional to such delay or delays, in which to complete the contract. During such extension of time, neither extra compensation for engineering and inspection as provided in Paragraph K-03, nor liquidated damages as provided in Paragraph K-04, shall be charged to the Contractor.

The Contractor expressly waives any allowances by way of damages for any delay as to which the City shall determine extra compensation is not due and the extension of time granted, if any, shall be the Contractor's sole remedy.

6. **GENERAL CONDITIONS**, Paragraph J-07 **Unfavorable Weather and Other Conditions**, of Section J – Prosecution of Work, is hereby amended in its entirety by deleting said language therein and replacing Paragraph J-07 **Unfavorable Weather and Other Conditions** to read as follows:

J-07 Unfavorable Weather and Other Conditions.

Comply with the requirements set forth in Section 3 of the Technical Specifications.

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Upper York Creek Ecosystem Restoration Project
Phase I
Bid Addendum #1

7. **GENERAL CONDITIONS, Paragraph J-08 Sunday, Holiday and Night Work**, of Section J – Prosecution of Work, is hereby amended in its entirety by deleting said language therein and replacing Paragraph J-08 **Sunday, Holiday and Night Work** to read as follows:

J-08 Sunday, Holiday and Night Work.

Comply with the requirements set forth in Section 3 of the Technical Specifications.

8. **GENERAL CONDITIONS, Paragraph K-03 Compensation to the City for Extension of Time**, of Section K – Payment, is hereby amended in its entirety by deleting said language therein and replacing Paragraph K-03 **Compensation to the City for Extension of Time** to read as follows:

K-03 Compensation to the City for Extension of Time. In case the work called for under the Contract is not completed within the time limit stipulated herein, subject to the limitations set forth in the permits identified in Section 2 of the Technical Specifications, the City shall have the right as provided in Paragraph J-06 (1), to extend the time of completion thereof. If the time limit be so extended, the City shall have the right to charge to the Contractor and to deduct from the final payment for the work the actual cost to the City of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Contract and which accrue during the period of such extension, except that the cost of final surveys and preparation of final estimate shall not be included in such charges. In such event, liquidated damages as provided for in Paragraph K-04 shall not be charged.

9. **GENERAL CONDITIONS, Paragraph K-04 Liquidated Damages for Delay**, of Section K – Payment, is hereby amended in its entirety by deleting said language therein and replacing Paragraph K-04 **Liquidated Damages for Delay** to read as follows:

K-04 Liquidated Damages for Delay. It is agreed by the parties to the Contract that time is of the essence and that in case all the work is not completed before or upon the expiration of the time limit as set forth therein, including such extra time as allowed for unavoidable delays and for extensions as set forth in Paragraph J-06 (1), damage will be sustained by the City, and that liquidated damages are to be due from the Contractor in the amount determined in Paragraph 4-1.02 of the Special Provisions.

10. **SPECIAL PROVISIONS, Paragraph 4-1.02 LIQUIDATED DAMAGES**, of Section 4 BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES, is hereby amended in its entirety by deleting said language therein and replacing Paragraph 4-1.02 **LIQUIDATED DAMAGES** to read as follows:

4-1.02 LIQUIDATED DAMAGES. The Owner and Contractor acknowledge and agree that time is of the essence and that in the case the work is not completed before or upon the expiration of the time as set forth in Paragraph 4-1.01 herein, including such extra time as may be allowed for unavoidable delays and for extensions of time as set forth in Paragraph J-06 of the General Conditions, damage will be sustained by Owner and that liquidated damages are to be due from Contractor whenever actual damages cannot be calculated; and it is therefore agreed that Contractor will pay Owner the sum of Five Hundred Dollars and 00/100 (\$500.00) per day in liquidated damages for each and every calendar day of delay to achieve completion of the work beyond the time prescribed in Paragraph 4-1.01 herein, excluding construction work related to installation of the sediment traps. As provided in Sections 23 and 24 of the Technical Specifications, Contractor shall only be paid the contract unit price for each of the pay items listed in the bid schedule for each sediment trap structure actually constructed, installed and accepted in accordance with the Contract; accordingly, it is agreed that liquidated damages will not be due in the event one or more of the sediment trap structures are not actually constructed, installed and accepted in accordance with the Contract by 31 October 2019, including such extra time as may be allowed for

unavoidable delays and for extensions of time as set forth in Paragraph J-06 of the General Conditions.

Payment of liquidated damages represents a reasonable estimate of fair compensation for the losses that reasonably may be anticipated as a result of Contractor's delays in completing the work, excluding construction work related to installation of the sediment trap structures. Owner and Contractor acknowledge and agree that this liquidated damages provision will be Owner's sole remedy for delay damages caused by Contractor's failure to achieve completion of the work, excluding construction work related to installation of the sediment trap structures, within the time prescribed in Paragraph 4-1.01 herein.

Contractor, however, acknowledges and agrees that payment of liquidated damages as provided in this Paragraph 4-1.02 shall not preclude the Owner from recovering, in addition to liquidated damages, actual damages caused by reasons other than the Contractor's failure to timely achieve completion within the time prescribed, including but not limited to claims for actual damages incurred due to breach of contract, negligence, defective work, injury to persons or property or third party claims, and consequential damages not otherwise waived under this Contract.

11. **SPECIAL PROVISIONS**, Paragraph 5-4.01 **INSURANCE**, of Section 5-4 **LEGAL RELATIONS AND RESPONSIBILITIES**, is hereby amended in its entirety by deleting said language therein and replacing Paragraph 5-4.01 **INSURANCE** to read as follows:

5-4.01 INSURANCE

Section 7-1.12B "Insurance" of the Standard Specifications is amended to read:

7-1.12B INSURANCE

Without limiting Contractor's indemnification obligation provided herein, Contractor shall take out and maintain at all times during the life of this contract the following policies of insurance with insurers with a current A.M. Best's rating of no less than A: VII, or its equivalent, against injury to persons or damage to property which may arise from or in connection with the performance of work hereunder by Contractor, its agents, representatives, employees or subcontractors:

- A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
 1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001). This insurance must include coverage for contractual liability assumed by the Contractor under Section 5-4.02 Indemnification of the Special Provisions.
 2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
 3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:
 1. General Liability: \$5,000,000 per occurrence, \$10,000,000 general aggregate, for bodily injury, personal injury, death and property damage resulting from operations, products and completed operations, slander, false arrest and invasion of privacy, and blanket contractual liability as applicable.
 2. Automobile Liability: \$5,000,000 per accident for bodily injury and property damage for owned, non-owned and hired vehicles.
 3. Employer's Liability: \$2,000,000 per accident for bodily injury or disease.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions shall not exceed \$10,000 for any one loss. Any deductibles or self-insured retentions in excess of \$10,000 must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its agents, officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee

satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, the County of Napa, Spring Mountain Vineyards, Inc., and their respective agents, officers, officials, employees, and volunteers (the "Additional Insureds") are to be covered as additional insured as respects: liability arising out of work or operations performed by the Contractor or Contractor's subcontractors; or automobile owned, leased, hired or borrowed by the Contractor.
2. For any claims related to Contractor's conduct while performing the work of this project, the Contractor's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any Additional Insured for the active negligence of the Additional Insured in any case where an agreement to indemnify the Additional Insureds would be invalid under Subsection (b) of Section 2782 of the Civil Code.

E. Waiver of Subrogation. The workers compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the Additional Insureds for losses paid under the terms of this policy which arises from the work performed by the named insured for the City.

F. The Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

G. Verification of Coverage. Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on forms that conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

- H. **Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or require subcontractors to secure and maintain insurance in accordance with all the requirements stated herein.

12. **SPECIAL PROVISIONS**, Paragraph 5-4.02 INDEMNIFICATION, of Section 5-4 LEGAL RELATIONS AND RESPONSIBILITIES, is hereby amended in its entirety by deleting said language therein and replacing Paragraph 5-4.02 INDEMNIFICATION to read as follows:

5-4.02 INDEMNIFICATION

Section 5-4.02 "Indemnification" of the Standard Specifications is amended to read:

5-4.02 Responsibility of Contractor And Indemnification.

The City, County of Napa, Spring Mountain Vineyards, Inc., and their respective agents, officers, officials, employees, and volunteers (the "Indemnitees") shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, emotional injury, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or

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active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.

To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), Contractor shall assume defense of, and indemnify and hold harmless, the Indemnitees from all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies, or relating to claims, etc., for copyright and/or infringement of patent, and attorney's fees and consultant's fees, directly or indirectly, from any cause whatsoever, directly or indirectly, arising out of, connected with, or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or in part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether it is caused in part by the negligence of an Indemnitee.

With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against the Indemnitees.

Approval or purchase of any insurance contracts or policies by an Indemnitee shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.

To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnification, releases of liability and limitations of liability, claims, procedures, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of contract, negligence (active or passive), fault or strict liability of the Indemnitees, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents.

The Contractor's obligation to defend, indemnify and hold the Indemnitees harmless shall not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable to the claimant. The Contractor will respond within 30 days to the tender of any claim for defense and indemnity by an Indemnitee, unless this time has been extended by the Indemnitee. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Contractor under and by virtue of the contract as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

The indemnification obligation in the Contract Documents shall not apply to any Indemnitee to the extent of its sole negligence or willful misconduct; nor shall they apply to an Indemnitee to the extent of its active negligence.

13. **SPECIAL PROVISIONS**, Paragraph 5-4.06 PRESERVATION OF PROPERTY, is hereby amended in its entirety by deleting said language therein and replacing Paragraph 5-4.06 PRESERVATION OF PROPERTY to read as follows:

5-4.06 PRESERVATION OF PROPERTY

Attention is directed to Section 7-1.1.1, "Preservation of Property," of the Standard Specifications and these Special Provisions.

Trees

Removal of existing trees shall be minimized to the greatest extent possible. Trees no greater than six inches (6") at breast height may be removed as necessary to facilitate access and implementation and construction of the work. All trees so removed shall be cataloged by Contractor as to their diameter at breast height, type and location, and said information shall be certified by Contractor and provided to City. Contractor shall have no obligation for replacement and replanting of trees removed. City shall replace all trees removed at a future date in accordance with the Restoration Monitoring and Adaptive Management Plan required in accordance with the permit issued by the State of California, Department of Fish and Wildlife identified in Section 2 of the Technical Specifications.

14. **SPECIAL PROVISIONS**, Paragraph 5-5.05 WORKING DAYS AND HOURS OF WORK, is hereby amended in its entirety by deleting said language therein and replacing Paragraph 5-5.05 WORKING DAYS AND HOURS OF WORK to read as follows:

5-5.05 WORKING DAYS AND HOURS OF WORK

Attention is directed to Section 8-1.06 "Time of Completion" of the Standard Specifications.

Construction activities throughout the entire duration of the project shall be limited to daylight hours from one (1) hour after sunrise until sunset, Monday through Saturday except legal holidays.

The CITY OF ST. HELENA recognized holidays (Appendix A) shall be used to determine the legal holidays.

If the Contractor desires to work on Sundays or City holidays, the Contractor shall submit a written request to the Engineer for approval. The request shall state the reason for the change in the working day, and shall be submitted a minimum of three (3) days prior to the requested change.

The Engineer shall approve or deny the request within three (3) days and advise the Contractor in writing of his or her decision. The Engineer's decision shall be final. If the request is approved, the Contractor will be required to pay the cost of providing inspection services for the work being performed. If inspection services are not available for the requested change, the Engineer may deny the request.

Any request submitted to work before or beyond the stated daylight hours will not be authorized or allowed.

15. **TECHNICAL SPECIFICATIONS, Page 2**, Section 3 CONSTRUCTION SCHEDULE is amended as follows:

Replace this section in its entirety with the following:

The work is estimated to be completed within 50 working days from Notice to Proceed. All sediment trap construction work shall be completed by 31 October 2019 to meet permit requirements. In accordance with Section 23 and 24 of these Technical Specifications, the City will not pay for sediment traps not constructed by 31 October 2019, including such extra time as may be allowed for unavoidable delays and for extensions of time as set forth in Paragraph J-06 of the General Conditions. The Contractor is directed to Work Condition requirements set forth in the permit issued by the State of California, Department of Fish and Wildlife identified in Section 2 of the Technical Specifications.

Work is restricted to daylight hours from one (1) hour after sunrise until sunset, Monday through Saturday, except legal holidays.

Work is restricted to dry weather. Construction shall be timed with the awareness of precipitation forecasts and potential increases in streamflow. Construction shall cease when the National Weather Service 72-hour weather forecast indicates a 40% chance or higher of rain. Construction activities halted due to rain may resume when rain ceases, and the NWS 72-hour forecast indicates less than a 40% chance of rain. No work shall occur during a dry-out period of 24-hours after the above-referenced wet weather.

If Contractor cannot complete construction of the sediment traps by October 31, 2019, the City may elect to either request a permit extension or halt construction with a reduced final quantity of completed sediment traps.

The Contractor shall submit a detailed project schedule within 5 working days of Notice to proceed for City approval, and update and submit the project schedule every week thereafter.

16. TECHNICAL SPECIFICATIONS, Page 3, Section 7 ENVIRONMENTALLY SENSITIVE AREAS is amended as follows:

Replace this section in its entirety with the following:

An Environmentally Sensitive Area (ESA) fence shall be placed by the Contractor at the direction of the archaeologist along the ESA boundary as roughly shown on the plans. The Environmentally Sensitive Area fence will be maintained throughout construction and will be removed by the Project Archeologist at the close of construction.

The fence shall be 5-ft high orange plastic exclusion fencing secured to the ground with metal stakes.

17. TECHNICAL SPECIFICATIONS, Page 3, Section 10 TRAFFIC CONTROL is amended as follows:

Add the following paragraph to the end of this section:

Napa County prefers the use of concrete K-rail for temporary guard rail. If traffic delays are expected to exceed 15 minutes for traffic in either direction then message boards need to be put up, and will be supplied and installed by the City with coordination by the Contractor.

18. TECHNICAL SPECIFICATIONS, Page 11, Section 15.2 Logs is amended as follows:

Add the following paragraph to the end of this section:

If experienced log vendors are unavailable, salvaged logs may be provided meeting the following requirements:

- a. Each log is given a unique ID number and labeled as such for tracking through installation.
- b. The location (source) where the logs were obtained is submitted for City review and approval in addition to documentation of negative Phytophthora test results for each log.
- c. Each log is stored on and under plastic sheet at a City owned staging area where it is tested by a City Representative with testing equipment provided by the Contractor with a negative result prior to installation. More than one onsite test may be required. Logs with a positive result will be immediately taken off site by the Contractor. Logs with a negative result may be used.
- d. Burnt logs may be used and shall have an unburnt diameter at least equal to the minimum diameter required in the design.

19. TECHNICAL SPECIFICATIONS, Page 8, Section 15.5 Stones is amended as follows:

Replace the first sentence in this section with the following sentence:

Stone for boulders shall be granitic, basalt, or other approved non-toxic equal and shall be rounded.

20. TECHNICAL SPECIFICATIONS, Page 10, Section 17 TEMPORARY CONSTRUCTION FENCING is amended as follows:

Replace this section in its entirety with the following:

Temporary construction fencing shall be constructed around areas designated as “Limits of Disturbance” and “Environmentally Sensitive Areas” as shown on the project plans. All fencing shall be 5-ft high plastic orange exclusion fencing secured with metal posts.

21. TECHNICAL SPECIFICATIONS, Page 11, Section 21 RESEEDING is amended as follows:

- a. Change the name of that section from “RESEEDING” to “RESEEDING/INVASIVE PLANT REMOVAL/EROSION CONTROL”
- b. Insert the following at the end of that section:

Seed shall be placed at the optimum time to maximize plant survival, generally in late fall or winter when ambient daily temperatures are low and moisture is present. Seed material will be purchased from a reputable local native plant nursery that collects locally to maintain the integrity of genotypes. The native plant seed palette shall include plant species that occur in mixed evergreen forest in the vicinity of the Project site, as follows:

Table 1: Seed Plant Palette

Scientific Name	Common Name	Bulk Lbs./Acre
<i>Adenocaulon bicolor</i>	American Trailplant	1.5
<i>Aralia californica</i>	Elk Clover	2
<i>Artemisia douglasiana</i>	Mugwort	1.5
<i>Bromus carinatus</i>	California Brome	5
<i>Carex praegracilis</i>	Clustered Field Sedge	1
<i>Elymus glaucus</i>	Blue Wild Rye	4
<i>Galium triflorum</i>	Fragrant Bedstraw	2.5
<i>Juncus dubius</i>	Mariposa Rush	8
Total		25.5

Prior to reseeding described above, Contractor shall remove invasive plants within the Temporary Construction Areas designated on the project plans. Chemicals may not be used; the Contractor shall use mechanical methods such as hand pulling, suffocation, or mowing/cutting, as long as native species are not impacted. The invasive species to be removed will be indicated by the Project Biologist and are as follows:

- Himalayan Blackberry (*Rubus armeniacus*),
- English Ivy (*Hedera helix*),
- Prickly Sow Thistle (*Sonchus asper*)
- Greater Periwinkle (*Vinca major*),
- Tree of Heaven (*Ailanthus altissima*),
- Rattlesnake grass (*Briza maxima*),
- Italian thistle (*Carduus pycnocephalus*),
- Panic veldtgrass (*Ehrharta erecta*), and

- Fennel (*Foeniculum vulgare*).

The invasive species removal will be performed under the observation of the Project Biologist who, with the assistance of the Contractor, will document the quantity of each species removed to determine when the work is complete.

22. TECHNICAL SPECIFICATIONS, Page 10, Section 20 SUPPLEMENTAL SURVEYS is amended to have the following text replace that section in its entirety:

Contractor shall provide topographic surveys for the project site consisting of two main work elements: 1) a topographic survey of the project area and as built locations of the traps and 2) a survey of creek cross sections for permit compliance. Horizontal datum = NAD 83 CA State Plane Zone 2. Vertical datum = NAVD88. Survey benchmarks are assumed to be located at the Upper York Creek Dam (shown in the Project Layout on Sheet TT-01) and at the Lower Reservoir site further south down Spring Mountain Road. Surveys shall be performed by a qualified CA-licensed land surveyor. Contractor to submit name and qualifications to City for review and approval.

1. Topographic and trap location survey: Perform topographic Survey with 0.5 ft accuracy using GPS with supplemental total stations. There is little to no cell phone reception at the site. Limits of the survey shall be from edge of pavement of Spring Mountain Road to the limits of the "Access Area" as shown on the project plans. Survey points shall be collected on a 25-foot (perpendicular to the creek centerline) by 50-foot grid. A map of 2-ft contours shall be created from the data. Survey shall include edge of pavement, guard rails, and any other permanent, man-made features. Each installed trap location shall be surveyed to 1-inch accuracy and show ends of each log, connections between logs, boulders and live trees tied into with the trap number designation labeled.
2. Creek cross sections: Survey shall provide elevations with 1-inch accuracy. Survey shall be conducted after trap construction is complete. Scope is described in the RWQCB permit and is as follows:
 - a. The surveys shall include cross-sections surveyed at each sediment trap location along the Project reach. City shall provide Contractor with the exact location of creek sections to survey following receipt of topographic and trap location survey (survey #1). Contractor shall stake the east end of each survey section with one of the sediment trap number posts described in Section 19.
 - b. Cross-sections shall also be surveyed 100 feet and 200 feet upstream, and 100 feet and 200 feet downstream of the Project reach (the northernmost and southernmost traps).
 - c. Cross-sections shall be reasonably wide enough (approximately 60 ft) to capture erosion and sedimentation occurring within the channel and floodplain along the Project reach.
 - d. A longitudinal thalweg survey shall be conducted based on a data point for every 50 feet, with the longitudinal survey extending 200 feet upstream and 200 feet downstream of the Project reach.

23. TECHNICAL SPECIFICATIONS, Appendices, Appendix E: Napa County Encroachment Permit Application is added to the end of the appendices, and is provided, attached.

24. BID FORMS, Bid Schedule, page P-3. Item 7 "Reseeding" is changed to "Reseeding/Invasive Plant Removal/Erosion Control".

25. BID FORMS, Bid Schedule, page P-3. Item 15 "Supplemental Survey 2: Creek Sections" is changed to 15 "Supplemental Survey 2: Creek Sections and Thalweg".

PLEASE SIGN THIS ADDENDUM IN THE SPACE PROVIDED AND INCLUDE THE SIGNED COPY OF THE ADDENDUM WITH YOUR BID DOCUMENTS. NOTE THAT BID DOCUMENTS SUBMITTED WITHOUT A SIGNED COPY OF THIS ADDENDUM MAY BE CONSIDERED NON-RESPONSIVE AND MAY BE REJECTED.

By:  Jenn Hyman, PE 8/30/19
 Erica Ahmann Smithies, PE for Date

The undersigned has received and read this addendum.

Suulutaag, Inc. 
 Contractor Signature
John Hurd 9/6/19
 Name (printed) Date





ADDENDUM NO. 2
to
PROJECT PLANS AND SPECIAL PROVISIONS
FOR CONSTRUCTION OF

W-26 – UPPER YORK CREEK ECOSYSTEM RESTORATION PROJECT – PHASE 1

IN THE CITY OF ST. HELENA

DATE: September 3, 2019
TO: Plan Holders
SUBJECT: Revised Specifications and Plan Changes
BID OPENING DATE **September 6, 2019 at 2:00 pm at St. Helena City Clerk – 1480 Main Street, St. Helena, CA 94574**

This Addendum forms a part of the Bidding and Contract Documents and modifies the Special Provisions as described below:

CLARIFICATIONS

See attached Clarification #1 with answers to Contractor questions.

SPECIFICATIONS

- 1. NOTICE TO CONTRACTORS, last page, last paragraph,** the due date/time for mailing or emailing all questions or inquiries to Erica Ahmann Smithies (esmithies@cityofstheleena.org), City of St. Helena Public Works, 1572 Railroad Avenue, St. Helena, CA 94574, is extended to **September 4 by 4:00 P.M.**
- 2. TECHNICAL SPECIFICATIONS, Page 1, Section 1.1 Scope of Work** is hereby amended in its entirety by deleting said language therein and replacing Paragraph 1.1 Scope of Work to read as follows:

1.1 Scope of Work

The specifications related to Phase 1 of the project includes the following major work elements:

- Construction of up to 30 sediment traps at locations downstream of the Upper York Creek Dam along Spring Mountain Rd in Napa County. The traps consist of logs placed above the creek channel. Approximately 17 of the traps are to be anchored to existing rocks or trees. Approximately 13 of the traps are to be anchored to imported rocks and are an Optional Bid Item. The City will only consider the award of the Optional Bid Item if it secures permits from the appropriate state and federal regulatory agencies allowing for the imported rock material. The property is owned by Spring Mountain Vineyards (SMV).
- Securing a no-fee encroachment permit with traffic control plans from Napa County for the work.
- Preparing access at 5 locations through steep wooded areas to access the creek.

- Complying with environmental and encroachment permit requirements and SMV access agreement requirements in executing the work, including completing construction of the traps by October 31, 2019.
- Removal of non-native invasive species.
- Restoring disturbed areas by reseeding with native grasses and installing erosion control.
- Removal of trees no greater than six inches (6") at breast height, only as necessary to facilitate construction of the work, and cataloging of all trees removed for future replacement planting by others.
- Preparing a topographic survey of the project area and creeks.
- Preparing record drawings of the constructed sediment traps.

The Upper York Creek Phase 1 Project Plans have identified the major design components and provide sufficient detail for completion of the Phase 1 Project. The Contractor and Biologist will work together daily, on-site to ensure plans are being interpreted correctly and make field-fit modifications as necessary.

3. TECHNICAL SPECIFICATIONS, Page 8, Section 15.5 Stones is amended as follows:

Replace this section in its entirety with the following:

Trap Types 1 and 4 are assumed to utilize existing stones and trees for anchoring. These will be designated by the City Representative in accordance with the ballast sizes provided on the plans.

Trap Types 2 and 3 are assumed to use imported boulders ranging in size from 1.2 – 2.5 ft in diameter. The Contractor shall supply a range of sizes within this range to be selected by the City Representative once the final length and layout of each trap is determined. Boulders not needed for construction will be removed from the site by the Contractor. Stone for boulders shall be granitic, basalt, or other approved non-toxic equal and shall be rounded. Stone shall be sound, durable, and hard and shall be of such character that it will not disintegrate from the conditions to be met in handling and placing. All material shall be clean and free from deleterious impurities, including alkali, earth, clay, refuse, and adherent coatings.

Contractor shall submit source and specifications for imported rocks to be supplied for City review and approval prior to Construction. The City will inspect the boulders brought to the site to confirm size requirements.

4. TECHNICAL SPECIFICATIONS, Page 11, Section 24 BASIS OF PAYMENT is amended to have the following inserted at the end of that section:

24.1 MEASUREMENT AND PAYMENT

- A. Costs for conforming to the provisions of this section will receive no separate payment from the City, and the Contractor is presumed to have allocated such costs to the pay items deemed most appropriate.
- B. Contractor administrative costs for performing work in this contract will receive no separate payment from the City, and the Contractor is presumed to have allocated such costs to the pay items deemed most appropriate.

24.2 BID ITEM DESCRIPTIONS

A. Bid Item No. 1 – Mobilization

- a. The contract lump sum price paid for mobilization shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, for doing all the work involved in mobilization, bonding, insurance, submittals, preconstruction condition surveys, SWPPP,

health and safety, and other preconstruction activities, complete in place, as shown on the Plans, and as specified in these technical specifications.

- b. Payment for this lump sum item in the amount as stated in the Bid Schedule shall be made upon completion of mobilization.

B. Bid Item Nos. 2 and 3 – Sediment Trap Types 1 and 4

- a. Payment shall be deemed full compensation for all labor, equipment, materials, and incidentals for furnishing each sediment trap type (1 or 4), no larger than the sizes indicated (field cutting logs to smaller size and attaching logs to existing trees and up to 3 existing ballast rocks at each end may be required), installed and attached complete in place as shown on the Plans and specified in the technical specifications.
- b. Payment shall be made on the contract unit price as stated in the Bid Schedule for furnishing each sediment trap, installed complete in place.

C. Bid Item No. 4 – Establishing Creek Access

- a. The contract lump sum price paid for Establishing Creek Access shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, for doing all the work involved in staking and establishing access routes to the creek, tree removal and disposal, cataloging of diameter of trees at breast height, tree type, quantity and location of each tree removed, and other related activities not covered in other bid items complete in place, as shown on the Plans, and as specified in these technical specifications.
- b. Payment for this lump sum item in the amount as stated in the Bid Schedule shall be made at the completion of the installation of the sediment traps in each of the 5 Access Areas.

D. Bid Item No. 5 – Invasive Plant Removal /Reseeding/Erosion Control

- a. The contract lump sum price paid for Invasive Plant Removal /Reseeding/Erosion Control shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, for doing all the work involved in removal of invasive species, reseeding disturbed areas, and installing post-construction erosion control measures, complete in place, as shown on the Plans, and as specified in these technical specifications.
- b. Payment for this lump sum item in the amount as stated in the Bid Schedule shall be made upon City acceptance of this work.

E. Bid Item No. 6 – Environmental Compliance

- a. The contract lump sum price paid for Environmental Compliance shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, for doing all the work involved in environmental training, phytophthera measures, pre- and during construction stormwater protection, environmental protection (excluding bid items 7: Reseeding/Invasive Plant Removal/Erosion Control and 13: Temporary Construction Fencing and Gates), and other permit compliance activities, complete in place, as shown on the Plans, and as specified in these technical specifications.
- b. Payment for this lump sum item in the amount as stated in the Bid Schedule shall be made upon City acceptance of the project as complete.

F. Bid Item No. 7 – Demobilization/Site Restoration

- a. The contract lump sum price paid for demobilization/site restoration shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in demobilization, site cleanup, record drawings, and restoring the

project area to its preconstruction condition (exclusive of the work in Bid Item No.7), as shown on the Plans, and as specified in these technical specifications.

- b. Payment for this lump sum item in the amount as stated in the Bid Schedule shall be made upon City acceptance of the project as complete.

G. Bid Item No. 8 – Encroachment Permit/Traffic Control

- a. Payment for Encroachment Permit/Traffic Control will be measured as a lump sum for all labor, materials, tools, equipment, incidentals, and meeting all requirements, for doing all the work involved in securing the Napa County Encroachment permit, preparing any associated traffic control plans in compliance with County or City requirements and standards, providing traffic control where and when needed, as specified in the plans and specifications and in any project permits.
- b. Payment for this lump sum item in the amount as stated in the Bid Schedule shall be made upon receipt of the Encroachment Permit and following completion of all work requiring traffic control measures.

H. Bid Item No. 9 – Remove/replace Permanent and Temporary Guard Rail

- a. Payment for Remove/replace Permanent and Temporary Guard Rail will be measured as a lump sum for all removal of existing guard rail, installation of replacement permanent guard rail, repair of damaged asphalt and road striping, and procurement and use of temporary guard rail, as described in the plans and specifications and as may be required by the County. Payment for this item of work will be full compensation for furnishing all materials, tools, labor, and equipment necessary in completing the work scope described in the corresponding technical specification.
- b. Payment for this lump sum item in the amount as stated in the Bid Schedule shall be made following City and County acceptance of the work.

I. Bid Item No. 10 – Permanent Stakes

- a. Payment shall be deemed full compensation for all labor, equipment, materials, and incidentals for furnishing each permanent stake (sediment trap number posts and photo stations) at the sizes and positions indicated, complete in place as shown on the Plans and specified in the technical specifications.
- b. Payment shall be made on the contract unit price as stated in the Bid Schedule for furnishing each stake, installed complete in place.

J. Bid Item No. 11 – Temporary Construction Fencing and Gates

- a. Payment for installing the Exclusion Fencing, Payment for this item of work will be full compensation for furnishing all materials, tools, labor, and equipment necessary for installing and maintaining the fence and any required gates. Once the City Representative has determined that a fence in an area is no longer needed, it may be removed and reused if it is in suitable condition acceptable to the City Representative. The City will only pay once for installing fencing at a location, unless it is for the purpose of change order work where the fencing had been previously removed.
- b. Payment for this item shall be made at the contract unit price as stated in the Bid Schedule for each linear foot of exclusion fencing installed, as measured by the Contractor and confirmed by the City Representative.

K. Bid Item No. 12 – Supplemental Survey 1: Topographic Survey

- a. Payment for Supplemental Survey 1: Topographic Survey will be measured as a lump sum for all surveying and staking, referencing or re-referencing all necessary control points, as described in the plans and specifications. Payment for this item of work will be full compensation for furnishing all materials, tools, labor, and equipment necessary in completing the work scope described in the corresponding technical specification.
- b. Payment for this lump sum item in the amount as stated in the Bid Schedule shall be made following City acceptance of the survey deliverable.

L. Bid Item No. 13 – Supplemental Survey 2: Creek Sections and Thalweg

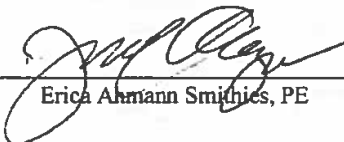
- a. Payment for Supplemental Survey 2: Creek Sections and Thalweg will be measured as a lump sum for all surveying and staking, referencing or re-referencing all necessary control points, as described in the plans and specifications. Payment for this item of work will be full compensation for furnishing all materials, tools, labor, and equipment necessary in completing the work scope described in the corresponding technical specification.
- b. Payment for this lump sum item in the amount as stated in the Bid Schedule shall be made following City acceptance of the survey deliverable.

M. Bid Item Nos. 14 and 15 – Sediment Trap Types 2 and 3 (Optional)

- a. Payment shall be deemed full compensation for all labor, equipment, materials, and incidentals for furnishing each sediment trap type (2 or 3), no larger than the sizes indicated (field cutting logs to smaller size and attaching up to 2 imported ballast rocks 2-3 ft in diameter at each end may be required), installed and attached complete in place as shown on the Plans and specified in the technical specifications. Also included in these bid items are any additional labor, equipment, materials, and incidentals for performing the work in the above bid items to add these additional sediment traps to the project, such as Establishing Site Access in Bid Item 4, Environmental Compliance in Bid Item 6, and Supplemental Surveys 1 and 2: Trap Locations and Creek Sections at each trap in Bid Items 12 and 13.
- b. Payment shall be made on the contract unit price as stated in the Bid Schedule for furnishing each sediment trap, installed complete in place and surveyed.

5. **BID FORMS, Bid Schedule, pages P-3 and P-4.** The Bid Sheet is deleted and replaced in its entirety with the 2-page Bid Sheet attached.

PLEASE SIGN THIS ADDENDUM IN THE SPACE PROVIDED AND INCLUDE THE SIGNED COPY OF THE ADDENDUM WITH YOUR BID DOCUMENTS. NOTE THAT BID DOCUMENTS SUBMITTED WITHOUT A SIGNED COPY OF THIS ADDENDUM MAY BE CONSIDERED NON-RESPONSIVE AND MAY BE REJECTED.

By:  Jenn Hyman, PE 9/3/19
Erica Annmann Smithies, PE for Date

The undersigned has received and read this addendum.


Contractor Signature
Simlutag, Inc.
Name (printed) John Hurd 9/6/19
Date

BID SCHEDULE**W-26 – PHASE 1 UPPER YORK CREEK ECOSYSTEM RESTORATION & AQUATIC HABITAT
ENHANCEMENT PROJECT**

Item No.	Item Description	Estimated Quantity	Unit	Unit Price	Total Cost
1	Mobilization	1	LS		
2	Sediment Trap Type 1	12	EA		
3	Sediment Trap Type 4	5	EA		
4	Establishing Creek Access	5	EA		
5	Reseeding/Invasive Plant Removal/Erosion Control	1	LS		
6	Environmental Compliance	1	LS		
7	Demobilization/Site Restoration	1	LS		
8	Encroachment Permit/Traffic control	1	LS		
9	Remove/replace permanent and temporary guard rail	1	LS		
10	Permanent Stakes	60	EA		
11	Temporary Construction Fencing and Gates	6,780	LF		
12	Supplemental Survey 1: Topographic Survey	1	LS		
13	Supplemental Survey 2: Creek Sections and Thalweg	1	LS		
14	Sediment Trap Type 2 w/ Imported Rocks (Optional)	2	EA		
15	Sediment Trap Type 3 w/ Imported Rocks (Optional)	11	EA		

* Note: In case of error in extension of price into the total price column, the unit price will govern.

Total Amount of Bid including Optional Items (written in words) is: _____ Dollars and
_____ Cents.

In the event of discrepancy between words and figures, the words shall prevail.

\$ _____

Total in Figures

BID SCHEDULE, continued

Notes:

- The Contract will be compared and awarded on the basis of the Total Bid including Optional Items.
- The City has until 10 days following award to decide if they would like to exercise the Optional Items.
- The City reserves the right to increase or decrease quantities as deemed necessary, with the unit prices bid above.

Address of Bidder

Signature of Bidder

City

Name of Bidder (Print)

Telephone Number of Bidder

Fax Number of Bidder

Contractor's License Number

License's Expiration Date

ADDENDUM ACKNOWLEDGMENT

Bidder acknowledges receipt of the following addenda, which are attached to the proposal:

Addendum No.	Date:
Addendum No.	Date:
Addendum No.	Date:
Addendum No.	Date:

**W-26 PHASE 1 UPPER YORK CREEK ECOSYSTEM
RESTORATION & AQUATIC HABITAT ENHANCEMENT
CLARIFICATION #1**

3 September 2019

Contractor Questions and Answers

1. Question: Will roadway guard rails be replaced outside of removed extent?

Answer: No, Per *Technical Specification Section 17 - Guard Rail Removal and Replacement*, only removed existing guard rails will be replaced. Additionally, Refer to Plan Set Page NT-01 note 21 and note 28-C.

2. Question: What are the survey and topographic mapping requirements?

Answer: See updated *Technical Specification Section 21 - Supplemental Surveys in Bid Addendum 1*.

3. Question: What are the required log dimensions?

Answer: Log dimensions are shown on the updated plans in Bid Addendum 1. Log lengths vary but are not expected to exceed 25 ft. The logs may be 18- 24" diameter.

4. Question: How will the environmentally sensitive areas (ESA) be delineated?

Answer: Per *Technical Specification Section 7 Environmentally Sensitive Areas*, the ESA fence shall be placed by the Contractor at the direction of the archaeologist along the ESA boundary as roughly shown on the plans. See also the updated *Technical Specification Section 7 Environmentally Sensitive Areas* in Bid Addendum 1.

5. Question: Have sediment loading calculations been completed?

Answer: Sediment loading calculations were completed and can be made available to the selected Contractor after award.

6. Question: Will a SWPPP be required?

Answer: Per *Technical Specification Section 13 - Stormwater Pollution Prevention Plan (SWPPP)*, a SWPPP is required for the Project.

7. Question: May 'charred logs' (i.e. those recently burned during a fire event) be used?

Answer: Yes, with certain requirements; see updated *Technical Specification Section 15.2 Logs* in Bid Addendum 1.

8. Question: May the sediment trap locations deviate?

Answer: Refer to Plan Set Page NT-01 note 10 which indicates that "the final location and design of each sediment trap shall be staked and determined in the field by the City's Engineer and Biologist in consultation with the contractor prior to construction."

9. Question: I have a follow up question regarding the as-built location of the sediment traps. Will the entire centerline of the creek need to be located by ground survey for the as-built? If not, what are

the parameters for mapping each individual trap? 20 feet up and down stream? Distance up the banks from the flowline at each trap?

Answer: The centerline (thalweg) of the creek is to be located by ground survey for the Supplemental Survey #2 described in *Technical Specification Section 20 - Supplemental Surveys*. The parameters for mapping each trap in the as-built are described in Supplemental Survey #1 described in *Technical Specification Section 20 - Supplemental Surveys*. *Technical Specification Section 20 - Supplemental Surveys* has been updated in Bid Addendum 1.

10. Question: Will the locations of survey control points be provided? If so, what is the Horizontal/Vertical Datum (including Epoch)?

Answer: Survey control points are not available at this time however an assumption has been made, and datums are provided in *Technical Specification Section 20 - Supplemental Surveys* in Bid Addendum 1.

11. Question: The specifications refer to Construction Staking in several places. Will surveying services be required for construction layout, etc. prior to the completion of construction and prior to the as-built topographic surveys?

Answer: No, surveying services are not required for construction layout. See also the answer to question 9 above.

12. Question: The limits of the as-built topographic surveys as described in *Technical Specifications Section 20 – Supplemental Surveys* discusses the “‘access area’ as shown on the plans.” Please confirm that the heavy dashed line to the south of York Creek represents the limit of the “access area” so as not to confuse it with the temporary construction area, which is also shown on the plans with a dashed line.

Answer: Yes, as shown on Plan Set Page TT-01, the Access Area for the limit of the Supplemental Survey #1 is indicated on the plans by a heavy dashed line.

13. Question: In *Technical Specification Section 20 – Supplemental Surveys*, please clarify the definition of “survey lines.”

Answer: *Technical Specification Section 20 – Supplemental Surveys* has been revised in Bid Addendum 1.

14. Question: In *Technical Specification Section 20 – Supplemental Surveys*, please confirm that a 10-foot contour interval is required. A 10-foot contour interval will not provide much ground surface detail, yet it is presumed that detailed information at the sediment traps is necessary.

Answer: *Technical Specification Section 20 – Supplemental Surveys* 20 has been updated in Bid Addendum 1. A less-detailed topographic survey will be supplemented by the more detailed creek section survey.

15. Question: In *Technical Specification Section 20 – Supplemental Surveys*, please confirm that the Topographic and Trap Location Survey and the Creek Cross Section Survey are distinct and separate deliverables, owing to the different accuracies required.

Answer: Yes, Supplemental Surveys #1 and 2 are distinct and separate deliverables. Note that the trap locations have a different accuracy than the topographic survey and both are in survey #1.

16. Question: Paragraph 12 of the Regional Board Permit discusses multiple surveys over the 10 years following completion of the project. Please confirm that this bid only includes one Topographic and trap location survey and one Cross section survey.

Answer: Yes, this is confirmed. The Contractor's surveys represent Year 0 (only) of the multi-year surveys required by the Regional Board permit.

17. Question: What is the minimum size tree required to be included in the as-built topographic survey?

Answer: Trees are not required to be surveyed. They were already surveyed and are shown in the project plans.

18. Question: Is select cutting of brush permitted for developing lines of sight while conducting survey activity?

Answer: Select trimming of brush is permitted if required for developing lines of sight while conducting survey activity.

19. Question: Is surveyor parking permitted at the Spring Mountain Ranch Vineyard Parking Lot?

Answer: No parking is permitted at the Spring Mountain Ranch Vineyard Parking Lot.

20. Question: 5-4.01 Insurance - 7-1.12B -- Can the contractor's excess liability be used to comply with the minimum limits of insurance?

Answer: Yes, Excess Liability or Umbrella Liability can be used to meet the minimum insurance requirements provided they are listed as Each Occurrence in addition to Aggregate.

21. Question: Is Builder's Risk Insurance/Course of Construction insurance required for this project?

Answer: No, Paragraph 5-4.01 Insurance of Special Provisions has been amended in Bid Addendum 1 to remove such insurance.

22. Question: Details on sheet DT-01 call for 2' logs. The table on the same sheet references 18" and 24" logs. Is there a minimum log sizes for each structure?

Answer: Sheet 05 has been updated in Bid Addendum 1 to specify all logs be 18-24" diameter.

23. Question: The spec requires submittal of log vendor along with contact info and recommendations for 3 other previous project clients where their logs have been successfully used.

We cannot locate any such vendor. Would locally sourced logs accompanied by a portable test kit negative result suffice?

Answer: Yes, with certain requirements; see update to *Technical Specification Section 15.2 Logs* in Bid Addendum 1.

24. Question: Will the project allow the use of logs that have burned in the recent fires (assuming the fire has not damaged the integrity of the log)?

Answer: Yes, with certain requirements; see update to *Technical Specification Section 15.2 Logs* in Bid Addendum 1.

25. Question: Will the contractor need to prepare a SWPPP, even though there is no grading activities?

Answer: Per Technical Specification Section 13 - Stormwater Pollution Prevention Plan (SWPPP), a SWPPP is required for the Project.

26. Question: The boulder spec calls for round, granitic rocks. Will local round basalt boulders (similar to the existing ones in the creek) be allowed?

Answer: Yes, see amendment to *Technical Specification Section 15.5 Stones* in Bid Addendum 2.

27. Question: Can the owner Specify a seed mix that will be acceptable when reseeding?

Answer: No, a seed mix specification is provided in the update to *Technical Specification Section 21 Reseeding* in Bid Addendum 1.

28. Question: If additional erosion control measures such as straw, Jute Netting, or Coconut Fiber Blanket, what bid item shall it be paid under?

Answer: Bid item 7. See revised bid sheet and new Measurement and Payment section in Bid Addendum 2.

29. Question: Will temporary road closures be allowed while unloading Logs, Boulders (30 Mins or less)?

Answer: No, at least one lane of traffic shall be open at all times per Note 16 on Sheet 06.

30. Question: Are there traffic control restrictions on spring mountain road?

Answer: See answer to question 29 above and see General Permit Regulations on page 2 of the Napa County Encroachment Permit Application, provided in Bid Addendum 1.

31. Question: What is the preferred disposal method (i.e. mulching/chipping/off-haul) for any disturbed vegetation (i.e. trees less than 6" BHD or shrubbery)?

Answer: Per the *Construction, Maintenance and Monitoring, Access and Sediment Disposal Agreement* between the City of St. Helena and Spring Mountain Vineyards, "the [Contractor]

shall be solely responsible to haul away and appropriately dispose of all vegetation material removed as a result of the utilization of the Construction Rights”.

CITY OF ST. HELENA DEPARTMENT OF PUBLIC WORKS

BIDDER'S BOND

We, Suulutaag, Inc. as Principal, and Fidelity and Deposit Company of Maryland as Surety are bound unto the City of St. Helena, State of California, hereafter referred to as "Obligee", in the penal sum of ten percent (10%) of the total amount of the bid of the Principal submitted to the Obligee for the work described below, for the payment of which sum we bind ourselves, jointly and severally,

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT:

WHEREAS, the Principal is submitted to the Obligee, W-26 Phase I Upper York Creek Ecosystem Restoration & Aquatic Habitat Enhancement for which bids are to be opened at City Hall, 1480 Main Street, St. Helena, CA. 94574 on September 4, 2019 at 2:00 p.m.

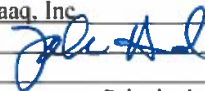
NOW, THEREFORE, if the Principal is awarded the contract and, within the time and manner required under the specifications, after the prescribed forms are presented to him for signature, enters into a written contract, in the prescribed form, in conformance with the bid, and files two bonds with the Obligee, one to guarantee faithful performance of the contract and the other to guarantee payment for labor and materials as provided by law, then this obligation shall be null and void; otherwise, it shall remain in full force.

The surety, for value received, hereby stipulates and agrees that the obligation of said surety and its bond shall in no way be impaired or affected by any extension of time within which the City of St. Helena may accept such bid; and Surety does hereby waive notice of any such extension.

In the event suit is brought upon this bond by the Obligee and judgement is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

Dated: September 4th, 2019.

Suulutaag, Inc.



Principal

Fidelity and Deposit Company of Maryland

Surety

By



Kristy M. Konte, Attorney-in-fact

CERTIFICATE OF ACKNOWLEDGEMENT

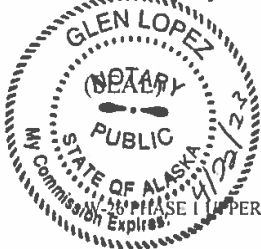
State of Alaska

City/County of Third Judicial District SS

On this 4th day of September in the year 20 19 before me

Glen Lopez, personally appeared Kristy M. Konte, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument as the attorney-in-fact of

Fidelity and Deposit Company of Maryland, and acknowledged to me that he (she) subscribed the name of the said company thereto as surety, and his (her) own name as attorney-in-fact.




Notary Public



**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **ROBERT D. MURRAY, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Kristy M. KONTE, Kelly Michael LAYMAN, Kirk C. LEADBETTER, Jay A. MILEY and Glen LOPEZ, all of Anchorage, Alaska, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 22nd day of July, A.D. 2019.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



By:

Dawn E. Brown

*Assistant Secretary
Dawn E. Brown*

Robert D. Murray

*Vice President
Robert D. Murray*

State of Maryland
County of Baltimore

On this 22nd day of July, A.D. 2019, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **ROBERT D. MURRAY, Vice President, and DAWN E. BROWN, Assistant Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Constance A. Dunn

*Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2023*



EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereto subscribed my name and affixed the corporate seals of the said Companies, this 4th day of September, 2019.



Brian M. Hodges

Brian M. Hodges, Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT ALL REQUIRED INFORMATION TO:

Zurich American Insurance Co.
Attn: Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056

MINUTES
City of St. Helena
Special City Council Meeting
Friday, January 31, 2019 @ 9:00 AM
Harvest Inn, The Vineyard View Room, 1 Main
Street, St. Helena

A complete video recording of this meeting, except for closed session, can be found at <https://sthelena.civicweb.net/Portal/> or by calling the City Clerk at (707) 968-2742. The City Council video is the official record of the Council meeting.

Present: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein

Absent: None

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PUBLIC COMMENT:**

No public comment was received.

4.

The City of St. Helena City Council will be meeting to develop Council processes for working and communicating together and for team building.

This meeting will not consider any motions and will not take any actions as a City Council.

While this meeting is open to the public, we would request consideration to allow the City Council to have this time for this working session.

Reminder - the Brown Act doesn't allow substantive discussion of any specific issues or projects.

City Manager Mark Prestwich provided an introduction. Management Partners Senior Partner Rod Gould who provided a presentation and facilitated a discussion.

5. ADJOURNMENT

The January 31, 2019 special meeting minutes were adopted at the regular City Council meeting of September 10, 2019.

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

MINUTES
City of St. Helena
Special City Council Meeting
Monday, July 22, 2019 @ 6:00 PM
1480 Main Street, Fire Training Room, St. Helena
(Entrance on Railroad Avenue)
465 Main Street, St. Helena

A complete video recording of this meeting, except for closed session, can be found at <https://sthelena.civicweb.net/Portal/> or by calling the City Clerk at (707) 968-2742. The City Council video is the official record of the Council meeting.

Present: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein

Absent: None

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **PUBLIC COMMENT:**

Was taken during the presentation.

5. **NEW BUSINESS:**

- 5.1 Update on City Projects / Issues:

Public Works Related Items

Public Works Director Erica Ahmann Smithies provided Public Works related project updates.

- York Creek Dam Removal
- Downtown "Cultivate St. Helena" Streetscape Project
- Wastewater Treatment Facility Phase 1 Upgrades
- 2019 Paving and ADA Projects
- Hunt Avenue Sidewalk Gap Closure
- Pratt Avenue/Main Striping
- Downtown Restrooms
- Integrated Utility Master Plan
- Bell Canyon Reservoir – Water Audit Litigation Status

Special City Council
July 22, 2019

- Bell Canyon Intake Tower
- California River Watch
- Hall Winery

At 6:38 pm Council Member Chouteau recused herself from the Hall Winery discussion and left the meeting room due to a conflict that her husband is employed by Hall Winery.

At 6:40 pm the discussion concluded and Council Member Chouteau rejoined the meeting room.

- Conservation Easement
- Meadowood Tanks

The City Council directed staff to agendize the discussion to choose Council Liaisons for Meadowood Water Tanks for future subcommittee discussions.

- Hotel at Freemark Abbey

The City Council directed staff to agendize the Hotel at Freemark Abbey for a future discussion.

- Carpenter Water Agreement Negotiations
- Stormwater Maintenance Program Update
- Library Roof Replacement
- Silverado Trail Guardrail Design
- Tennis Lighting Study
- Will-Serve Policy
- Public Works Reorganization
- Black and Veatch Water Engineering Study
- Traffic Calming Update

Planning Department Related Items

Planning Director Noah Housh provided Planning Department related project updates.

- Zoning Code Update
- Farmstead at Long Meadow Ranch Hotel
- Hunter Subdivision EIR
- Design Guidelines
- Review of Planning Projects and Department Staffing Update

Special City Council
July 22, 2019

- Castellucci Projects

The City Council directed staff to agendize the Castellucci projects for a special meeting.

- Vineland Station Hotel
- LAFCO Sphere of Influence and Municipal Services Review
- Compliance Review of Projects with Water Neutrality Obligations

General Items

City Manager Mark Prestwich provided updates for the general items.

- Compensation and Classification Study
- Reimagining St. Helena's Civic Spaces Feasibility Planning Update
- Update to Employee Handbook
- Citywide Diversity Training
- Wine Train Plans
- Public Works Reorganization Update
- Planning Director Recruitment

John Therene, Tom Belt, Mark Smithers, Anthony Micheli, Pam Smithers and Bill Ryan addressed the City Council.

5.2 Update on City Council Goals and 2019 Workplan

CEQA Determination: Not a CEQA project
Prepared By: Mark T. Prestwich, City Manager
Recommendation:
Receive and file.

City Manager Mark Prestwich reported on this item.

City Manager Mark Prestwich noted that the 2019 Workplan Housing Goal Objectives will be agendized at a later date for Council Liaisons to be assigned.

6. ADJOURNMENT

Mayor Ellsworth adjourned the meeting at 8:14 p.m.

The July 22, 2019 special meeting minutes were adopted at the September 10, 2019 regular City Council meeting.

APPROVED:

ATTEST:

Special City Council
July 22, 2019

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

MINUTES
City of St. Helena
Regular City Council Meeting
Tuesday, July 23, 2019 @ 6:00 PM
Vintage Hall Board Room - Second Floor
465 Main Street, St. Helena

A complete video recording of this meeting, except for closed session, can be found at <https://sthelena.civicweb.net/Portal/> or by calling the City Clerk at (707) 968-2742. The City Council video is the official record of the Council meeting.

Present: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein

Absent: None

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PUBLIC FORUM:

Nancy Dervin, Anthony Micheli and Dick Grace addressed the City Council.

5. REPORTS BY STAFF AND CITY COUNCIL, FUTURE AGENDA ITEMS, and AB 1234 REPORTS:

Council Member Knudsen requested the 2002, 2006 and 2009 Adams Street visioning be agendaized for an informational presentation with possible action. Mayor Ellsworth agreed with the request.

Reports by Staff and City Council Members were made.

6. PRESENTATIONS AND PUBLIC RECOGNITIONS

6.1 Proclamation for Mayors Against Illegal Guns

7. STAFF BRIEFING

7.1 PG&E Fulton-Calistoga 60kV Power Line Reconductoring Project Update

City Manager Mark Prestwich reported on this item.

Jessica Hague addressed the City Council.

Regular City Council
July 23, 2019

8. CONSENT ITEMS

Members of the Council or the public may ask that any items be considered individually for purposes of considering alternative action, for extended discussion, or for public comment. Unless that is done, one motion may be used to adopt all recommended actions. (Roll Call Vote)

- 8.1 Consideration of approval of a Resolution 2019-82 authorizing the City Manager to sign and execute a Letter of Agreement with the County of Napa outlining roles, responsibilities, and assurances associated with the acquisition, management, and retention of grant funded equipment or grant funding for the purchases of equipment.

CEQA Determination: Not a CEQA project

Prepared By: Mandy Kellogg, Admin Services Mgr

Recommendation:

Authorize the City Manager to sign and execute a Letter of Agreement with the County of Napa outlining roles, responsibilities, and assurances associated with the acquisition, management, and retention of grant funded equipment or grant funding for the purchases of equipment.

- 8.2 Consideration and proposed approval of a resolution 2019-83 authorizing (1) the City Manager to annually accept the bid recommendations on behalf of the City of St. Helena, (2) the purchase of chemicals from vendors based on the annual recommendation provided by the North Bay Agency Chemical Pool not-to-exceed the adopted/adjusted fiscal year budget, and (3) the City Manager to execute the necessary agreements or purchase orders on behalf of the City.

CEQA Determination: Not a CEQA project

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Recommendation:

Adopt a resolution authorizing (1) the City Manager to annually accept the bid recommendations on behalf of the City of St. Helena, (2) the purchase of chemicals from vendors based on the annual recommendation provided by NBACP not-to-exceed the adopted/adjusted fiscal year budget, and (3) the City Manager to execute the necessary agreements or purchase orders on behalf of the City.

- 8.3 Consideration and proposed approval of a resolution 2019-84 authorizing the first amendment to the Full Time Fire Department Unrepresented Program to update language to reflect new shift structure, establish overnight standby pay, and work hours

CEQA Determination: Not a CEQA project

Prepared By: Alec Vidler, Administrative Assistant, Kathy Robinson, Human Resources & IT Director

Recommendation:

It is recommended that the City Council approve the first amendment.

Regular City Council
July 23, 2019

- 8.4 Consideration and proposed approval of a resolution 2019-85 (1) authorizing a Grant Request to the Metropolitan Transportation Commission for the allocation of Fiscal Year 2019-20 Transportation Development Act Article 3 Pedestrian/Bicycle Project Funding in the Amount of \$50,000; (2) amending the Fiscal Year 2019-2020 adopted Capital Improvement Program Budget to include R20-02, Pratt and Elmhurst Crosswalk Improvements on Main Street/Highway 29 Project; (3) authorizing a budget of \$50,000 for R20-02; and (4) authorizing the City Manager to execute all grant related documents pertaining to CIP Project R20-02

CEQA Determination: Exempt from the requirements of CEQA pursuant to Section 15301, Class 1, which exempts the operation, leasing, or minor alteration of existing facilities

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer
Recommendation:

Staff recommends City Council adopt the resolution (1) authorizing a Grant Request to the Metropolitan Transportation Commission for the allocation of Fiscal Year 2019-20 Transportation Development Act Article 3 Pedestrian/Bicycle Project Funding in the Amount of \$50,000; (2) amending the Fiscal Year 2019-2020 adopted Capital Improvement Program Budget to include R20-02, Pratt and Elmhurst Crosswalk Improvements on Main Street/Highway 29 Project; (3) authorizing a budget of \$50,000 for R20-02; and (4) authorizing the City Manager to execute all grant related documents pertaining to CIP Project R20-02

Item 8.5 was removed from consent.

- 8.5 ~~Consideration and proposed adoption of a resolution approving a Professional Services Agreement with Gates + Associates for the C20-03 Skatepark Improvements Project for an amount not to exceed \$29,865 and authorizing the City Manager to execute the agreement.~~
- 8.6 Consideration of approval of a Resolution 2019-86 approving out-of-state travel for City Manager Mark Prestwich and Assistant to the City Manager Jessica Deakyne to attend the International City/County Manager Association Conference (ICMA) in Nashville, Tennessee from October 19-23, 2019

CEQA Determination: Not a CEQA project

Prepared By: Jessica Deakyne, Asst. to the City Manager

Recommendation:

City Staff recommends City Council approve a resolution authorizing out-of-state travel for City Manager Mark Prestwich and Assistant to the City Manager Jessica Deakyne to attend the International City/County Manager Association (ICMA) Annual Conference in Nashville, Tennessee from October 19-23, 2019.

- 8.7 *NEW ITEM 7-19-19
Consideration and proposed resolution 2019-87 approving Master Professional

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Services Agreements (MPSA's) with eighteen (18) consultants to provide professional consulting services.

CEQA Determination: Not a CEQA project

Prepared By: Tobias Barr, Project Manager

Recommendation:

Adopt the Resolution approving Master Professional Services Agreements (MPSA's) with eighteen (18) consultants to provide professional consulting services.

Vice Mayor Paul Dohring moved to adopt items 8.1 through 8.4, 8.6 and 8.7. The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: None

- 8.5 Consideration and proposed adoption of a resolution approving a Professional Services Agreement with Gates + Associates for the C20-03 Skatepark Improvements Project for an amount not to exceed \$29,865 and authorizing the City Manager to execute the agreement.

CEQA Determination: Exempt from the requirements of CEQA pursuant to Section 15301, Class 1, which exempts the operation, leasing, or minor alteration of existing facilities

Prepared By: Edrees Argand, Junior Assistant Engineer

Recommendation:

Staff recommends City Council adopt a Resolution approving a Professional Service Agreement with Gates + Associates for the C20-03 Skatepark Improvements Project for an amount not to exceed \$29,865 and authorizing the City Manager to execute the agreement.

Public Works Director Erica Ahmann Smithies reported on this item.

Susan Kenward, Anthony Micheli, Nancy Dervin and Mark Smithers addressed the City Council.

Vice Mayor Paul Dohring moved to table this item. The motion was seconded by Council Member Mary Koberstein and on roll call carried by the following vote:

Regular City Council
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AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member David Knudsen, and Council Member Mary Koberstein
NOES: Council Member Anna Chouteau
ABSENT: None
ABSTAIN: None
RECUSE: None

9. PUBLIC HEARINGS

- 9.1 Consideration and approval of a Resolution 2019-88 1) Amending the Appropriation Limits for Fiscal Year 2018-19 and 2) Establishing Appropriation Limits for Fiscal Year 2019-20 and the Selection of Current Year Adjustment Factors

CEQA Determination: Not a CEQA project
Prepared By: Mandy Kellogg, Admin Services Mgr
Recommendation:
Staff recommends the City Council of the City of St. Helena adopt a Resolution amending the appropriation limit for Fiscal Year 2018-19 and establishing an appropriation limit for Fiscal Year 2019-20.

Administrative Services Manager Mandy Kellogg reported on this item.

Mayor Ellsworth opened the public hearing.

No public comment was received.

Mayor Ellsworth closed the public hearing.

Council Member Mary Koberstein moved to adopt a Resolution amending the appropriation limit for Fiscal Year 2018-19 and establishing an appropriation limit for Fiscal Year 2019-20. The motion was seconded by Vice Mayor Paul Dohring and on roll call carried by the following vote:

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None

10. OLD BUSINESS

- 10.1 Consider and approve a resolution 2019-89 authorizing the City Manager to execute Amendment No. 3 in the amount of \$289,184 to the Professional

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July 23, 2019

Services Agreement with Michael Baker International for the Upper York Creek Habitat Restoration Project, for a total not to exceed amount of \$1,130,178.80

CEQA Determination: Environmental Impact Report (SCH. No. 2006092096)
Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer
Recommendation:

Staff recommends that City Council approve a resolution authorizing the City Manager to execute Amendment No. 3 in the amount of \$289,184 to the Professional Services Agreement with Michael Baker International for the Upper York Creek Habitat Restoration Project, for a total not to exceed amount of \$1,130,178.80.

Public Works Director Erica Ahmann Smithies reported on this item.

No public comment was received.

Council Member Mary Koberstein moved to approve a resolution authorizing the City Manager to execute Amendment No. 3 in the amount of \$289,184 to the Professional Services Agreement with Michael Baker International for the Upper York Creek Habitat Restoration Project, for a total not to exceed amount of \$1,130,178.80. The motion was seconded by Vice Mayor Paul Dohring and on roll call carried by the following vote:

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: None

10.2 Presentation by Del Rio Advisors, LLC on General Fund Debt Options and Capacity

CEQA Determination: Not a CEQA project
Prepared By: April Mitts, Finance Director
Recommendation:
Receive and file presentation by Del Rio Advisors, LLC.

Finance Director April Mitts introduced Del Rio Advisors, LLC Finance Consultant Ken Deaker.

Del Rio Advisors, LLC Finance Consultant Ken Deaker provided a presentation.

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Mark Smithers, Anthony Micheli and Mark Walsh addressed the City Council.

Council Member Koberstein and Council Member Knudsen were appointed to a subcommittee to review financing options with Consultant Ken Deaker.

11. NEW BUSINESS

- 11.1 Review and Authorization to Proceed with Release of Draft Request for Proposals (RFP) for Zoning Ordinance Update Services (~~Staff Report~~ ~~Forthcoming~~ Provided 7-19-19)

CEQA Determination: Not a CEQA project
Prepared By: Jessica Deakyne, Asst. to the City Manager
Recommendation:
Discuss and provide direction to the City Manager.

City Manager Mark Prestwich reported on this item.

No public comment was received.

Council Member Anna Chouteau moved to authorize to proceed with the release of the Request for Proposals (RFP) for Zoning Ordinance Update Services. The motion was seconded by Council Member Mary Koberstein and on roll call carried by the following vote:

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None

- 11.2 Proposed approval to adopt a resolution 2019-90 authorizing a budget increase of \$14,000 to Recreation - Other Contract Services 289-4728-2145 and an offsetting revenue increase of \$14,000 to Recreation Registration 289-3430-0000; Receive and file the Q4 FY 2018-19 financial report (unaudited).

CEQA Determination: Not a CEQA project
Prepared By: April Mitts, Finance Director
Recommendation:
Staff recommends the City Council adopt a resolution authorizing a budget increase in the amount of \$14,000 to Recreation - Other Contract Services 289-4728-2145 and an offsetting increase of \$14,000 to Recreation Registration Revenues 289-3430-0000.

Regular City Council
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Additionally, staff recommends City Council receive and file the Q4 FY 2018-19 financial report.

Administrative Services Manager Mandy Kellogg reported on this item.

Council Member Koberstein requested to agendize the CARE program criteria. Mayor Ellsworth agreed with the request.

Vice Mayor Paul Dohring moved to lower the check amount threshold per quarter and update the Finance Policy to incorporate the change and bring back to the City Council for consideration at a later date. The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein

NOES: None

ABSENT: None

ABSTAIN: None

- 11.3 Consideration of approval of a Resolution: (1) approving the purchase of a Pelican P Three Wheel Broom Street Sweeper in the amount of \$283,920.74 from Owen Equipment, (2) authorizing a 60 month Lease-Purchase agreement with a qualified lending institution to be placed through Brandis Tallman LLC, and (3) authorizing the City Manager to execute all necessary documents.

CEQA Determination: Not a CEQA project

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer
Recommendation:

Staff recommends City Council approve the Resolution: (1) approving the purchase of a Pelican P Three Wheel Broom Street Sweeper in the amount of \$283,920.74 from Owen Equipment, (2) authorizing a 60 month Lease-Purchase agreement with a qualified lending institution to be placed through Brandis Tallman LLC, and (3) authorizing the City Manager to execute all necessary documents.

Public Works Director Erica Ahmann Smithies reported on this item.

Brandis Tallman Owner Rick Brandis, Nancy Dirvin and Anthony Micheli addressed the City Council.

Vice Mayor Paul Dohring moved to continue the meeting beyond 9:00 pm. The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

Regular City Council
July 23, 2019

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None

11.4 Quarterly Grant Report for FY 2019 Q4, for the period ending June 30, 2019

CEQA Determination: Not a CEQA project
Prepared By: Mandy Kellogg, Admin Services Mgr
Recommendation:
Receive and file report.

Administrative Services Manager Mandy Kellogg reported on this item.

No public comment was received.

12. ITEMS LIKELY TO BE PLACED ON THE NEXT OR FUTURE MEETING AGENDA:

12.1	August City Council Meetings: 7/22 6:00 PM Special Mtg on Key Projects/Goals Updates Workshop (Carnegie Building) 8/13 (staff reports due 7/26) 8/27 (staff reports due 8/9) 8/26 Special CC Mtg Reimagine Downtown 9/18/19 (NVTA) Transportation Summit 2019 PROCLAMATIONS AND PUBLIC RECOGNITION: 8/27 Retirement of Dan Brunetti CONSENT: Conflict of Interest Update Cell tower lease renewal NVTA MOU 8/13 Homecoming Parade Offer of dedication (McCorkle and Vallejo) Award of contract for phase 1 of Upper York Creek Investment Policy Library Roof Repair OLD BUSINESS: 8/13 Pension Liability 8/27 Pratt/Main Pratt/Silverado Discussion
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Regular City Council
July 23, 2019

8/27 Pratt Ave. speed control and bridge
Downtown Restroom Design
PH or NEW BUSINESS:
PH First Reading for McGrath Ordinance
Calistoga shared Police services?
PH 8/13 Williamson Act Application – 601 Fulton Lane
8/13 Grand Jury response
8/27 Grand Jury response
8/27LOCC annual conference voting delegate and resolutions
8/13 Beautification Foundation art
Adopt speed survey - PW
Mid Managers, Exec Staff and SHEA Mou's
Generator Fees

13. ADJOURNMENT

Mayor Ellsworth adjourned the meeting at 8:59 p.m.

The July 23, 2019 regular meeting minutes were adopted at the September 10, 2019 regular City Council meeting.

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

MINUTES
City of St. Helena
Special City Council Meeting
Monday, August 5, 2019 @ 4:00 PM
Changed to - Vintage Hall Board Room - Second
Floor, 465 Main Street, St. Helena
465 Main Street, St. Helena

A complete video recording of this meeting, except for closed session, can be found at <https://sthelena.civicweb.net/Portal/> or by calling the City Clerk at (707) 968-2742. The City Council video is the official record of the Council meeting.

Present: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, and Council Member Mary Koberstein

Absent: Council Member David Knudsen

1. CALL TO ORDER

Vice Mayor Dohring announced that Mayor Geoff Ellsworth will be teleconferencing from:
David Walley's Resort
2001 Foothill Rd.
Genoa, NV 89411
Room 3103

Vice Mayor Dohring called for a moment of silence for reflection on the recent mass shootings that occurred in Dayton, Ohio, El Paso, Texas and Gilroy, California.

2. ROLL CALL

3. PUBLIC COMMENT:

No public comment was taken, but rather after the item was presented.

4. NEW BUSINESS:

- 4.1 1) Consideration and proposed approval of a resolution 2019-92 (1) acknowledging and supporting the City Manager's recommendation of a reorganization of personnel positions, roles and responsibilities within Public Works administration and operations; (2) authorizing the addition of one and one half (1.5) FTE positions to the Public Works Department to include one (1.0) FTE Trees and Parks Superintendent and one half (0.5) FTE to Trees and Parks Maintenance Worker position which will be combined with the current one half (.5) Bocce Maintenance Worker position; (3) authorizing the reclassification of one Maintenance Worker position to a Lead Maintenance Worker classification in the Trees and Parks division; and (4) authorizing a budget increase of \$147,895 to the General Fund for the Trees and Parks Superintendent position; and

Special City Council
August 5, 2019

- 2) Direction to City Manager regarding recommended transition to bi-monthly utility billing; and
- 3) Direction to City Manager regarding recommendation to revise Municipal Code, Chapter 3.04 to increase Purchase Order limits.

CEQA Determination: Not a CEQA project

Prepared By: April Mitts, Finance Director, Erica Ahmann Smithies, Public Works Director and City Engineer, Kathy Robinson, Human Resources & IT Director, Mark T. Prestwich, City Manager

Recommendation:

- 1) Approval of a resolution (1) acknowledging and supporting the City Manager's recommendation of a reorganization of personnel positions, roles and responsibilities within Public Works administration and operations; (2) authorizing the addition of one and one half (1.5) FTE positions to the Public Works department to include one (1.0) FTE Trees and Parks Superintendent and one half (0.5) FTE to Trees and Parks Maintenance Worker position which will be combined with the current one half (.5) Bocce Maintenance Worker position; (3) authorizing the reclassification of one Maintenance Worker position to a Lead Maintenance Worker classification in the Trees and Parks division; and (4) authorizing a budget increase of \$147,895 to the General Fund for the Trees and Parks Superintendent position; and
- 2) Direction to City Manager regarding recommended transition to bi-monthly utility billing; and
- 3) Direction to City Manager regarding recommendation to revise Municipal Code, Chapter 3.04 to increase Purchase Order limits.

City Manager Mark Prestwich, Public Works Director Erica Ahmann Smithies, Public Works Superintendent Glen Price, Public Works Maintenance Manager Carlos Uribe, Public Works Operations Manager Clayton Church and Finance Director April Mitts reported on this item.

Anthony Micheli, Matt Demchuk, Bob Frescura and Betsy Holzhauer addressed the City Council.

Council Member Mary Koberstein moved to approve a resolution acknowledging and supporting the City Manager's recommendation of a reorganization of personnel positions, roles and responsibilities within Public Works administration and operations. The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, and Council Member Mary Koberstein

NOES: None

ABSENT: Council Member David Knudsen

ABSTAIN: None

Special City Council
August 5, 2019

RECUSE: None

It was the direction of the City Council for staff to transition to bi-monthly utility billing and increase the income eligibility criteria for the CARE program and bring back for Council consideration.

It was also the direction of the City Council for staff to revise Municipal Code, Chapter 3.04 to increase Purchase Order limits to \$5,000 and bring back for Council consideration.

5. ADJOURNMENT

Mayor Ellsworth adjourned the meeting at 5:17 p.m.

The August 5, 2019 special meeting minutes were adopted at the September 10, 2019 regular City Council meeting.

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

MINUTES
City of St. Helena
Special City Council Meeting
Monday, August 12, 2019 @ 9:00 AM
Harvest Inn, The Fountain View South Room, 1 Main
Street, St. Helena
465 Main Street, St. Helena

A complete video recording of this meeting, except for closed session, can be found at <https://sthelena.civicweb.net/Portal/> or by calling the City Clerk at (707) 968-2742. The City Council video is the official record of the Council meeting.

Present: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein

Absent: None

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC COMMENT:

No public comment was received.

4.

- 4.1 The City of St. Helena City Council will be meeting to:
1. Conduct a mid-year check-in discussion of Council processes for working and communicating together and for team building; and
 2. Discussing the role of elected officials during emergencies.

This meeting will not consider any motions and will not take any actions as a City Council.

While this meeting is open to the public, we would request consideration to allow the City Council to have this time for this working session.

Reminder - the Brown Act doesn't allow substantive discussion of any specific issues or projects.

Bread of Life Director Jean Holsten facilitated the communicating together and for team building discussion.

City Manager Mark Prestwich, Public Works Director Erica Ahmann Smithies, Acting Police Chief Chris Hartley and Fire Chief John Sorensen reported on the

Special City Council
August 12, 2019

role of elected officials during emergencies.

5. ADJOURNMENT

Mayor Ellsworth adjourned the meeting.

The August 12, 2019 special meeting minutes were adopted at the September 10, 2019 regular City Council meeting.

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

MINUTES
City of St. Helena
Special City Council Meeting
Tuesday, August 13, 2019 @ 5:15 PM
Vintage Hall Board Room - Second Floor
465 Main Street, St. Helena

A complete video recording of this meeting, except for closed session, can be found at <https://sthelena.civicweb.net/Portal/> or by calling the City Clerk at (707) 968-2742. The City Council video is the official record of the Council meeting.

Present: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein

Absent: None

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC COMMENT:

Public comment was received during the meeting.

4. NEW BUSINESS:

4.1 The City Council will interview the following Applicants:

Parks & Recreation Commission

One application was received from Tye Taylor for one available term expiring June 30, 2020.

Active Transportation & Sustainability Committee

Two applications were received from Betsy Davis Reynard and Madelyn Chandler to fill one available alternate position term of office expiring June 30, 2021.

Tye Taylor, Betsy Davis Reynard and Madelyn Chandler addressed the City Council.

5. ADJOURNMENT

Mayor Ellsworth adjourned the meeting at 5:41 pm.

The August 13, 2019 special meeting minutes were adopted at the September 10,

Special City Council
August 13, 2019

2019 regular City Council meeting.

APPROVED:

Geoff Ellsworth, Mayor

ATTEST:

Cindy Tzaopoulos, City Clerk



Report to the City Council
Council Meeting of September 10, 2019

Agenda Section: Public Hearing

Subject: Consideration of Proposed Approval of a Resolution Establishing a Home Generator Permit Fee in the amount of \$582.50 with the Effective Date of April 1, 2019 and Authorize Refunds in the Amount of \$146.50 for any Home Generator Permits Issued Since April 1, 2019.

CEQA Determination: Not a CEQA project

Prepared By: April Mitts, Finance Director

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Because PG&E recently notified its customers that it anticipates implementing periodic Public Safety Power Shutdowns (PSPS) as part of its Community Wildfire Safety Program, the City experienced a noticeable increase in permit applications for home generators in approximately April 2019. The City is currently processing approximately 10 permit applications for home generators each month. Vice Mayor Paul Dohring recently inquired about the cost of the City's fees related to permitting of backup home generators and expressed concern that if fees were too high, it may deter customers from seeking a permit or cause some to install a generator without the City's important safety oversight.

The City currently charges a minor electrical fee (\$436), plus two inspections (a total of two hours totaling \$293), for a total of \$729. These permits cover a variety of electrical installations and projects (e.g. solar permits, fence permits, small bathroom remodel, etc.) and are considered a Rapid Permit. While the City notifies customers that its review period is up to 14-days, typically these permits are issued in about one week. The City asks for enough information to be able to approve the permit including a site plan (to verify setbacks), one-line electrical diagram (to verify feeder sizes and conduit),

and manufacturer's cut sheets (to verify fuel type, DB rating @ 50'). St. Helena does not have a specific home generator permit fee.

Below are approximate permit fee costs for backup home generator installation in several of Napa County's jurisdictions. These comparisons are not "apples to apples" as the fees vary based on how they are charged (i.e., job versus valuation):

City of Napa: A recent permit fee was \$599.02 for a \$15,000 valued project (\$12,000 to \$15,000 is a common job cost for most home generators). This fee includes Planning, Building, and Fire Department plan checks and one electrical inspection.

Town of Yountville: The permit fee is \$300 for a generator permit with a total valuation is \$4,500 (a much lower project valuation typically seen, meaning it was likely a very small generator or the cost was not accurate). In Yountville, permit fees are based solely on project valuation, so if a generator installation is valued at \$20,000, which is more realistic for an 18 KW generator, the permit fee would be higher. Yountville has also advised that they are currently having a fee study performed by the same consultant who is doing Calistoga's fee study, because they feel their permit fees have been on the low side.

City of Calistoga: Calistoga has indicated that their fees are too low and not good for comparison and that they are in the process of doing a fee study in order to increase fees.

Napa County: A recent permit fee was \$558.59 for an 18 KW generator.

DISCUSSION

At the August 27, 2019 meeting, the City Council discussed the issue and provided direction to the City Manager to prepare a Home Generator Permit fee that reduces the current cost by \$146.50 which is equal to one hour of inspection time. Accordingly, Staff recommends the City Council adopt a resolution establishing a Home Generator Permit Fee in the amount of \$582.50 with the effective date of April 1, 2019 and authorize refunds in the amount of \$146.50 for any home generator permits issued since April 1, 2019.

FISCAL IMPACT

While the reduction of fees associated with the installation of new home generators will result in a loss of revenue, due to the low cost of the fees and relative infrequency of generator installations, this loss of revenue is not expected to be significant. Approval of the resolution will result in a refund of \$1,611.50 in fees.

RECOMMENDED ACTION

Adopt a resolution establishing a Home Generator Permit fee in the amount of \$582.50 with the effective date of April 1, 2019 and authorize refunds in the amount of \$146.50 for each home generator permit issued since April 1, 2019.

ATTACHMENTS

[Resolution - Home Generator Permit Fee](#)

CITY OF ST. HELENA

RESOLUTION NO. 2019-__

Resolution Establishing a Home Generator Permit Fee in the Amount of \$582.50 with the Effective Date of April 1, 2019, and Authorizing Refunds in the Amount of \$146.50 for each Home Generator Permit Issued Since April 1, 2019.

RECITALS

- A. Because PG&E recently notified its customers that it anticipates implementing periodic Public Safety Power Shutdowns (PSPS) as part of its Community Wildfire Safety Program the City has experienced a noticeable increase in permit applications for home generators; and
- B. The City currently charges a minor electrical fee (\$436), plus two inspections (a total of two hours totaling \$293), for a total of \$729 for a home generator; and
- C. The fees above cover a variety of electrical installations and projects (e.g. solar permits, fence permits, small bathroom remodel, etc.) and are considered a rapid permit; and
- D. Due to safety issues that may arise if a home generator and transfer switch are not properly installed, the City desires to establish a reduced Home Generator Permit Fee in the amount of \$582.50; and
- E. The City desires to establish an effective date of April 1, 2019 for the Home Generator Permit Fee and authorize refunds in the amount of \$146.50 for each home generator permit issued since April 1, 2019.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

- 1. Establishing a Home Generator Fee is not a CEQA project; and
- 2. Approves the establishment of a Home Generator Permit Fee in the amount of \$582.50 with the effective date of April 1, 2019; and
- 3. Authorizes a refund of \$146.50 for each Home Generator Permit issued since April 1, 2019.

Approved at a Regular Meeting of the St. Helena City Council on September 10, 2019, by the following vote:

Mayor Ellsworth: _____
Vice Mayor Dohring: _____
Councilmember Koberstein: _____
Councilmember Chouteau: _____
Councilmember Knudsen: _____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

Jerald R. Hyde, FASA, FIOA
Physicist, Consultant on Acoustics (Ret.)

Box 55, St. Helena, CA 94574
(707) 963-0983 - jerry@jerryhyde.com

September 4, 2019

SUBJECT: Standby Generator Installation, Impacts and Regulations

Dear Councilmember:

I have been involved in the subject issue now for several months as one of my neighbors is having a large generator installed soon. They have asked me to evaluate the noise impact on their neighbors which I have done.

The main point I'd like to make is this: These generators are VERY LOUD. Think of a gas-powered leaf blower at full throttle. That's the noise output of a typical generator. They are being installed all over town, several without permits. We need effective regulation.

Unfortunately the Municipal Code (MC) is not equipped to handle this new phenomenon. There is absolutely no environmental review involved, so the huge impact on neighbors is not part of the review process. We need that review process.

The Planning Department is currently using a provision in the MC which regulates the Location of "Accessory Structures," which is what they are erroneously calling electrical generators. Have a look at Section 17.116.010 of the MC and you will note that it deals with "Structures" as in buildings. What is at stake, in reality, is the placement of a piece of noisy machinery. Out of convenience, and a lack of specific guidelines, Planning is using this part of the MC which is awkward at best and doesn't protect anyone.

This new phenomenon should be dealt with head-on with the addition of a new section to Section 17.116 of the MC. Such a section should address the impact of the generator on the environment and the applicant's neighbors by including provisions for acceptable locations, barriers and shielding. This could be part of a review process that staff undertakes before issuing a permit. Currently none of this is taken into account. In the meantime, the Building Dept. needs better direction on this.

My analysis of generator locations on narrow lots in particular indicates that the best place for a generator, with the least impact on the nearest neighbors, is in the front yard of the home. Unfortunately, this is not allowed for "Accessory Structures" in the MC on most small lots due to lack of space and non-conforming building setbacks.

I would like to offer my expertise and help in solving this problem. I would be glad to meet with the City Manager and Aaron to discuss. Perhaps a moratorium on generator permits should be instituted until we get a handle on this and figure things out.

Sincerely,

Jerry Hyde

From: Jerry Hyde <jerry@jerryhyde.com>
Date: September 9, 2019 at 2:30:38 PM PDT
To: "'mprestwich@cityofsthelena.org'" <mprestwich@cityofsthelena.org>,
"'ctzafopoulos@cityofsthelena.org'" <ctzafopoulos@cityofsthelena.org>, "Aaron Hecock
(ahecock@cityofsthelena.org)" <ahecock@cityofsthelena.org>
Cc: "'gellsworth@cityofsthelena.org'" <gellsworth@cityofsthelena.org>,
"'pdohring@cityofsthelena.org'" <pdohring@cityofsthelena.org>, "'mkoberstein@cityofsthelena.org'"
<mkoberstein@cityofsthelena.org>, "achouteau@cityofsthelena.org" <achouteau@cityofsthelena.org>,
"dknudsen@cityofsthelena.org" <dknudsen@cityofsthelena.org>
Subject: Typical Generator Regulation and Standard

September 9, 2019

SUBJECT: Regulation of Emergency Generators

Attention: City Council and Staff:

I found this link on the internet by Googling "City of Santa Monica Standby Generator Regulations."

It is a stand-alone ordinance which establishes regulations and noise standards, and thereby defines noise impact from generators. The noise impact values given are in line with St. Helena's noise environment and would be acceptable values for our community, in my opinion.

St. Helena currently has no standard specifically regulating standby electrical generators.

The time of day and day of week of when generators are tested weekly, should also be part of any regulation we consider.

Sincerely,

Jerry Hyde

https://www.smgov.net/uploadedFiles/Departments/Building_and_Safety/emergency%20generators%20V3.pdf



Report to the City Council
Council Meeting of September 10, 2019

Agenda Section: Old Business

Subject: Discussion and possible direction on the re-opening of Pratt Avenue post-construction of the County of Napa Silverado Trail Slide Repair Project

CEQA Determination: Exempt from the requirements of CEQA pursuant to Section 15301, Class 1, which exempts the operation, leasing, or minor alteration of existing facilities

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

During the 2017 winter storms a major slide on Silverado Trail required the temporary closure of Pratt Avenue until such time that repairs could be made permanently by the County of Napa. The 2017 storms were declared a natural disaster and the County has spent the past couple of years in design, permitting, and meeting other funding obligations to complete the project. Construction is currently underway and the project is anticipated to be completed by mid-October 2019 with Pratt Avenue being re-opened upon completion of construction.

DISCUSSION

During the closure of Pratt Avenue, there have been various discussions within the City with the re-opening of the cross-town connector. Pratt Avenue serves as one of only two east/west cross-town connectors between Highway 29 and Silverado Trail. The report below addresses the following issues:

1. Whether or not Pratt Avenue could be permanently closed at Silverado Trail
2. How to address speeding on Pratt Avenue once it is opened
3. Whether left turning movements can be restricted from both Pratt Avenue and northbound Silverado Trail

Taking the above under consideration, the Public Works Director, Fire Chief, and Police Chief discussed the concept of a permanent closure of Pratt Avenue. The discussions resumed shortly after the 2017 October Fire Disaster and the idea of permanently closing Pratt Avenue at Silverado Trail remains a public safety concern. While public safety typically responds to calls within the City limits, there are many occasions when they respond outside the City limits and a permanent closure would reduce mutual aid response times. In addition, a permanent closure will limit evacuation planning during any natural disaster and lessons learned from the 2017 fires is that more evacuation corridors are needed for not only City residents, but everyone throughout the County.

As for addressing speeding on Pratt Avenue, funds have been appropriated in Fiscal Year 2019/20 to install radar driver feedback signs in both directions. The feedback signs will not only alert motorists to their speed, it collects each vehicles speed and time which is then provided to the St. Helena Police Department to review and improve enforcement action in the area as necessary. Signs are currently on order and will be installed in time of the opening of Pratt Avenue. Additionally, it is recommended the City add painted 11' lane lines to Pratt Avenue as a traffic calming measure to increase the perceived friction of driving the corridor. The concept of a speed hump or lump (with lane cut-outs to accommodate the wheelbase of fire trucks and buses) was discussed as a possible solution. However, due to the interference with response times of emergency vehicles and related concerns (e.g. reduced fuel efficiency, increased carbon monoxide emissions, increased noise levels, conflicts with current St. Helena Municipal Fire Code, etc.), driver feedback signs remain a preferred alternative.

It is important to note that not all of Pratt Avenue is within the City's jurisdiction and generally ends just as a driver crosses the Pratt Avenue bridge over the Napa River. Therefore, while some discussions took place at the City level, the City's Public Works Director has been in regular communications with the County Public Works Director on the above topics of discussion and especially restricting left turning movements from Silverado Trail and from Pratt Avenue. Both Directors, as well as the City's Interim Police Chief, agree that restricting left turning movements would be an improvement at the intersection since there is not sufficient room to provide a left turn pocket on either the Pratt Avenue bridge or on northbound Silverado Trail which contributes to traffic congestion and, most likely, accidents.

The process of restricting left turning movements requires the County Public Works Director to seek approval from the County Board of Supervisors to install the additional regulatory signage in their jurisdiction. If the City Council concurs with this recommendation, the Public Works Director will write a letter in support of this restriction which the County Director can present to the Board. If the County Board of Supervisors approves the restriction, the City will continue to coordinate with the County as well as purchase and install additional regulatory warning signage within City limits on Pratt Avenue to alert eastbound motorists on their approach to Silverado Trail. The pending change in road conditions would also be preempted with a press release and flashing warning signage on the City's portable trailer for up to two weeks.

FISCAL IMPACT

Funds have been budgeted in Fiscal Year 2019-20 Street Operations to order and install two radar feedback signs. In addition, any new regulatory signage to assist the County would be minimal (<\$200) and absorbed in the current Street Operations budget.

RECOMMENDED ACTION

Discuss and provide direction to staff.

Comments from Anthony Micheli:

When the Pratt Ave bridge is opened the Crinella neighborhood will become a race track again. People using Pratt Ave will turn on Park to Crinella then to main. They do not use Pratt to main. One simple reason, they do not want to take on the large trunks going to Beringer Winery. The trucks take both lanes turning off Main to Pratt. Is the City working with Beringer Winery to address the traffic during harvest?

Now to the Pratt Ave Bridge: The city needs to ban left hand turns off the bridge to the Silverado trail. There have been far too many accidents at this location. We do not need any fatalities. The city needs to persuade the county to ban left hand turns from the Silverado Trail onto the Pratt Ave Bridge. When cars fly around the corner at Madrone Knoll and a car is waiting to turn left onto the bridge, there is no room. Look at the police log over the years and see how many accidents have occurred at this location. Thank You.

From: **Ross Allen** rossrallen@comcast.net

Subject: **Reopening Pratt Speedway**

Date: June 3, 2019 at 2:11 PM

To: **Dillon, Diane** Diane.Dillon@countyofnapa.org, editor@sthelenastar.com, gellsworth@cityofsthelena.org

Cc: **Julia Bolander** jlb2788@gmail.com, **Ross Allen** rossrallen@comcast.net



Hello -

The reopening of Pratt Avenue at the Trail, at federal expense of \$3 million, is inadequate solution to a long-standing problem that falls through the cracks of city, county, state, and federal responsibility and funding. This construction project benefits who, exactly? And, if "they" want it so badly, what are "they" going to do about the rest of the problems it causes? (Answer: nothing, as usual.)

Reopening Pratt without increased police presence, without repairing the potholes, and without traffic control/calming measures is irresponsible. The result will be the resumption of reckless endangerment to residents, drivers, cyclists, and pedestrians. This has been a problem we've complained about to more than four generations of St. Helena Mayors and Chiefs of Police. The answer has always been "no patrol cars, no money". (St. Helena Police need to give Pratt Avenue the same reputation for speeding tickets as Pope Street. Nobody speeds on Pope anymore. Here's why: there's a police presence and radar speed signs.)

We've had almost two years of relative calm since the bridge was closed—except for the illiterates who ignore three signs informing of road closure and then come speeding back to make up for lost time.

Pratt is a residential area without street lights and sidewalks where children, pets, pedestrians, and bicyclists will soon be mixed with 45-75 mph through traffic of tourists, commuters, and drunks. (Police need to aggressively enforce the speed limit of 35 mph and/or the speed limit should be lowered to 25 mph (CalTrans?) and then the police should enforce that.)

Resumption of through traffic means longer, more frustrating, and more dangerous left turns onto Main Street from the intersection of Pratt and Main. (An on-demand stop light needs to be placed there for safety given poor visibility from Pratt of northbound and southbound Main St. traffic, two left turn lanes at Pratt and Main Street, and the Los Alcobras driveway.)

Reopening Pratt with partial funding and with only a partial solution creates problems for residents. It seems that city, county, and state (CalTrans) agencies have neither the money nor the will to do this properly. A complete solution needs to be funded and implemented before someone is seriously injured or killed.

Sincerely,

- Dr. Ross R. Allen and Ms. Julia M. Bolander
Pratt Avenue, St. Helena

*Provided at meeting.



Report to the City Council
Council Meeting of September 10, 2019

Agenda Section: Old Business

Subject: Consideration and proposed adoption of a Resolution approving a Professional Services Agreement with Grindline Skateparks, Inc. for the C20-03 Skatepark Improvements Project for an amount not-to-exceed \$124,420 and authorizing the City Manager to execute the agreement.

CEQA Determination: Exempt from the requirements of CEQA pursuant to Section 15301, Class 1, which exempts the operation, leasing, or minor alteration of existing facilities

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On May 28, 2019, City Council authorized Capital Improvement Project, C20-03 Skatepark Improvements to rehabilitate and implement Americans with Disabilities Act (ADA) improvements at the Skatepark in Crane Park. City staff requested proposals for an assessment from two known skatepark companies. Grindline Skateparks, Inc. (Grindline) was the most responsive and was also the company that originally designed and built the City's skatepark.

DISCUSSION

On August 28, 2019, City staff presented Grindlines' Assessment Report dated July 31, 2019 to the Park and Recreation Commission (P&RC) for discussion and input. P&RC recommended all maintenance work be completed as proposed in the report as well as some minor skatepark treatment additions in the amount of \$87,800. In addition to the P&RC recommendations, City staff recommends including up to three years of annual inspections to the contract agreement for \$6,620 along with a contingency of \$30,000 for completing any additional needs encountered during this year's project as well as repairs identified in future inspections.

Pursuant to St Helena Municipal Code Sections 3.04.320-340, professional services shall be procured through negotiated contract to firms who have demonstrated an adequate level of experience, competence, staffing and other professional qualifications necessary for more than a satisfactory performance of the services required. Based on prior work Grindline has completed for the City and their knowledge of the City's skatepark, City staff believes Grindline has demonstrated the level of experience, competence, staffing and other professional qualifications necessary for exceptional performance of the services required and described in the scope of work provided, and recommends that a professional services agreement with Grindline be procured through negotiated contract.

PR&C also provided input on other needed treatments at the skatepark:

- Fencing - provide an additional gate at the Del Britton Redwood Grove and not replace the entire fence at this time
- Landscape - in lieu of redesign of the landscape, reutilize the original landscape plan and ensure irrigation is utilized even during drought restrictions
- ADA features at park entrance - keep the existing paver section, but bring it up to ADA compliance and replace the water fountain

Depending on cost, it is staff's recommendation to replace the entire fence at this time since it is not commercial grade with the vertical bars being easily damaged. Staff is currently requesting proposals from fence contractors for both the entire perimeter as well as the addition of a gate entrance. In addition, staff is able to complete the paver improvements and will schedule that work for this fall as well as solicit proposals from landscape contractors for the landscape improvements.

FISCAL IMPACT

On May 28, 2019, City Council authorized a Capital Improvement Project budget of \$250,000 for the C20-03 Skatepark Improvements project from 734-Park Impact Fees.

RECOMMENDED ACTION

Staff recommends City Council adopt the Resolution approving a Professional Services Agreement with Grindline Skateparks, Inc. for the C20-03 Skatepark Improvements Project for an amount not-to-exceed \$124,420 and authorizing the City Manager to execute the agreement.

ATTACHMENTS

[Attachment 1: C20-03 Resolution](#)

[Attachment 2: 2019 5-yr CIP C20-03](#)

[Attachment 3: St. Helena Skatepark Assessment 073119](#)

[Attachment 4: Grindline Skatepark Maintenance PSA](#)

CITY OF ST. HELENA

RESOLUTION No. 2019-

Resolution approving a Professional Services Agreement with Grindline Skateparks, Inc. for the C20-03 Skatepark Improvements Project for an amount not-to-exceed \$124,420 and authorizing the City Manager to execute the agreement

RECITALS

- A. The C20-03 Skatepark Improvements Project is intended to rehabilitate and implement ADA improvements at an existing skatepark facility for public use; and
- B. On July 31, 2019, Grindline Skateparks, Inc. (Grindline) completed an assessment report for the City's skatepark located at Crane Park; and
- C. On August 28, 2019, City staff presented Grindlines' assessment report to the Park and Recreation Commission (P&RC) for discussion and input. P&RC recommended all maintenance work be completed as proposed in the report as well as some minor skatepark treatment additions; and
- D. In addition, City staff recommends including up to three years of annual inspections to the contract agreement along with a contingency of \$30,000 for completing any additional needs encountered during this years project as well as repairs identified in future inspections; and
- E. Pursuant to St Helena Municipal Code Sections 3.04.320-340, professional services shall be procured through negotiated contract to firms who have demonstrated an adequate level of experience, competence, staffing and other professional qualifications necessary for more than a satisfactory performance of the services required; and
- F. Based on prior work Grindline has completed for the City and their knowledge of the City's skatepark, City staff believes Grindline has demonstrated the level of experience, competence, staffing and other professional qualifications necessary for exceptional performance of the services required and described in the scope of work provided, and recommends that a professional services agreement with Grindline be procured through negotiated contract; and
- G. The Fiscal Year 2019/2020 Civic Capital Improvement Program includes \$250,000 for the C20-03 Skatepark Improvements Project from 734-Park Impact Fees.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. The C20-03 Skatepark Improvements Project is categorically exempt from the California Environmental Quality Act, pursuant to CEQA guidelines section 15301, Existing Facilities Class I which exempts the operation, repair, maintenance, and permitting of existing facilities involving negligible or no expansion of use; and
2. Approves the Professional Services Agreement with Grineline Skateparks, Inc. for maintenance services in an amount not to exceed \$124,420; and
3. Authorizes the City Manager to execute the Professional Services Agreement.

Approved at a Regular Meeting of the St. Helena City Council on September 10, 2019
by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Koberstein:	_____
Councilmember Chouteau:	_____
Councilmember Knudsen:	_____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

Skate-park Improvements

Project No: 0107-C20-03

Category: Civic

Project Location: 360 S. Crane Avenue



PROJECT PURPOSE & DESCRIPTION: Rehabilitate the skate-park and implement ADA improvements.

FISCAL IMPACT: The estimated cost is \$250,000.

EXPENDITURE ACCOUNTS:

Fund: 733 **Dept:** 5010

EXPENDITURES	2019-20	2020-21	2021-22	2022-23	2023-24	Five Year
3110 - Design	50,000					50,000
3160 - Construction Contract	200,000					200,000
EXPENDITURE TOTALS	250,000					250,000
FUNDING SOURCES						
734-Park Impact Fees	250,000					250,000
FUNDING TOTALS	250,000					250,000



ST. HELENA SKATEPARK
CITY OF ST. HELENA
SKATEPARK ASSESSMENT

GRINDLINE

CONCRETE SKATEPARK DESIGN & CONSTRUCTION



4619 14TH AVE SW, SEATTLE, WA 98106 • 206-932-6414 • GRINDLINE.COM

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- 3** Assessment Overview
- 4** St. Helena Skatepark Assessment
- 5** Skatepark Condition
- 13** Hazards
- 14** Estimated Costs

GRINDLINE



GRINDLINE SKATEPARKS

We use Best Management Practices and our collective experience in the field of Skatepark Design and Build to assess skateparks in terms of condition, safety, & function.

Please note that while we highlight the good points of the skatepark in descriptions and some photos, the main focus of the assessment will help clarify the results and guide The City of St. Helena's decision making process.

This assessment identifies and outlines the current function and condition of the skatepark, cost of repairs, potential hazards and a strategic plan for repair and/or upgrade/replacement.

ST. HELENA SKATEPARK

LOCATION

St. Helena Skatepark
360 S. Crane Ave.
St. Helena, CA 94574

DESCRIPTION:

ST. HELENA SKATEPARK WAS OPENED IN OCTOBER 2009. THE 18,000 SQUARE FOOT PARK WAS DESIGNED AND CONSTRUCTED BY GRINDLINE. THE PARK IS OPEN SEVEN DAYS A WEEK FROM 8:00 A.M. TILL DUSK. IT IS CLOSED ON RAINY DAYS.

The skatepark in Crane Park is a large skatepark, consisting of varied terrain, including a flow bowl, a pool bowl, and various different street areas. There are restrooms, a drinking fountain, shade trees and BB Q's in Crane Park, within close proximity to the skatepark.

The skatepark is in good condition and is used regularly by both local skateboarders and people from out of town. Maintenance and repairs would be very beneficial at this stage in the skatepark's life.



ASSESSMENT OVERVIEW

PHYSICAL CONDITION OF SKATEPARK

Given that skateparks are relatively new in terms of construction (the oldest surviving facilities date back to the late 1970's) it is difficult to determine how long skateparks that are built to today's standards of construction will last - both in terms of condition and function. We can only assess skate parks on their current appearance. This part of the assessment deals with the physical condition of the skatepark. It does not address function, construction tolerances, etc.

Skatepark condition covers items including:

- Hazards
- Graffiti
- Spalls & Cracks
- Surface Finishes
- Wear & Tear
- Damage (Malicious)
- Structural Failure
- Differential Settlement
- Rust & Corrosion
- Erosion
- Drainage Issues

RATING THE CONDITION OF THE PARK

We use the following as a set of guidelines for rating the skatepark and estimating it's end of life. These are by no means absolute, but will be a good indication of the skatepark's life span

EXCELLENT

END OF LIFE ESTIMATE: 20 YEARS

The skatepark has been recently constructed and shows little to no signs of wear and tear. Regular maintenance is required to maintain

VERY GOOD

END OF LIFE ESTIMATE: 15 YEARS

The skatepark is a few years old and shows some minor wear and tear. Regular maintenance is required to maintain its performance and minor repairs/upgrades/improvements should be considered at this time for future planning (funding/design/construction).

GOOD

END OF LIFE ESTIMATE: 10 YEARS

Your skatepark is beginning to age and shows a noticeable level of wear and tear. An increase in the level of regular maintenance is required to maintain its performance and minor repairs, upgrades, and improvements should be implemented at this time (funding/design/construction).

POOR

END OF LIFE ESTIMATE: 5 YEARS

Your skatepark is old and shows a high level of wear and tear. A high level of maintenance and major work will be required to bring the condition to an acceptable level. A plan for skate park repairs, redevelopment, demolition, or replacement should be in place and ready for action.

HAZARD

IMMEDIATE ACTION REQUIRED

Your skatepark has major issues affecting the safety of your users. We've identified extremely worn surfaces, damage, structural failure, dangerous elements, drainage issues, and possibly more.

ST. HELENA SKATEPARK ASSESSMENT

The supporting photos and descriptions outline the specifics of our assessment. Based on these, and our site visit, the skatepark has been rated as:

GOOD

END OF LIFE ESTIMATE: 10 YEARS

Your skatepark is beginning to age and shows a noticeable level of wear and tear. An increase in the level of regular maintenance is required to maintain its performance and minor repairs, upgrades, and improvements should be implemented at this time (funding/design/construction).

There are cracks throughout the skatepark that should be filled, but differential settlement was not observed at any of the cracks. The majority of the issues with the St. Helena Skatepark are cosmetic and do not pose any immediate danger to the users of the skatepark.

The tile in the pool and the brick coping on the bank wall in the flow bowl seem to be the only ongoing maintenance problems within the skatepark. The brick coping can be replaced with a cast in place replacement that should be almost maintenance free. For the tile - the solutions would be to continue to fix the tile as needed or the other more costly option would be to remove the tile and replace with a cast in place concrete, painted tiles.

The other item that would really make the park look new again would be the pressure washing and re-sealing with a tinted sealer. This will not only give the park a fresh look but also will help to preserve the smooth concrete. Resealing the Concrete of the skatepark and painting of the steel coping and edging will make the park look new again.

Landscape areas within the skatepark were discussed as a maintenance problem as well. Pricing is provided to fill these in with concrete. The pricing is a range with the low end being just flat concrete and the higher end consisting of new obstacles/skate terrain.



SKATEPARK CONDITION

HAZARD: IMMEDIATE ACTION REQUIRED



REPAIRS - ROUGH EDGES

Grind and Smooth Rough Concrete Edges in Skatepark
Approx. 80 LF at various locations.

HAZARD: IMMEDIATE ACTION REQUIRED



REPAIRS - TILE FAILURE

Replace Tile with Cast in Place Tile or repair existing tile.

HAZARD: IMMEDIATE ACTION REQUIRED



REPAIRS - SEAMS AT TOP OF PYRAMID

Route out and Fill with Flexible Joint Sealant at top of
Pyramid obstacle

HAZARD: IMMEDIATE ACTION REQUIRED



REPAIRS - POOL COPING JOINTS

Repair and Maintain Pool Coping Joints

SKATEPARK CONDITION

Continued



REPAIRS - CONCRETE CRACKS

Cracks to be cleaned out and filled with flexible joint sealant
Approx. 800 LF



REPAIRS - CONCRETE CRACKS

Cracks to be cleaned out and filled with flexible joint sealant
Approx. 800 LF



REPAIRS - CONCRETE CRACKS

Cracks to be cleaned out and filled with flexible joint sealant
Approx. 800 LF



REPAIRS - CONCRETE CRACKS

Cracks to be cleaned out and filled with flexible joint sealant
Approx. 800 LF

SKATEPARK CONDITION

Continued



REPAIRS - CONCRETE JOINTS

Joints - Seams and Saw Cuts to be cleaned out and filled with flexible joint sealant
Approx. 2,000 LF



REPAIRS - CONCRETE JOINTS

Joints - Seams and Saw Cuts to be cleaned out and filled with flexible joint sealant
Approx. 2,000LF



REPAIRS - CONCRETE JOINTS

Joints - Seams and Saw Cuts to be cleaned out and filled with flexible joint sealant
Approx. 2,000 LF



REPAIRS - CONCRETE JOINTS

Joints - Seams and Saw Cuts to be cleaned out and filled with flexible joint sealant
Approx. 2,000 LF

SKATEPARK CONDITION

Continued



REPAIRS - TOP OF PYRAMID

Cracks and Seam Damage at Pyramid
Repair with Flexible Epoxy



REPAIRS - TILES

Tile Damage - Repair or replace with cast in place Tiles



REPAIRS - ROUGH EDGES

Stair Edging torn up and corner of stair has broken off.
Grind rough edges smooth



REPAIRS - BRICK COPING

Brick Coping in Flow Bowl -Approx. 30LF
Replace Brick Coping with Cast in Place Coping to
match

SKATEPARK CONDITION

Continued



REPAIRS - POOL COPING

Pool Coping - coat grind edge with clear lacquer.



REPAIRS - POOL COPING

Pool Coping -grout failure: repair with epoxy as needed



REPAIRS - HARD EDGE

Rough edges and gouges in Hard Edge.
Grind smooth and fill gaps with epoxy if necessary.
Approx. 80 LF



REPAIRS - HARD EDGE

Rough edges and gouges in Hard Edge.
Grind smooth and fill gaps with epoxy if necessary.
Approx. 80 LF

SKATEPARK CONDITION

Continued



GENERAL MAINTENANCE

Repaint Steel Coping



GENERAL MAINTENANCE

Repaint Steel Coping



GENERAL MAINTENANCE

Repaint Steel Coping & Edging



GENERAL MAINTENANCE

Repaint Steel Coping & Handrails

SKATEPARK CONDITION

Continued



GENERAL MAINTENANCE

Pressure Wash and Reseal entire skatepark with tinted sealer. Tinted sealer will bring back color and make it pop again.



GENERAL MAINTENANCE

Pressure Wash and Reseal entire skatepark with tinted-sealer. Tinted sealer will bring back color and make it pop again.



GENERAL MAINTENANCE

Pressure Wash and Reseal entire skatepark with tinted sealer. Tinted sealer will bring back color and make it pop again.



GENERAL MAINTENANCE

Pressure Wash and Reseal entire skatepark with tinted-sealer. Tinted sealer will bring back color and make it pop again.

SKATEPARK CONDITION

Continued



LANDSCAPING / ADDITION

Landscape Areas
Pour Concrete Decks at Landscape Areas
Provide a skateable area where dead landscape was



ADDITON - BANK

Add Bank Feature to grass slope area in street area.



LANDSCAPING

Replace landscaping with an alternative.
Pavers, Concrete, Artifical Turf, and Soft Surface were suggested. To be done by others.



ADDITION - FLAT RAIL

Add flat rail to park as new feature.
Exact Location to be determined.

HAZARDS

This section highlights any potential hazards needing immediate attention to reduce risk to The City of St. Helena. Please also refer to the detailed descriptions and photos in the previous sections.

HAZARDS

Tile damage
Rough Concrete Edges
Seams at Pyramid

Cracks:
Approx. 800 LF

Seams:
Approx. 2,000 LF



ESTIMATED COSTS

Repairs and maintenance are required to keep the St. Helena skatepark safe and usable. The prices given are a range for planning purposes and approximate. A bid will be given and exact scope of work agreed upon.

MOBILIZATION FEE \$5,000

REPAIRS

- Rough Edges - Grind Concrete Edges in Skatepark - Approx. 80 LF \$2,800
- Fix Tile - Fix Broken Tile (repair Existing tile as needed) \$2,500
- Pool Blocks - repair seams, coat with lacquer and fill with epoxy as necessary \$1,600
- Seams at Top of Pyramid - Tune Up Pyramid \$1,700
- Cracks in Skatepark- Clean out and fill joints: Approx. 900 LF \$7,200
- Joints in Skatepark- Clean out and fill joints: Approx. 2,000 LF \$14,000

MAINTENANCE

- Repaint all steel coping & edging \$3,800
- Pressure Wash & Reseal entire skatepark with tinted concrete sealer. \$15,500

REPLACE / ADDITONS

- Landscape area inside Skatepark to be Replaced with Concrete (Approx. 1,200 SQ/FT) The lower price would be just flat concrete - upper range would be a new addition. \$26,000 - \$48,000
- Replace Brick Coping in flow bowl with cast in place Brick Coping \$6,600
- Replace Tile with Faux Tile - Remove existing tile and replace with more durable faux tile \$12,100
- Addition of Flat Rail in Street Area \$2,500
- Addition of Bank in Street Area \$14,000

Grindline Skateparks, Inc. should conduct a yearly inspection of the skatepark to keep the skatepark in the Good condition it is in.

ReSealing yearly with a high end tinted sealer is the most beneficial item that can be done to help preserve the skatepark. Along with some basic repairs this will keep the St. Helena Skatepark going for years to come.



AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on _____, 2019 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Grindline Skateparks, Inc. (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as City Skatepark Maintenance.

B. Consultant has represented that Consultant has the necessary expertise, experience, and qualifications to perform the required duties.

NOW, THEREFORE, in consideration of the mutual premises, covenants, and conditions herein contained, the parties agree as follows:

SECTION 1 – BASIC SERVICES

Consultant agrees to perform the services set forth in **Exhibit A, “Scope of Services”** and made part of this Agreement.

SECTION 2 – ADDITIONAL SERVICES

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in this Agreement or **Exhibit A, “Scope of Services”** (the “Services”), unless such additional Services and compensation are authorized in advance and in writing by the City Council or City Manager of the City.

SECTION 3 – TIME FOR COMPLETION

The time for completion of Services shall be as identified in **Exhibit A, “Scope of Services”**. The parties expressly agree that time is of the essence in the performance of this Agreement.

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in Exhibit B, “Compensation” attached hereto and made a part hereof. Total compensation shall not exceed \$124,420.00 unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories if applicable: labor (by sub-category), travel, materials, equipment, supplies, subconsultant contracts, and miscellaneous expenses. Each original invoice furnished shall include the expenses incurred during the preceding month, the cumulative Agreement amount,

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and the amount remaining on the Agreement. City shall independently review each invoice submitted to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. If no charges or expenses are disputed, the invoice shall be approved, and City will use its best efforts to cause Consultant to be paid within 30 days of receipt of invoice. If the City disputes any charges or expenses, the City will return the original invoice to Consultant for correction and resubmission. If the City reasonably determines, in its sole judgment, that the invoiced charges and expenses exceed the value of the Services performed to date and that it is probable that the Agreement will not be completed satisfactorily within the contract price, City may retain all or a portion of the invoiced charges and expenses. Within thirty (30) days of satisfactory completion of the project, City shall pay the retained amount, if any, to Consultant.

C. Payment to the Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

SECTION 5 – STANDARD OF PERFORMANCE

A. Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons in the same or similar geographical area engaged in providing Services similar to those required of Consultant under this Agreement.

B. In order to induce Owner to enter into this Agreement, Consultant represents that it is duly organized, existing and in good standing under applicable state law; Consultant is licensed to perform all aspects of the Services; Consultant will employ only persons and Subconsultants with all required licenses and certifications; that Consultant is duly qualified to conduct business in the State; that Consultant has duly authorized the execution, delivery and performance of this Agreement and the Services to be performed herein; and that the Agreement does not violate or create a default under any instrument, agreement, order or decree binding on Consultant.

SECTION 6 – INSPECTION AND FINAL ACCEPTANCE

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within sixty (60) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject work by a timely written explanation, otherwise Consultant's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects and fraud. Acceptance of any of Consultant's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections pertaining to indemnification and insurance.

SECTION 7 – INSURANCE REQUIRED

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees, as indicated:

- A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
 - 1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
 - 2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
 - 3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:
 - 1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - 2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
 - 3. Employer's Liability: \$2,000,000 per accident for bodily injury or disease.

C. Professional Liability Insurance. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, environmental engineer or other professional engineer, or land surveyor ("design professional"), Consultant shall maintain at least \$2,000,000 of professional liability insurance. When Consultant is not a design professional, Consultant shall maintain at least \$1,000,000 of professional liability insurance combined single limit for each occurrence, insuring against professional errors and omissions in the Services performed by Consultant under this Agreement, including, without limitation, claims for negligence, misrepresentation, violation of good faith and fair dealing, and inaccurate advice arising out of, resulting from, or in connection with Services performed by Consultant under this Agreement.

D. Excess Limits. If Consultant maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

E. Primary Coverage. For any claims related to this contract the Consultants insurance coverage shall be primary insurance as respects to City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Consultants insurance and shall not contribute with it.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions of \$25,000 or greater must be declared to and approved by the City.

G. Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its agent, officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of work or operations performed by the Consultant or Consultant's subconsultants; or automobile owned, leased, hired or borrowed by the Consultant.
2. For any claims related to Consultant's conduct while performing the work of this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its agents, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its agents, officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.

H. Waiver of Subrogation. Consultant's commercial general liability, automobile liability, workers' compensation, and employer's liability policies shall be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its agents, officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the work performed by the named insured for the City.

I. The Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

J. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on forms that conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

SECTION 8 – INDEMNIFICATION

A. To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), as may be applicable, Consultant shall indemnify, defend, and hold harmless City, its agents, officers, officials, employees, representatives, and volunteers from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith, including legal fees and expert witness costs)

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(collectively, “Liabilities”), incurred by reason of any negligent or otherwise wrongful act or omission of Consultant, its officers, agents, employees, subconsultants, and subcontractors, or any of them, under or in connection with this Agreement; and Consultant agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against City, its agents, officers, officials, employees and volunteers, or any of them, arising out of, pertaining to, or relating to such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

B. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, professional engineer, or land surveyor (i.e., a “design professional,” pursuant to Civil Code § 2782.8(c)), the provisions of this section regarding Consultant’s duty to defend and indemnify apply only to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant.

C. If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultant’s expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to Indemnification in order to be so indemnified. The insurance required to be maintained by Consultant shall ensure Consultant’s obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

D. The provisions of this section do not apply to claims to the extent occurring as a result of the City’s sole negligence, active negligence, or willful acts or misconduct.

E. Duty to Cooperate. Each party shall notify the other party immediately in writing of any claim or damage related to activities or Services performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of all Liabilities arising out of the activities or Services under this Agreement.

F. In the event that Consultant executes any subconsulting agreements in connection with the Services performed under this Agreement, Consultant shall place in all such subconsulting agreements, and cause its subconsultants to agree to, the indemnity and insurance obligations in favor of Owner and other Indemnitees, as provided herein, in the exact form and substance of those contained in this Agreement.

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner or to incur an obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

B. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant’s exclusive direction and control. Neither City, nor any

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elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City.

C. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 10 – CONFLICTS OF INTEREST AND ANTI-FRAUD AND ANTI-CORRUPTION POLICIES

A. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of Services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts with the interests of City in the performance of this Agreement.

B. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related Services for other governmental agencies and private parties. Consultant is aware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

C. Consultant understands and acknowledges City maintains an anti-fraud and anti-corruption policy to protect the City, its operations, and its employees from and against financial risks, operational breaches, and unethical, fraudulent and corrupt activities. Consultant represents and warrants that Consultant, its subcontractor(s) / subconsultant(s) and their respective employees providing Services pursuant to the Agreement are (1) in good standing; (2) have not been previously investigated, convicted, or debarred for fraudulent or corrupt activities; (3) will not participate in fraudulent or corrupt activities, and (4) will take steps to ensure that its employees and subcontractor(s) / subconsultant(s) employees do not participate in any fraudulent or corrupt activities. Consultant acknowledges and agrees further that it has a duty to and will report to City any information or incident(s) about possible fraudulent or corrupt activities Consultant may discover, and will cooperate in any fraud or corruption investigation conducted, with respect to Consultant's service provided pursuant to this Agreement.

SECTION 11 – OWNERSHIP OF DOCUMENTS

A. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in the course of providing any Services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. When requested by City, but no later than three years after project

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completion, Consultant shall deliver to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

B. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, improvements, developments, works of authorship, or other products developed or created by Consultant during the course of providing Services (collectively the “Work Product”) shall belong exclusively to City. The Work Product shall be considered a “work made for hire” within the meaning of Title 17 of the United States Code. Without reservation, limitation, or condition, Consultant hereby assigns, at the time of creation of the Work Products, without any requirement of further consideration, exclusively and perpetually, any and all right, title, and interest Consultant may have in the Work Product throughout the world, including without limitation any copyrights, patents, trade secrets, or other intellectual property rights, all rights of reproduction, all rights to create derivative works, and the right to secure registrations, renewals, reissues, and extensions thereof.

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

A. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided consultant gives City notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys’ fees, caused by or incurred as a result of Consultant’s conduct.

D. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.

SECTION 13 – SUSPENSION OF WORK

City may, at any time, by ten (10) days written notice suspend further performance by Consultant. All suspensions shall extend the time schedule for performance in a mutually satisfactory manner and Consultant shall be paid for Services performed and reimbursable expenses incurred prior to the suspension date.

SECTION 14 – COMPLIANCE WITH LAW

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the Services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

During the performance of this contract, Consultant agrees as follows:

A. Equal Employment Opportunity. In connection with the execution of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, age, sexual orientation, gender, gender identity and gender expression as protected categories specifically and expressively in that category, physical handicap, medical condition, marital status, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship.

B. Nondiscrimination Civil Rights Act of 1964. Consultant will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

C. Solicitations for Subcontractors including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations, made by Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by Consultant of Consultant's obligations under this Agreement and the regulations relative to nondiscrimination.

SECTION 16 – AUDIT AND INSPECTION OF RECORDS

A. Records of Consultant's direct labor costs, payroll costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on a generally recognized accounting basis and made available to City if and when required for a period of up to 3 years from the date of Consultant's final invoice.

B. Consultant shall maintain all documents and records prepared by or furnished to Consultant during the course of performing the Services for at least three (3) years following completion of the Services. Such records include, but are not limited to, correspondence,

internal memoranda, technical reports and investigations, calculations, books and accounts, accounting records documenting its work under its Agreement, and invoices, payrolls, records and all other data related to matters covered by this Agreement.

C. Consultant shall permit Owner to audit, examine and make copies, excerpts and transcripts from such records, and the Consultant shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any matter whatsoever for three (3) years after Owner makes the final or last payment or within three (3) years after any pending issues between Owner and Consultant with respect to this Agreement are closed, whichever is later.

SECTION 17 – LIMITATION OF LIABILITY

A. Consultant agrees that any liability of Owner arising in connection with this Agreement shall be limited exclusively to the Owner-entity identified as the “Owner” under this Contract. Under no circumstance shall any other Owner-entity be liable to Consultant under any theory, whether in contract, tort, or otherwise, and Consultant waives unconditionally any such claims. Consultant hereby waives and release other Owner-entities from any liability under this Agreement.

B. Notwithstanding any other provision of this Agreement, in no event shall Owner be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed hereunder.

SECTION 18 – COOPERATION BY CITY

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Exhibit A, “Scope of Services”, shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement.

SECTION 19 – NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by facsimile or first class mail, addressed as follows:

To City: City Manager
 1480 Main Street
 St. Helena, California 94574

To Consultant: Micah Shapiro
 Chief Executive Officer
 Grindline Skateparks, Inc.
 4619 14th Ave. SW.
 Seattle, WA 98106

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or, if mailed, three (3) days after deposit in the custody of the U.S. Postal Service.

SECTION 20 – TERMINATION

A. City may terminate this Agreement, with or without cause, at any time by giving ten (10) days written notice of termination to Consultant. If such notice is given, Consultant shall cease immediately all work in progress.

B. If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

C. Upon termination of this Agreement by either Consultant or City, all property belonging to City which is in Consultant's possession shall be delivered to City. Consultant shall furnish to City a final invoice for work performed and expenses incurred by Consultant, prepared as set forth in this Agreement.

SECTION 21 – ATTORNEYS' FEES

If litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled. In addition, any legal fees, costs and expenses incurred to enforce the provisions of this Agreement shall be reimbursed to the prevailing party.

SECTION 22 – ENTIRE AGREEMENT

This Agreement, including the attached Exhibits, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 23 – SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties. However, this Agreement shall not be assigned by Consultant without written consent of the City.

SECTION 24 – CONTINUITY OF PERSONNEL

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the Services required under this Agreement. Consultant

shall notify City of any changes in Consultant's staff assigned to perform the Services required under this Agreement, prior to any such performance.

SECTION 25 – DEFAULT

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default and may terminate this Agreement immediately by written notice to Consultant.

SECTION 26 – WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or Services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 27 – LAW TO GOVERN; VENUE

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Napa. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 28 – SEVERABILITY

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 29 – THIRD PARTY BENEFICIARIES

Consultant's subconsultants shall agree to be bound to the terms of the Agreement to the extent of their scope of Services, including but not limited to, terms regarding indemnity and dispute resolution, and shall agree that Owner is deemed an express third party beneficiary of their subconsultant agreements. Nothing contained in this Agreement, however, shall operate to confer such or similar rights or benefits on persons or entities not party to this Agreement.

SECTION 30 – STATUTES OF LIMITATION

As between the parties to this Agreement, any applicable statute of limitations for action arising out of, pertaining to, or relating to any act or failure to act in connection with this Agreement shall commence to run on the date of Owner's issuance of the final Certificate for Payment, or termination of this Agreement, whichever is earlier, except for latent defects and/or

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Grindline Skatepark, Inc. 8/30/2019

deficiencies, for which the applicable statute of limitation shall begin to run upon discovery of the defect and/or deficiency and its cause.

SECTION 31 – SPECIAL PROVISIONS

This Agreement is subject to the following special provisions: none.

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

Consultant:

City:

By: _____

By: _____

Name: _____

Name: Mark T. Prestwich

Title: _____

Title: City Manager

Approved as to Form:

By: _____

Name: Michael G. Biddle

Title: City Attorney

**EXHIBIT A and B****PROPOSED SCOPE OF WORK:****SUBMITTED TO:**

Name:	Erica Ahmann Smithies	Project Name:	St. Helena Skatepark Maintenance
Organization:	City of St. Helena	City:	St. Helena
Phone:	707.968.2629	State:	CA
Fax:		Date:	September 5, 2019
Email:	ESmithies@cityofstheleena.org		

Grindline proposes to provide all necessary labor, materials, and equipment to complete the work detailed below within the skatepark footprint, from the St. Helena Skatepark Assessment created on July 31, 2019, including:

• One Mobilization	\$5,000.00
• Rough Edges - Grind Concrete Edges - Approx. 80 LF	\$2,800.00
• Pool Blocks - Repair Seams, Coat with Lacquer and Fill with Epoxy as necessary	\$2,600.00
• Seams at Top of Pyramid - Tune Up Pyramid	\$1,700.00
• Cracks in Skatepark - Clean out and fill joints: Approx. 900 LF	\$7,200.00
• Joints in Skatepark - Clean out and fill joints: Approx. 2,000	\$14,000.00
• Repaint all steel coping & edging	\$3,800.00
• Replace Brick Coping in Flow Bowl with Cast in Place Brick Coping	\$6,600.00
• Replace Tile with Faux Tile - Remove Existing Tile and Replace with Faux Tile	\$12,100.00
• Addition of Flat Rail in Street Area	\$2,500.00
• Addition of Bank in Street Area	\$14,000.00
• Pressure Wash & Reseal Skatepark	\$15,500.00

Exclusions:

- Demolition
- Stripping of sod & topsoil
- Import/Export of fill material
- Water and power supply
- Dewatering
- Landscaping (including seeding and planting) /Irrigation (including sleeving) and/or restoration
- Erosion control
- Construction fence/staging area and final perimeter fencing.
- Permits
- Performance/Payment Bond. If required add 2% to total bid.
- Construction staking/surveying
- Mass excavation (Flat pads to be +/- 1/2" from subgrade and transition walls banked at a 1:1 slope)
- Underground Drain lines
- Finish grading around skatepark perimeter
- Non skatepark concrete
- Site amenities. Including but not limited to benches, trash cans, shade structures, picnic tables
- Material testing/special inspections
- Any other work outside of areas referenced above





Exhibit A and B

PROPOSED SCOPE OF WORK:

SUBMITTED TO:

Name: Erica Ahmann Smithies Organization: City of St. Helena Phone: 707.968.2629 Fax: Email: ESmithies@cityofstheleena.org	Project Name: St. Helena Skatepark Maintenance City: St. Helena State: CA Date: September 5, 2019
--	--

We propose to complete the scope listed above for:

BASE BID LUMP SUM TOTAL:	\$87,800.00
• 3 Years of Annual Skatepark Inspections *With 5% increase per year	\$2,100.00 Fall 2020 \$2,205.00 Fall 2021 \$2,315.00 Fall 2022
• In addition, the City has requested a \$30,000 contingency for future maintenance needs over the 3-year period. No contingency funds will be expended without written authorization from the Public Works Director or their designee.	\$30,000.00 Contingency for Future Maintenance

With a tentative start date of September 23, 2019, all work will be completed by October 31.

This proposal is valid for 60 days

Respectfully Submitted,

James Klinedinst
 Project Manager
 Cell: 206-819-9234

4619 14TH AVE SW SEATTLE, WA 98106
 206.932.6414 (OFFICE) 206.932.6840 (FAX)
www.grindline.com





Report to the City Council
Council Meeting of September 10, 2019

Agenda Section: Old Business

Subject: *NEW ITEM 9-6-19

Consideration and proposed approval of a resolution approving and authorizing the City Manager to execute, enter into and carry out the terms of a Revised 2018 Extension Of Raw Water Agreement between the City of St. Helena and Spring Mountain Vineyards, Inc. for property located at 2805 Spring Mountain Road, Napa County, California (APN 009-450-001; 022-180-021; 022-180-020; 022-180-058; 022-180-017; 022-180-015; 022-180-053; 022-260-012; 022-260-013)

CEQA Determination: Not a “project” as defined by State CEQA Guidelines Section 15378(a); Further, even if deemed a “project”, otherwise exempt from CEQA under the common sense exemption set forth in Section 15061(b)(3).

Prepared By: Michael G. Biddle, City Attorney

Reviewed By: Erica Ahmann Smithies, Public Works Director and City Engineer

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

At its regular meeting of June 26, 2018, the City Council considered and approved a 2018 Extension Of Raw Water Use Agreement (“Agreement”) between the City of St. Helena (“City”) and Spring Mountain Vineyards, Inc. (“SMV”) for the provision of raw water for vineyard irrigation purposes to property located at 2805 Spring Mountain Road, commonly referred to as Spring Mountain Vineyard. The Agreement was executed by the City and SMV effective as of June 26, 2018 and subsequently recorded in the Official Records of Napa County on October 17, 2018. The term of the Agreement was for five (5) years from the effective date of June 26, 2018.

DISCUSSION

It has recently come to the attention of City staff and representatives of SMV that, somehow, the Agreement was recorded without the inclusion of the legal descriptions of the property owned by SMV and subject to the terms of the Agreement. Further, the assessor parcel numbers listed in the Agreement are incomplete, and the parcel identified as being located within the City of St. Helena is incorrect. Further, there is a reference within the Agreement to a "Lease" which ought to be referring to the Agreement.

Accordingly, the proposed Revised 2018 Extension Of Raw Water Use Agreement ("Revised Agreement") is presented for City Council's approval to correct these minor, yet important details. Note that the term as reflected in Section 2 of the Revised Agreement remains for five (5) years from the effective date of June 26, 2018.

CEQA

For purposes of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), a "project" is defined in State CEQA Guidelines Section 15378 (a) as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment". The City Council hereby finds that the action to approve this Revised Agreement serves only to correct the description of the real property subject to its terms and will not result in any change in the environment and thus is not a project subject to the requirements of CEQA. Further, even if the action to approve this Revised Agreement was deemed to be a project subject to CEQA, the City Council finds approval of this Revised Agreement is exempt from CEQA under the common sense exemption set forth in Section 15061(b)(3), which provides that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and thus where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

FISCAL IMPACT

Approval of the Revised Agreement will have no fiscal implications for the City.

RECOMMENDED ACTION

Staff recommends City Council adopt the attached resolution (Attachment 2) authorizing the City Manager to execute, enter into and carry out the terms of the Revised 2018 Extension Of Raw Water Use Agreement (Attachment 1) between the City of St. Helena and Spring Mountain Vineyards for the provision of raw water for vineyard irrigation purposes to property located at 2805 Spring Mountain Road, commonly referred to as "Spring Mountain Vineyard", and identified by Napa County Assessor's Parcel Nos. 009-450-001; 022-180-021; 022-180-020; 022-180-058; 022-180-017; 022-180-015; 022-180-053; 022-260-012; and 022-260-013. The Revised Agreement is in redline format so the Council can see the changes made to the version approved on June 26, 2018.

ATTACHMENTS

[Attachment 1 - Revised 2018 Extension Of Raw Water Use Agreement - Redline](#)
[Attachment 2 - Resolution 09.10.2019](#)
[Exhibit A to Attachment 2: Revised 2018 Extension Of Raw Water Use Agreement](#)

EXEMPT FROM RECORDING FEES PURSUANT
TO GOVERNMENT CODE ~~SECTION 27383~~ §27383 AND
BUILDING HOMES & JOBS TRUST FUND
FEE PER GOVERNMENT CODE §27388.1(A)(2)(D)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City Clerk
City of St. Helena
1480 Main Street
St. Helena, California 94574

Assessor's Parcel No(s). 009-450-001; 022-180-021; 022-180-020; ~~022-180-021 and 009-450-001;~~
022-180-058; 022-180-017; 022-180-015; 022-180-053; 022-260-012; 022-260-013

REVISED 2018 EXTENSION OF RAW WATER USE AGREEMENT

SPRING MOUNTAIN VINEYARD, INC.

THIS **REVISED 2018 EXTENSION OF RAW WATER USE AGREEMENT**
("AGREEMENT") is entered into as of this ____ day of _____, ~~2018 ("Effective~~
~~Date")~~ 2019, by and between the City of St. Helena, a California municipal corporation ("City"), on
the one hand, and Spring Mountain Vineyard, Inc., a Delaware corporation ("Buyer"), on the other,
and upon execution and recording of this Agreement in the Official Records of Napa County
("Official Records"), this Agreement shall amend and replace in its entirety that certain 2018
Extension Of Raw Water Use Agreement dated June 26, 2018, and recorded on October 17, 2018
in the Official Records at Document No. 2018-0020105. City and Buyer are sometimes referred to
herein individually as a "party" and collectively as the "parties."

RECITALS

A. Buyer is the owner of that certain real property ~~(the "Property")~~ generally located on
the southerly side of Spring Mountain Road at 2805 Spring Mountain Road, ~~identified by Napa~~
~~County Assessor's Parcel Nos. 022-180-020, 022-180-021 and 009-450-001, and more~~ commonly
referred to as "Spring Mountain Vineyard," ~~and identified by Napa County Assessor's Parcel~~
~~No Nos. 022-180-021, 009-450-001; 022-180-021; 022-180-020; 022-180-058; 022-180-017; 022-~~
~~180-015; 022-180-053; 022-260-012; and 022-260-013, and more particularly described in the legal~~
description attached hereto as Exhibit A and incorporated herein by this reference (the "Property").
That portion of the Property identified as Napa County Assessor Parcel No. 009-450-001 is located
in the City of St. Helena.

B. City is the owner of that certain reservoir (the “Lower Reservoir”) located on the northerly side of Spring Mountain Road and identified by Napa County Assessor’s Parcel No. 009-131-013.

C. On August 28, 1990, City adopted City Council Resolution No. 90-91 approving a Water Use Agreement between City and Buyer’s predecessor in interest, Michael Robbins (the “1990 Water Use Agreement”).

D. The 1990 Water Use Agreement was amended in 1996 by the “Amended Agreement.” That Amended Agreement terminated on June 30, 2006. Since that time, the City believes that it has had no obligation to provide raw water from the Lower Reservoir to Buyer. The City has continued to voluntarily provide raw water to Buyer, even though the City has no ongoing obligation to do so.

E. Following the expiration of the Amended Agreement on June 30, 2006, Buyer continued to purchase water from the City substantially under the terms of that expired agreement, although the volume of water used by Buyer exceeded the 25-acre feet authorized by the 1990 Water Use Agreement and the Amended Agreement.

F. On May 24, 2016, City adopted City Council Resolution No. 2016-64 approving a Raw Water Use Agreement between City and Buyer (the “2016 Raw Water Use Agreement”).

G. Buyer desires to continue to use raw water from the Lower Reservoir to irrigate its vineyards, and City is willing to continue to sell said water to Buyer upon the terms and conditions set forth hereinafter.

H. The parties mutually desire to (i) extend and amend the 2016 Raw Water Use Agreement; (ii) strictly limit Buyer’s actual annual water usage; and (iii) set forth the respective obligations of the parties and the terms under which City will continue to sell and Buyer will continue to purchase raw water from the City from Lower Reservoir.

I. This Agreement confirms the City’s intent to continue to use the raw water for beneficial purposes pursuant to pre-1914 water rights claimed by the City associated with water in Lower Reservoir.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. Supply. City shall provide water from the Lower Reservoir to the Property up to a maximum of twenty-five (25) acre-feet (i.e. 8,146,275 gallons) per Water Year (“Annual Limitation”) upon the terms and conditions set forth herein. As used herein, the term “Water Year” shall mean the twelve-month period between July 1st and June 30th each year. Buyer shall in no event use more water than the Annual Limitation.

2. Term. This Agreement shall commence on June 26, 2018 (hereinafter, the "Effective Date-"), and shall continue in full force and effect for an initial period not to exceed five (5) years. Thereafter, this Agreement shall automatically renew each year and shall continue on a year to year basis unless terminated by either party upon six (6) months written notice.

3. Price.

A. Within thirty (30) days of the receipt of an invoice from City, and throughout the term of this Agreement, Buyer shall pay City for water delivered pursuant to this Agreement at the price established by the City Council for raw water. Without limitation on the right of the City Council to raise or otherwise modify these prices, as of the Effective Date, the prices per gallon for raw water have been, are and shall be as follows:

Prior	12/8/2017	11/8/2018	11/8/2019	11/8/2020	11/8/2021
\$0.00273	\$0.00313	\$0.00335	\$0.00359	\$0.00379	\$0.00397

The amount of water furnished shall be measured by the existing meter located directly across Spring Mountain Road from the dam at Lower Reservoir. Any and all maintenance expenses and costs of the meter shall be the sole responsibility of Buyer, payable within thirty (30) days of the receipt of an invoice from City.

B. Without limitation on the provisions of Paragraph 1, and without in any manner excusing Buyer from strict compliance with the Annual Limitation, should Buyer for any reason exceed the Annual Limitation, Buyer shall pay City twice the price under Paragraph 3A above per gallon of water delivered in excess of the Annual Limitation. Without limitation on any other rights or remedies available to the City, and as specified in Paragraph 10.1, the City shall have the right to discontinue and terminate at its discretion the provision of raw water under this Agreement upon ten (10) days prior written notice if and when Buyer exceeds its Annual Limitation.

4. Quality. City does not warrant or guarantee the quality of water coming from the Lower Reservoir or provided to Buyer, or its suitability for any purpose or use by Buyer. Buyer expressly acknowledges, agrees and understands that the water being delivered from the Lower Reservoir pursuant to this Agreement is raw water. Buyer expressly acknowledges and agrees that said water is **not treated** and is **not suitable or intended for human consumption**.

5. Use. Buyer shall use the water delivered under this Agreement solely for vineyard irrigation purposes.

6. Release and Indemnity.

A. Buyer shall defend (with counsel approved by City, which approval shall not be unreasonably withheld), indemnify, and hold harmless City, its elected and appointed officials, employees, volunteers and agents from and against any and all loss, liability, expenses, claims, costs (including reasonable attorney's fees), suits and damages of every kind, nature, and description, directly or indirectly arising from the performance of this Agreement or any third party legal or administrative challenge to City's approval of this Agreement.

B. To the full extent authorized by law, Buyer hereby forever waives, releases and covenants not to sue the City, and its Council members, officials, officers, agents, representatives, insurers and employees, from any and all claims, causes of action and damages, including without limitation damages to Buyer's road and/or Property, arising from or in any manner connected with Buyer's (and its predecessors') acceptance of soil from the City in 2006 or at any other time.

7. Connection Location and Charges. Buyer shall receive raw water via its current water meter and existing three and one-half inch (3.5") diameter pipe located in Spring Mountain Road. Buyer expressly acknowledges and agrees that Spring Mountain Road was resurfaced in October 2013 and has been and is subject to a five-year moratorium on non-emergency utility construction that will lapse in October 2018. Buyer agrees that any proposed improvements relating to the utility connection will require review and approval by the City Engineer as well as an encroachment permit. Buyer is solely responsible for all applicable connection charges.

8. Emergencies. City shall have the unlimited right to shut off or reduce the supply of water to Buyer in the event of an emergency. As used in this Agreement, an "emergency" shall be defined as (1) a fire, act of god, or other natural disaster, (2) malfunction of the water system that prevents distribution to Buyer, or (3) an event declared by resolution of the city council to threaten the public health, safety or welfare.

9. Compliance with Laws. At all times during the term of this Agreement, Buyer shall be bound by and subject to all lawful resolutions, rules, regulations, directives, ordinances and orders of the City applicable to Buyer.

10. Conservation; Declaration of Water Shortage Emergency; Avoidance of City Liability.

10.1 Conservation. In the event City's Director of Public Works, in his or her sole discretion, determines that the Annual Limitation inevitably will be exceeded or that the Annual Limitation has been exceeded, City may require Buyer to undertake additional conservation measures and may shut off raw water delivery, upon ten (10) days prior written notice.

10.2 Water Shortage Emergency. The Lower Reservoir holds approximately 161 acre feet of water at full capacity. Buyer acknowledges and understands that City desires to retain not less than twenty-five percent (25%), or 40.25 acre feet, of this capacity in the reservoir at all times. In addition, Robert Louis Stevenson Middle School ("RLS") uses 10 acre feet per year for

irrigation of athletic fields and landscaped areas. At any time City determines that delivery of the Annual Limitation specified in Paragraph 1 of this Agreement will reduce the water level in the Lower Reservoir below 40.25 acre feet ("Minimum Water Reserves"), the City may declare a water shortage emergency and, upon written notice to Buyer, reduce the Annual Limitation delivered to Buyer as necessary to ensure that the water capacity in the Lower Reservoir does not dip below the Minimum Water Reserves.

10.3 State Ordered Reductions, or Potential Liability Associated with Diversion and Use. Buyer acknowledges and agrees if, at any time during the term of this Agreement, the State of California orders City to reduce the storage volume behind the dam at the Lower Reservoir, the City in its exclusive discretion may reduce the Annual Limitation pursuant to Paragraph 1 of this Agreement and/or turn off and discontinue raw water delivery in order to maintain Minimum Water Reserves and comply with the State of California order. Further, if a federal, state, or local agency or third party orders that the diversion, storage or use of water associated with Lower Reservoir is unlawful, or that the delivery of water to Buyer is unlawful, City in its exclusive discretion may shut off water delivery.

11. Modification of Use Permit with County. Buyer agrees that if any future request or application for approval of amendments or modifications to any of the use permits for the Property are filed with the County of Napa, Buyer shall concurrently submit copies of such application(s) or request(s) to City. In addition, Buyer agrees to provide City with copies of all supporting documents or other information submitted in connection with such requests or applications.

12. Remedies; Prohibition On Damages.

A. As part of the bargained for consideration for this Agreement, the parties agree that any action or proceeding to cure, correct, or remedy any default or to enforce any covenant or promise herein shall be limited solely and exclusively to those remedies expressly provided herein. Either party may institute legal or equitable proceedings to cure, correct or remedy any default of this Agreement; or to enforce any covenants or promises herein, enjoin any threatened or attempted violation, or to enforce by specific performance, injunction, declaratory relief, writ of mandate, and/or other similar non-monetary relief, the obligations and rights of the parties under this Agreement.

B. In no event shall the City, or any of its officers, agents, representatives, officials, Council, employees, or insurers, be liable to Buyer for damages for any breach or violation of this Agreement. In the event Buyer requests damages in any action or proceeding brought for breach or violation of this Agreement or to enforce any provision hereof, then such request shall destroy the consideration supporting the City's agreement to enter into this Agreement, and shall, in turn, entitle the City to immediately terminate and end all obligations under this Agreement, irrespective of any provision to the contrary contained herein. The enforceability and validity of the above limitations on the remedies available to the parties, including, without limitation, the specific provision prohibiting the recovery of damages, is part of the bargained for, negotiated consideration

for the City's agreement to enter into this Agreement, and it is acknowledged that the City would not have entered this Agreement if it were to be liable in damages under this Agreement

13. Notices. All notices and other communications provided for herein shall be in writing and shall be sent to the address set forth below (or such other address as a party may hereafter designate for itself by notice to the other parties as required hereby) of the party for whom such notice or communication is intended:

If to City:

City of St. Helena
Attn: City Manager
1480 Main Street
St. Helena, CA 94574
Facsimile No.: 707-963-7748

If to Buyer:

Spring Mountain Vineyard
Attn: General Manager
2805 Spring Mountain Rd.
St. Helena, CA 94574
Facsimile No.: 707-963-2753

Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid; by hand delivery; by overnight courier service; or by facsimile transmission or by email. Any notice given by facsimile transmission or by email shall be deemed given on the day sent, provided it is sent on a business day during normal business hours, otherwise it will be deemed sent on the next business day. Any notice given by registered or certified mail, return receipt requested, shall be deemed to have been given on the date receipt was acknowledged to the postal authorities. Any notice given by overnight courier service shall be deemed to have been given on the business day following deposit with the courier service. Buyer and City agree that any notice provided by their respective legal counsel shall be deemed to be notice given by Buyer or City, respectively. Either party may, by written notice to the other in the manner aforesaid, change the address to which notices addressed to it shall thereafter be mailed.

14. Force Majeure.

A. "Force Majeure Event" means a cause of non-performance or delay that is not the fault of the party who is required to perform under this Agreement and is beyond that party's reasonable control, including the elements (including floods, earthquakes, windstorms, drought or water shortage and unusually severe weather), fire, energy shortages or rationing, riots, acts of terrorism, war or war-defense conditions, acts of any public enemy, epidemics, the actions or inactions of any governmental entity (excluding City) or that entity's agents, litigation, labor shortages (including shortages caused by strikes or walkouts), and materials shortages.

B. If the performance of any act required by this Agreement to be performed by either City or Buyer is prevented or delayed because of a Force Majeure Event, then the time for performance will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused. An extension of time for any such Force Majeure Event shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this ~~Lease~~ Agreement may also be extended in writing by the mutual agreement of City and Buyer.

C. This Section does not excuse (1) Buyer's obligation to pay for water provided under this Agreement when due and payable; or (2) either party's obligation to perform an act when performance is rendered difficult or impossible solely because of the party's financial condition. Buyer expressly agrees that adverse changes in economic conditions, either of Buyer specifically or the economy generally, or changes in market conditions or demand, shall not constitute grounds of enforced delay pursuant to this Section. Buyer expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the effective date of this Agreement.

15. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party because of breach of this Agreement or to enforce any provision of this Agreement, the venue for such action shall be in the Superior Court of California, County of Napa.

16. Attorneys' Fees. If any legal action is brought by either party to interpret or enforce any terms or provisions of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

17. Severability. The parties hereto agree that the provisions of this Agreement are severable. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected and shall remain in full force and effect unless amended or modified by mutual consent of the parties in writing.

18. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of all tenants, heirs, assigns and successors in interest to the parties hereto and shall be a covenant that runs with the land.

19. Integration. This Agreement, together with any documents expressly incorporated herein, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by each party hereto.

20. Counterparts. This Agreement may be executed in counterparts, and all counterparts shall constitute but one and the same document.

21. No Waiver. The failure of the City to exercise any right under this Agreement shall not constitute or be deemed as a waiver or breach.

Executed the day and year first above written.

BUYER:

SPRING MOUNTAIN VINEYARD, INC.

Dated: _____ By: _____
Constantine S. Yannias, President

Dated: _____ By: _____
General Manager

CITY: CITY OF ST. HELENA,
A municipal corporation,

Dated: _____ By: _____
Mark T. Prestwich
Its: City Manager

Dated: _____ By: _____
~~Alan Galbraith~~
Geoff Ellsworth
Its: Mayor

APPROVED AS TO FORM:

~~Thomas B.~~Michael G. Brown Biddle, City Attorney

ATTEST:

Cindy Tzaopoulos, City Clerk

_____ 1

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for the State of California, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for the State of California, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

Notary Public

OAK #4811-9696-2467 ~~v1~~v3

_____↑

EXHIBIT A**EXHIBIT A****LEGAL DESCRIPTION**

The land referred to in this report is situated in the unincorporated area of the County of Napa, State of California, and is described as follows:

TRACT ONE:

Commencing at a point on the Westerly boundary line of the Carne Humana Rancho distant thereon 29.19 chains Northerly from corner C. H. No. 8 of said Rancho and running thence due North along said Western boundary line of said Rancho 24.40 chains to a stone monument which is one of the corners of the Western boundary line of the Town of St. Helena; thence following the boundary line of said Town of St. Helena South 84-1/2° East 3.11 chains, North 55° East 86 links, South 83° East 2.80 chains, South 72-1/4° East 3.30 chains and North 89-3/4° East 1.60 chains to a large white oak marked "C" standing on the bank of a small branch of York Creek, said point being also a Northwesterly corner of the premises conveyed to E. R. Palmer, et ux, by Deed recorded May 11, 1932 in Book 68 at page 394 of Official Records of Napa County; thence South 27° West along a Westerly line of said premises so conveyed to E. R. Palmer, et ux, and along a Westerly line of the premises conveyed to Alfred H. Meyer, et ux, by Deed recorded June 6, 1935 in Book 98 at page 377 of Official Records of Napa County, 26 chains to the point of commencement.

EXCEPTING THEREFROM that certain property described as Parcel 2 conveyed to Alfred H. Meyer, et ux, by Deed recorded August 23, 1939 in Book 142 at page 418 of Official Records of Napa County.

APN 009-450-001

TRACT TWO:

Commencing at a point formed by the intersection of the Western boundary line of the Carne Humana Rancho with the Southerly line of Hudson or York Creek and running thence Southerly along said boundary line to a stone monument which is one of the corners of the Westerly boundary of the Town of St. Helena; thence following said boundary line of the Town of St. Helena, South 84-1/4° East 3.11 chains, North 55° East 86 links, South 83° East 2.80 chains, South 72-1/4° East 3.30 chains and North 89-3/4° East 1.60 chains to a large white oak marked "C" standing on the bank of a small branch of York Creek, said point being also a Northwesterly corner of the premises conveyed to E. R. Palmer, et ux, by Deed recorded May 11, 1932 in Book 68 at page 394 of Official Records of Napa County; thence South 81-1/2° East along a Northerly line thereof, 5.31 chains to a point from which a black oak tree marked "Y" bears Northeasterly 19 yards, said point being on the Westerly line of the premises conveyed to Ralph R. McMasters, et ux, by Deed recorded June 22, 1936 in Book 107 at page 454 of Official Records of Napa County; thence North 1-3/4° West along said Westerly line and along the Westerly line of the premises conveyed to William L. Gaylord, et ux, by Deed recorded August 31, 1927 in Book 25 at page 320, Napa County Records; 9.28 chains; thence North 35-3/4° East along a Northwesterly line of said premises conveyed to William L. Gaylord, et ux, to the Southerly line of Hudson or York Creek; thence in a general Westerly direction along the Southerly line of said creek to the point of commencement.

APN 022-180-021

TRACT THREE:

The Southeast quarter of the Northeast quarter of Section 34, the South half of the Northwest quarter, the Northeast quarter of the Northwest quarter, the Southwest quarter of the Northeast quarter and all that portion of the Northwest quarter of the Northeast quarter of Section 35 lying Southerly of the Southerly line of the first

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parcel of land described in the Lis Pendens recorded April 2, 1938 in Book 129 at page 94 of Official Records of Napa County, of Section 35, Township 8 North, Range 6 West Mount Diablo Base and Meridian.

APN 022-180-020

TRACT FOUR:

Beginning at a nail and tag stamped LS 4510 in the center of Lemme Road on the North and South line through the middle of the Southeast quarter of Section 27, Township 8 North, Range 6 West, Mount Diablo Base and Meridian, said nail and tag perpetuates the location of Lemme Gate and is shown on Map No. 4084 filed in Book 26 of Surveys at pages 10-11 in the office of the County Recorder of said Napa County; thence along the centerline of Lemme Road, South $88^{\circ} 48' 46''$ West 11.84 feet and on the arc of a tangent curve to the right having a radius of 300 feet through a central angle of $15^{\circ} 08' 59''$ an arc distance of 79.32 feet; thence leaving said centerline North $1^{\circ} 10' 23''$ West 16.00 feet to a rebar and cap stamped LS 4510; thence continuing North $1^{\circ} 10' 23''$ West 345.98 feet to a rebar and cap stamped LS 4510; thence North $1^{\circ} 22' 07''$ East 183.97 feet to a rebar and cap stamped LS 4510; thence North $89^{\circ} 23' 32''$ West 733.91 feet to a rebar and cap stamped LS 4510; thence North $88^{\circ} 26' 35''$ West 517.19 feet to a rebar and cap stamped LS 4510 at the Northeast corner of the Southeast quarter of the Southwest quarter of said Section 27; thence along the lines of said Southeast quarter of the Southwest quarter South $89^{\circ} 57' 28''$ West 1329.32 feet to the Northwest corner thereof and South $0^{\circ} 03' 16''$ West 774.71 feet, more or less, to the most Northerly corner of the 7.5 acre tract conveyed to Jerome C. Draper, et ux, by Deed recorded July 17, 1943 in Book 202 at page 18 of Official Records of Napa County; thence along the Northwesterly line of said 7.5 acre tract South $69^{\circ} 16' 23''$ West, 932.00 feet; thence leaving said northwesterly line south $12^{\circ} 53' 26''$ West, 2145.36 feet to the west line of Section 34 of said Township and Range; thence along the west line of said Section 34, South $0^{\circ} 38' 53''$ West, 760.00 feet to the west quarter corner of said Section 34; thence along the East-West center of section line of Section 34 East 2640 feet, more or less, to the center of Section 34; thence along the North-South center of section line of Section 34, North 1320 feet, more or less, to the Northwest corner of the Southwest quarter of the Northeast quarter of Section 34; thence along the North line of said Southwest quarter of the Northeast quarter East 1320 feet, more or less, to the Southeast corner of the Northwest quarter of the Northeast quarter of said Section 34; thence along the East line of said Northwest quarter of the Northeast quarter, North 867 feet, more or less, to the Southerly corner of the 5.55 acre tract conveyed from Charles Lemme to Jacob L. Beringer, recorded in Book 30 of Deeds at page 429, said Napa County Records; thence along the Southwesterly line of said 5.55 acre tract North $40-1/2^{\circ}$ West 12.60 chains to the center of a ravine and Easterly down the center of said ravine to a point from which the point of beginning bears North $1^{\circ} 34' 10''$ East; thence North $1^{\circ} 34' 10''$ East 4.55 chains to the point of beginning.

APN 022-180-058

TRACT FIVE:

PARCEL ONE:

Commencing at the Lemme Gate on the north and south line through the center of the southeast quarter of Section 27, Township 8 North, Range 6 West, Mount Diablo Base and Meridian; and running thence along the old Lemme Road (which is also the southern line of the parcel of land heretofore conveyed to George F. Chevalier by Deed of record in Book 68 of Deeds at page 229, Napa County Records, as follows: South $85-1/2^{\circ}$ East 3.96 chains, South 57° East, 5.27 chains, South 16° East 1.80 chains, south 74° East, 1.36 chains, South $54-1/2^{\circ}$ East 2.17 chains, South 88° East, 1.95 chains, North $60-1/2^{\circ}$ East 4.30 chains, south 67° East 1.71 chains, South 14° West, 1.49 chains, South $38-1/2^{\circ}$ East, 5.17 chains, North $84-1/2^{\circ}$ East 8.71 chains, North 35° East, 2.50 chains, North 76° East 3.67 chains, South $80-1/2^{\circ}$ East 2.23 chains, South 52° East 1.72 chains, North 63° East, 2.22 chains, South 76° East, 1.72 chains, North $55-3/4^{\circ}$ East, 3.75 chains, South $52-3/4^{\circ}$ East, 2.70 chains, South $12-$

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1/2° East, 1.50 chains, South 78-1/2° East, 1.36 chains, South 84° East, 1.91 chains, North 60° East 1.97 chains, South 69° East, 1.38 chains, East 3.00 chains, South 61° East 3.00 chains and South 33° 41' East 0.61 chains, to the line of land formerly owned by St. Helena Water Company; thence Southerly and along the line of land so owned by said Company to a point on the line between Sections 26 and 35, in Township 8 North, Range 6 West, distance about 50 links west of the quarter section corner; thence with government subdivision lines as follows: West 19.50 chains, South 20 chains and west 40 chains to the aforesaid north and south centerline of the southeast quarter of Section 27, in Township 8 North, Range 6 West; and thence North along last mentioned line, 31 chains to the point of commencement. Being a portion of the south half of the southwest quarter of Section 26 and of the southeast quarter of the southeast quarter of Section 27 and all of the northeast quarter of the northeast quarter of Section 34, all of the northwest quarter of the northwest quarter of Section 35, all in Township 8 North, Range 6 West, Mount Diablo Base and Meridian.

APN 022-180-017 (portion)

PARCEL TWO:

The southwest quarter of the northeast quarter of Section 34, Township 8 North, Range 6 West, Mount Diablo Base and Meridian.

APN 022-180-017 (portion)

PARCEL THREE:

Commencing in the center of a ravine running through the Dixon flat and distant due South along the north and south centerline of the southeast quarter of Section 27, Township 8 North, Range 6 West, Mount Diablo Base and Meridian, 4.55 chains from the point of commencement, designated in the description next proceeding; running thence due south, along said north and south centerline, 12.36 chains, to a stake at the foot of a small oak marked "L&B", at the junction with the line of the former Lemme Vineyard fence continued; thence North 40-1/2° West, 12.60 chains, in line with said vineyard fence and along the same and the continuation thereof, to the center of the aforesaid ravine; and thence down said ravine, following all of its meanderings, to the point of commencement.

Being a portion of the southwest quarter of the southeast quarter of Section 27 and of the northwest quarter of the northeast quarter of Section 34, in Township 8 North, Range 6 West, Mount Diablo Base and Meridian, and being the same parcel of land acquired by Jacob L. Beringer by Deed from Chas. Lemme of record in Book 30 of Deeds at page 429, Napa County Records.

APN 022-180-017 (portion)

TRACT SIX:

Commencing on the South side of York Creek at the point of intersection of a line on a water level with the County Road on the North side of said creek with the North line of the Lemme Road near the quarter section corner of the South boundary of Section 26, Township 8 North, Range 6 West, Mount Diablo Base and Meridian; thence along said Lemme Road the following courses and distances: North 33° 41' West 0.61 chains, North 61° West 3.00 chains, West 3.00 chains, North 69° West 1.38 chains, South 60° West 1.97 chains, North 84° West 1.91 chains, North 78-1/2° West 1.36 chains, North 12-1/2° West 1.50 chains, North 52-3/4° West 2.70 chains, South 55-3/4° West 3.75 chains, North 76° West 1.72 chains, South 63° West 2.22 chains, North 52° West 1.72 chains, North 80-1/2° West 2.33 chains, South 76° West 3.67 chains, South 35° West 2.50 chains, South 84-1/2° West 8.71 chains, North 38-1/2° West 1.50 chains; thence leaving said Lemme Road, North 22-1/2° East 21.21 chains, more or less, to a point on the South side of York Creek on a water level with the County Road on the

Exhibit A-5



North side of said creek; and thence Southeast down the South side of York Creek and on a water level with the County Road on the North side of said creek to said Lemme Road and the point of commencement.

EXCEPTING THEREFROM any portion lying within the bounds of the tract of land described in the Judgment to the Town of St. Helena, rendered in the Superior Court of the State of California, in and for the County of Napa, Case No. 7761, a Notice of Lis Pendens having been recorded April 2, 1938 in Book 129 at page 94 of Official Records of Napa County.

APN 022-180-015

TRACT SEVEN:

Beginning at a nail and tag stamped LS 4510 on the centerline of Lemme Road as shown on Map No. 4531 filed in Book 28 of Surveys at page 47 in the office of the County Recorder of said Napa County, said point being the Southwest corner of Parcel Two as shown on said map; thence leaving said centerline of Lemme Road along the Westerly line of said Parcel Two as shown on said map, North 1° 10' 23" West 16.00 feet to a rebar and cap stamped LS 4510; thence continuing North 1° 10' 23" West 345.98 feet to a rebar and cap stamped LS 4510; thence North 1° 22' 07" East 183.97 feet to a rebar and cap stamped LS 4510; thence leaving said Westerly line of Parcel Two, North 88° 28' 11" East 21.08 feet to a rebar and cap stamped LS 4510; thence North 29° 46' 59" East 140.36 feet to a rebar and cap stamped LS 4510; thence North 61° 59' 13" East 136.20 feet to a rebar and cap stamped LS 4510; thence North 51° 31' 51" East 119.53 feet to a rebar and cap stamped LS 4510; thence North 60° 07' 31" East 172.56 feet to a rebar and cap stamped LS 4510; thence South 14° 00' 40" East 114.88 feet to a rebar and cap stamped LS 4510; thence South 53° 12' 33" East 33.51 feet to a rebar and cap stamped LS 4510; thence North 45° 02' 37" East 323.99 feet to a rebar and cap stamped LS 4510; thence North 52° 13' 22" East 163.29 feet, more or less, to the North side of "Chevalier's Road" up the South side of York Creek; thence Southeasterly down the South side of York Creek, and on a water level with the County Road on the North side of said creek to the Northwestern corner of the property described in the Deed to Dudley R. Day, et ux, recorded December 5, 1949 in Book 319 at page 364 of Official Records of Napa County; thence South 22-1/2° West along the Western line of said Day's property, 21.21 chains, more or less, to Lemme Road; thence along Lemme Road Westerly to the point of commencement.

APN 022-180-053

TRACT EIGHT:

Beginning at a rebar stamped LS 4510 at the Southwest corner of the Northeast quarter of the Southwest quarter of Section 27, Township 8 North, Range 6 West, Mount Diablo Base and Meridian, said rebar and cap being shown on Map No. 4084 filed in Book 26 of Surveys at pages 10-11 in the office of the County Recorder of said Napa County; thence North 0° 03' 16" East 1050.17 feet along the West line of the Northeast quarter of the Southwest quarter of said Section 27 to a rebar and cap stamped LS 4510; thence continuing North 0° 03' 16" East 32.05 feet to a nail and tag stamped LS 4510 on the centerline of Spring Mountain Road, said point being on a non-tangent curve from which the radius point bears South 19° 52' 21" East 500.00 feet; thence Northeasterly along the centerline of Spring Mountain Road on said non-tangent curve to the right having a radius of 500.00 feet through a central angle of 6° 07' 47" an arc length of 53.49 feet; thence on a tangent course North 76° 15' 26" East 78.71 feet; thence on a tangent curve to the right having a radius of 250.00 feet through a central angle of 43° 25' 37" an arc length of 189.48 feet; thence on a tangent course South 60° 18' 58" East 0.67 feet; thence on a tangent curve to the left having a radius of 75.00 feet through a central angle of 93° 02' 02" an arc length of 121.78 feet; thence on a tangent course North 26° 39' 00" East 138.74 feet; thence on a tangent curve to the right having a radius of 300.00 feet through a central angle of 4° 43' 57" an arc length of 24.78 feet to a nail and tag

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stamped LS 4510, said point being on the North line of the Northeast quarter of the Southwest quarter of said Section 27; thence leaving said centerline of Spring Mountain Road and along said North line South 89° 45' 02" East 35.79 feet to a rebar and cap stamped LS 4510; thence continuing along said North line South 89° 45' 02" East 244.15 feet to the center of York Creek; thence up the center of said creek the following courses: South 63° 26' 50" West 168.42 feet, South 9° 54' 54" West 50.15 feet, South 40° 24' 39" East 115.99 feet, South 27° 48' 41" West 64.76 feet, South 13° 40' 59" East 150.40 feet, North 55° 39' 19" East 9.71 feet, North 68° 58' 59" East 101.30 feet, South 35° 36' 48" East 129.48 feet, South 5° 32' 59" East 55.71 feet, North 87° 13' 40" East 93.47 feet, South 8° 59' 16" West 83.26 feet, South 34° 28' 49" East 217.85 feet, South 53° 26' 00" East 36.39 feet, South 13° 34' 30" West 170.81 feet, South 18° 36' 18" East 163.50 feet, South 50° 00' 00" West 100.00 feet and South 40° 00' 00" West 86.23 feet to the South line of the Northeast quarter of the Southwest quarter of said Section 27; thence along said line South 89° 57' 28" West 988.38 feet to the point of beginning.

APN 022-260-012

TRACT NINE:

Beginning at a rebar and cap stamped LS 4510 at the Northeast corner of Draper as shown on Map No. 4531 filed in Book 28 of Surveys at page 47 in the office of the County Recorder of said Napa County; thence North 88° 28' 11" East 21.08 feet to a rebar and cap stamped LS 4510; thence North 29° 46' 59" East 140.36 feet to a rebar and cap stamped LS 4510; thence North 61° 59' 13" East 136.20 feet to a rebar and cap stamped LS 4510; thence North 51° 31' 51" East 119.53 feet to a rebar and cap stamped LS 4510; thence North 60° 07' 31" East 172.56 feet to a rebar and cap stamped LS 4510; thence South 14° 00' 40" East 114.88 feet to a rebar and cap stamped LS 4510; thence South 53° 12' 33" East 33.51 feet to a rebar and cap stamped LS 4510; thence North 45° 02' 37" East 323.99 feet to a rebar and cap stamped LS 4510; thence North 52° 13' 22" East 163.29 feet, more or less, to the North side of "Chevalier's Road" up the South side of York Creek; thence Northwesterly up the Southerly side of York Creek, and a water level with the County Road on the North side of said creek to the North line of the Northwest quarter of the Southeast quarter of Section 27, Township 8 North, Range 6 West, Mount Diablo Base and Meridian; thence North 89° 45' 02" West along said line 146.38 feet, more or less, to the center of said Section 27; thence along the East-West center of section line of said Section 27, North 89° 45' 02" West 560.94 feet to the center of York Creek; thence up the center of said creek the following courses: South 63° 26' 50" West 168.42 feet, South 9° 54' 54" West 50.15 feet, South 40° 24' 39" East 115.99 feet, South 27° 48' 41" West 64.76 feet, South 13° 40' 59" East 150.40 feet, North 55° 39' 19" East 9.71 feet, North 68° 58' 59" East 101.30 feet, South 35° 36' 48" East 129.48 feet, South 5° 32' 59" East 55.71 feet, North 87° 13' 40" East 93.47 feet, South 8° 59' 16" West 83.26 feet, South 34° 28' 49" East 217.85 feet, South 53° 26' 00" East 36.39 feet, South 13° 34' 30" West 170.81 feet, South 18° 36' 18" East 163.50 feet, South 50° 00' 00" West 100.00 feet and South 40° 00' 00" West 86.23 feet to the South line of the Northeast quarter of the Southwest quarter of said Section 27 as shown on Map No. 4084 filed in Book 26 of Surveys at pages 10-11 in the office of the County Recorder of said Napa County; thence along said South line North 89° 57' 28" East 340.95 feet to a rebar and cap stamped LS 4510 at the Southeast corner of the Northeast quarter of the Southwest quarter of said Section 27 as shown on said Map No. 4084 and Map No. 4531; thence along the Southerly lines of said Parcel One as shown on said Map No. 4531, South 88° 26' 35" East 517.19 feet to a rebar and cap stamped LS 4510 and South 89° 23' 32" East 733.91 feet to the point of beginning.

APN 022-260-013

Comparison Details	
Title	compareDocs Comparison Results
Date & Time	9/5/2019 12:39:35 PM
Comparison Time	1.69 seconds
compareDocs version	v4.3.300.65

Sources	
Original Document	[#4811-9696-2467] [v1] City SMV Water Use Agreement - Revised 2019.docx
Modified Document	[#4811-9696-2467] [v3] City SMV Water Use Agreement - Revised 2019.docx

Comparison Statistics		Word Rendering Set Markup Options	
Insertions	18	Name	
Deletions	7	Insertions	
Changes	8	Deletions	
Moves	0	Moves / Moves	
Font Changes	0	Font Changes	
Paragraph Style Changes	0	Paragraph Style Changes	
Character Style Changes	0	Character Style Changes	
TOTAL CHANGES	33	Inserted cells	
		Deleted cells	
		Merged cells	
		Changed lines	Mark left border.
		Comments color	By Author.
		Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	[Yes / No]
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True

CITY OF ST. HELENA

RESOLUTION No. 2019-

Resolution of the City Council of the City of St. Helena approving and authorizing the City Manager to execute, enter into and carry out the terms of a Revised 2018 Extension Of Raw Water Agreement between the City of St. Helena and Spring Mountain Vineyards, Inc. for property located at 2805 Spring Mountain Road, Napa County, California (APN 009-450-001; 022-180-021; 022-180-020; 022-180-058; 022-180-017; 022-180-015; 022-180-053; 022-260-012; 022-260-013)

- A. June 26, 2018, the City Council considered and approved a 2018 Extension Of Raw Water Use Agreement ("Agreement") between the City of St. Helena ("City") and Spring Mountain Vineyards, Inc. ("SMV") for the provision of raw water for vineyard irrigation purposes to property located at 2805 Spring Mountain Road, commonly referred to as Spring Mountain Vineyard; and
- B. The Agreement was executed by the City and SMV effective as of June 26, 2018 and subsequently recorded in the Official Records of Napa County on October 17, 2018. The term of the Agreement was for five (5) years from the effective date of June 26, 2018; and
- C. It has recently come to the attention of City staff and representatives of SMV that the Agreement was recorded without the inclusion of the legal descriptions of the property owned by SMV and subject to the terms of the Agreement, the assessor parcel numbers listed in the Agreement are incomplete, the parcel identified as being located within the City of St. Helena is incorrect, and there is an internal reference within the Agreement to a "Lease" which ought to be referring to the Agreement; and
- D. A proposed Revised 2018 Extension Of Raw Water Use Agreement ("Revised Agreement") has been prepared by City staff for the City Council's consideration and approval to correct these minor, yet important details; now, therefore

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. For purposes of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), a "project" is defined in State CEQA Guidelines Section 15378 (a) as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment". The City Council hereby finds that the action to approve this Revised Agreement serves only to correct the description of the real property subject to its terms and will not result

in any change in the environment and thus is not a project subject to the requirements of CEQA. Further, even if the action to approve this Revised Agreement was deemed to be a project subject to CEQA, the City Council finds approval of this Revised Agreement is exempt from CEQA under the common sense exemption set forth in Section 15061(b)(3), which provides that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and thus where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

2. The City Council hereby authorizes the City Manager to execute, enter into and carry out the terms of the Revised 2018 Extension Of Raw Water Use Agreement, in the form attached hereto as **Exhibit A**, between the City of St. Helena and Spring Mountain Vineyards for the provision of raw water for vineyard irrigation purposes to property located at 2805 Spring Mountain Road, commonly referred to as "Spring Mountain Vineyard", and identified by Napa County Assessor's Parcel Nos. 009-450-001; 022-180-021; 022-180-020; 022-180-058; 022-180-017; 022-180-015; 022-180-053; 022-260-012; and 022-260-013, inclusive of such revisions and corrections thereto as may be approved by the City Manager and City Attorney which do not increase the obligations nor impair the rights of the City thereunder.

Approved at a Regular Meeting of the St. Helena City Council on September 10, 2019 by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Koberstein:	_____
Councilmember Chouteau:	_____
Councilmember Knudsen:	_____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafopoulos, City Clerk

EXEMPT FROM RECORDING FEES PURSUANT
TO GOVERNMENT CODE §27383 AND
BUILDING HOMES & JOBS TRUST FUND
FEE PER GOVERNMENT CODE §27388.1(A)(2)(D)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City Clerk
City of St. Helena
1480 Main Street
St. Helena, California 94574

Assessor's Parcel No(s). 009-450-001; 022-180-021; 022-180-020; 022-180-058; 022-180-017;
022-180-015; 022-180-053; 022-260-012; 022-260-013

REVISED 2018 EXTENSION OF RAW WATER USE AGREEMENT

SPRING MOUNTAIN VINEYARD, INC.

THIS REVISED 2018 EXTENSION OF RAW WATER USE AGREEMENT

(“AGREEMENT”) is entered into as of this ____ day of _____, 2019, by and between the City of St. Helena, a California municipal corporation (“City”), on the one hand, and Spring Mountain Vineyard, Inc., a Delaware corporation (“Buyer”), on the other, and upon execution and recording of this Agreement in the Official Records of Napa County (“Official Records”), this Agreement shall amend and replace in its entirety that certain 2018 Extension Of Raw Water Use Agreement dated June 26, 2018, and recorded on October 17, 2018 in the Official Records at Document No. 2018-0020105. City and Buyer are sometimes referred to herein individually as a “party” and collectively as the “parties.”

RECITALS

A. Buyer is the owner of that certain real property generally located on the southerly side of Spring Mountain Road at 2805 Spring Mountain Road, commonly referred to as “Spring Mountain Vineyard”, and identified by Napa County Assessor’s Parcel Nos. 009-450-001; 022-180-021; 022-180-020; 022-180-058; 022-180-017; 022-180-015; 022-180-053; 022-260-012; and 022-260-013, and more particularly described in the legal description attached hereto as **Exhibit A** and incorporated herein by this reference (the “Property”). That portion of the Property identified as Napa County Assessor Parcel No. 009-450-001 is located in the City of St. Helena.

B. City is the owner of that certain reservoir (the “Lower Reservoir”) located on the northerly side of Spring Mountain Road and identified by Napa County Assessor’s Parcel No. 009-131-013.

C. On August 28, 1990, City adopted City Council Resolution No. 90-91 approving a Water Use Agreement between City and Buyer's predecessor in interest, Michael Robbins (the "1990 Water Use Agreement").

D. The 1990 Water Use Agreement was amended in 1996 by the "Amended Agreement." That Amended Agreement terminated on June 30, 2006. Since that time, the City believes that it has had no obligation to provide raw water from the Lower Reservoir to Buyer. The City has continued to voluntarily provide raw water to Buyer, even though the City has no ongoing obligation to do so.

E. Following the expiration of the Amended Agreement on June 30, 2006, Buyer continued to purchase water from the City substantially under the terms of that expired agreement, although the volume of water used by Buyer exceeded the 25-acre feet authorized by the 1990 Water Use Agreement and the Amended Agreement.

F. On May 24, 2016, City adopted City Council Resolution No. 2016-64 approving a Raw Water Use Agreement between City and Buyer (the "2016 Raw Water Use Agreement").

G. Buyer desires to continue to use raw water from the Lower Reservoir to irrigate its vineyards, and City is willing to continue to sell said water to Buyer upon the terms and conditions set forth hereinafter.

H. The parties mutually desire to (i) extend and amend the 2016 Raw Water Use Agreement; (ii) strictly limit Buyer's actual annual water usage; and (iii) set forth the respective obligations of the parties and the terms under which City will continue to sell and Buyer will continue to purchase raw water from the City from Lower Reservoir.

I. This Agreement confirms the City's intent to continue to use the raw water for beneficial purposes pursuant to pre-1914 water rights claimed by the City associated with water in Lower Reservoir.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. Supply. City shall provide water from the Lower Reservoir to the Property up to a maximum of twenty-five (25) acre-feet (i.e. 8,146,275 gallons) per Water Year ("Annual Limitation") upon the terms and conditions set forth herein. As used herein, the term "Water Year" shall mean the twelve-month period between July 1st and June 30th each year. Buyer shall in no event use more water than the Annual Limitation.

2. Term. This Agreement shall commence on June 26, 2018 (hereinafter, the "Effective Date"), and shall continue in full force and effect for an initial period not to exceed five (5) years. Thereafter, this Agreement shall automatically renew each year and shall continue on a year to year basis unless terminated by either party upon six (6) months written notice.

3. Price.

A. Within thirty (30) days of the receipt of an invoice from City, and throughout the term of this Agreement, Buyer shall pay City for water delivered pursuant to this Agreement at the price established by the City Council for raw water. Without limitation on the right of the City Council to raise or otherwise modify these prices, as of the Effective Date, the prices per gallon for raw water have been, are and shall be as follows:

Prior	12/8/2017	11/8/2018	11/8/2019	11/8/2020	11/8/2021
\$0.00273	\$0.00313	\$0.00335	\$0.00359	\$0.00379	\$0.00397

The amount of water furnished shall be measured by the existing meter located directly across Spring Mountain Road from the dam at Lower Reservoir. Any and all maintenance expenses and costs of the meter shall be the sole responsibility of Buyer, payable within thirty (30) days of the receipt of an invoice from City.

B. Without limitation on the provisions of Paragraph 1, and without in any manner excusing Buyer from strict compliance with the Annual Limitation, should Buyer for any reason exceed the Annual Limitation, Buyer shall pay City twice the price under Paragraph 3A above per gallon of water delivered in excess of the Annual Limitation. Without limitation on any other rights or remedies available to the City, and as specified in Paragraph 10.1, the City shall have the right to discontinue and terminate at its discretion the provision of raw water under this Agreement upon ten (10) days prior written notice if and when Buyer exceeds its Annual Limitation.

4. Quality. City does not warrant or guarantee the quality of water coming from the Lower Reservoir or provided to Buyer, or its suitability for any purpose or use by Buyer. Buyer expressly acknowledges, agrees and understands that the water being delivered from the Lower Reservoir pursuant to this Agreement is raw water. Buyer expressly acknowledges and agrees that said water is **not treated** and is **not suitable or intended for human consumption**.

5. Use. Buyer shall use the water delivered under this Agreement solely for vineyard irrigation purposes.

6. Release and Indemnity.

A. Buyer shall defend (with counsel approved by City, which approval shall not be unreasonably withheld), indemnify, and hold harmless City, its elected and appointed officials, employees, volunteers and agents from and against any and all loss, liability, expenses, claims, costs (including reasonable attorney's fees), suits and damages of every kind, nature, and description,

directly or indirectly arising from the performance of this Agreement or any third party legal or administrative challenge to City's approval of this Agreement.

B. To the full extent authorized by law, Buyer hereby forever waives, releases and covenants not to sue the City, and its Council members, officials, officers, agents, representatives, insurers and employees, from any and all claims, causes of action and damages, including without limitation damages to Buyer's road and/or Property, arising from or in any manner connected with Buyer's (and its predecessors') acceptance of soil from the City in 2006 or at any other time.

7. Connection Location and Charges. Buyer shall receive raw water via its current water meter and existing three and one-half inch (3.5") diameter pipe located in Spring Mountain Road. Buyer expressly acknowledges and agrees that Spring Mountain Road was resurfaced in October 2013 and has been and is subject to a five-year moratorium on non-emergency utility construction that will lapse in October 2018. Buyer agrees that any proposed improvements relating to the utility connection will require review and approval by the City Engineer as well as an encroachment permit. Buyer is solely responsible for all applicable connection charges.

8. Emergencies. City shall have the unlimited right to shut off or reduce the supply of water to Buyer in the event of an emergency. As used in this Agreement, an "emergency" shall be defined as (1) a fire, act of god, or other natural disaster, (2) malfunction of the water system that prevents distribution to Buyer, or (3) an event declared by resolution of the city council to threaten the public health, safety or welfare.

9. Compliance with Laws. At all times during the term of this Agreement, Buyer shall be bound by and subject to all lawful resolutions, rules, regulations, directives, ordinances and orders of the City applicable to Buyer.

10. Conservation; Declaration of Water Shortage Emergency; Avoidance of City Liability.

10.1 Conservation. In the event City's Director of Public Works, in his or her sole discretion, determines that the Annual Limitation inevitably will be exceeded or that the Annual Limitation has been exceeded, City may require Buyer to undertake additional conservation measures and may shut off raw water delivery, upon ten (10) days prior written notice.

10.2 Water Shortage Emergency. The Lower Reservoir holds approximately 161 acre feet of water at full capacity. Buyer acknowledges and understands that City desires to retain not less than twenty-five percent (25%), or 40.25 acre feet, of this capacity in the reservoir at all times. In addition, Robert Louis Stevenson Middle School ("RLS") uses 10 acre feet per year for irrigation of athletic fields and landscaped areas. At any time City determines that delivery of the Annual Limitation specified in Paragraph 1 of this Agreement will reduce the water level in the Lower Reservoir below 40.25 acre feet ("Minimum Water Reserves"), the City may declare a water shortage emergency and, upon written notice to Buyer, reduce the Annual Limitation delivered to Buyer as necessary to ensure that the water capacity in the Lower Reservoir does not dip below the Minimum Water Reserves.

10.3 State Ordered Reductions, or Potential Liability Associated with Diversion and Use. Buyer acknowledges and agrees if, at any time during the term of this Agreement, the State of California orders City to reduce the storage volume behind the dam at the Lower Reservoir, the City in its exclusive discretion may reduce the Annual Limitation pursuant to Paragraph 1 of this Agreement and/or turn off and discontinue raw water delivery in order to maintain Minimum Water Reserves and comply with the State of California order. Further, if a federal, state, or local agency or third party orders that the diversion, storage or use of water associated with Lower Reservoir is unlawful, or that the delivery of water to Buyer is unlawful, City in its exclusive discretion may shut off water delivery.

11. Modification of Use Permit with County. Buyer agrees that if any future request or application for approval of amendments or modifications to any of the use permits for the Property are filed with the County of Napa, Buyer shall concurrently submit copies of such application(s) or request(s) to City. In addition, Buyer agrees to provide City with copies of all supporting documents or other information submitted in connection with such requests or applications.

12. Remedies; Prohibition On Damages.

A. As part of the bargained for consideration for this Agreement, the parties agree that any action or proceeding to cure, correct, or remedy any default or to enforce any covenant or promise herein shall be limited solely and exclusively to those remedies expressly provided herein. Either party may institute legal or equitable proceedings to cure, correct or remedy any default of this Agreement; or to enforce any covenants or promises herein, enjoin any threatened or attempted violation, or to enforce by specific performance, injunction, declaratory relief, writ of mandate, and/or other similar non-monetary relief, the obligations and rights of the parties under this Agreement.

B. In no event shall the City, or any of its officers, agents, representatives, officials, Council, employees, or insurers, be liable to Buyer for damages for any breach or violation of this Agreement. In the event Buyer requests damages in any action or proceeding brought for breach or violation of this Agreement or to enforce any provision hereof, then such request shall destroy the consideration supporting the City's agreement to enter into this Agreement, and shall, in turn, entitle the City to immediately terminate and end all obligations under this Agreement, irrespective of any provision to the contrary contained herein. The enforceability and validity of the above limitations on the remedies available to the parties, including, without limitation, the specific provision prohibiting the recovery of damages, is part of the bargained for, negotiated consideration for the City's agreement to enter into this Agreement, and it is acknowledged that the City would not have entered this Agreement if it were to be liable in damages under this Agreement

13. Notices. All notices and other communications provided for herein shall be in writing and shall be sent to the address set forth below (or such other address as a party may hereafter designate for itself by notice to the other parties as required hereby) of the party for whom such notice or communication is intended:

If to City:

City of St. Helena
Attn: City Manager
1480 Main Street
St. Helena, CA 94574
Facsimile No.: 707-963-7748

If to Buyer:

Spring Mountain Vineyard
Attn: General Manager
2805 Spring Mountain Rd.
St. Helena, CA 94574
Facsimile No.: 707-963-2753

Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid; by hand delivery; by overnight courier service; or by facsimile transmission or by email. Any notice given by facsimile transmission or by email shall be deemed given on the day sent, provided it is sent on a business day during normal business hours, otherwise it will be deemed sent on the next business day. Any notice given by registered or certified mail, return receipt requested, shall be deemed to have been given on the date receipt was acknowledged to the postal authorities. Any notice given by overnight courier service shall be deemed to have been given on the business day following deposit with the courier service. Buyer and City agree that any notice provided by their respective legal counsel shall be deemed to be notice given by Buyer or City, respectively. Either party may, by written notice to the other in the manner aforesaid, change the address to which notices addressed to it shall thereafter be mailed.

14. Force Majeure.

A. “Force Majeure Event” means a cause of non-performance or delay that is not the fault of the party who is required to perform under this Agreement and is beyond that party’s reasonable control, including the elements (including floods, earthquakes, windstorms, drought or water shortage and unusually severe weather), fire, energy shortages or rationing, riots, acts of terrorism, war or war-defense conditions, acts of any public enemy, epidemics, the actions or inactions of any governmental entity (excluding City) or that entity’s agents, litigation, labor shortages (including shortages caused by strikes or walkouts), and materials shortages.

B. If the performance of any act required by this Agreement to be performed by either City or Buyer is prevented or delayed because of a Force Majeure Event, then the time for performance will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused. An extension of time for any such Force Majeure Event shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Buyer.

C. This Section does not excuse (1) Buyer's obligation to pay for water provided under this Agreement when due and payable; or (2) either party's obligation to perform an act when performance is rendered difficult or impossible solely because of the party's financial condition. Buyer expressly agrees that adverse changes in economic conditions, either of Buyer specifically or the economy generally, or changes in market conditions or demand, shall not constitute grounds of enforced delay pursuant to this Section. Buyer expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the effective date of this Agreement.

15. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party because of breach of this Agreement or to enforce any provision of this Agreement, the venue for such action shall be in the Superior Court of California, County of Napa.

16. Attorneys' Fees. If any legal action is brought by either party to interpret or enforce any terms or provisions of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

17. Severability. The parties hereto agree that the provisions of this Agreement are severable. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected and shall remain in full force and effect unless amended or modified by mutual consent of the parties in writing.

18. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of all tenants, heirs, assigns and successors in interest to the parties hereto and shall be a covenant that runs with the land.

19. Integration. This Agreement, together with any documents expressly incorporated herein, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by each party hereto.

20. Counterparts. This Agreement may be executed in counterparts, and all counterparts shall constitute but one and the same document.

21. No Waiver. The failure of the City to exercise any right under this Agreement shall not constitute or be deemed as a waiver or breach.

Executed the day and year first above written.

BUYER:

SPRING MOUNTAIN VINEYARD, INC.

Dated: _____

By: _____
Constantine S. Yannias, President

Dated: _____

By: _____
General Manager

CITY:

CITY OF ST. HELENA,
A municipal corporation,

Dated: _____

By: _____
Mark T. Prestwich
Its: City Manager

Dated: _____

By: _____
Geoff Ellsworth
Its: Mayor

APPROVED AS TO FORM:

Michael G. Biddle, City Attorney

ATTEST:

Cindy Tzafopoulos, City Clerk

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

STATE OF CALIFORNIA)
) ss.
 COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for the State of California, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

 Notary Public

STATE OF CALIFORNIA)
) ss.
 COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for the State of California, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

 Notary Public

with the Southerly line of Hudson or York Creek and running thence Southerly along said boundary line to a stone monument which is one of the corners of the Westerly boundary of the Town of St. Helena; thence following said boundary line of the Town of St. Helena, South 84-1/4° East 3.11 chains, North 55° East 86 links, South 83° East 2.80 chains, South 72-1/4° East 3.30 chains and North 89-3/4° East 1.60 chains to a large white oak marked "C" standing on the bank of a small branch of York Creek, said point being also a Northwesterly corner of the premises conveyed to E. R. Palmer, et ux, by Deed recorded May 11, 1932 in Book 68 at page 394 of Official Records of Napa County; thence South 81-1/2° East along a Northerly line thereof, 5.31 chains to a point from which a black oak tree marked "Y" bears Northeasterly 19 yards, said point being on the Westerly line of the premises conveyed to Ralph R. McMasters, et ux, by Deed recorded June 22, 1936 in Book 107 at page 454 of Official Records of Napa County; thence North 1-3/4° West along said Westerly line and along the Westerly line of the premises conveyed to William L. Gaylord, et ux, by Deed recorded August 31, 1927 in Book 25 at page 320, Napa County Records; 9.28 chains; thence North 35-3/4° East along a Northwesterly line of said premises conveyed to William L. Gaylord, et ux, to the Southerly line of Hudson or York Creek; thence in a



EXHIBIT A

LEGAL DESCRIPTION

The land referred to in this report is situated in the unincorporated area of the County of Napa, State of California, and is described as follows:

TRACT ONE:

Commencing at a point on the Westerly boundary line of the Carne Humana Rancho distant thereon 29.19 chains Northerly from corner C. H. No. 8 of said Rancho and running thence due North along said Western boundary line of said Rancho 24.40 chains to a stone monument which is one of the corners of the Western boundary line of the Town of St. Helena; thence following the boundary line of said Town of St. Helena South 84-1/2° East 3.11 chains, North 55° East 86 links, South 83° East 2.80 chains, South 72-1/4° East 3.30 chains and North 89-3/4° East 1.60 chains to a large white oak marked "C" standing on the bank of a small branch of York Creek, said point being also a Northwesterly corner of the premises conveyed to E. R. Palmer, et ux, by Deed recorded May 11, 1932 in Book 68 at page 394 of Official Records of Napa County; thence South 27° West along a Westerly line of said premises so conveyed to E. R. Palmer, et ux, and along a Westerly line of the premises conveyed to Alfred H. Meyer, et ux, by Deed recorded June 6, 1935 in Book 98 at page 377 of Official Records of Napa County, 26 chains to the point of commencement.

EXCEPTING THEREFROM that certain property described as Parcel 2 conveyed to Alfred H. Meyer, et ux, by Deed recorded August 23, 1939 in Book 142 at page 418 of Official Records of Napa County.

APN 009-450-001

TRACT TWO:

Commencing at a point formed by the intersection of the Western boundary line of the Carne Humana Rancho with the Southerly line of Hudson or York Creek and running thence Southerly along said boundary line to a stone monument which is one of the corners of the Westerly boundary of the Town of St. Helena; thence following said boundary line of the Town of St. Helena, South 84-1/4° East 3.11 chains, North 55° East 86 links, South 83° East 2.80 chains, South 72-1/4° East 3.30 chains and North 89-3/4° East 1.60 chains to a large white oak marked "C" standing on the bank of a small branch of York Creek, said point being also a Northwesterly corner of the premises conveyed to E. R. Palmer, et ux, by Deed recorded May 11, 1932 in Book 68 at page 394 of Official Records of Napa County; thence South 81-1/2° East along a Northerly line thereof, 5.31 chains to a point from which a black oak tree marked "Y" bears Northeasterly 19 yards, said point being on the Westerly line of the premises conveyed to Ralph R. McMasters, et ux, by Deed recorded June 22, 1936 in Book 107 at page 454 of Official Records of Napa County; thence North 1-3/4° West along said Westerly line and along the Westerly line of the premises conveyed to William L. Gaylord, et ux, by Deed recorded August 31, 1927 in Book 25 at page 320, Napa County Records; 9.28 chains; thence North 35-3/4° East along a Northwesterly line of said premises conveyed to William L. Gaylord, et ux, to the Southerly line of Hudson or York Creek; thence in a general Westerly direction along the Southerly line of said creek to the point of commencement.

APN 022-180-021

TRACT THREE:

The Southeast quarter of the Northeast quarter of Section 34, the South half of the Northwest quarter, the Northeast quarter of the Northwest quarter, the Southwest quarter of the Northeast quarter and all that portion of the Northwest quarter of the Northeast quarter of Section 35 lying Southerly of the Southerly line of the first



parcel of land described in the Lis Pendens recorded April 2, 1938 in Book 129 at page 94 of Official Records of Napa County, of Section 35, Township 8 North, Range 6 West Mount Diablo Base and Meridian.

APN 022-180-020

TRACT FOUR:

Beginning at a nail and tag stamped LS 4510 in the center of Lemme Road on the North and South line through the middle of the Southeast quarter of Section 27, Township 8 North, Range 6 West, Mount Diablo Base and Meridian, said nail and tag perpetuates the location of Lemme Gate and is shown on Map No. 4084 filed in Book 26 of Surveys at pages 10-11 in the office of the County Recorder of said Napa County; thence along the centerline of Lemme Road, South $88^{\circ} 48' 46''$ West 11.84 feet and on the arc of a tangent curve to the right having a radius of 300 feet through a central angle of $15^{\circ} 08' 59''$ an arc distance of 79.32 feet; thence leaving said centerline North $1^{\circ} 10' 23''$ West 16.00 feet to a rebar and cap stamped LS 4510; thence continuing North $1^{\circ} 10' 23''$ West 345.98 feet to a rebar and cap stamped LS 4510; thence North $1^{\circ} 22' 07''$ East 183.97 feet to a rebar and cap stamped LS 4510; thence North $89^{\circ} 23' 32''$ West 733.91 feet to a rebar and cap stamped LS 4510; thence North $88^{\circ} 26' 35''$ West 517.19 feet to a rebar and cap stamped LS 4510 at the Northeast corner of the Southeast quarter of the Southwest quarter of said Section 27; thence along the lines of said Southeast quarter of the Southwest quarter South $89^{\circ} 57' 28''$ West 1329.32 feet to the Northwest corner thereof and South $0^{\circ} 03' 16''$ West 774.71 feet, more or less, to the most Northerly corner of the 7.5 acre tract conveyed to Jerome C. Draper, et ux, by Deed recorded July 17, 1943 in Book 202 at page 18 of Official Records of Napa County; thence along the Northwesterly line of said 7.5 acre tract South $69^{\circ} 16' 23''$ West, 932.00 feet; thence leaving said northwesterly line south $12^{\circ} 53' 26''$ West, 2145.36 feet to the west line of Section 34 of said Township and Range; thence along the west line of said Section 34, South $0^{\circ} 38' 53''$ West, 760.00 feet to the west quarter corner of said Section 34; thence along the East-West center of section line of Section 34 East 2640 feet, more or less, to the center of Section 34; thence along the North-South center of section line of Section 34, North 1320 feet, more or less, to the Northwest corner of the Southwest quarter of the Northeast quarter of Section 34; thence along the North line of said Southwest quarter of the Northeast quarter East 1320 feet, more or less, to the Southeast corner of the Northwest quarter of the Northeast quarter of said Section 34; thence along the East line of said Northwest quarter of the Northeast quarter, North 867 feet, more or less, to the Southerly corner of the 5.55 acre tract conveyed from Charles Lemme to Jacob L. Beringer, recorded in Book 30 of Deeds at page 429, said Napa County Records; thence along the Southwesterly line of said 5.55 acre tract North $40-1/2^{\circ}$ West 12.60 chains to the center of a ravine and Easterly down the center of said ravine to a point from which the point of beginning bears North $1^{\circ} 34' 10''$ East; thence North $1^{\circ} 34' 10''$ East 4.55 chains to the point of beginning.

APN 022-180-058

TRACT FIVE:

PARCEL ONE:

Commencing at the Lemme Gate on the north and south line through the center of the southeast quarter of Section 27, Township 8 North, Range 6 West, Mount Diablo Base and Meridian; and running thence along the old Lemme Road (which is also the southern line of the parcel of land heretofore conveyed to George F. Chevalier by Deed of record in Book 68 of Deeds at page 229, Napa County Records, as follows: South $85-1/2^{\circ}$ East 3.96 chains, South 57° East, 5.27 chains, South 16° East 1.80 chains, south 74° East, 1.36 chains, South $54-1/2^{\circ}$ East 2.17 chains, South 88° East, 1.95 chains, North $60-1/2^{\circ}$ East 4.30 chains, south 67° East 1.71 chains, South 14° West, 1.49 chains, South $38-1/2^{\circ}$ East, 5.17 chains, North $84-1/2^{\circ}$ East 8.71 chains, North 35° East, 2.50 chains, North 76° East 3.67 chains, South $80-1/2^{\circ}$ East 2.23 chains, South 52° East 1.72 chains, North 63° East, 2.22 chains, South 76° East, 1.72 chains, North $55-3/4^{\circ}$ East, 3.75 chains, South $52-3/4^{\circ}$ East, 2.70 chains, South $12-$

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Exhibit A-2



1/2° East, 1.50 chains, South 78-1/2° East, 1.36 chains, South 84° East, 1.91 chains, North 60° East 1.97 chains, South 69° East, 1.38 chains, East 3.00 chains, South 61° East 3.00 chains and South 33° 41' East 0.61 chains, to the line of land formerly owned by St. Helena Water Company; thence Southerly and along the line of land so owned by said Company to a point on the line between Sections 26 and 35, in Township 8 North, Range 6 West, distance about 50 links west of the quarter section corner; thence with government subdivision lines as follows: West 19.50 chains, South 20 chains and west 40 chains to the aforesaid north and south centerline of the southeast quarter of Section 27, in Township 8 North, Range 6 West; and thence North along last mentioned line, 31 chains to the point of commencement. Being a portion of the south half of the southwest quarter of Section 26 and of the southeast quarter of the southeast quarter of Section 27 and all of the northeast quarter of the northeast quarter of Section 34, all of the northwest quarter of the northwest quarter of Section 35, all in Township 8 North, Range 6 West, Mount Diablo Base and Meridian.

APN 022-180-017 (portion)

PARCEL TWO:

The southwest quarter of the northeast quarter of Section 34, Township 8 North, Range 6 West, Mount Diablo Base and Meridian.

APN 022-180-017 (portion)

PARCEL THREE:

Commencing in the center of a ravine running through the Dixon flat and distant due South along the north and south centerline of the southeast quarter of Section 27, Township 8 North, Range 6 West, Mount Diablo Base and Meridian, 4.55 chains from the point of commencement, designated in the description next proceeding; running thence due south, along said north and south centerline, 12.36 chains, to a stake at the foot of a small oak marked "L&B", at the junction with the line of the former Lemme Vineyard fence continued; thence North 40-1/2° West, 12.60 chains, in line with said vineyard fence and along the same and the continuation thereof, to the center of the aforesaid ravine; and thence down said ravine, following all of its meanderings, to the point of commencement.

Being a portion of the southwest quarter of the southeast quarter of Section 27 and of the northwest quarter of the northeast quarter of Section 34, in Township 8 North, Range 6 West, Mount Diablo Base and Meridian, and being the same parcel of land acquired by Jacob L. Beringer by Deed from Chas. Lemme of record in Book 30 of Deeds at page 429, Napa County Records.

APN 022-180-017 (portion)

TRACT SIX:

Commencing on the South side of York Creek at the point of intersection of a line on a water level with the County Road on the North side of said creek with the North line of the Lemme Road near the quarter section corner of the South boundary of Section 26, Township 8 North, Range 6 West, Mount Diablo Base and Meridian; thence along said Lemme Road the following courses and distances: North 33° 41' West 0.61 chains, North 61° West 3.00 chains, West 3.00 chains, North 69° West 1.38 chains, South 60° West 1.97 chains, North 84° West 1.91 chains, North 78-1/2° West 1.36 chains, North 12-1/2° West 1.50 chains, North 52-3/4° West 2.70 chains, South 55-3/4° West 3.75 chains, North 76° West 1.72 chains, South 63° West 2.22 chains, North 52° West 1.72 chains, North 80-1/2° West 2.33 chains, South 76° West 3.67 chains, South 35° West 2.50 chains, South 84-1/2° West 8.71 chains, North 38-1/2° West 1.50 chains; thence leaving said Lemme Road, North 22-1/2° East 21.21 chains, more or less, to a point on the South side of York Creek on a water level with the County Road on the



North side of said creek; and thence Southeast down the South side of York Creek and on a water level with the County Road on the North side of said creek to said Lemme Road and the point of commencement.

EXCEPTING THEREFROM any portion lying within the bounds of the tract of land described in the Judgment to the Town of St. Helena, rendered in the Superior Court of the State of California, in and for the County of Napa, Case No. 7761, a Notice of Lis Pendens having been recorded April 2, 1938 in Book 129 at page 94 of Official Records of Napa County.

APN 022-180-015

TRACT SEVEN:

Beginning at a nail and tag stamped LS 4510 on the centerline of Lemme Road as shown on Map No. 4531 filed in Book 28 of Surveys at page 47 in the office of the County Recorder of said Napa County, said point being the Southwest corner of Parcel Two as shown on said map; thence leaving said centerline of Lemme Road along the Westerly line of said Parcel Two as shown on said map, North 1° 10' 23" West 16.00 feet to a rebar and cap stamped LS 4510; thence continuing North 1° 10' 23" West 345.98 feet to a rebar and cap stamped LS 4510; thence North 1° 22' 07" East 183.97 feet to a rebar and cap stamped LS 4510; thence leaving said Westerly line of Parcel Two, North 88° 28' 11" East 21.08 feet to a rebar and cap stamped LS 4510; thence North 29° 46' 59" East 140.36 feet to a rebar and cap stamped LS 4510; thence North 61° 59' 13" East 136.20 feet to a rebar and cap stamped LS 4510; thence North 51° 31' 51" East 119.53 feet to a rebar and cap stamped LS 4510; thence North 60° 07' 31" East 172.56 feet to a rebar and cap stamped LS 4510; thence South 14° 00' 40" East 114.88 feet to a rebar and cap stamped LS 4510; thence South 53° 12' 33" East 33.51 feet to a rebar and cap stamped LS 4510; thence North 45° 02' 37" East 323.99 feet to a rebar and cap stamped LS 4510; thence North 52° 13' 22" East 163.29 feet, more or less, to the North side of "Chevalier's Road" up the South side of York Creek; thence Southeasterly down the South side of York Creek, and on a water level with the County Road on the North side of said creek to the Northwestern corner of the property described in the Deed to Dudley R. Day, et ux, recorded December 5, 1949 in Book 319 at page 364 of Official Records of Napa County; thence South 22-1/2° West along the Western line of said Day's property, 21.21 chains, more or less, to Lemme Road; thence along Lemme Road Westerly to the point of commencement.

APN 022-180-053

TRACT EIGHT:

Beginning at a rebar stamped LS 4510 at the Southwest corner of the Northeast quarter of the Southwest quarter of Section 27, Township 8 North, Range 6 West, Mount Diablo Base and Meridian, said rebar and cap being shown on Map No. 4084 filed in Book 26 of Surveys at pages 10-11 in the office of the County Recorder of said Napa County; thence North 0° 03' 16" East 1050.17 feet along the West line of the Northeast quarter of the Southwest quarter of said Section 27 to a rebar and cap stamped LS 4510; thence continuing North 0° 03' 16" East 32.05 feet to a nail and tag stamped LS 4510 on the centerline of Spring Mountain Road, said point being on a non-tangent curve from which the radius point bears South 19° 52' 21" East 500.00 feet; thence Northeasterly along the centerline of Spring Mountain Road on said non-tangent curve to the right having a radius of 500.00 feet through a central angle of 6° 07' 47" an arc length of 53.49 feet; thence on a tangent course North 76° 15' 26" East 78.71 feet; thence on a tangent curve to the right having a radius of 250.00 feet through a central angle of 43° 25' 37" an arc length of 189.48 feet; thence on a tangent course South 60° 18' 58" East 0.67 feet; thence on a tangent curve to the left having a radius of 75.00 feet through a central angle of 93° 02' 02" an arc length of 121.78 feet; thence on a tangent course North 26° 39' 00" East 138.74 feet; thence on a tangent curve to the right having a radius of 300.00 feet through a central angle of 4° 43' 57" an arc length of 24.78 feet to a nail and tag

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Exhibit A-4



stamped LS 4510, said point being on the North line of the Northeast quarter of the Southwest quarter of said Section 27; thence leaving said centerline of Spring Mountain Road and along said North line South 89° 45' 02" East 35.79 feet to a rebar and cap stamped LS 4510; thence continuing along said North line South 89° 45' 02" East 244.15 feet to the center of York Creek; thence up the center of said creek the following courses: South 63° 26' 50" West 168.42 feet, South 9° 54' 54" West 50.15 feet, South 40° 24' 39" East 115.99 feet, South 27° 48' 41" West 64.76 feet, South 13° 40' 59" East 150.40 feet, North 55° 39' 19" East 9.71 feet, North 68° 58' 59" East 101.30 feet, South 35° 36' 48" East 129.48 feet, South 5° 32' 59" East 55.71 feet, North 87° 13' 40" East 93.47 feet, South 8° 59' 16" West 83.26 feet, South 34° 28' 49" East 217.85 feet, South 53° 26' 00" East 36.39 feet, South 13° 34' 30" West 170.81 feet, South 18° 36' 18" East 163.50 feet, South 50° 00' 00" West 100.00 feet and South 40° 00' 00" West 86.23 feet to the South line of the Northeast quarter of the Southwest quarter of said Section 27; thence along said line South 89° 57' 28" West 988.38 feet to the point of beginning.

APN 022-260-012

TRACT NINE:

Beginning at a rebar and cap stamped LS 4510 at the Northeast corner of Draper as shown on Map No. 4531 filed in Book 28 of Surveys at page 47 in the office of the County Recorder of said Napa County; thence North 88° 28' 11" East 21.08 feet to a rebar and cap stamped LS 4510; thence North 29° 46' 59" East 140.36 feet to a rebar and cap stamped LS 4510; thence North 61° 59' 13" East 136.20 feet to a rebar and cap stamped LS 4510; thence North 51° 31' 51" East 119.53 feet to a rebar and cap stamped LS 4510; thence North 60° 07' 31" East 172.56 feet to a rebar and cap stamped LS 4510; thence South 14° 00' 40" East 114.88 feet to a rebar and cap stamped LS 4510; thence South 53° 12' 33" East 33.51 feet to a rebar and cap stamped LS 4510; thence North 45° 02' 37" East 323.99 feet to a rebar and cap stamped LS 4510; thence North 52° 13' 22" East 163.29 feet, more or less, to the North side of "Chevalier's Road" up the South side of York Creek; thence Northwesterly up the Southerly side of York Creek, and a water level with the County Road on the North side of said creek to the North line of the Northwest quarter of the Southeast quarter of Section 27, Township 8 North, Range 6 West, Mount Diablo Base and Meridian; thence North 89° 45' 02" West along said line 146.38 feet, more or less, to the center of said Section 27; thence along the East-West center of section line of said Section 27, North 89° 45' 02" West 560.94 feet to the center of York Creek; thence up the center of said creek the following courses: South 63° 26' 50" West 168.42 feet, South 9° 54' 54" West 50.15 feet, South 40° 24' 39" East 115.99 feet, South 27° 48' 41" West 64.76 feet, South 13° 40' 59" East 150.40 feet, North 55° 39' 19" East 9.71 feet, North 68° 58' 59" East 101.30 feet, South 35° 36' 48" East 129.48 feet, South 5° 32' 59" East 55.71 feet, North 87° 13' 40" East 93.47 feet, South 8° 59' 16" West 83.26 feet, South 34° 28' 49" East 217.85 feet, South 53° 26' 00" East 36.39 feet, South 13° 34' 30" West 170.81 feet, South 18° 36' 18" East 163.50 feet, South 50° 00' 00" West 100.00 feet and South 40° 00' 00" West 86.23 feet to the South line of the Northeast quarter of the Southwest quarter of said Section 27 as shown on Map No. 4084 filed in Book 26 of Surveys at pages 10-11 in the office of the County Recorder of said Napa County; thence along said South line North 89° 57' 28" East 340.95 feet to a rebar and cap stamped LS 4510 at the Southeast corner of the Northeast quarter of the Southwest quarter of said Section 27 as shown on said Map No. 4084 and Map No. 4531; thence along the Southerly lines of said Parcel One as shown on said Map No. 4531, South 88° 26' 35" East 517.19 feet to a rebar and cap stamped LS 4510 and South 89° 23' 32" East 733.91 feet to the point of beginning.

APN 022-260-013



Report to the City Council
Council Meeting of September 10, 2019

Agenda Section: Old Business

Subject: *NEW ITEM 9-6-19

Consideration and proposed approval of a resolution approving and authorizing the City Manager to execute, enter into and carry out the terms of a Revised Loan Agreement between the City of St. Helena and Our Town St. Helena in an amount not to exceed \$450,000 from the Affordable Housing Trust Fund for the acquisition of property located at 963 Pope Street, St. Helena, California (APN 009-090-012-000; 009-090-013-000)

CEQA Determination: Approval of resolution authorizing the Loan Agreement for the acquisition of 963 Pope Street is governed by Section 15310 of State CEQA Guidelines which exempts the approval of mortgages for the purchase of existing structures where the loan will not be used for new construction.

Prepared By: Michael G. Biddle, City Attorney

Reviewed By: Aaron Hecock, Acting Planning & Building Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

At its regular meeting of August 27, 2019, the City Council considered and approved the request of Our Town St. Helena, a California non-profit public benefit corporation ("OTSH"), for a loan of four hundred fifty thousand and 00/100 dollars (\$450,000.00)(the "Loan") from the City's Housing Trust Fund to assist with the acquisition of real property located at 963 Pope Street, St. Helena, California (APN^[1] 009-090-012-000; 009-090-013-000)("Property").

^[1] APN refers to assessor parcel number.

DISCUSSION

The Loan Agreement approved by the City Council provided that the lien of the City's loan is to be subordinate to the lien of the first lender, Rural Community Assistance Corporation ("RCAC"). Accordingly one of the loan documents appended to the Loan Agreement and approved by the City Council includes a Subordination Agreement between the City, RCAC and OTSH that makes it clear that the City's Loan is subordinate to the RCAC loan.

The Loan Agreement approved by the City Council also requires OTSH to execute an Affordable Housing Agreement providing that (i) the existing residential unit that is located on the Property shall be occupied or held available for occupancy by a low income household at an affordable rent as defined, and (ii) if OTSH obtains entitlements to develop the Property, any future residential units on the Property shall be occupied or held available for occupancy by moderate, low or very low income households at an affordable rent.

The Loan Agreement and Subordination Agreement approved by the City Council provided that the lien of the Affordable Housing Agreement would be senior to any financing on the Property, including the lien of RCAC. However, subsequent to the approval of the Loan Agreement by the City Council, OTSH has advised City staff that RCAC will not provide the needed financing if their loan is subordinate to the City's Affordable Housing Agreement.

Competing Concerns of RCAC and City

OTSH has advised that RCAC is concerned that in the event of a default by OTSH, should they (RCAC) need to pursue a foreclosure action, the existence of the Affordable Housing Agreement as a senior lien will devalue the property and limit the amount of money the property will receive at a foreclosure sale. This is true. However, if the Affordable Housing Agreement is subordinate to their lien, then in the event of a foreclosure sale, RCAC believes the proceeds recovered would more closely resemble a market sale and thus be more likely to repay the liens of RCAC and the City. Considering that the Property appraised at \$1,380,000 and OTSH is acquiring it for 850,000, this is likely true. It is also true that the lien of the City's Affordable Housing Agreement will be extinguished. The argument is that while the covenants of the City's Affordable Housing Agreement are lost, the City will likely recapture its loan proceeds. Thus, no harm, no foul.

Yet, if the real estate market were to suffer a loss and/or the amount of the RCAC loan is increased, then the aforementioned truism becomes at risk. Keep in mind that while the Property appraised at \$1,380,000, the combined lien of RCAC and the City is approximately \$1,000,000 as RCAC is providing OTSH additional funds for pre-development costs. Further, as any development application progresses, it is possible and not at all uncommon that OTSH may need additional financial resources for their pre-development costs. To the extent OTSH obtains those funds from RCAC, the debt that would need to be repaid to RCAC before the City receives any portion of foreclosure sale proceeds would increase. The Loan Agreement and Subordination

Agreement requires the prior approval of the City before the amount of the RCAC loan can be increased, and the gradually deteriorating lien position of the City would ordinarily compel it to deny any such request; but, the needs of the Project might otherwise persuade the Council to approve it. And having done so, the secured position of the City in a foreclosure scenario is diminished and the covenants of the City's Affordable Housing Agreement terminated.

It must be understood that the request for the City to subordinate the lien of its Affordable Housing Agreement only holds water in the current situation where the City and RCAC are providing financing to acquire the Property. If no development occurs beyond the existing residential unit, the rental income received from one (1) low income unit will not be sufficient to support the debt service on \$1,000,000. Yet if the City was providing permanent funding after a development project had received all necessary entitlements, this request would not be forthcoming nor given any serious consideration because all the permanent financing would be predicated on the rents that could be expected from the income restricted units in the development. Thus the fear of a potential foreclosure scenario would not, and should not, be present.

The Revised Loan Agreement

In order to address the concerns of RCAC and allow this transaction to move forward, revisions are proposed to Section 11 of the Loan Agreement as well as to the Subordination Agreement, appended as Exhibit E to the Loan Agreement, which clarify that the lien of the Affordable Housing Agreement is also to be subordinated to the RCAC lien.

CEQA

Approval of a resolution by the City Council authorizing the Revised Loan Agreement for the acquisition of 963 Pope Street is governed by Section 15310 of State CEQA Guidelines which exempts the approval of mortgages for the purchase of existing structures where the loan will not be used for new construction. As provided in the Loan Agreement the monies advanced by the City may only be used for the acquisition of the Property and may not be used for any development activity. Accordingly, the approval of the Revised Loan Agreement is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines Section 15310, which exempts "mortgages for the purchase of existing structures where the loan will not be used for new construction".

It should also be noted that Section 13 of the Loan Agreement provides that by execution of the Loan Agreement the City is not committing itself to, or agreeing to, undertake any other act or activity requiring the subsequent independent exercise of discretion by the City in connection with any particular development application that may be submitted by OTSH for the Property. Therefore, the City has reserved to itself complete discretion in accordance with law in connection with any development application submitted by Borrower for the Property.

FISCAL IMPACT

Approval of the Revised Loan Agreement will obligate the Affordable Housing Fund to provide the Loan of four hundred fifty thousand and 00/100 dollars (\$450,000.00), which is currently available.

RECOMMENDED ACTION

Staff recommends City Council adopt the attached resolution (Attachment 2) authorizing the City Manager to execute, enter into and carry out the terms of the Revised Loan Agreement (Attachment 1) between the City of St. Helena and Our Town St. Helena in an amount not to exceed \$450,000 from the Affordable Housing Trust Fund for the acquisition of property located at 963 Pope Street, St. Helena, California (APN 009-090-012-000; 009-090-013-000). Note that the enclosed Revised Loan Agreement is in redline format so that the Council can see the changes made to Section 11 of the Loan Agreement and the Subordination Agreement (Exhibit E to Loan Agreement) in comparison to the final version approved on August 27, 2019.

ATTACHMENTS

[OTSH Loan Agreement](#)
[Resolution](#)

CITY OF ST. HELENA
HOUSING TRUST FUND REVISED LOAN AGREEMENT

This Housing Trust Fund Revised Loan Agreement is made and entered into effective as of this ____ day of September, 2019, by and between the City of St. Helena, a California municipal corporation (“**Lender**”), having a mailing address of 1480 Main Street, St. Helena, California 94574, and Our Town St Helena, a California non-profit public benefit corporation (“**Borrower**”), having a mailing address of P.O. Box 94, St. Helena, California 94574 (hereinafter, the “**Loan Agreement**”). Lender and Borrower are sometime referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

The Borrower has applied for a loan from Lender’s Housing Trust Fund to acquire real property located at 963 Pope Street, St. Helena, California and more particularly described in **Exhibit A** attached hereto and made a part hereof (hereinafter, the “**Property**”). The Property is comprised of two legal parcels identified as Assessor Parcel No. 009-090-013-000 (hereinafter, the “**Tract One Parcel**”), and Assessor Parcel Nos. 009-090-012-000 (hereinafter, the “**Tract Two Parcel**”).

In consideration of the mutual promises undertaken herein, the Parties mutually agree as follows:

1. *Effective Date and Term.*

This Loan Agreement shall be effective as of the date executed by Lender as indicated in the signature block below (the “**Effective Date**”), and shall continue thereafter until the Principal Amount, and all other amounts due and owing from Borrower pursuant to the terms of the Loan Documents, has been paid in full to Lender.

2. *Loan Terms*

Lender agrees to make a loan to Borrower from its Housing Trust Fund (hereinafter, the “**Loan**”), in the principal sum of Four Hundred Fifty Thousand Dollars and 00/100 Dollars (\$450,000.00)(hereinafter, the “**Principal Amount**”). Borrower agrees to execute a promissory note in the amount of the Principal Amount bearing interest at the rate of zero percent (0%) per annum (hereinafter, the “**Promissory Note**”), in the form attached hereto as **Exhibit B** attached hereto and made a part hereof. The Loan shall have a term of twenty four (24) months and all unpaid sums of the Principal Amount shall become immediately due and payable upon the second (2nd) anniversary of the date of the Promissory Note .

3. *Security*

The Promissory Note shall be secured by a deed of trust (hereinafter, the “**Deed of Trust**”), in the form attached hereto as **Exhibit C** attached hereto and made a part hereof, pursuant to which Borrower will provide Lender a junior lien position behind Rural Community Assistance Corporation, a California non-profit public benefit corporation (“**RCAC**”), which will maintain a senior lien in the Property.

4. *Loan Documents*

Collectively, the agreements, instruments, certificates, opinions and other documents governing, evidencing, securing, related to, executed or delivered in connection with the Loan, including without limitation, this Loan Agreement, Promissory Note, Deed of Trust, Subordination Agreement, Affordable Housing Agreement, Budget and escrow instructions of the Parties are hereinafter referred to as the “**Loan Documents**”.

5. *Purpose of Loan*

The purpose of the Loan is for the acquisition of the Property. In no event shall any portion of the Loan be used by Borrower to develop the Property.

6. *Conditions Precedent to Disbursement of Loan*

The proceeds of the Loan shall be disbursed to the Borrower in a single advance. The Loan shall be disbursed by a date no later than September 3, 2019 (“**Escrow Closing Date**”), or such other date agreed to by Lender but in no event beyond September 30, 2019 (“**Outside Escrow Closing Date**”). The obligation of the Lender to make the Loan shall be subject to the fulfillment and satisfaction by the Borrower of all of the conditions set forth in this Loan Agreement and the following:

(a) Borrower shall have provided to the Lender an ALTA Extended Coverage Lender's Policy with such endorsements as the Lender may require, issued by a title insurance company acceptable to the Lender, in an amount equal to the Principal Amount, and in a form and content satisfactory to the Lender insuring that the Lender's Deed of Trust on the Property is, or will be upon its recordation be, a valid second priority lien on the Property free and clear of all defects, liens, encumbrances, and exceptions except as to those approved by the City Manager and/or City Attorney of Lender, including the first lien of RCAC in the maximum amount of Five hundred forty four thousand and 00/100 Dollars (\$544,000.00) (“RCAC Loan”);

(b) Unless waived by Lender in writing, Borrower shall deliver to Lender the insurance policies or evidence thereof as described in the Deed of Trust;

(c) There shall not exist on the Escrow Closing Date a condition which would constitute an Event of Default under this Agreement;

(d) Each of the representations and warranties of the Borrower set forth in Section 7 shall be true and correct;

(e) Prior to or currently with the Escrow Closing Date, the Borrower shall have executed, and acknowledges as appropriate, all of the Loan Documents;

(f) Borrower has taken all necessary action to approve the Loan and the transactions contemplated under this Loan Agreement, that the Loan, the Loan Agreement and each of the Loan Documents, are properly executed and acknowledged by the Borrower and each evidences a valid, lawful and binding obligation of the Borrower, and such other matters as required by the Lender; and

(g) all conditions precedent to the disbursement of the RCAC Loan (other than the disbursement of the City Loan) have been satisfied.

Provided that all of the aforementioned conditions have been satisfied, the Lender shall disburse the sum of \$450,000.00 on or before the Escrow Closing Date.

7. *Representations and Warranties of Borrower*

Borrower represents and warrants to Lender, as of the date of this Loan Agreement and at all times that any balance of the Loan is outstanding:

(a) Borrower is and shall maintain during the period of time when any Principal Amount of the Loan may remain outstanding its status as a California non-profit public benefit corporation, duly organized and existing and authorized to transact business in California and the Borrower has previously qualified as a 501 (c)(3) tax exempt entity under applicable federal tax laws;

(b) the corporate charter and by-laws of the Borrower authorize the Borrower to enter into this Loan Agreement and to undertake the affordable housing preservation, operation and development activities contemplated hereunder, and the governing board and membership of the Borrower has previously taken all action necessary to authorize the execution of this Loan Agreement by the Borrower;

(c) the Borrower is qualified to undertake and complete the affordable housing preservation, operation and development activities contemplated under this Loan Agreement;

(d) the Borrower has conducted a due diligence inquiry and investigation of the environmental condition of the Property relating to the potential presence of Hazardous Substances and the use thereon of Hazardous Substances and based upon such inquiry, the Borrower represents to Lender that as of the Escrow Closing Date, the Borrower is unaware of any adverse environmental conditions relating to the presence or potential presence of Hazardous Substances in, on, under or upon the Property;

(e) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened and no other event has occurred which may materially adversely affect Borrower's financial condition, or the Property;

(f) Borrower has, as of the Escrow Closing Date, good and marketable title to the Property free and clear of all defects, liens, and encumbrances, excepting only liens for taxes, assessment, or governmental charges or levies not yet delinquent or payable without penalty or interest and such liens and encumbrances as may be approved in writing by the Lender prior to the Escrow Closing Date, including the RCAC Loan;

(g) no tenant in lawful possession of the Property shall be in arrears in its rental obligation to the Borrower unless Borrower has initiated reasonable measures acceptable to Lender to correct such arrearage in rent, and each rental agreement is in full force and effect without any other default by the renter unless Borrower has initiated reasonable measures to obtain the cure of any such other default;

(h) the information set forth in the Budget, attached hereto as **Exhibit D** and made a part hereof, generally describes the proposed housing improvements and activities to be undertaken by the Borrower, and such Budget provides that the Loan is to be used solely to acquire the Project. The Borrower shall not materially alter or modify the programs set forth in the Budget without consent of the Lender;

(i) Borrower is not in default under any other loans or obligations which it may have;

(j) Borrower understands and agrees that the Lender is relying upon the above representations and warranties in extending the Loan to Borrower. Borrower further agrees that the foregoing representations and warranties shall be continuing in nature and shall remain in full force and effect until such time as the Loan and Promissory Note shall be paid in full, or until the Loan Agreement is terminated, whichever is the last to occur.

8. *Affirmative Covenants of Borrower*

Borrower covenants and agrees with Lender that while this Loan Agreement is in effect, Borrower will:

(a) promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower;

(b) maintain its books and records in accordance with generally accepted accounting principles, applied on a consistent basis and permit the Lender to examine and audit Borrower's books and records at all reasonable times;

(c) furnish such additional information and statements, list of assets and liabilities, agings of receivables and payables, inventory schedules, budgets, forecasts, tax returns, and other reports with respect to Borrower's financial condition and business operations which the Lender may request from time to time;

(d) comply with all laws, ordinances, and regulations, now or hereafter in effect of governmental authorities applicable to the use or occupancy of the Property including without limitation "Environmental Laws" as defined below. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in the Lender's sole opinion, the Lender's interests in the Property are not jeopardized. The Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect the Lender's interest;

(e) use the proceeds of the Loan solely for the purposes of acquiring the Property;

(f) pay and discharge when due all of Borrower's other indebtedness, obligations, and claims (exclusive of the Deed of Trust) which, if unpaid, might become a lien or charge upon the Property, including the RCAC Loan; provided, however, that

Borrower shall not be required to pay and discharge any such indebtedness, obligation, or claim so long as (1) its legality is being contested by Borrower in good faith by appropriate proceedings, (2) the indebtedness, obligation, or claim does not become a lien or charge upon any of the Property, and (3) Borrower shall have established on its books adequate reserves with respect to the amount contested in accordance with generally accepted accounting practices;

(g) perform and comply with all terms, conditions, and provisions set forth in this Loan Agreement and in all other instruments and agreements between Borrower and Lender, including without limitation the Promissory Note, Deed of Trust, Affordable Housing Agreement and Subordination Agreement, and in all other loan documents now or hereafter existing between Borrower and RCAC, and any other party. Borrower shall notify Lender immediately in writing of any default in connection with any such agreement;

(h) make, execute, and deliver to Lender such security agreements, instruments, documents, and other agreements reasonably necessary to document and secure the Loan and to perfect the security interest of the Lender in the Property;

(i) maintain and undertake any improvements to the Property in a good and workman-like manner;

(j) to promptly rent the existing residential unit on the Tract One Parcel of the Property in accordance with the Affordable Housing Agreement and use the proceeds realized by the rental of the existing residential unit on the Tract One Parcel of the Property for the development of affordable residential units on the Property.

Borrower shall provide Lender with written confirmation that it is in compliance with this covenant annually, until this Loan Agreement is terminated.

9. *Negative Covenants*

Borrower covenants and agrees with Lender that while this Loan Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

(a) **Indebtedness and Liens.** (1) Incur or assume indebtedness for borrowed money, including capital leases, (2) sell, transfer, mortgage, assign, pledge, or lease any of the Property (except for leases of the existing residential dwelling unit on the Tract One Parcel of the Property to income qualified tenants in accordance with the Affordable Housing Covenant), (3) grant a security interest in, or encumber any of Borrower's assets, or (4) sell with recourse any of Borrower's accounts.

(b) **Continuity of Operations.** (1) engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change ownership, change its name, dissolve or transfer or sell any property or assets out of the ordinary course of business, or (3) make any distribution with respect to any capital account, whether by reduction of capital or otherwise.

(c) Loans, Acquisitions and Guaranties. (1) loan, invest in or advance money or assets to third-parties, (2) purchase, create or acquire any interest in any other enterprise or entity, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business.

(d) Liens. Create or allow to be created any lien or charge upon the Property, except for liens and charges in favor of Lender and RCAC.

(e) Hazardous Substances. Use, store, dispose of or release, or permit the use, storage, disposal or release, of any Hazardous Substance in, on, under or about the Property, except to the extent the same is in strict compliance with all applicable Environmental Laws. For purposes of this Loan Agreement, "Hazardous Substance," shall mean (1) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws (defined below) as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or "EP toxicity" and (2) any petroleum product, natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel (or mixtures of natural gas such as synthetic gas) which is not stored in a motor vehicle for use in the regular course of operation of such motor vehicle. For purposes of this Loan Agreement, "Environmental Laws" shall mean any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environmental regulation of any Hazardous Substance, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sections 9601, et seq.) ("CERCLA") and the applicable provisions of the California Health and Safety Code and the California Water Code, all as heretofore or hereafter amended from time to time.

10. *Other Financing*

The Loan shall be secured by the Deed of Trust recorded against the Property and junior in lien priority to the senior lien deed of trust to be held by RCAC. No other deeds of trust or liens shall be recorded against the Property at the Escrow Closing Date. Borrower certifies that no other liens, including mechanic liens, are or will be recorded against the Property without the prior written consent of Lender, which consent may be withheld in Lender's sole discretion. Further, Borrower shall not increase the amount of the lien of the deed of trust held by RCAC without the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

11. *Subordination*

Lender will subordinate the lien of its Deed of Trust and the lien of the Affordable Housing Agreement, in the form attached hereto as Exhibit F, to the lien of the senior lender, RCAC, as more particularly set forth in the Subordination Agreement attached hereto as Exhibit E. ~~The foregoing notwithstanding, the lien of the Affordable Housing Agreement, in the form attached hereto as Exhibit F, shall not be subordinated to any lien on the Property.~~

~~Accordingly, said Subordination Agreement shall provide for the subordination of the lien of the senior lender, RCAC, to the lien of the Affordable Housing Agreement.~~

12. *Prepayment Rights*

Borrower may prepay the Loan either in whole or in part without penalty. However, Borrower must provide Lender with written notice at least five (5) days prior to prepayment.

13. *Limitations of this Loan Agreement.*

This Loan Agreement shall not obligate Lender, acting in its regulatory capacity, to approve any particular development application submitted by Borrower for the Property. By execution of this Loan Agreement, Lender is not committing itself to, or agreeing to, undertake any other act or activity requiring the subsequent independent exercise of discretion by the Lender. Execution of this Loan Agreement by Lender is merely an agreement to loan money to Borrower for the acquisition of the Property, which action is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines Section 15310, which exempts “mortgages for the purchase of existing structures where the loan will not be used for new construction”. Accordingly, Lender and Borrower agree that Lender reserves to itself complete discretion in accordance with law in connection with any development application submitted by Borrower for the Property.

14. *Affordable Housing Agreement*

Borrower shall cause to be recorded the Affordable Housing Agreement which shall affect Borrower's title in the Property. The Affordable Housing Agreement contains certain affordable rental housing regulatory and affordability covenants which shall run with the land and the Property for a term of fifty five (55) years following its recordation. The text of the Affordable Housing Agreement is incorporated into this Loan Agreement by this reference. During the term of this Loan Agreement, any amendment of the Affordable Housing Agreement shall be subject to the prior written approval of the Lender.

The Affordable Housing Agreement provides for (i) the rental of the existing residential unit located on the Tract One Parcel of the Property at an Affordable Rent to a Low Income Household, and (ii) any new residential units developed on the Property to be rented at an Affordable Rent to Low Income Households.

15. *No Joint Venture*

Nothing in this Loan Agreement shall be construed to constitute the creation of a partnership or joint venture between Lender and Borrower. The Lender is not an agent or representative of Borrower and the Borrower is not an agent or representative of Lender. This Loan Agreement does not create a contractual relationship with and shall not be construed to benefit or bind the Lender in any way with or create any contractual duties by Lender to any contractor, subcontractor, materialman, laborer, or any other person retained or hired by Borrower.

16. *Default*

On the occurrence of any Event of Default, the Lender, at its sole election, may declare all sums advanced upon the Loan to be immediately due and payable, with simple interest at the rate of five percent (5%) per annum from the Escrow Closing Date until paid in full (“**Default Interest**”), and may proceed at once, without notice to Borrower, to exercise all rights and remedies provided in the Promissory Note, Deed of Trust or as otherwise provided by law to secure payment in full of all monies due Lender. Nothing herein shall preclude Lender, in the exercise of its reasonable discretion, from waiving all or any portion of the Default Interest. Each of the following occurrences shall constitute an Event of Default:

- (a) Failure to comply with any term or condition provided herein;
- (b) Failure of Borrower to comply with any term or condition provided in the Promissory Note, Deed of Trust, Subordination Agreement, and/or Affordable Housing Agreement;
- (c) Borrower’s default on any existing lien secured by the Property, including the RCAC loan or any subsequent lien on the Property;
- (d) Submission or making of any report, statement, warranty, or representation by Borrower or agent in its behalf to Lender in connection with the financial assistance awarded hereunder which is false, incomplete, incorrect or misleading;
- (e) Borrower's tax-exempt status is revoked, and Borrower has exhausted all remedies and appeals relating thereto;
- (f) Any deterioration, loss, theft, substantial damage, destruction or depreciation in the value or market price of the Property securing the Loan, that causes the Property in the judgment of Lender to become unsatisfactory as to character or value;
- (g) The recording of any mechanics’ lien or any judgment against the Borrower or the issuance or entry of any attachment against the Property and not discharged or dismissed within thirty (30) days from date of entry thereof;
- (h) The Borrower becoming insolvent or bankrupt or being unable or admitting in writing its inability to pay its debts as they mature or making a general assignment for the benefit of or entering into any composition or arrangement with creditors;
- (i) Proceedings for the appointment of a receiver, trustee, or liquidator of the assets of the Borrower or a substantial part thereof, being authorized or instituted by or against the Borrower;
- (j) Proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law or any jurisdiction being authorized or instituted against the Borrower;
- (k) Borrower's failure to pay when due any and all amounts due under this Loan Agreement and Promissory Note;

- (l) Borrower ceases to be the legal owner of the Property; or
- (m) Borrower commits or permits any illegal act to be conducted on the Property.

17. Severability

All provisions and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any competent court of law, this Loan Agreement shall be interpreted as if such invalid provisions and covenants were not contained herein, and all remaining provisions not affected by said ruling shall remain in full force and effect.

18. Indemnity; Hold Harmless

Borrower agrees to defend, indemnify and hold Lender harmless under this Loan Agreement as follows:

(a) General Indemnity. Borrower shall indemnify, defend with counsel selected by the Lender, protect and hold the Lender, and its officials, officers, employees, agents and successors, harmless from and against any and all claims, losses, liabilities, fines, penalties, damages, actions, judgments, costs and expenses (including attorneys' fees and expenses) asserted against them, or any of them, by any person, entity, or governmental body, arising out of or in connection with the use, operation or ownership of the Property by the Borrower or its agents, employees, tenants or permittees. The Lender shall be entitled to appear in any action or proceeding to defend itself against such claims, and all costs incurred by the Lender in connection with such defense, including attorneys' fees, shall be paid by Borrower to the Lender. Borrower shall not be required to indemnify, protect, defend, or hold harmless Lender from and against any claims, losses, liabilities, fines, penalties, damages, actions, judgments, costs and expenses (including attorneys' fees and expenses) arising out of the negligent acts or omissions of Lender, and its officials, officers, employees, agents and successors.

(b) Special Environmental Indemnity. Borrower shall indemnify, defend with counsel selected by the Lender, protect and hold harmless the Lender, and its officials, officers, employees, agents and successors (collectively, "Indemnified Parties" or singularly, "Indemnified Party") from and against all claims, damages (including without limitation, special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal and administrative proceedings, interest, fines, charges, penalties and expenses (including without limitation (1) attorney's, engineer's, consultant's and expert witness fees and costs incurred in defending against any of the foregoing or in enforcing this indemnity and (2) any diminution in the value of the Property) of any kind whatsoever paid, incurred or suffered by any Indemnified Party, or asserted against the Property, directly or indirectly arising from or attributable to (i) any breach by the Borrower of any of its agreements, representations or warranties set forth in Section 7(d) or Section 9(e), or (ii) any repair, cleanup, remediation, detoxification, closure or preparation and implementation of any plan therefor undertaken by any Indemnified Party concerning Hazardous Substances on,

under or about any of the Property. The foregoing indemnity shall apply whether acts of any Indemnified Party are undertaken because of proceedings initiated by any federal, state or other government authority or by any private persons(s). The foregoing indemnity is intended by the parties to be an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364.

(c) Special Covenant to Give Notice to Lender. The Borrower shall promptly give the Lender (i) a copy of any notice, correspondence or information the Borrower receives from any federal, state or other government authority regarding Hazardous Substances on, under or about the Property or regarding any actions, instituted, completed or threatened by any such governmental authority concerning Hazardous Substances which affect or may affect the Property, (ii) written notice of any knowledge or information the Borrower obtains regarding Hazardous Substances on, under or about the Property or expenses or losses incurred or expected to be incurred by the Borrower, third party or any government agency to study, assess, contain or remove any Hazardous Substances on, under or about the Property for which expense or loss the Borrower may be liable or for which a lien may be imposed on the Property, and (iii) written notice of all claims made or threatened by any third party (other than government authority) against the Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Substance.

19. *Successors and Assigns*

All warranties, representations, and covenants made by Borrower in this Loan Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Loan Agreement shall be considered to have been relied upon by Lender and will survive the making of the Loan and delivery to Lender of the Loan Documents, regardless of any investigation made by Lender. All warranties, representations, and covenants made by Borrower in this Loan Agreement shall bind its successors and assigns and shall inure to the benefit of Lender, and its successors and assigns. Borrower shall not, however, have the right to assign its rights under this Loan Agreement or any interest therein, without the prior written consent of Lender.

20. *Waiver*

The Lender shall not be deemed to have waived any rights under this Loan Agreement or the Loan Documents, either orally or by a course of conduct, but only if such waiver is given in writing and signed by the Lender. No delay or omission on the part of the Lender in exercising any right shall operate as waiver of such right or any other right. A waiver by Lender of a provision of this Loan Agreement or the Loan Documents shall not prejudice or constitute a waiver of the right of Lender otherwise to thereafter demand strict compliance with that provision or any other provision of this Loan Agreement or the Loan Documents. No prior waiver by Lender shall constitute a waiver of any of the rights of the Lender or of any obligations of Borrower as to any future transactions. Whenever the consent of Lender is required under this Loan Agreement or Loan Documents, the granting of such consent by Lender in any instance shall not constitute continuing consent in subsequent instances where such consent is required, and in all cases, such consent may be granted or withheld in the sole discretion of Lender.

21. Notices

All notices, requests, demands and other communications required or permitted to be given under the terms of this Loan Agreement by one party to the other shall be in writing addressed to the recipient party's Notice Address set forth below and shall be deemed to have been duly given or made (a) if delivered personally (including by commercial courier or delivery service) to the party's Notice Address, then as of the date delivered (or if delivery is refused, on presentation), or (b) if mailed by certified mail to the party's Notice Address, postage prepaid and return receipt requested, then at the time received at the party's Notice Address as evidenced by the return receipt, or (c) if mailed by first class mail to the party's Notice address, postage prepaid, then on the third (3rd) business day following deposit in the United States Mail. Any party may change its Notice Address by a notice given in the foregoing form and manner. The Notice Addresses of the parties are:

TO LENDER:

City of St. Helena
1480 Main Street
St. Helena, California 94574
Attn.: City Manager
(707) 968-2744 ext. 500

TO BORROWER:

Our Town St. Helena
P.O. Box 94
St. Helena, California 94574
Attn.: Mary Stephenson
(707) 849-2583

22. Scope of Agreement

This Loan Agreement and any supplement attached hereto sets forth the entire understanding of the Parties. No modification or waiver of any provision of this Loan Agreement shall be effective unless the same shall be in writing, and signed by the Parties hereto. The transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State of California. Venue for any proceeding to enforce or interpret the terms of any of the Loan Documents shall be in Superior Court of the County of Napa.

23. Acceptance

All obligations of Lender hereunder shall terminate and be of no further force and effect, if the Loan is not closed on or before the Outside Escrow Closing Date, unless otherwise agreed to in writing by Lender.

24. Counterparts

This Loan Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute but one and the same instrument.

25. Discrimination Prohibited

The Borrower covenants and agrees that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability in the use, operation, occupation, lease, sublease, transfer or sale of the Property, nor shall the Borrower, or any third party related to the Borrower establish or permit any such practice of discrimination or segregation to occur on the Property in connection with the selection, location, number or occupancy of residents in any of the residential dwelling units on the Property.

IN WITNESS WHEREOF, Borrower and Lender have executed this Loan Agreement as of the dates set forth below and effective as of the date executed by Lender.

Borrower's Acceptance:

***Our Town St. Helena, a California
non-profit public benefit corporation***

Date: _____

Mary Stephenson
Board President

Lender's Acceptance:

***City of St. Helena, a California
municipal corporation***

Date: _____

Mark Prestwich
City Manager

“Effective Date”

ATTEST:

By: _____

Cindy Tzaopoulos
City Clerk

APPROVED AS TO FORM:

By: _____
Michael G. Biddle
City Attorney

Exhibit A – Property Legal Description

Exhibit B – Promissory Note

Exhibit C – Deed of Trust

Exhibit D – Budget

Exhibit E - Subordination Agreement

Exhibit F – Affordable Housing Agreement

EXHIBIT A

The land described herein is situated in the State of California, County of Napa, City of Saint Helena, described as follows:

TRACT ONE:

PARCEL ONE:

Commencing at the most Western corner of a lot heretofore conveyed by George Chase and wife to one Mrs. F. M. Woodward, by Deed recorded December 12, 1884, in [Volume 35 of Deeds, at page 387](#), Napa County Records; thence running along the South Westerly line of lot so conveyed to Mrs. F. M. Woodward, South 38 degrees 30' East 150 feet; thence South 51 degrees 30' West parallel with Pope Street and 150 feet distant therefrom, 60 feet; thence North 38 degrees 30' West 150 feet to the Southeasterly line of Pope Street; thence along said Southeasterly line of Pope Street North 51° 30' East 60 feet to the point of commencement.

APN: 009-090-013

PARCEL TWO:

A non-exclusive easement for drainage pipe as granted to Wyatt H. Ensminger, et al in the document recorded October 19, 1956 in [Book 526 at page 149](#) of Official Records.

TRACT TWO:

Commencing at a point on the Southeastern line of Pope Street, distant thereon South 51 degrees 30 minutes West 60.0 feet from the most Western corner of a lot heretofore conveyed by George Chase and wife to one Mrs. F. M. Woodward, by Deed recorded December 12, 1884, in Volume 35 of Deeds at page 387, Napa County Records; thence running South 38 degrees 30 minutes East 150.0 feet; thence South 51 degrees 30 minutes West 25.0 feet; thence North 38 degrees 30 minutes West 150.0 feet to the Southeastern line of Pope Street; thence along said Southeastern line of Pope Street North 51 degrees 30 minutes East 25.0 feet to the point of commencement.

APN: 009-090-012

EXHIBIT B
PROMISSORY NOTE

SEPTEMBER __, 2019 ST. HELENA, California \$450,000

FOR VALUE RECEIVED, the undersigned, OUR TOWN ST. HELENA, a California non-profit public benefit corporation, organized under the laws of the State of California, whose mailing address is P.O. Box 94, St. Helena, CA 94574 (hereinafter known as "Maker"), promises to pay to the City of Saint Helena, a California municipal corporation (hereinafter known as the "Payee"), at 1480 Main Street, in St. Helena, CA 94574, or as directed otherwise in writing by Payee, the principal sum of Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) (the "Principal Amount"), in lawful money of the United States of America, on the following terms and conditions:

1. Term and Lump Sum Payment. The entire Principal Amount of this Promissory Note (hereinafter, the "Note"), and all other amounts due and owing from Maker to Payee pursuant to the terms of this Note and the Loan Documents, shall be immediately due and payable to Payee upon the earlier of (i) the second (2nd) anniversary of the date of this Note or (ii) upon an Event of Default as set forth in the Loan Agreement between Maker and Payee of even date herewith (the "Maturity Date").
2. Prepayment. Maker shall have the right to prepay any portion of the Principal Amount owing under this Note at any time without penalty. However, Maker shall provide Payee with written notice at least five (5) days prior to prepayment.
3. Security. The repayment of the Principal Amount due under this Note shall be secured by that certain Deed of Trust, signed this same date by Maker and Payee, whereby Maker assigns to Payee a security interest in the property located at 963 Pope Street, St. Helena, CA as collateral for repayment of this Note.
4. Interest. No interest shall accrue on the Principal Amount during the term of this Note.
5. Default Interest. If any portion of the Principal Amount due under this Note shall not be paid on the Maturity Date, Maker will be charged five percent (5%) simple interest on said amount from the date of this Note until paid in full ("Default Interest"). Nothing herein shall preclude Payee, in the exercise of its reasonable discretion, from waiving all or any portion of the Default Interest.
6. Miscellaneous.

All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Documents, as defined in the Loan Agreement, are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein and Maker covenants and agrees to keep and perform them, or cause them to be kept and performed, strictly in accordance with their terms.

On the occurrence of any Event of Default, as set forth in the Loan Agreement, Payee, at its sole election, may declare the Principal Amount evidenced by this Note, and all other amounts due and owing from Maker to Payee pursuant to the terms of the Loan Documents, to be immediately due and payable and may proceed at once without further notice to enforce this Note according to law.

No delay or failure of Payee in the exercise of any right or remedy hereunder or under the Loan Documents, as defined in the Loan Agreement, shall affect any such right or remedy, and no action taken or omitted by Payee shall be deemed a waiver of any right or remedy. Neither the agreement of a late payment charge or increased interest after default shall prevent Lender from exercising its rights and remedies under this Note, or the other Loan Documents.

Each maker, endorser, surety, and guarantor of this Note hereby severally waives demand, protest, presentment, notice of nonpayment, notice of protest and diligence in bringing suit against any party and does hereby consent that time of payment of all or any part of the Principal Amount may be extended from time to time by the Payee hereof without notice.

Any notice to the Payee shall be given as stated in the Loan Agreement.

If this Note is placed with an attorney for collection, for suit, or bankruptcy proceedings, Maker agrees to pay all collection costs, court costs, and the expenses incurred, including reasonable attorney's fees at trial, on appeal and in bankruptcy proceedings.

Payee or any other holder hereof may freely sell, assign, transfer or otherwise dispose of this Note and Maker hereby consents and agrees that any subsequent holder of this Note shall have all of the rights of Payee provided herein.

This Note shall be construed and enforced in accordance with the laws of the State of California.

MAKER:

OUR TOWN ST. HELENA, a California non-profit public benefit corporation

BY: _____
Mary M. Stephenson, its President

Dated: _____, 2019

OAK-#4846-8221-1233-v3

EXHIBIT C

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

Mary M. Stephenson
c/o Our Town St. Helena
2683 Chablis Court
St. Helena, CA 94574

**Exempt from recording fees per Government Code
§27383 and Building Homes & Jobs Trust Fund
Fee per Government Code §27388.1(a)(2)(D)**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST

This DEED OF TRUST is made this ___ day of September, 2019 between OUR TOWN ST. HELENA, a California non-profit public benefit corporation ("Trustor") whose mailing address is P.O. Box 94, St. Helena, CA 94574, the CITY OF ST. HELENA, a California municipal corporation ("Beneficiary"), whose mailing address is 1480 Main Street, St. Helena, CA 94574, and _____ ("Trustee"), whose mailing address is _____.

Trustor irrevocably grants, transfers and assigns to Trustee in Trust, with Power of Sale that Property located at 963 Pope Street in the City of St. Helena, County of Napa, State of California, having Assessor's Parcel Numbers 009-090-012-000 and 009-090-013-000 (the "Property") and more particularly described in the legal description attached hereto as **Attachment "A"** and incorporated herein.

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the purpose of securing (1) payment of the sum of \$450,000.00 according to the terms of a Loan Agreement and Promissory Note of even date herewith made by Trustor, payable to order of Beneficiary, and any extensions or renewals thereof; (2) the performance of each agreement of Trustor as set forth in the Loan Agreement and the Promissory Note; and (3) payment of additional sums thereon which may hereafter be loaned to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

A. To protect the security of this Deed of Trust, and with respect to the Property above described, Trustor agrees:

1) To keep said Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which

may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said Property in violation of the law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said Property may be reasonably necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

4) To pay at least ten days before delinquency all taxes and assessments affecting said Property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby, any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award of damages in connection with any condemnation for public use of or injury to said Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him or her in the same manner and with the same effect as above provided for disposition or proceeds of fire or other insurance.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his or her right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability of trust therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said Promissory Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may re-convey any part of said Property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said Promissory Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall re-convey, without warranty, the Property then held hereunder. The recitals in such re-conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such re-conveyance may be described as "the person or persons legally entitled thereto."

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said Property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said Property or any part thereof, in his or her own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, including the Promissory Note and Loan Agreement, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said Promissory Note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee without demand on Trustor, shall sell said Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The

recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of Napa County where said Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

8) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Promissory Note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

9) The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obliged to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge thereof does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to it at its address hereunder set forth. .

Our Town St. Helena, a California non-profit public
benefit corporation
P.O. Box 94
St. Helena, CA 94574

By: Mary Stephenson, President

OAK #4843-7766-5441-v2

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

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2019

"Jane Doe, Notary Public")

Date _____

Name And Title Of Officer (e.g.

personally appeared

Name 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.

Signature of Notary Public

ATTACHMENT A

PROPERTY

[Legal description to be inserted.]

EXHIBIT D

BORROWER'S CERTIFICATION OF SOURCES AND USES

Rural Community Assistance Corporation Proposed Sources and Use of Project Funds Template

Uses

Lien Position	Total Costs	Lender		Borrower's Funds
		1	2	
		RCAC	City	
Acquisition	850,000	400,000	450,000	
Pre-purchase (Phase I- asbestos/lead)	4,650	4,650		
Predev expenses for 4-plex	100,000	100,000		
Closing Costs	3,500	3,500		
Loan Fee	5,439	5,439		
Interest Reserves 1/	30,000	30,000		
Doc Fee	300	300		
TOTALS	\$ 993,889	\$ 543,889	\$ 450,000	\$ -

Rent	\$1,900.00	1900/month	restricted at 80% AMI
Utilities	100		
Taxes, Insurance	250	(assumes welfare tax exemption)	
Mtn.	100		
Mgmt fee	250		
Net	\$1,200.00 x 24=	\$28,800	

EXHIBIT E

Recording Requested By: Rural Community Assistance Corporation 3120 Freeboard Drive, Suite 201 West Sacramento, CA 95691	Space above this line for Recorder's Use
And When Recorded Mail To: Rural Community Assistance Corporation 3120 Freeboard Drive, Suite 201 West Sacramento, CA 95691 Loan No: _____ \$543,889 to RCAC Exempt from recording fees per Government Code §27383 and Building Homes & Jobs Trust Fund Fee per Government Code §27388.1(a)(2)(D)	

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE LIEN OF THE CITY DEED OF TRUST AND THE LIEN OF THE AFFORDABLE HOUSING AGREEMENT BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE LENDER DEED OF TRUST, ~~AND THE LIEN OF THE LENDER DEED OF TRUST BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE AFFORDABLE HOUSING AGREEMENT~~ (ALL AS HEREINAFTER DEFINED).

This Subordination Agreement ("Agreement") is made as of September __, 2019, by and between the City of St. Helena, a California municipal corporation ("City"), Rural Community Assistance Corporation, a California nonprofit public benefit corporation ("Lender"), and Our Town St. Helena, a California nonprofit public benefit corporation ("Borrower").

WITNESSETH

WHEREAS, Borrower has entered into a purchase agreement to acquire certain real property located at 963 Pope Street, St. Helena, California, which property is more particularly described in Attachment A attached hereto and by this reference made a part hereof, (hereinafter, the "Property"), with the intent to develop affordable rental residential units; and

WHEREAS, in accordance with a Loan Agreement between City and Borrower dated September __, 2019 ("City Loan Agreement"), Borrower has executed, or is about to execute a Deed of Trust, to secure a City Promissory Note in the principal amount of Four hundred fifty thousand dollars (\$450,000) in favor of the City ("City Loan"), recorded on September __, 2019, as Document No. _____ (hereinafter, the "City Deed of Trust"); and

WHEREAS, it is a condition of said City Loan Agreement between City and Borrower, that Borrower execute that certain Affordable Housing Agreement, recorded on __ September, 2019, as

Document No. _____ (hereinafter, ~~and that said the~~ “Affordable Housing Agreement ~~be subordinated to any financing on the Property~~”); and

WHEREAS, in accordance with a Loan Agreement between Lender and Borrower dated September ___, 2019 (“Lender Loan Agreement”), Borrower has executed, or is about to execute a Deed of Trust, to secure a Lender Promissory Note in the principal amount of Five hundred forty three thousand, eight hundred and eighty nine dollars (\$543,889) in favor of the Lender (“Lender Loan”), recorded concurrently herewith on September ___, 2019, as Document No. ____ (hereinafter, the “Lender Deed of Trust”); and

WHEREAS, it is a condition precedent to obtaining said Lender Loan that said Lender Deed of Trust shall unconditionally be and remain at all times a lien or charge upon the Property, prior and superior to the lien or charge of the City Deed of Trust and Affordable Housing Agreement; and

WHEREAS, Lender is willing to make said Lender Loan provided the Lender Deed of Trust securing the same is a lien or charge upon the above described Property prior and superior to the lien or charge of the City Deed of Trust and Affordable Housing Agreement and provided that City will specifically and unconditionally subordinate the lien or charge of the City Deed of Trust and Affordable Housing Agreement to the lien or charge of the Lender Deed of Trust in favor of Lender, subject to the terms of this Agreement; and

WHEREAS, City is willing to subordinate the lien or charge of the City Deed of Trust and Affordable Housing Agreement to the lien or charge of the Lender Deed of Trust, ~~provided Lender subordinates the lien or charge of the Lender Deed of Trust to the Affordable Housing Agreement~~; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender and City make such loans to Borrower, and City is willing that the Lender Deed of Trust securing the same shall, when recorded, constitute a lien or charge upon said Property which is unconditionally prior and superior to the lien or charge of the City Deed of Trust ~~first above mentioned, and Lender is willing that and~~ the Affordable Housing Agreement ~~shall, when recorded, constitute a lien or charge upon such Property which is unconditionally prior and superior to the lien or charge of the Lender Deed of Trust mentioned above.~~

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Lender and City to enter into the City Loan Agreement and Lender Loan Agreement, the parties hereto declare, understand and agree:

1. That the Lender Deed of Trust securing the Lender Loan as well as all other obligations recited therein as being secured thereby, and any renewals or extensions thereof, unconditionally shall be and remain at all times a lien or charge upon the Property prior and superior to the lien or charge of the City Deed of Trust and Affordable Housing Agreement;
- ~~2. That the Affordable Housing Agreement unconditionally shall be and remain at all times a lien or charge upon the Property prior to and superior to the lien or charge of the Lender Deed of Trust;~~
2. ~~3.~~ That Lender would not enter into the Lender Loan Agreement without this Agreement;
3. ~~4.~~ That City would not enter into the City Loan Agreement without this Agreement;
4. ~~5.~~ That this Agreement shall be the whole and only agreement with regard to the subordination of the City Deed of Trust and Affordable Housing Agreement in favor of

the Lender Deed of Trust, ~~and subordination of the Lender Deed of Trust to the Affordable Housing Agreement~~, and this Agreement shall supersede and cancel, but only insofar as would affect the priority between the City Deed of Trust ~~and the Lender Deed of Trust and between the Lender Deed of Trust and~~ Affordable Housing Agreement and the Lender Deed of Trust, any prior agreement as to such subordination, including but not limited to, those provisions, if any, contained in the City Deed of Trust ~~-, Affordable Housing Agreement~~ or Lender Deed of Trust which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

City declares, agrees and acknowledges that:

1. It consents to and accepts all provisions of the Lender Loan Agreement, Lender Promissory Note and Lender Deed of Trust ("Lender Loan Documents");
2. It intentionally subordinates the lien or charge of the City Deed of Trust and Affordable Housing Agreement in favor of the Lender Deed of Trust, as to the City Loan Agreement and City Loan as well as all other obligations recited therein as being secured thereby, and understands that in reliance upon and in consideration of this subordination, specific monetary and other obligations are being made and will be entered into which would not be made or entered into but for Lender's reliance upon this subordination.

Lender declares, agrees and acknowledges that:

1. It consents to and accepts all provisions of the City Loan Agreement, City Promissory Note, City Deed of Trust and Affordable Housing Agreement ("City Loan Documents"); ~~and~~
- ~~2. It intentionally subordinates the lien or charge of the Lender Deed of Trust in favor of the Affordable Housing Agreement, as to the Lender Loan Agreement and Lender Loan as well as all other obligations recited therein as being secured thereby, and understands that in reliance upon and in consideration of this subordination, specific monetary and other obligations are being made and will be entered into which would not be made or entered into but for City's reliance upon this subordination.~~

The parties hereto further agree:

1. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original, and all of which counterparts taken together shall constitute one agreement; and
2. This Agreement will be governed by or construed in accordance with the laws of the State of California and federal law, where applicable.
3. Each party hereto shall give the other party 60 days' notice prior to issuing a notice of default under each of the City Deed of Trust, Lender Deed of Trust or Affordable Housing Agreement (hereinafter, a "Recorded Item"), and shall have the right to cure a default on any Recorded Item at any time prior to a foreclosure sale under that Recorded Item. Lender also acknowledges and agrees to work with the City to provide a reasonable extended notice period for cure of Borrower's default ~~-, if any~~, to provide for payment in full of Lenders Loan with assignment to the City, if requested; and

4. Lender shall not advance to Borrower further sums under the term of the Lender Loan Agreement, nor modify the terms of the Lender Loan Documents to increase the amount of or extend the maturity date of the Lender Loan, without the City's prior written consent, which consent may be granted or withheld by City in its sole discretion.
5. Lender shall provide City certified copies of executed, and where appropriate, acknowledged and recorded, Lender Loan Documents. City shall provide Lender certified copies of executed, and where appropriate, acknowledged and recorded, City Loan Documents.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Our Town St. Helena
a California nonprofit public benefit corporation

By: _____
Mary Stephenson
Board President

City of St. Helena
a California municipal corporation

By: _____
Mark Prestwich
City Manager

ATTEST:

By: _____
Cindy Tzafopoulos
City Clerk

APPROVED AS TO FORM:

By: _____
Michael G. Biddle
City Attorney

Rural Community Assistance Corporation,
a California nonprofit public benefit corporation

By: _____
XXXXXXX
Loan Fund Director

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

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2019

"Jane Doe, Notary Public")

Date _____

Name And Title Of Officer (e.g.

personally appeared

Name 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.

Signature of Notary Public

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

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2019

"Jane Doe, Notary Public")

Date _____

Name And Title Of Officer (e.g.

personally appeared

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Signature of Notary Public

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ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2019

"Jane Doe, Notary Public")

Date _____

Name And Title Of Officer (e.g.

personally appeared

Name 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.

Signature of Notary Public

~~OAK #4826-5662-4545 v3~~

ATTACHMENT A

PROPERTY

[Legal description to be inserted.]

EXHIBIT F**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of St. Helena
1480 Main Street
St. Helena, Ca 94574
Attention: City Clerk

*EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE § 27383*

Exempt from recording fees per Government Code
and Building Homes & Jobs Trust Fund
Fee per Government Code §27388.1(a)(2)(D)

Space above this line for Recorder's use

AFFORDABLE HOUSING AGREEMENT

This Affordable Housing Agreement (“**Agreement**”) is entered into effective as of _____, 2019 (“**Effective Date**”), by and between the CITY OF ST. HELENA, a California municipal corporation (“**City**”) and our OUR TOWN ST. HELENA, a California non-profit public benefit corporation (“**Declarant**”). City and Declarant are sometimes referred to herein as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. City and Declarant are parties to a Loan Agreement dated _____, 2019, (“**Loan Agreement**”) setting forth the terms and conditions of a loan provided by City from its Housing Trust Fund to Declarant for the acquisition of 963 Pope Street, St. Helena, Napa County, California, as more particularly described in Attachment A attached hereto and incorporated herein (“**Property**”). The Property is comprised of two legal parcels identified as the “**Tract One Parcel**” (Assessor Parcel No. 009-090-013-000) and the “**Tract Two Parcel**” (Assessor Parcel No. 009-090-012-000).

B. The Loan Agreement requires, among other things, that upon acquisition of the Property by Declarant, the Parties shall enter into this Agreement to obligate Declarant to (a) rent the existing residential unit located on the Tract One Parcel (the “**Existing Residential Unit**”) at an Affordable Rent to a Low Income Household, and (b) if Declarant subsequently seeks and obtains all land use entitlements necessary to develop additional residential units (“**Future Residential Units**”) on the Property, and thereafter proceeds to develop and construct said Future Residential Units on the Property (“**Future Housing Project**”), Declarant shall rent the Future Residential Units constructed pursuant to a Future Housing Project at an Affordable Rent to Eligible Households whose gross annual income does not exceed 120% of Area Median Income.

C. The Loan Agreement requires recordation of this Agreement against the Property concurrently with recordation of the Deed of Trust securing the loan provided pursuant to the Loan Agreement in order to appropriately condition the use of the Existing Residential Unit and development of Future Residential Units, if any, on the Property in a manner consistent with the expenditure of Housing Trust Funds.

D. In accordance with the Loan Agreement, City and Declarant now desire to enter into and record this Agreement to ensure that the Property is used and developed for affordable housing purposes as set forth herein.

E. City and Declarant acknowledge that if prior to expiration of the term of this Agreement, Declarant does seek and obtain land use entitlements necessary to develop a Future Housing Project on the Property, and thereafter proceeds to develop and construct Future Residential Units on the Property, this Agreement will be replaced by a more detailed affordable housing regulatory agreement (“**Regulatory Agreement**”) to be entered into by City and the Declarant prior to commencement of construction of a Future Housing Project on the Property.

F. Declarant acknowledges that nothing contained in this Agreement shall preclude the Regulatory Agreement from requiring the rental of the Existing Residential Unit or Future Residential Units constructed pursuant to a Future Housing Project at an Affordable Rent to Eligible Households whose gross annual income is less than 120% of Area Median Income.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Incorporation of Recitals; Intent of Agreement.** The Parties acknowledge the truth of the foregoing Recitals, which are incorporated into this Agreement by this reference. The purpose of this Agreement is to provide notice of the development, occupancy and affordability requirements that apply to the Existing Residential Unit on the Tract One Parcel and any Future Housing Project that may be developed on the Property. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Declarant and Declarant’s successors and assigns.

2. **Definitions.** As used in this Agreement, the following terms shall have the meanings set forth in this Section 2.

“**Actual Household Size**” means the actual number of persons in the applicable household.

“**Adjusted for Family Size Appropriate for the Unit**” shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules associated with Affordable Housing Project financing sources.

“**Affordable Rent**” means a monthly rent that does not exceed:

(1) For Extremely Low-Income Households the product of 30 percent times 30 percent of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto, less a reasonable utility allowance and other fees and charges required to be paid by tenants on a non-optional basis.

(2) For Very Low-Income Households, the product of 30 percent times 50 percent of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto, less a reasonable utility allowance and other fees and charges required to be paid by tenants on a non-optional basis.

(3) For Low-Income Households, the product of 30 percent times 60 percent of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto, less a reasonable utility allowance and other fees and charges required to be paid by tenants on a non-optional basis.

(4) For Moderate -Income Households, the product of 30 percent times 110 percent of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto, less a reasonable utility allowance and other fees and charges required to be paid by tenants on a non-optional basis.

“Affordable Units” means the Existing Residential Unit and any Future Residential Units.

“Agreement” means this Affordable Housing Agreement.

“Annual Report” is defined in Section 4.

“Area Median Income” or “AMI” means the median income for Napa County, California, adjusted for Actual Household Size, as determined by the U.S. Department of Housing and Urban Development (“HUD”) pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development (“HCD”) in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

“City” means the City of St. Helena, a California municipal corporation.

“Declarant” means Old Town St. Helena, a California non-profit public benefit corporation.

“Deed of Trust” means the deed of trust by and between Declarant, as Trustor, and City, as Beneficiary, securing a loan of four hundred fifty thousand and 00/100 dollars (\$450,000.00) provided by City to Declarant pursuant to the Loan Agreement, and recorded in the official records of Napa County on _____, 2019, at Document No. _____.

“Effective Date” means the date set forth in the introductory paragraph of this Agreement.

“Eligible Household” means a Moderate-Income Household, Low-Income Household, Very Low-Income Household or Extremely Low-Income Household.

“Existing Residential Unit” is defined in Recital B.

“Extremely Low-Income Household” means households whose gross annual income, adjusted for family size, does not exceed thirty percent (30%) of Area Median Income for Napa County.

“Future Housing Project” is defined in Recital B.

“Future Residential Units” is defined in Recital B.

“Loan Agreement” is defined in Recital A.

“Low-Income Household” means households whose gross annual income, adjusted for family size, does not exceed eighty percent (80%) of Area Median Income for Napa County.

“Management Agreement” is defined in Section 5.

“Moderate Income Household” means households whose gross annual income, adjusted for family size, does not exceed one hundred twenty percent (120%) of Area Median Income for Napa County.

“Occupant” shall mean a person over the age of three (3) years who occupies an Affordable Unit for more than fourteen (14) days or more during a one-month period month.

“Party” means City or Declarant.

“Parties” means City and Declarant.

“Property” is defined in Recital A.

“Property Manager” is defined in Section 5.

“Regulatory Agreement” is defined in Recital E.

“Tract One Parcel” is defined in Recital A.

“Tract Two Parcel” is defined in Recital A.

“Very Low-Income Household” means households whose gross annual income, adjusted for family size, does not exceed fifty percent (50%) of Area Median Income for Napa County.

3. Development, Use and Affordability Restrictions. Declarant hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the use, operation and development of affordable housing in compliance with the requirements set forth in this Agreement. Until the date which is fifty-five (55) years following the date on which this Agreement is recorded in the official records of Napa County, (i) the Existing Residential Unit shall be occupied or held available for occupancy by a Low Income Household at an Affordable Rent, and (ii) any Future Residential Units on the Property shall be occupied or held available for occupancy by Eligible Households and shall be rented at an Affordable Rent. To the extent not in violation of state or federal law fair housing law, Declarant shall give preference in the rental of Affordable Units to Eligible Households with one or more Occupants employed within the City of St. Helena.

3.1.1 In the Affordable Units, no less than one Occupant shall be allowed per bedroom and no more than two Occupants shall be allowed per bedroom. A studio shall count as a one-bedroom for the purposes of these occupancy requirements. If no Eligible Households apply within sixty (60 days) of an Affordable Unit being available that meet these occupancy standards, the City shall, upon request of Declarant, grant exceptions to the occupancy standards.

3.1.2 Not more than once per year, Declarant may adjust rents in occupied Affordable Units to the level allowed for the family size appropriate to the unit. Declarant may adjust the rent upon vacancy of an Affordable Unit to the level allowed for the family size appropriate to the unit. Declarant must notify the lessee of an Affordable Unit in writing of any increase in such monthly rent at least sixty (60) days in advance of the effective rent adjustment date, and a copy of any such notification shall be sent to City simultaneously. The Declarant shall report any rent increase(s) to the City in the Annual Report, including: (1) the rent adjustment for each Affordable Unit; (2) the new rental amount for each Affordable Unit; (3) the effective date of the adjustment for each Affordable Unit; and (4) a copy of the written notice provided to the lessee of the Affordable Unit. Failure to provide the notice and reporting required shall be considered a default by Declarant under this Agreement.

3.1.3 The determination of a status as an Eligible Household shall be made by Declarant prior to initial occupancy of the Affordable Unit by such household. The income of all Occupants residing in the Affordable Unit shall be considered for purposes of calculating the household income. Declarant shall not discriminate against prospective lessee's of an Affordable Unit with qualified Public Housing Authority Section 8 certificates or vouchers who are otherwise qualified. In the Annual Report, the Declarant shall report any changes in the Occupants of any Affordable Unit to the City that are known by the Declarant, including the name(s) and household size(s) of the Occupant(s) vacating the Affordable Unit(s) during the reporting period, and, if the Affordable Unit(s) has/have been reoccupied, the name, household size and income of the new Occupant(s) occupying the Affordable Unit(s).

3.1.4 Immediately prior to the first anniversary date of the lease commencement of an Affordable Unit by an Eligible Household, and on each anniversary date thereafter, Declarant shall re-certify the income of the Occupant(s) of such Affordable Unit by obtaining a completed Occupant income certification based upon the current income of each Occupant of the Affordable Unit and Declarant shall take all reasonable steps to verify with reliable documentation the income and household size of the Occupant(s). All documentation obtained by Declarant in connection with the annual Occupant income certification shall be retained by Declarant for three (3) calendar years.

4. Reporting Requirements. Declarant shall submit to City annual reports ("**Annual Report**") which shall include all reporting required under this Agreement from the date of the previous Annual Report and include the following:

- A. A cover letter to the City describing the status of compliance with this Agreement, including any problems experienced during the reporting period, and any recommendations to address problems and enhance compliance;
- B. Income certifications or re-certifications, for each Eligible Household of an Affordable Unit. The Annual Report shall be accompanied by an income certification worksheet in a format and containing information reasonably required by

City, which at a minimum, shall include the following with respect to each of the Affordable Units:

- a. Address of Affordable Unit;
- b. Number of bedrooms and bathrooms in Affordable Unit;
- c. Floor Plan of Affordable Unit, with room designations and dimensions;
- d. Name of head of Eligible Household;
- e. The number of Occupant(s) in the Eligible Household and their age;
- f. Initial lease commencement date;
- g. Eligible Household income limit applicable to Affordable Unit at initial lease commencement date; and at recertification date (if applicable);
- h. Gross income of Eligible Household at lease commencement date; and at recertification date (if applicable);
- i. Affordable Rent applicable to Affordable Unit;
- j. Reasonable Utility Allowance calculation by Declarant;
- k. Reasonable Utility Allowance applicable to Affordable Unit;
- l. Section 8 Assistance (if applicable);
- m. Rent Paid by Eligible Household;
- n. Rent as a percentage of Eligible Household's Income;
- o. Next Recertification Date; and
- p. Move out date (if applicable).

Upon receipt of the Annual Report, the City may request additional information to confirm compliance with this Agreement. In the event the City requests such information, the Declarant shall promptly supply such information to City in the format requested by City. Declarant shall maintain all necessary documents, books and records, including property and financial records, in accordance with requirements prescribed by City with respect to all matters covered by this Agreement for a period of three (3) years following the date of submittal of the Annual Report to which such documents, books or records relate. Upon request for examination by City, Declarant, at any time during normal business hours and upon reasonable notice, shall make available at the Property (or at another location within the City of St. Helena) all material records with respect to matters covered by the Agreement. Declarant shall permit City, at City's expense, to audit, examine, copy, and make excerpts or transcripts from such records.

5. Management Of Affordable Units. If Declarant enters into a separate property management agreement ("**Management Agreement**") with a property management company or other organization in order to manage the Affordable Units (including leasing, property management, maintenance and repair services, and reporting obligations) and ensure that Declarant's obligations under this Agreement with respect to the Affordable Units are satisfied ("**Property Manager**"), Declarant shall comply with this Section 5. Property Manager shall have at least five (5) years' experience in the operation and management of similar size rental housing developments, and at least three (3) years' experience in the operation and management of rental housing developments containing below-market-rate units, without any record of material violations of discrimination restrictions or other applicable laws. No less than sixty (60) calendar days prior to hiring any Property Manager or executing any amendment to a Management Agreement, Declarant shall provide documentation to the City as is reasonably necessary to evaluate the proposed Property Manager's experience and qualifications or revisions to a Management Agreement. No Property Manager shall be hired, or Management Agreement signed or amended, without City's prior approval

thereof, which shall not be unreasonably withheld or delayed. For the term of this Agreement, any change in Property Manager or amendment to the Management Agreement shall comply with the requirements of this Section 5 and any material amendment shall require the prior written approval of City, which shall not be unreasonably withheld or delayed.

6. Remedies for Breach. Upon any default under this Agreement by Declarant or by Declarant's successors or assigns, City may seek specific performance of the terms hereof, and may enjoin acts that may be in violation of this Agreement. Failure by City to enforce any provision contained herein shall not be deemed a waiver of the right to do so as to any continuing, subsequent, or other violation. This Section is not intended to limit City's ability to exercise any applicable remedy available to City pursuant to this Agreement or the Loan Agreement. All remedies available to City shall be cumulative and not exclusive.

7. Binding on Successors in Interest; Provisions Run With the Land. The Property, and each and every portion thereof, shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, covenants, conditions and restrictions set forth in this Agreement, all of which shall run with the land, shall constitute equitable servitudes, shall be binding on all parties having or acquiring any right, title or interest in such Property or portion thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of City and its successors and assigns. It is the intent of the Parties that this Agreement shall satisfy the requirements of California Civil Code Section 1468.

Without limiting the foregoing, the Parties hereby declare that it is their express intent that the covenants, restrictions and conditions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon Declarant's successors in title to the Property. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property, Existing Residential Unit, or, if developed, the Future Residential Units pursuant to the Future Housing Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. Declarant agrees for itself and for its successors and assigns that if a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property in favor of City.

8. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Napa County concurrently with and immediately following recordation of the Deed of Trust securing the Loan provided pursuant to the Loan Agreement. Declarant hereby represents warrants and covenants that with the exception of easements of record, absent the written consent of City, this Agreement shall not be subordinated in priority to any lease, ground lease, security agreement, deed of trust, mortgage, lien, encumbrance, or other interest in the Property.

9. Release and Discharge. Upon the earlier of (i) expiration of this Agreement, or (ii) execution and recordation of a Regulatory Agreement between City and Declarant in connection with a Future Housing Project, which Regulatory Agreement encumbers the Existing Residential Unit on the Tract One Parcel, City and Declarant, will execute and record appropriate instruments to release and discharge this Agreement. Declarant acknowledges that nothing contained in this Agreement shall preclude the Regulatory Agreement from requiring the rental of the Existing Residential Unit or

Future Residential Units constructed pursuant to a Future Housing Project at an Affordable Rent to Eligible Households whose gross annual income is less than 120% of Area Median Income.

10. Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser.

Such purchaser shall, however, be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice of such violation to the holders of record of any mortgages or deeds of trust encumbering the Property.

11. Estoppel Certificate. At any time during the term hereof, City, Declarant or any party then owning an interest in the Property may request an estoppel certificate from the other party attesting to such party's compliance with the terms and provisions of this Agreement. A party making a request for an estoppel certificate shall provide Declarant or City, as applicable, with all documentation reasonably necessary for Declarant or City to form an opinion as to compliance or non-compliance with the provisions hereof. After receiving such a request and the necessary supporting documentation, Declarant or City, as applicable, shall respond, in writing, within thirty (30) calendar days following the date of receipt and shall either confirm compliance with the terms and provisions of this Agreement or shall state in reasonable detail any alleged failure to comply and the steps necessary to cure such lack of compliance.

12. Indemnification. Declarant hereby covenants and agrees that it shall indemnify, defend with counsel reasonably acceptable to City and hold City and its elected and appointed officials, representatives, officers, agents and employees harmless from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with the approval of this Agreement; (b) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with the implementation or enforcement of this Agreement; (c) any and all claims arising from an act or omission of Declarant or any of its shareholders, partners, members, principals, officials, officers, employees, representatives, agents, contractors or subcontractors in connection with this Agreement or the Property; (d) any and all claims arising out of or related to the operation, use, occupancy, maintenance or ownership of the Property, including compliance with the laws, ordinances, rules and regulations of City pursuant to this Agreement; and (e) all reasonable costs, attorney fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; provided, however, that this provision shall not require Declarant to indemnify City from any claims, costs, fees expenses or liabilities arising from the gross negligence or willful misconduct of the City. In the event any action or proceeding is brought against the City or any of its elected and appointed officials, representatives, officers, agents and employees, with respect to which indemnity may be sought hereunder, Declarant, upon receipt of written notice from City, shall assume the investigation and defense thereof, including the employment of counsel approved by the City and the payment of all expenses related thereto.

13. Miscellaneous.

13.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by each of the Parties or their respective successors in interest.

13.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

13.3 Notices. All notices, requests, demands and other communications required or permitted to be given under the terms of this Agreement by one party to the other shall be in writing addressed to the recipient party's address set forth below and shall be deemed to have been duly given or made (a) if delivered personally (including by commercial courier or delivery service) to the party's address, then as of the date delivered (or if delivery is refused, on presentation), or (b) if mailed by certified mail to the party's address, postage prepaid and return receipt requested, then at the time received at the party's address as evidenced by the return receipt, or (c) if mailed by first class mail to the party's address, postage prepaid, then on the third (3rd) business day following deposit in the United States Mail. Any party may change its address for the receipt of notices by giving notice to the other party in the foregoing form and manner. The addresses of the parties are:

TO CITY:

City of St. Helena
1480 Main Street
St. Helena, California 94574
Attn.: City Manager
(707) 968-2744 ext: 500

TO DECLARANT:

Our Town St. Helena
P.O. Box 94
St. Helena, California 94574
Attn.: Mary Stephenson
(707) 849-2583

13.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and shall take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

13.5 Parties Not Co-Venturers; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Declarant and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Declarant or to any third party with respect to the Property.

13.6 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair

meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of St. Helena shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

13.7 Time is of the Essence. Time is of the essence in the performance of this Agreement.

13.8 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Napa County, California or in the Federal District Court for the Northern District of California.

13.9 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

13.10 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

13.11 Entire Agreement. This Agreement, together with the Loan Agreement and the Loan Documents referred to in the Loan Agreement, contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto.

13.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Agreement as of the date first written above.

CITY:

CITY OF ST. HELENA, a
California municipal corporation

By: _____
Name: Mark Prestwich
Its: City Manager

ATTEST:

Cindy Tzafopoulos, City Clerk

APPROVED AS TO FORM:

Michael G. Biddle, City Attorney

DECLARANT:

OUR TOWN ST. HELENA,
a California non-profit public benefit corporation

By: _____
Name: Mary Stephenson
Its: Board President

By: _____
Name: _____
Its: _____

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

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2019
"Jane Doe, Notary Public" Date Name And Title Of Officer (e.g.

personally appeared _____
Name 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.

Signature of Notary Public

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

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2019
"Jane Doe, Notary Public" Date Name And Title Of Officer (e.g.

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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 of Notary Public

ATTACHMENT A

PROPERTY

[Legal description to be inserted.]

OAK #4849-8088-4130 ~~v3~~v5
05829-0068

Comparison Details	
Title	compareDocs Comparison Results
Date & Time	9/4/2019 5:50:46 PM
Comparison Time	2.83 seconds
compareDocs version	v4.3.300.65

Sources	
Original Document	[#4849-8088-4130] [v3] OTSH Loan Agreement Pope St..doc
Modified Document	[#4849-8088-4130] [v5] OTSH Loan Agreement Pope St..doc

Comparison Statistics		Word Rendering Set Markup Options	
Insertions	22	Name	
Deletions	15	Insertions	
Changes	9	Deletions	
Moves	0	Moves / Moves	
Font Changes	0	Font Changes	
Paragraph Style Changes	0	Paragraph Style Changes	
Character Style Changes	0	Character Style Changes	
TOTAL CHANGES	46	Inserted cells	
		Deleted cells	
		Merged cells	
		Changed lines	Mark left border.
		Comments color	By Author.
		Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	[Yes / No]
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True

CITY OF ST. HELENA

RESOLUTION NO. 2019-

Resolution of the City Council of the City of St. Helena approving and authorizing the City Manager to execute, enter into and carry out the terms of a Revised Loan Agreement between the City of St. Helena and Our Town St. Helena in an amount not to exceed \$450,000 from the Affordable Housing Trust Fund for the acquisition of property located at 963 Pope Street, St. Helena, California (APN 009-090-012-000; 009-090-013-000)

- A. On August 13, 2019, the City Council considered the request of Our Town St. Helena, a California non-profit public benefit corporation ("OTSH"), for a loan of four hundred fifty thousand and 00/100 dollars (\$450,000.00)(the "Loan") from the City's Housing Trust Fund to assist with the acquisition of real property located at 963 Pope Street, St. Helena, California (APN 009-090-012-000; 009-090-013-000)("Property"); and
- B. After considerable discussion regarding OTSH's request, and in recognition of the representation by OTSH that the date for close of the transaction related to the purchase and sale of the Property was set for September 3, 2019, the City Council directed staff to return to the City Council at its next regular meeting of August 27, 2019, with documentation for its consideration that would provide OTSH with the requested Loan for acquisition of the Property; and
- C. On August 27, 2019, the City Council considered and approved the request of OTSH for the Loan from the City's Housing Trust Fund to assist with the acquisition of the Property; and
- D. Subsequent to the City Council's approval of the Loan Agreement, OTSH advised City staff that the first lender, Rural Community Assistance Corporation ("RCAC"), will not provide the needed financing if their loan is subordinate to the City's Affordable Housing Agreement; and
- E. On September 10, 2019, the City Council considered the request of OTSH to modify the Loan Agreement and Subordination Agreement previously approved on August 27, 2019, to provide that the lien of the City's Affordable Housing Agreement be subordinate to the lien of the deed of trust of RCAC; now, therefore

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

- 1. Authorizing the Revised Loan Agreement for the acquisition of 963 Pope Street is governed by Section 15310 of State CEQA Guidelines which exempts the approval of mortgages for the purchase of existing structures where the loan will not be used for new construction. As provided in the Revised Loan Agreement the monies advanced by the City may only be used for the acquisition of the

Property and may not be used for any development activity. Accordingly, the approval of the Revised Loan Agreement is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines Section 15310, which exempts “mortgages for the purchase of existing structures where the loan will not be used for new construction”.

2. The City Council hereby authorizes the City Manager to execute, enter into and carry out the terms of the Revised Loan Agreement, and all documents appended thereto, between the City of St. Helena and Our Town St. Helena in an amount not to exceed \$450,000 from the Affordable Housing Trust Fund for the acquisition of property located at 963 Pope Street, St. Helena, California (APN 009-090-012-000; 009-090-013-000), inclusive of such revisions and corrections thereto as may be approved by the City Manager and City Attorney which do not increase the obligations nor impair the rights of the City thereunder.

Approved at a Regular Meeting of the St. Helena City Council on September 10, 2019 by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Koberstein:	_____
Councilmember Chouteau:	_____
Councilmember Knudsen:	_____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafopoulos, City Clerk

OAK #4823-5531-8948 v1



963 Pope Street Acquisition Loan

ORDER OF CONTROL

- | | |
|------------|--|
| As Written | <ol style="list-style-type: none">1. Affordability Restriction2. RCAC Loan3. City Loan4. Property Ownership |
|------------|--|

- | | |
|---------------------|---|
| As Required by RCAC | <ol style="list-style-type: none">1. RCAC Loan2. Affordability Restriction3. City Loan4. OTSH Property Ownership |
|---------------------|---|

OTSH 9/10/19

**Provided at Meeting*