



City of St. Helena
Regular City Council Meeting
Tuesday, October 22, 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 - Rodolfo Morales 9 - 20
[Starr Avenue-Hunt's Grove area Parking Petition](#)
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. Fourth Annual Saint Helena Movember Mens' Health Month November 1st – November 30th, 2019 presented to Chris Hartley, Acting Police Chief 21
[Proclamation](#)
 - 6.2. National Friends of Libraries Week Proclamation presented to Maria Criscione Stel, St. Helena Public Library Friends & Foundation Executive Director 23
[Proclamation](#)
7. STAFF BRIEFING

- 7.1. Holiday Lighting and Jingle All the Way by Andre Pichly, Parks & Recreation Director 25 - 30
[Jingle All the Way Info Packet 2019](#)
- 7.2. Upper York Creek Dam Project Update by Erica Ahmann Smithies, Public Works Director and City Engineer
- 7.3. Update on Waste Water Treatment Plant Upgrade Project by Erica Ahmann Smithies, Public Works Director and City Engineer
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 Regular Meeting Minutes of August 27, 2019 (~~To be provided prior to the meeting~~ Provided October 22, 2019 at 3:20 pm) 31 - 41
 CEQA Determination: Not a CEQA project
 Prepared By: Cindy Tzafopoulos, City Clerk
 Recommendation:
 Staff recommends approval of the meeting minutes.
[Minutes](#)
- 8.2. Consideration of proposed approval of a resolution authorizing (1) Amendment #1 to Professional Services Agreement with Noll & Tam Architects STH Contract No: FY 2019-091 for an additional \$17,674 for a total contract amount not-to-exceed \$273,244; (2) a budget increase of \$15,624 to 101-4000-2130 and use of General Fund Reserves of the same; and (3) a budget increase of \$2,050 to 713-4000-2130. 43 - 69
 CEQA Determination: Categorically Exempt, Section 15323
 Prepared By: April Mitts, Finance Director
 Recommendation:
 Staff recommends City Council approve a resolution authorizing (1) Amendment #1 to Professional Services Agreement with Noll & Tam Architects STH Contract No: FY 2019-091 for an additional \$17,674 for a total contract amount not-to-exceed \$273,244; (2) a budget increase of \$15,624 to 101-4000-2130 and use of General Fund Reserves of the same; and (3) a budget increase of \$2,050 to 713-4000-2130.
[Staff Report - Pdf](#)
- 8.3. Consideration and proposed approval of a resolution: (1) authorizing and approving classification and compensation study recommendations for Mid-Managers and Department Heads; (2) approving classification changes for those Mid-Managers and Department Heads recommended for a reclassification as noted on the publicly available salary schedules; (3) authorizing and approving implementation of compensation adjustments for all Mid-Manager and Department Heads to be within 7.5% of the market median study, effective July 1, 2019; and a 2% salary adjustment for all Mid-Managers and Departments Heads effective January 1, 2020; (4) in accordance 71 - 95

with the requirement of California Code Section 54953(c)(3) including an oral report summarizing the recommended final action for the Executive Department Heads which includes a 1.1% for the Finance Director, 7.2% compensation adjustment for the Human Resources and Information Technology (HR&IT) Director, 14.9% for the Library Director, 0.8% compensation adjustment for the Police Chief, and 10.4% compensation adjustment for the Parks and Recreation Director, effective July 1, 2019 and a 2% compensation adjustment to the City Clerk, Finance Director, HR&IT Director, Library Director, Building & Planning Director, Police Chief, Public Works Director, and Recreation Director effective January 1, 2020; (5) duly approving and adopting publicly available compensation schedules in accordance with California Code Section 570.5; and (6) approving the sixth amendment to the Unrepresented Compensation Program to update Section 1.3 Covered Employees with the new classification recommendations.

CEQA Determination: Not a CEQA project

Prepared By: Kathy Robinson, Human Resources & IT Director, Mandy Kellogg, Admin Services Mgr

Recommendation:

Authorize and approve recommended classification changes, compensation adjustments for positions that were below market median, effective July 1, 2019; and a 2% salary adjustment for all mid-managers and department heads effective January 1, 2020; authorize and approve publicly available pay schedules in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5; and approve the sixth amendment to the Unrepresented Compensation Program to update Section 1.3 Covered Employees with the new classification recommendations.

[Staff Report - Consideration and proposed approval of a resolution authorizing and approving publicly available pay schedules in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5 - Pdf](#)

- 8.4. Consideration and Adoption of a Resolution Awarding Legal Services Contract to Best Best & Krieger LLP and Appointing Kara Ueda as City Attorney.

97 - 117

CEQA Determination: Categorically Exempt, Section 15323

Prepared By: April Mitts, Finance Director

Recommendation:

Based on City Council direction, staff recommends City Council adopt a resolution awarding Legal Services Contract to Best Best & Krieger LLP and appointing Kara Ueda as City Attorney.

[Staff Report - Pdf](#)

9. PUBLIC HEARINGS

- 9.1. None

10. OLD BUSINESS
- 10.1. Review and Discussion of Possible Back-up/Standby Generator Regulations 119 - 123
- CEQA Determination: Not a CEQA project
Prepared By: Philip Henry, Building Official
Recommendation:
Provide direction to the City Manager.
[Staff Report - Pdf](#)
- 10.2. Consideration, discussion and direction regarding policy of the City of St. Helena pertaining to the provision of water services to “new development” on property located outside the City of St. Helena city limits 125 - 185
- CEQA Determination: Not a “project” as defined in CEQA Guidelines Section 15378(a); Common Sense exemption, as set forth in CEQA Guidelines Section 15061(b)(3).
Prepared By: Michael G. Biddle, City Attorney
[Staff Report - Pdf](#)
11. NEW BUSINESS
- 11.1. Quarterly Grant Report for FY 2020 Q1, for the period ending September 30, 2019 187 - 200
- CEQA Determination: Not a CEQA project
Prepared By: Mandy Kellogg, Admin Services Mgr
Recommendation:
Receive and file report.
[Staff Report - Pdf](#)
- 11.2. Caltrans Presentation on Highway 29 Sulphur and York Creek Bridges Barrier Rails Upgrade Project 201 - 243
- CEQA Determination: CEQA will be completed as part of project design
Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer
Recommendation:
Receive, discuss, and provide feedback on Caltrans presentation.
[Staff Report - Pdf](#)
[Presentation - 4J830HopperSlough10-18-19](#)
[Presentation - 2K150 Sulphur and York10-18-19](#)
- 11.3. Consideration and adoption of Resolution of the City Council of the City of St. Helena Regarding the Refund Of Defense Cost On Appeal Application of Joseph C. McGrath Pursuant to St. Helena Municipal Code §17.08.060 In A Range From \$0.00 To An Amount Not To Exceed \$87,201.37 245 - 277
- CEQA Determination: Not a “project” as defined in Section 15378(a) subject to CEQA; further, even if deemed a “project” subject to CEQA,

exempt from CEQA under the common sense exemption set forth in Section 15061 (b)(3), in that it can be seen with certainty that the proposed action will have no impact on the environment.

Prepared By: Michael G. Biddle, City Attorney

[Staff Report - Pdf](#)

[Public Comment.Joe McGrath](#)

- 11.4. Consideration and proposed approval of a resolution approving the POW/MIA flag to be flown on the City's ceremonial flag pole:

279 - 286

1. The week preceding and week after Memorial Day (Last Monday in May).
2. The week preceding and week after Veterans Day (November 11th).

CEQA Determination: Not a CEQA project

Prepared By: Cindy Tzaopoulos, City Clerk

Recommendation:

Approve Resolution authorizing the MIA/POW flag to be flown on the City's ceremonial flag pole during the requested times.

[Staff Report - Pdf](#)

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

- 12.1.

November City Council Meetings:	
11/12 (staff reports due 10/25)	
11/26 (staff reports due 11/8)	
TBD Joint P&R\ATSC\City Council Mtg (Nov or Dec)	
PROCLAMATIONS AND PUBLIC RECOGNITION:	
Arbor Day Proclamation	
CONSENT:	
11/12 Napa RCD Amendment	
11/26 Two NOC's (R19-79 and Hunt)	
11/12 Mead & Hunt PSA Amendment	
11/26 SHEA MOU	
OLD BUSINESS:	
11/12 Noll & Tam Report	
11/12 Add back list (Paying down PERS- Prefunding medical)	
11/12 Curfew Ordinance Review	
11/12 CARES program update	
11/12 Pratt and Main	
11/12 Hydro Science report on WWTP	
11/12 Crinella Pump Station	
PH or NEW BUSINESS:	
Zoning Code Update – award of contract	
Measure T Project List	
11/12 LRFF Policy discussion	
PH Sewer Annexation 1057 Pratt Avenue	
11/26 MCC Clean Energy	
11/26 Williamson Act	

<u>December City Council Meetings:</u>
12/10 (staff reports due 10/25)
12/24 Cancelled
<i>PROCLAMATIONS/PUBLIC RECOGNITION/STAFF BRIEFING:</i>
SB - Elm Tunnel Update
Honor and recognize committees
<i>CONSENT:</i>
Joint use agreement with SHUSD for the use of Vintage Hall (Expires February 2020)
NOC for paving projects

13. ADJOURNMENT

The next Regular City Council meeting is scheduled for November 12, 20019, 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 October 15, 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.

Parking Petition

In Saint Helena

Parking petition in St. Helena

Petition: A longstanding problem has existed in St. Helena related to parking in the Starr Avenue/Hunt's Grove area. We, the undersigned residents of the area, would like the city to take a proactive role in addressing the situation of lack of parking here, and with this action, help neighborhood relations.

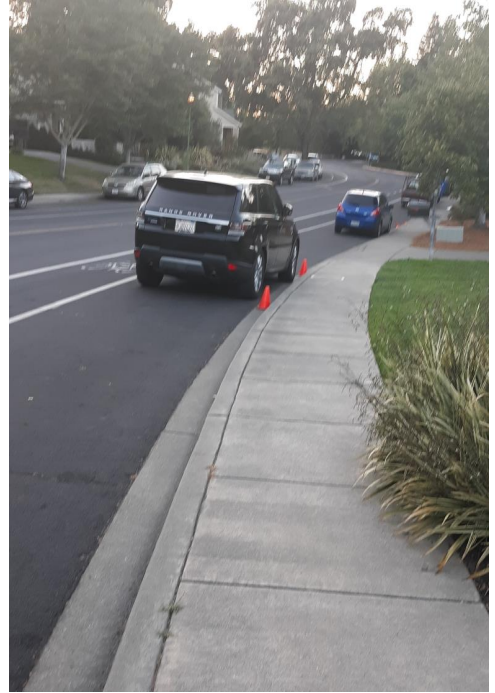
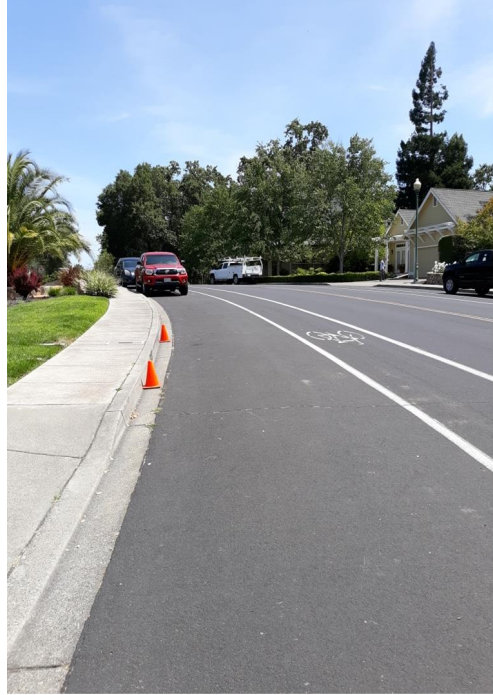
We believe there are some viable options in the area for additional parking, and we would like these to be explored by the city and its representatives. Parking and housing will be long-term issues for St. Helena. We ask for innovative, engaged solutions regarding parking, in the Starr Avenue/Hunt's Grove area, from the city as soon as possible.

Peticion

Un problema ha existido por largo tiempo en St Helena relacionado con estacionamiento de autos en el área entre la avenida Starr y Hunt's Grove. Nosotros, quienes firmamos esta petición y quienes somos residentes de las áreas estacionamiento afectadas por esta situación, le pedimos a la ciudad que tome acción atendiendo la situación de falta de estacionamiento, y así promover las relaciones positivas entre las vecindades.

Nosotros creemos que existen opciones muy viables en el área para establecer estacionamiento adicional al que actualmente existe- cual no suficiente- y pedimos que estas opciones sean exploradas por la ciudad y sus gobernantes. Las necesidades de estacionamiento y de viviendas son y serán cuestiones de largo tiempo. Pedimos que la ciudad discuta e implemente soluciones innovadoras y comprometidas, para el área de la avenida Starr y Hunt's Grove, lo más pronto posible.

CONES ON THE SIDE OF THE STREET



PROPERTY OF HUNTS AVE AND STARR AVE.





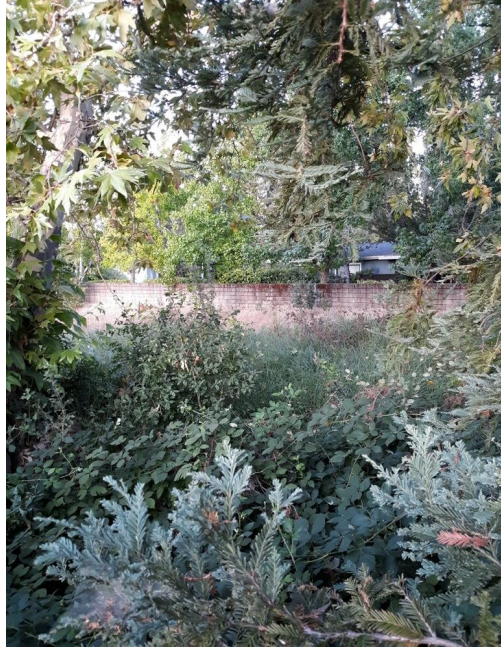




SECOND OPTION FOR RESIDENT PARKING



THIS AREA NEEDS MORE CLEANING/WORK FOR PARKING





Agenda Item #4.1.



City of St. Helena

PROCLAMATION

Fourth Annual Saint Helena Movember Mens' Health Month **November 1st – November 30th, 2019**

WHEREAS, Prostate cancer is the second most common cancer in men in the US., and Testicular cancer is the most common cancer in young men aged 15-34 in the US., and Around 1 in 4 adults in the US will experience a mental health problem in a given year; and

WHEREAS, Numerous studies have shown that early detection of any form of cancer is instrumental in combatting the disease, and since using early detection tests for prostate cancer became fairly common in the United States around 1990, the prostate cancer death rate has dropped; and

WHEREAS, the American Cancer Society ® recommends prostate cancer screenings for men of average risk who are 50 years old or higher, men of high risk who are 45 years or older, and men of even higher risk (those with two or more direct relatives who have had prostate cancer) who are 40 years and older; and

WHEREAS, the key to educating people about the benefits of early detection through routine exams is creating awareness campaigns designed to stimulate conversation; and

WHEREAS, the Movember movement, which began in 2003 has raised over \$650 million and funded over 1,000 programs focusing on prostate cancer, testicular cancer, poor mental health and physical inactivity in men;

NOW, THEREFORE, be it resolved that I, Geoff Ellsworth, Mayor of the City of St. Helena, along with the St. Helena City Council, do hereby proclaim November 1st through November 30th, 2019 Movember – Men's Health Month.

Dated: October 22, 2019

Geoff Ellsworth, Mayor
City of St. Helena

City of St. Helena PROCLAMATION

National Friends of Libraries Week Proclamation

Whereas, Friends & Foundation, St. Helena Public Library raises money that enables our library to move from good to great -- providing the resources for programming, additional part-time staff, support for the library's various summer reading programs, and special events throughout the year which help lead to positive civic engagement and the betterment of our community;

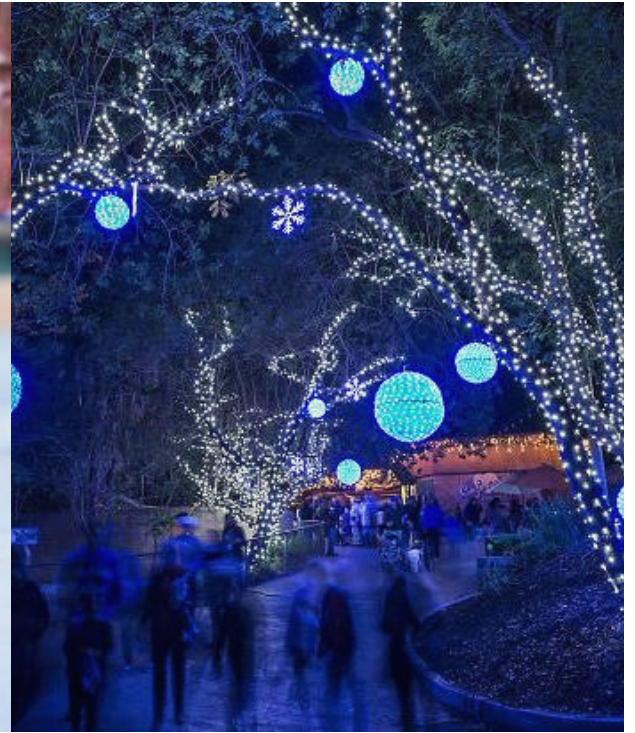
Whereas, the work of the Friends & Foundation highlights on an on-going basis the fact that our library is the cornerstone of the community, providing opportunities for all to engage in the joy of life-long learning, and connect with the thoughts and ideas of others from ages past to the present;

Whereas, the Friends & Foundation understand the critical importance of well-funded libraries and encourage community support for the library along with advocating to ensure that our library gets the resources it needs to provide a wide variety of services to all ages including access to print and electronic materials, as well as expert assistance in research, readers' advisory, and children's services;

Now, therefore, be it resolved that I, Geoff Ellsworth, Mayor of the City of St. Helena, proclaim October 20-26, 2019, as Friends of Libraries week in St. Helena and urge everyone to thank the Friends & Foundation for all they do to make our library and community so much better.

Dated: October 22, 2019

Geoff Ellsworth, Mayor
City of St. Helena



ST HELENA'S FAVORITE HOLIDAY TRADITION
RETURNS TO LYMAN PARK
JINGLE ALL THE WAY



Shine Bright, St Helena

Jingle All the Way is a month long holiday experience located in downtown St Helena at Lyman Park beginning November 29th through December 29th. Through partnerships and enhanced amenities, Jingle All the Way will be one of St Helena's prized yearly traditions bringing both locals and visitors together for a truly magical winter wonderland.



Your 2019 Jingle All the Way Winter Wonderland will feature:

- Outdoor Roller Skating under a lit clear top tent equipped with disco ball and chandeliers
- Nightly food trucks + bar for all ages
- Nimbus Arts Roller Skating Cow featured in the "grazing zone" with firepits and smore-making
- Santa guest appearances
- Jaw Dropping lighting display with over 26 LED lit trees, 15 foot custom St Helena lighted snowflake, LED orbs, and an 18 foot lit and decorated City Holiday Tree
- Over 20 snow flocked trees + weekly "skating in the snow"
- Live Music + DJ appearances
- Outdoor Cozy Igloo hangouts
- Professional skating demonstrations and themed skate nights

The City of St Helena and the Chamber of Commerce are excited to bring Jingle All the Way to St Helena, and are inviting business sponsors and community supporters to join us in the effort of making St Helena a town of celebration.



sthelenajingle.com

2018 Season Numbers

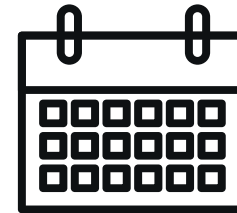
Number of Skaters

1,103



*Not including kids 5th grade and below who skate free the first hour!

MOST POPULAR DAY
SAT, DEC 15



Across 10 Facebook Events,
23,200 people were reached

BUSIEST HOUR

6PM - 7PM

2nd BUSIEST HOUR

3PM - 4:30PM



19,300



Cars travel through Downtown St Helena
Daily (study in 2015)

More than 4,000 LED Lights installed for event



Over 1,000
beverages Sold



sthelenajingle.com

Social Media

↑ **25K**  
Social Media Followers



Diana Schweiger Isdahl Love the rink in St. Helena. It is a great skating experience 🛼

Like · Reply · Message · 19w



5.0 Facebook Rating 

Average Instagram Impressions



190,000
@StHelenaCA



Jingle All the Way
Statistics

Display Ads

- 1,379,717 impressions
- 4,098 clicks
- .30% CTR (Good)
- .85 CPC
- \$2.55 CPM (Very good)
- \$3,519.11 Media spend

Facebook Ads

- 86,615 impressions
- 1,299 Link Clicks
- 2.58 CTR (Very Good)
- .754 CPC
- \$11.32 CPM
- 33,814 Reach
- \$980.89 media spend

Jingle All the Way Facebook Event Responses



23.2K

People Reached



996

Event Responses



222

Ticket Clicks



sthelenajingle.com

Sponsorship Opportunity

The 2019 Jingle All the Way Committee is seeking a total of \$65,000 in sponsorship from business owners and community supporters. Through teamwork and community support, St Helena locals will have a month long event that not only showcases the best of St Helena but a gathering opportunity for people to come together throughout the holidays. Jingle All the Way offers activities for not only families, but teens and adults as well. After hours events, industry parties, teen skate, and more.

Enclosed are a varitey of oportunties for supports to help make Jingle All the Way exceedingly special. With benefits ranging from "community give back" to an opportunity to join us in the 2019 Tractor Parade, online recognition, business promotion and more.

Bringing Jingle All the Way back for a second year to St Helena was demanded by locals and the anticipation has been growing since. Our 2018 success was not possible without the support of our generous sponsors: Brasswood Estates, Trinchero Napa Valley, Clif Family Winery, Sunshine Foods, Safe Harbor, Coppercane, Castellucci Napa Valley, Jack Oliver, Charles Krug, Andrew Beckstoffer, and Wydown Hotel. In addition, Joel Gott, Beringer, Napa Valley Wine Train, ER Jewelers, UV Disposal, Marcus Robbins, Coppola Family, Dario and Tom Sattui.

We thank you in advance for supporting community events that celebrate St Helena!



QUESTIONS? CONTACT STEPHANIEI@CITYOFSTHELENA.ORG | 707-339-9810

sthelenajingle.com



LOCK IN YOUR SPONSORSHIP TODAY!

With our impressive positive feedback from last season, the 2019 Season is expected to be wildy successful. Don't miss your opportunity to increase your brand exposure and community support this holiday season.

Feel free to get creative at giving to help make this possible! Mail a check, request a matching gift from an employer, host a Jingle All the Way sponsorship event, collect corkage fees, and more!

FOR SPONSORSHIP INQUIRES, CONTACT:
Stephanie Iacobacci
stephaniei@cityofsthelena.org | 707-339-9810
All sponsorships go through the St Helena Renaissance
Foundation Non-profit

November 29, 2019 - December 29, 2019



sthelenajingle.com

MINUTES
City of St. Helena
Regular City Council Meeting
Tuesday, August 27, 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:

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PUBLIC FORUM:

Autumn Anderson addressed the City Council.

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

Council Member Knudsen requested for the disbanded Tree Committee to be agendized for a future discussion. Council Member Koberstein was in agreement.

Reports by Staff and City Council Members were made.

6. PRESENTATIONS AND PUBLIC RECOGNITIONS

6.1 Proclamation and recognition for the Retirement of Dan Brunetti

6.2 Oath of Office for Officer Carlos Lopez

7. STAFF BRIEFING

7.1 Police Department 2018 Year in Review

Acting Police Chief Chris Hartley provided a presentation.

7.2 *NEW ITEM 8-23-19

Fire Department Emergency Preparedness Mailing

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CEQA Determination: Not a CEQA project
Prepared By: John Sorensen, Fire Chief
Recommendation:
Informational report. No action required.

Alec Vidler reported

Mayor Ellsworth reopened public forum.

Rodolpho Ramirez addressed the City Council.

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 Regular Meeting Minutes of June 11, 2019.
- 8.2 Consideration and proposed approval of a resolution 2019-101 authorizing the St. Helena High School annual homecoming parade on Main Street and authorizing City staff to provide traffic control before, during, and after the parade.

CEQA Determination: Categorically Exempt, Section 15323
Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer
Recommendation:
Staff recommends the City Council adopt the resolution authorizing the St. Helena High School annual homecoming parade on Main Street authorizing City staff to provide traffic control before, during, and after the parade.

- 8.3 Consideration and proposed approval of a resolution 2019-102 acknowledging and accepting an offer of dedication from Nest Properties of St. Helena LLC of a twenty nine foot (29') wide portion of the property located at 632 McCorkle Avenue for public right of way, authorizing the City Manager to execute the certificate of acceptance of grant deed, and accepting the right of way into the City's street system.

CEQA Determination: Approval of resolution not a "project" as defined in Section 15378(a) of State CEQA Guidelines. Even if determined to be a "project" subject to CEQA, action is exempt under the common sense exemption set forth in Section 15061(b)(3).
Prepared By: Edrees Argand, Junior Assistant Engineer
Recommendation:
Staff recommends City Council adopt the attached resolution (Attachment 1), acknowledging and accepting an offer of dedication from Nest Properties of St.

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Helena LLC, as reflected in the grant deed (Attachment 2), of a twenty nine foot (29') wide portion of the property located at 632 McCorkle Avenue for public right of way, authorizing the City Manager to execute the Certificate of Acceptance of Grant Deed (Attachment 3), and accepting the right of way into the City's street system.

- 8.4 Consideration and proposed approval of the attached resolution 2019-103 acknowledging and accepting an irrevocable offer of dedication from Gregory Parish Fowler and Christin Diane Fowler of a fifteen foot (15') wide portion of the property located at 2600 Sulphur Springs Avenue for public right of way and utility purposes along Vallejo Street, authorizing the City Manager to execute the acceptance of the irrevocable offer of dedication, determining that the public convenience and necessity demand the acquisition, construction and maintenance of a street of less than 40 feet, and accepting the right of way into the City's street system

CEQA Determination: Approval of resolution not a "project" as defined in Section 15378(a) of State CEQA Guidelines. Even if determined to be a "project" subject to CEQA, action is exempt under the common sense exemption set forth in Section 15061(b)(3).

Prepared By: Edrees Argand, Junior Assistant Engineer

Recommendation:

Staff recommends City Council adopt the attached resolution (Attachment 1), acknowledging and accepting an Irrevocable Offer Of Dedication from Gregory Parish Fowler and Christin Diane Fowler, of a fifteen foot (15') wide portion of the property located at 2600 Sulphur Springs Avenue for public right of way and utility purposes on Vallejo Street (Attachment 2), authorizing the City Manager to execute the Certificate of Acceptance of Irrevocable Offer of Dedication (Exhibit C to Attachment 2), accepting the right of way into the City's street system, and finding by a 4/5ths vote of the City Council that the public convenience and necessity demand the acquisition, construction and maintenance of a street less than 40 feet wide.

- 8.5 Authorize the Mayor to sign a letter of support for SB5, (as amended, Beall) which would establish an Affordable Housing and Community Development Investment Program in California.

CEQA Determination: Not a CEQA project

Prepared By: Jessica Deakyne, Asst. to the City Manager

Recommendation:

Staff recommends that the City Council authorize the Mayor to sign a letter of support for SB5 on behalf of the City Council.

- 8.6 Conduct second reading and proposed adoption and of an ordinance 2019-6 amending Section 17.08.060 and adding Section 17.08.200 to Chapter 17.08 of Title 17 of the St. Helena Municipal Code Authorizing Refunds of City's Defense Costs on Appeal to Residential Projects.

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CEQA Determination: Not a CEQA project
Prepared By: Michael G. Biddle, City Attorney
Recommendation:

Staff recommends the City Council adopt the draft Ordinance amending Section 17.08.060 and adding Section 17.08.200 to Chapter 17.08 of Title 17 of The St. Helena Municipal Code Authorizing Refunds of City's Defense Costs on Appeal to Residential Projects.

- 8.7 Consideration and proposed resolution 2019-104 authorizing the City Manager to execute Work Order #2 in the amount of \$271,883 to the Master Professional Services Agreement with EKI Environment & Water, Inc. - STH Contract: FY 2020-024 - to provide professional consulting services for the Upper York Creek Habitat Restoration Project, CIP Project No. W-26 for a total not-to-exceed amount of \$296,743.

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 Work Order #2 (WO2) in the amount of \$271,883 to Master Professional Services Agreement with EKI Environment & Water, Inc. (STH Contract: FY 2020-024) to provide professional consulting services for the Upper York Creek Habitat Restoration Project, CIP Project No. W-26 for a total not-to-exceed amount of \$296,743.

- 8.8 Consideration and approval of a Resolution 2019-105 rescinding Resolution 2016-79 and Resolution 2018-115 and approval of a Resolution reaffirming the use Affordable Housing Trust Funds in the amount of \$40,000 to facilitate one Very Low Income family to be able to own and occupy a unit in the Brenkle Court self-help affordable housing project and reaffirm temporary bridge loan of \$80,000 as authorized in Resolutions 2016-79 and 2018-115. (Staff report forthcoming) Provided 8-23-19

CEQA Determination: Not a CEQA project
Prepared By: April Mitts, Finance Director
Recommendation:

Staff recommends City Council adopt a Resolution (Attachment 3) rescinding Resolutions 2016-79 and 2018-115 and approval of a Resolution reaffirming the use of \$40,000 to facilitate one Very Low Income family to be able to own and occupy a unit in the Brenkle Court self-help affordable housing project and reaffirm temporary bridge loan of \$80,000 as authorized in Resolutions 2016-79 and 2018-115.

Vice Mayor Paul Dohring moved to approve Consent items 8.1 through 8.8. The motion was seconded by Council Member Mary Koberstein and on roll call carried by the following vote:

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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

9. PUBLIC HEARINGS

- 9.1 Introduction and first reading 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. (Staff report forthcoming) Provided 8-23-19

CEQA Determination: Not a CEQA project

Prepared By: April Mitts, Finance Director

Recommendation:

Staff recommends City Council review of the draft Ordinance amending Chapter 3.04, Title 3 of the St. Helena Municipal Code in its entirety, which effectuates 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 to conform with increased limits set by Assembly Bill 2249. Accordingly, staff recommends the City Council:

1. Approve the proposed amendments to the SHMC as described above and reflected in the draft Ordinance in redline format (Attachment A); and
2. Introduce and conduct a first reading of the draft Ordinance (Attachment B), by title only and waive further reading.

Finance Director April Mitts reported on this item.

Mayor Ellsworth opened the public hearing.

No public comment was received.

Mayor Ellsworth closed the public hearing.

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Council Member Anna Chouteau moved to approve the first reading by title only, waiving further reading, 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. 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 *UPDATED TITLE 8-23-19

Consideration and proposed approval of a resolution approving and authorizing the City Manager to execute, enter into and carry out the terms of a 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 (751) and Measure E Fund (752) for the acquisition of property located at 963 Pope Street, St. Helena, California (APN 009-090-012-000; 009-090-013-000) (Staff report forthcoming) Provided 8-23-19

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 3) authorizing the City Manager to execute, enter into and carry out the terms of the 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 (751) and Measure E Fund (752) for the acquisition of property located at 963 Pope Street, St. Helena, California (APN 009-090-012-000; 009-090-013-000).

City Attorney Michael Biddle reported on this item.

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Mary Stephenson, OTSH President and Erica Sklar, OTSH Operations Manager addressed the City Council.

Vice Mayor Paul Dohring moved to authorize the City Manager to execute, enter into and carry out the terms of a 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 (751) and Measure E Fund (752) for the acquisition of property located at 963 Pope Street, St. Helena, California (APN 009-090-012-000; 009-090-013-000) as amended by the redline loan agreement provided by the City Attorney prior to the meeting. 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

10.2 Discuss and provide direction on Council Liaisons to Meadowood Water Tanks Discussions and 2019 Workplan Housing Goal Objectives

CEQA Determination: Not a CEQA project

Prepared By: Mark T. Prestwich, City Manager

Recommendation:

Provide direction to the City Manager.

City Manager Mark Prestwich reported on this item.

No public comment was received.

It was the consensus of the City Council for Vice Mayor Dohring to join Council Member Koberstein as Council liaisons to assist staff regarding the Meadowood water tanks.

The City Council discussed "GOAL 2: Stabilize, Maintain and Improve Access to Housing". It was the consensus of the City Council to combine items A. and C. with Council Members Koberstein and Knudsen as Council liaisons. Council Members Koberstein and Knudsen will serve as Council liaisons for B. as well. Mayor Ellsworth and Council Member Chouteau will serve as Council liaisons for D.

Mayor Ellsworth called for a break at 8:02 pm and reconvened at 8:08 pm.

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11. NEW BUSINESS

11.1 Review and Discussion of Proposed Reduction in Home Generator Permitting Fees

CEQA Determination: Not a CEQA project
Prepared By: Aaron Hecock, Acting Planning & Building Director
Recommendation:
Discuss and provide direction to the City Manager.

Council Member Koberstein recused herself and left the meeting room due to a conflict with recently applying for a generator permit.

Chief Building Official Philip Henry reported on this item.

No public comment was received.

It was the consensus of the City Council for the City to charge a minor electrical fee (\$436) and reduce the inspection fee from two inspections to one (a reduction of \$146.50), for a total of \$582.50.

11.2 *UPDATED ATTACHMENTS 8/23/19

Discussion and authorization to submit Grand Jury Response letter for the 2018-2019 Napa County Grand Jury Report, "Napa County Water Quality - It's a Matter of Taste"

CEQA Determination: Not a CEQA project
Prepared By: Mark T. Prestwich, City Manager
Recommendation:

Discussion and authorization for the City Manager to sign and submit the City of St. Helena's Response letter for the 2018-2019 Napa County Grand Jury Report, "Napa County Water Quality - It's a Matter of Taste"

Council Member Koberstein joined the dais.

Public Works Director Erica Ahmann Smithies reported on this item.

No public comment was received.

It was the consensus of the City Council to authorize the City Manager to sign and submit the City of St. Helena's Response letter with provided edits for the 2018-2019 Napa County Grand Jury Report, "Napa County Water Quality - It's a Matter of Taste".

11.3 *UPDATED ATTACHMENTS 8/23/19

Discussion and authorization to submit Grand Jury Response letter for the 2018-2019 Napa County Grand Jury Report "St. Helena: A Small Town with

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Big City Problems"

CEQA Determination: Not a CEQA project

Prepared By: Mark T. Prestwich, City Manager

Recommendation:

Discussion and authorization for the City Manager to sign and submit the City of St. Helena's Response letter for the 2018-2019 Napa County Grand Jury Report, "St. Helena: A Small Town with Big City Problems"

City Manager Mark Prestwich reported on this item.

No public comment was received.

authorize the City Manager to sign and submit the City of St. Helena's Response letter as presented for the 2018-2019 Napa County Grand Jury Report, "St. Helena: A Small Town with Big City Problems".

11.4 *Updated Agreement 8/27/19

Proposed adoption of a Resolution 2019-107 authorizing the City Manager to enter into a Police Shared Services Agreement with the City of Calistoga for Police Officer and Police Dispatcher services on an as-needed basis and authorizing City Manager to coordinate City of St. Helena participation in Calistoga/St. Helena shared services delivery structure analysis.

CEQA Determination: Not a CEQA project

Prepared By: Mark T. Prestwich, City Manager

Recommendation:

1) Adopt a Resolution authorizing the City Manager to enter into a Police Shared Services Agreement with the City of Calistoga for Police Officer and Police Dispatcher services on an as-needed basis; and 2) Authorize City Manager to coordinate City of St. Helena participation in Calistoga/St. Helena shared services delivery structure analysis.

City Manager Mark Prestwich reported on this item.

No public comment was received.

Vice Mayor Paul Dohring moved to authorize the City Manager to enter into a Police Shared Services Agreement with the City of Calistoga for Police Officer and Police Dispatcher services on an as-needed basis; and 2) Authorize City Manager to coordinate City of St. Helena participation in Calistoga/St. Helena shared services delivery structure analysis. 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

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Koberstein
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None

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

12.1

<u>August City Council Meetings:</u>
8/26 Special CC Mtg Reimagine (Vintage Hall 6pm)
<u>September City Council Meetings:</u>
9/10 (staff reports due 8/23)
9/13 Upper York Special Mtg
9/24 (staff reports due 9/6)
9/24 5pm (Tentative) Special CC Mtg Antonio's Project
9/18/19 (NVTa) Transportation Summit 2019 in Napa
Closed Session:
<i>CONSENT:</i>
9/13 Award of contract for phase 1 of Upper York Creek
9/10 Britton Tree Contract
9/10 SPLASH Contract
<i>OLD BUSINESS:</i>
9/24 Legal Services RFP award
9/10 Pratt/Main
Pratt/Silverado Discussion
9/10 Pratt Ave. speed control and bridge
9/10 Will-serve discussion
<i>PH or NEW BUSINESS:</i>
9/24 Adopt speed survey - PW
9/24 Elm Tunnel Update
9/10 LOCC annual conference voting delegate and resolutions
Sewer Annexation
Mid Managers, Exec Staff and SHEA Mou's
<u>October City Council Meetings:</u>
10/8 (staff reports due 9/20)
10/22 (staff reports due 10/4)
<i>CONSENT:</i>
Cell tower lease renewal - Finance
Joint use agreement with SHUSD for the use of Vintage Hall (Expires February 2020)

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13. ADJOURNMENT

Mayor Ellsworth adjourned the meeting at 8:51 p.m.

The regular City Council meeting minutes for August 27, 2019 was adopted at the regular City Council meeting of October 22, 2019.

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk



Report to the City Council
Regular City Council - 22 Oct 2019

Agenda Section: CONSENT ITEMS

Subject: Consideration of proposed approval of a resolution authorizing (1) Amendment #1 to Professional Services Agreement with Noll & Tam Architects STH Contract No: FY 2019-091 for an additional \$17,674 for a total contract amount not-to-exceed \$273,244; (2) a budget increase of \$15,624 to 101-4000-2130 and use of General Fund Reserves of the same; and (3) a budget increase of \$2,050 to 713-4000-2130.

CEQA Determination: Categorically Exempt, Section 15323

Prepared By: April Mitts, Finance Director

Reviewed By: Mark T. Prestwich, City Manager

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

In September 2018, following submittal of the SHAPE Committee Final Report, the City Council approved a four-phase "City of St. Helena Civic Infrastructure Strategy" framework for City Council decision making to advance discussions toward replacement of City Hall, Library improvements, and a possible Recreation/Community space. The Strategy was designed and developed in accordance with the City's Vision and Mission Statement. The recommendations were also developed in accordance with criteria established by the citizen-based SHAPE Committee. While the Strategy includes some concrete recommendations and milestones, it was acknowledged the Strategy would be flexible and could be adjusted to address changing conditions and priorities. The Strategy consists of four distinct phases to organize the decision-making process and considers work completed during the SHAPE Committee process to be the first step of this comprehensive effort. To complete Phase 2 and Phase 3, the City issued an RFP for Architectural Feasibility/Visioning Study of Library, City Hall, and Recreational Facilities. On May 28, 2019, the City Council approved a Professional Services

Agreement STH Contract No: FY 2019-091 with Noll & Tam for a not-to-exceed amount of \$255,570 (Attachment 1). The work of Noll & Tam includes:

1. A Needs Assessment
2. A Site Analysis
3. Space Programming
4. Site Test fits
5. Conceptual Site Plan/Floor Plans
6. Massing and 3D Architectural Character Sketches
7. Conceptual Construction Cost Estimates
8. Community Process

DISCUSSION

Noll & Tam's contract work began with extensive community outreach including establishing a steering committee comprised of diverse community stakeholders. Other outreach included hosting an in-person storefront downtown on June 20 and 21 with guest speakers who are leaders in their respective fields, in-depth interviews with staff currently working in the current facilities, and an online survey, which garnered 482 responses. Workshop materials, the flyers for the in-person workshop and storefront, and the survey were translated into Spanish to ensure inclusion of Spanish-speaking community members. During this time Noll & Tam staff also created a website (civicsthelena.com) for housing timely information regarding the project for the community.

On August 26, 2019, a Special City Council meeting was held and Noll & Tam presented site options associated with the architectural feasibility/visioning study of the Library, City Hall, and conceptual community/recreation facilities. During this meeting City Council provided direction to the City Manager and Noll & Tam to move forward with obtaining cost estimates for four of the options presented.

Based on City Council direction it will be necessary for Noll & Tam to provide additional community outreach materials and complete a fourth concept option at Main Street. Because the current agreement with Noll & Tam includes cost estimates for only three options, it is necessary to amend the current agreement to include the additional costs associated with these items.

On September 6, 2019, Noll & Tam provided a quote for the additional services for City consideration. The basic fee for the additional scope is a lump sum fixed fee of \$17,674. Amendment #1 for \$17,674 will bring the agreement to a not-to-exceed amount of \$273,244 (Attachment 2).

FISCAL IMPACT

The fiscal impact of Amendment #1 to the Professional Services Agreement STH Contract: 2019-091 will be an additional \$17,674. The Civic Impact Fee Fund (Fund

713) can be utilized for 11.6% of the costs (\$2,050) and the remaining amount of \$15,624 will come from General Fund reserves.

RECOMMENDED ACTION

Staff recommends City Council approve a resolution authorizing (1) Amendment #1 to Professional Services Agreement with Noll & Tam Architects STH Contract No: FY 2019-091 for an additional \$17,674 for a total contract amount not-to-exceed \$273,244; (2) a budget increase of \$15,624 to 101-4000-2130 and use of General Fund Reserves of the same; and (3) a budget increase of \$2,050 to 713-4000-2130.

ATTACHMENTS

[Attachment 1 - STH Contract FY2019-091 - Noll & Tam](#)

[Attachment 2 - Amendment #1 Noll and Tam 111219](#)

[Attachment 3 - Resolution](#)

STH CONTRACT: FY 2019-091

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on May 28, 2019 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Noll & Tam Architects (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Architectural Feasibility/Visioning Study of Library, City Hall, and Recreational Facilities of the City of St. Helena.

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 \$255,570 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

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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 acts 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, to the extent caused by such negligent acts 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

Page 6 of 12

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:	Noll & Tam Architects 729 Heinz Avenue Berkeley, CA 94710

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.

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Noll & Tam Architects 052819

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:

By: Janet Tam
Name: Janet Tam
Title: Principal, CEO, Noll-Tam Architects

City:

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

Approved as to Form:

By: Michael G. Biddle
Name: Thomas B. Brown Michael G. Biddle
Title: City Attorney

Exhibit A - Scope of Work

May 28, 2019
 Mark Prestwich, City Manager
 1480 Main Street
 St Helena, CA 94574



**Re: Architectural Feasibility/Visioning Study of Library, City Hall and Recreational Facilities
 City of St Helena**

Dear Mr. Prestwich,

Noll & Tam Architects is pleased to present our proposal for architectural consulting services for this project. This proposal is based upon the RFP and Addendum 1 dated Feb 22, 2019 and subsequent conversations with you after we were selected for the project. Our understanding and proposed scope of work and design fees are summarized below.

Project Description:

Phase I: Initial civic facilities feasibility planning and visioning for the Library, City Hall and Recreational facilities for the City of St Helena.

Project Objective: Facilitate community consensus toward a course of action for each of the three civic facilities.

Anticipated Schedule: 5-6 months for study completion and recommendations for Phase II design development and implementation.

Phase I -Scope of Work:

Phase I will include the following tasks:

1. **Needs Assessment** for the library, city hall and recreational facilities based on interviews with city staff, community input and design team's expertise with these building types. Extensive data collection or statistically reliable surveys are not included in this scope.
2. **Site analysis** at the macro level of the entire town, and at specifically identified civic sites that include the Adams Street property, City Hall and Lyman Park site, and the Crane Park site as identified in the SHAPE report. Site analysis will also include mapping of existing cultural and social nodes, constraints, underutilized areas, traffic patterns, development zones, etc., that influence the town's viability and vitality. Analysis will be based on city staff and community input and the design team's observations.
3. **Space programming:** preparation of proposed space program options for the library, city hall, and recreation facilities. Options will be first developed from the SHAPE report recommendations and the needs assessment task as described above. Space program options may include combined or shared facilities between the three facility types that develop out of community and task force input and current trends appropriate to St. Helena.

4. **Site Test fits:** Specific sites will be test fit for the space programs as determined in task 3 above. Test fits will be diagrams showing relationship of building footprint to public outdoor space design, parking, circulation, and required setbacks. These site masterplan diagram options will be narrowed to 2-3 options for further development.

5. **Conceptual site plan /floorplans :** 2-3 site master plan options, that each include a library, City Hall, and community recreation facility component, will be developed into more detailed but still conceptual site and floor plans illustrating options for the space program(s) as defined in task 3 above.
Design team will facilitate a process that assists the task force and City staff to prioritize which facility should be implemented first, with a phasing strategy for all three facilities.

6. **Massing and 3D architectural character sketches:** Conceptual massing sketches will be developed for up to (3) selected masterplan options from task 5 above.
(2-3) Architectural character sketches will be developed for the selected priority concept building option that will be developed in Phase 2.

7. **Conceptual Construction Cost Estimates**
Up to (3) concept construction cost estimates for the selected masterplan options from task 5 above. Estimates will be largely based on square foot unit costs appropriate to the building type, quality of construction, regional market conditions, and will include appropriate contingencies. We will review and confirm cost assumptions with the City prior to submitting to our estimator. Note that our estimator's work does not include establishing detailed project soft costs that are in addition to construction costs. However, we can assist the city in identifying what the soft costs might be and can suggest an appropriate percentage of construction cost for a soft cost allowance.

8. **Community Process**
 - a. Individual interviews with each council member- one or two at a time so as not to incur the Brown Act.
 - b. Interviews with key city staff representing the library, city hall and rec facilities.
 - c. 2-day storefront community "drop-in" with invited speed interviews of individual citizens.
 - d. Series of 4-5 Guest Speakers open to the community, scheduled during the 2-day storefront or another date mutually agreeable to the City and the design team.
Key experts bring their perspectives and describe trends and key issues pertinent to this project. Includes: Library expert from librarian perspective; Recreation planner expert; Civil environmental engineering expert in sustainable land planning, and Urban planners presenting our initial overall site analysis of St Helena. Guest speakers selected will be in collaboration with the City.
 - e. (1) open community meeting/ workshop to get input on setting priorities and to narrow down to 1-2 preferred master plan options, and a preferred sequence of phasing for each community facility.

9. Meetings included

- (1) Kick off meeting with Task force and City
- (4) Task Force on site
- (4) City Manager/City staff progress- on site, same day prior to task force meeting.
(Other meetings will be via conference call)
- (2) City Council presentations

Consultants Included in this contract

- 1. WRT, Urban Planning & Landscape Architects
- 2. MACK 5, Cost estimators
- 3. Penny Hummel, Librarian and library programmer
- 4. Darin Barr, Ballard-King, Recreation planning consultant
- 5. Drew Norton, Sherwood (Civil) Design Engineers

City's responsibility to provide

- 1. Establishing a task force committee of 12-15 (in collaboration with design team)
- 2. Surveys of specified city properties for consideration of new or renovation facilities
- 3. Floor plans of the existing library and City Hall
- 4. Local Spanish translators, if required
- 5. City Building Assessment reports, including structural and MEP assessment of existing library
- 6. Procurement of a storefront on Main street for a two-day community drop-in engagement and the movie theater on Main Street for the guest speaker event, if possible.

Exclusions

(Services or work products not noted above can be provided upon request as an additional service.)

- 1. Engineering consultants not included above
- 2. Operational Analysis for recreational facilities
- 3. Economic Impact projections
- 4. Statistically valid polling
- 5. Online surveys
- 6. Community outreach mailings or web design
- 7. Additional building assessments of the existing library, city hall or other city facilities
- 8. Physical models
- 9. Fund raising materials
- 10. Professional renderings

Deliverables:

1. Materials as required for Community storefront, guest speakers, and community meeting/workshop
2. Space program options
3. Site Analysis context mapping of St Helena overall
4. Initial Test fit Site diagrams illustrating SHAPE top 3-4 scenarios (specific city sites)
5. 3-4 site masterplans with concept floor plans for each community facility based on space program options
6. Criteria for assessing concept options
7. 3D Massing site sketches for 3 priority master plan options
8. 2-3 perspective sketches with architectural character for one priority building option that will most likely be developed in Phase 2.
9. Conceptual construction cost estimates for up to (3) master plan options.
10. Final feasibility study report- executive summary with recommendations and collection of materials from the study process.

Compensation:

We propose to perform the work described above for a lump sum of \$249,570 with a \$6000 reimbursable expense allowance as detailed on the attached fee proposal. Thank you for considering us for this project. We look forward to the opportunity to work with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet Tam". The signature is fluid and cursive, with the first name "Janet" and last name "Tam" clearly distinguishable.

Janet Tam

Principal, Noll & Tam Architects

May 28, 2019.

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Exhibit B - Compensation

Noll & Tam Architects
729 Heinz Avenue
Berkeley, CA 94710

Civic Facilities Feasibility/Visioning Study
City of St Helena
5/28/2019

Phase I

TOTALS

Basic Service	Consultant	
Architectural Services	Noll & Tam Architects	\$139,570
Urban Planning/Landscape Architect	WRT	\$74,800
Civil Engineering	Sherwood	\$9,350
Cost Estimating	Mack5	\$14,850
Library Consultant	Penny Hummel	\$5,500
Rec facility Planning Consultant	Ballard King	\$5,500
Subtotal Basic Services		\$249,570
Reimbursable Expense Allowance		\$6,000
TOTAL		\$255,570

AMENDMENT #1

TO PROFESSIONAL SERVICES AGREEMENT WITH NOLL & TAM ARCHITECTS; STH CONTRACT NO: FY 2019-091 FOR ARCHITECTURAL FEASIBILITY/VISIONING STUDY OF LIBRARY, CITY HALL, AND RECREATIONAL FACILITIES AT THE CITY OF ST. HELENA FOR AN ADDITIONAL \$17,674 FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$273,244.

This First Amendment to Professional Services Agreement STH Contract: FY 2019-091 dated May 28, 2019 ("Agreement") is made as of this 12th day of November 2019 by and between the City of St. Helena, a municipal corporation ("City"), and Noll & Tam Architects ("Consultant").

RECITALS

- A. On May 28, 2019, the City and Consultant entered into the Agreement for Consultant to provide professional services in connection with the project described as Architectural Feasibility/Visioning Study of Library, City Hall, and Recreational Facilities at the City of St. Helena; and
- B. On August 26, 2019, a Special City Council Meeting was held for discussion and direction regarding concept site options associated with the Architectural Feasibility/Visioning Study for the Library, City Hall, and Recreation Facilities; and
- C. Based on City Council direction, the City and Consultant now desire to amend the Agreement with the Consultant to provide additional community outreach materials and create a fourth concept option at Main Street (Exhibit A).

AGREEMENT

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements herein contained, for good and valuable consideration, the adequacy of which is hereby acknowledged, the parties agree to amend the Agreement as follows:

1. Section 4.A. Compensation and Method of Payment, is amended to read as follows:

"Total compensation shall not exceed \$273,244.00..."

All other terms of the Agreement shall remain in full force and effect.

Entered as of the day and year first above stated.

Page 1 of 2

First Amendment to Professional Services Agreement STH Contract: FY 2019-091
Consultant: Noll & Tam Architects

CONSULTANT:

Signatures of Authorized Persons:

By: _____

Print Name: _____

Title: _____

CITY OF ST. HELENA
a Municipal Corporation

By: _____

Print Name: Mark T. Prestwich

Title: City Manager

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Exhibit A

St Helena Architectural Feasibility /Visioning Study for Civic Facilities

ADDITIONAL SERVICE REQUEST NO. 1

September 6, 2019



Mark Prestwich, City Manager

City of St Helena

1480 Main Street St. Helena, CA 94574

Re: Additional service request (ASR 1)

Dear Mark,

This is an Additional Service Request for scope not included in our base contract per City requests. The added scope and proposed fees are summarized below.

Scope of Work:

- a. Additional Community outreach materials:
 - Outreach flyer for the Community Storefront 2-day event drop in
 - Creation and uploads to project webpage using the Square Space platform
 - Creation of Public Survey following the Community Storefront using Survey Monkey
- b. Fourth Concept Option at Main Street to include
 - Enlarged new Library floor plan, garage plan, site plan and park improvement plan
 - 3-D Massing
 - Cost estimate package

Deliverables:

See individual items above for proposed deliverables.

Exclusions:

Services or work products not noted above can be provided upon request as an additional service.

Fees:

Our basic fee for this scope shall be lump sum fixed fee of \$17,674 as listed below, billed on a percent complete basis.

Total ASR 1 Compensation:

Noll & Tam Architects

1. Storefront Outreach Flyer Design	\$1,800
2. Webpage design and material uploads	\$3,900
3. Public Survey	\$1,800
4. 4 th concept option	
a. Site plan, park improvements, UG parking, floor plans	\$4,500
b. 3D Massing	\$3,000
c. Cost estimate package	\$2,500

Total Fee	\$17,500
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Reimbursable expense: Square space website platform fees	\$174
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Total ASR 1 Request	\$17,674
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Sincerely,



Janet Tam, principal

Noll & Tam Architects

Sept. 6, 2019

Approved:

Mark Prestwich , City Manager

City of St Helena

Date

CITY OF ST. HELENA

RESOLUTION NO. 2019-_____

Authorizing (1) Amendment #1 to Professional Services Agreement with Noll & Tam Architects STH Contract No: FY 2019-091 for an additional \$17,674 for a total contract amount not-to-exceed \$273,244; (2) a budget increase of \$15,624 to 101-4000-2130 and use of General Fund Reserves of the same; and (3) a budget increase of \$2,050 to 713-4000-2130.

RECITALS

- A. On May 28, 2019, the City entered into a Professional Services Agreement with Noll & Tam Architects (Consultant) to provide professional services in connection with the project described as Architectural Feasibility/Visioning Study of Library, City Hall, and Recreational Facilities at the City of St. Helena; and
- B. On August 26, 2019, a Special City Council Meeting was held for discussion and direction regarding concept site options associated with the Architectural Feasibility/Visioning Study of Library, City Hall, and Recreational Facilities at the City of St. Helena; and
- C. Based on City Council direction, the City and Consultant now desire to enter into Amendment #1 to STH Contract No: FY 2019-091 to provide additional community outreach materials and create a fourth concept option at Main Street.

RESOLUTION

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

- 1. Approval of this resolution is CEQA Categorically Exempt under Section 15323; and
- 2. Approves Amendment #1 to Professional Services Agreement with Noll & Tam Architects STH Contract No: FY 2019-091 for an additional \$17,674 for a total contract amount not-to-exceed \$273,244 and authorizes the City Manager to execute all necessary documents; and
- 3. Approves a budget increase of \$15,624 to 101-4000-2130 and use of General Fund Reserves of the same; and
- 4. Approves a budget increase of \$2,050 to 713-4000-2130.

Approved at a Regular Meeting of the St. Helena City Council on October 8, 2019, by the following vote:

Mayor Geoff Ellsworth:

Vice Mayor Paul Dohring:

Councilmember Koberstein:

Councilmember Anna Chouteau:

Councilmember David Knudsen:

APPROVED:

Geoff Ellsworth, Mayor

ATTEST:

Cindy Tzafopoulos, City Clerk



Report to the City Council
Regular City Council - 22 Oct 2019

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed approval of a resolution: (1) authorizing and approving classification and compensation study recommendations for Mid-Managers and Department Heads; (2) approving classification changes for those Mid-Managers and Department Heads recommended for a reclassification as noted on the publicly available salary schedules; (3) authorizing and approving implementation of compensation adjustments for all Mid-Manager and Department Heads to be within 7.5% of the market median study, effective July 1, 2019; and a 2% salary adjustment for all Mid-Managers and Departments Heads effective January 1, 2020; (4) in accordance with the requirement of California Code Section 54953(c)(3) including an oral report summarizing the recommended final action for the Executive Department Heads which includes a 1.1% for the Finance Director, 7.2% compensation adjustment for the Human Resources and Information Technology (HR&IT) Director, 14.9% for the Library Director, 0.8% compensation adjustment for the Police Chief, and 10.4% compensation adjustment for the Parks and Recreation Director, effective July 1, 2019 and a 2% compensation adjustment to the City Clerk, Finance Director, HR&IT Director, Library Director, Building & Planning Director, Police Chief, Public Works Director, and Recreation Director effective January 1, 2020; (5) duly approving and adopting publicly available compensation schedules in accordance with California Code Section 570.5; and (6) approving the sixth amendment to the Unrepresented Compensation Program to update Section 1.3 Covered Employees with the new classification recommendations.

CEQA Not a CEQA project
Determination:

Prepared By: Kathy Robinson, Human Resources & IT Director, Mandy

Kellogg, Admin Services Mgr

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Classification and compensation studies are performed to assess and ensure accurate and legally compliant class specifications and to maintain competitive and equitable pay. Over time, changes in City operations and staffing can affect the type, scope, and level of work being performed. Best practices suggest organizations conduct a study at least every seven years if not more frequently. The City last completed a study in May of 2008 but did not implement the recommendations of that study. Prior to the 2008 study, the City conducted and implemented a study in 2002.

As a public employer, the City continues to abide by the Government Code when establishing and reporting compensation for its employees. In accordance with the California Code of Regulations (CCR) Title 2, Section 570.5, each instance that there is a change in an employee's salary schedule, the Human Resources Department presents the pay schedule to be duly approved and adopted by the City Council in accordance with requirements of applicable public meeting laws.

On June 8, 2018 City Council approved Resolution 2018-74 authorizing the City Manager to execute a professional services agreement with Ralph Anderson and Associates (Consultant) to conduct a classification and compensation study and would survey comparable cities' compensation to that of St. Helena. The collection of data for the classification portion of the study commenced with employee interviews conducted over the summer months. Comparable agencies for the compensation portion were presented at the Classification and Compensation Study update to the City Council on September 11, 2018. The collection of compensation data continued over the fall months and concluded towards the end of the year, timing well to capture any adjustments comparable agencies would implement at the beginning of the 2019 calendar year.

DISCUSSION

City staff met with the bargaining units at the start of 2019. The Mid-managers and Department Heads Unrepresented Compensation Program and the St. Helena Employees Association (SHEA) are under contract until June 30, 2020, but each Memorandum of Understanding (MOU) included a re-opener to discuss terms of compensation after completion of the compensation study. The St. Helena Police Officers Association (POA) is under contract until June 30, 2020 and not open for any salary adjustment negotiations.

Negotiations continued throughout the beginning of the year with the latter two groups, but a consensus had not been reached before the adoption of the 2019/2020 budget. The City has reached a tentative agreement with the unrepresented group regarding classification and compensation adjustments as follows:

Current Classification:

Senior Management Analyst (working title Project Manager)
 Senior Management Analyst (working title Maintenance Manager)
 Utilities Operation Manager
 Administrative Services Manager
 Recreation Director
 Planning & Community Services Director

Recommended Classification:

Senior Management Analyst
 Assistant Public Works Operations Manager
 Public Works Operation Manager
 Finance Manager
 Parks & Recreation Director
 Planning & Building Director

The Council defined "market median" as 7.5% below the median salaries of benchmark positions studied in the market study, as the study determined the City's benefit package to be more valuable than other agencies. The compensation study found various citywide classifications to be below, at market, or above the City's defined "market median" as of January 1, 2019 based on a survey of approximately a dozen comparable agencies. In the case of the Mid-managers and Department Heads, 10 of the 18 positions were found to be at or above market and requiring no adjustment. Therefore, compensation adjustments effective July 1, 2019 will only be applied to eight classifications in this bargaining unit. Classifications at or above market are y-rated, meaning the employee will not experience a pay reduction as a result of the survey. The City Council has agreed to provide a 2.0% salary adjustment effective January 1, 2020 to keep pace with inflation.

FISCAL IMPACT

The market median compensation adjustments effective on July 1, 2019 result in a cumulative 3.01% General Fund increase from FY 2018/19, and have been incorporated in the FY 2019/20 Adopted Budget. The FY 2019/20 fiscal impact associated with the January 1, 2020 2% salary adjustments totals \$17,100 to Fund 101 (General Fund), \$5,760 to Fund 561 (Water Fund), and \$4,430 to Fund 571 (Sewer Fund).

RECOMMENDED ACTION

Authorize and approve recommended classification changes, compensation adjustments for positions that were below market median, effective July 1, 2019; and a 2% salary adjustment for all mid-managers and department heads effective January 1, 2020; authorize and approve publicly available pay schedules in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5; and approve the sixth amendment to the Unrepresented Compensation Program to update Section 1.3 Covered Employees with the new classification recommendations.

ATTACHMENTS

[Resolution Approving Class and Comp, salary schedules and Sixth Amendment to Unrepresented Compensation Program](#)

[Publicly Available Salary Schedule 2019.10.22](#)

[Sixth Amendment Unrepresented Comp Program 2019-10-22](#)

Attachment 3

CITY OF ST. HELENA
RESOLUTION NO. 2019-_____

Authorizing (1) classification and compensation study recommendations for Mid-Managers and Department Heads; (2) approving classification changes for those Mid-Managers and Department Heads recommended for a reclassification as noted on the publicly available salary schedules; (3) authorizing and approving implementation of compensation adjustments for all Mid-Manager and Department Heads to be within 7.5% of market median, retroactive to July 1, 2019; and effective January 1, 2020 a 2% salary adjustment for all Mid-Managers and Departments Heads; (4) in accordance with the requirement of California Code Section 54953(c)(3) including an oral report summarizing the recommended final action for the Executive Department Heads which includes a 1.1% for the Finance Director, 7.2% compensation adjustment for the Human Resources and Information Technology (HR&IT) Director, 14.9% for the Library Director, 0.8% compensation adjustment for the Police Chief, and 10.4% compensation adjustment for the Parks and Recreation Director, retroactive to July 1, 2019 and final action effective January 1, 2020 which includes a 2% compensation adjustment to the City Clerk, Finance Director, HR&IT Director, Library Director, Building & Planning Director, Police Chief, Public Works Director and Recreation Director; (5) duly approving and adopting publicly available compensation schedules in accordance with California Code Section 570.5; and (6) approving the sixth amendment to the Unrepresented Compensation Program to update Section 1.3 Covered Employees with the new classification recommendations.

RECITALS

- A. The City of St. Helena contracts with the California Public Employees Retirement System (CalPERS) to provide retirement benefits for its employees. As a public employer, the City continues to abide by the Government Code when establishing and reporting compensation for its employees; and
- B. In accordance with the California Code of Regulations (CCR) Title 2, Section 570.5, each instance that there is a change in an employee's salary schedule, the Human Resources Department presents the pay schedule to be duly approved and adopted by the City Council in accordance with requirements of applicable public meeting laws.
- C. On June 8, 2018 City Council approved Resolution 2018-74 authorizing the City Manager to execute a professional services agreement with Ralph Anderson and Associates (Consultant) to conduct a classification and compensation study and would
- D. Comparable agencies for the compensation portion were presented at the Classification and Compensation Study update to the City Council on September 11, 2018; and

- E. City staff met with the St. Helena's Mid-managers and Department Heads to discuss the pay plan for FY 2019/2020; and
- F. The unrepresented group is in support of the classification recommendations and compensation adjustments.

RESOLUTION

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

1. Authorizes and approves classification and compensation study recommendation; and
2. Approves classification changes for those Mid-Managers and Department Heads recommended for a reclassification as noted on the publicly available salary schedules Exhibit A; and
3. Authorizes and approving implementation of compensation adjustments for all Mid-Manager and Department Heads to be within 7.5% of market median, retroactive to July 1, 2019; and effective January 1, 2020 a 2% salary adjustment for all Mid-Managers and Departments Heads; and
4. In accordance with the requirement of California Code Section 54953(c)(3) including an oral report summarizing the recommended final action for the Executive Department Heads which includes a 1.1% for the Finance Director, 7.2% compensation adjustment for the Human Resources and Information Technology (HR&IT) Director, 14.9% for the Library Director, 0.8% compensation adjustment for the Police Chief, and 10.4% compensation adjustment for the Parks and Recreation Director, retroactive to July 1, 2019 and final action effective January 1, 2020 which includes a 2% compensation adjustment to the City Clerk, Finance Director, HR&IT Director, Library Director, Building & Planning Director, Police Chief, Public Works Director and Recreation Director; and
5. Duly approving and adopting publicly available compensation schedules in accordance with California Code Section 570.5; and
6. Approving the sixth amendment to the Unrepresented Compensation Program to update Section 1.3 Covered Employees with the new classification recommendations as noted in Exhibit B.

Approved at a Regular Meeting of the St. Helena City Council on October 22, 2019, by the following vote:

Mayor Geoff Ellsworth:

Vice Mayor Paul Dohring:

Councilmember Koberstein:

Councilmember Anna Chouteau:

Councilmember David Knudsen:

APPROVED:

Geoff Ellsworth, Mayor

ATTEST:

Cindy Tzafopoulos, City Clerk

CITY OF ST. HELENA PUBLICLY AVAILABLE SALARY SCHEDULE

Mid-Management Exempt

Approved and Adopted October 22, 2019

^Denotes position with a salary adjustment effective July 1, 2019

FY 2019-2020

Position	Timebase*	Steps				
		A	B	C	D	E
Management Analyst	Annual	77,871	81,765	85,853	90,145	94,653
	Monthly	6,489	6,814	7,154	7,512	7,888
	Hourly	37.44	39.31	41.28	43.34	45.51
Senior Management Analyst <i>* Formerly a working title Project Manager</i>	Annual	85,149	89,406	93,877	98,571	103,499
	Monthly	7,096	7,451	7,823	8,214	8,625
	Hourly	40.94	42.98	45.13	47.39	49.76
Public Works Assistant Operations Manager ^ <i>*Formerly Senior Management Analyst</i>	Annual	90,428	94,949	99,697	104,682	109,916
	Monthly	7,536	7,912	8,308	8,723	9,160
	Hourly	43.48	45.65	47.93	50.33	52.84
Senior Planner	Annual	92,669	97,302	102,168	107,276	112,640
	Monthly	7,722	8,109	8,514	8,940	9,387
	Hourly	44.55	46.78	49.12	51.57	54.15
Public Works Operations Manager <i>*Formerly Utilities Operation Manager</i>	Annual	99,291	104,256	109,468	114,942	120,689
	Monthly	8,274	8,688	9,122	9,578	10,057
	Hourly	47.74	50.12	52.63	55.26	58.02
Lieutenant^	Annual	104,903	110,148	115,656	121,438	127,510
	Monthly	8,742	9,179	9,638	10,120	10,626
	Hourly	50.43	52.96	55.60	58.38	61.30
Chief Building Official Assistant Public Works Director	Annual	109,001	114,451	120,174	126,182	132,491
	Monthly	9,083	9,538	10,014	10,515	11,041
	Hourly	52.40	55.02	57.78	60.66	63.70
<u>Confidential Positions</u>						
Finance Manager ⁽¹⁾ <i>*Formerly Administrative Services Manager</i>	Annual	99,291	104,256	109,468	114,942	120,689
	Monthly	8,274	8,688	9,122	9,578	10,057
	Hourly	47.74	50.12	52.63	55.26	58.02
Assistant to City Manager ⁽¹⁾	Annual	99,291	104,256	109,468	114,942	120,689
	Monthly	8,274	8,688	9,122	9,578	10,057
	Hourly	47.74	50.12	52.63	55.26	58.02

(1) Confidential Positions receive a 3% pay differential that is added to the employee's base salary. Confidential as defined is an employee having access in the course of his/her duties to confidential information on the employer's labor relations and consequently excludable from holding Association office and/or divulging confidential employer information to the Association.

*Annual timebase payrate is rounded up to the nearest whole dollar, while all other timebase payrates are rounded to the nearest cent.

CITY OF ST. HELENA PUBLICLY AVAILABLE SALARY SCHEDULE

Executive Management - Department Heads

Approved and Adopted October 22, 2019

^Denotes position with a salary adjustment effective July 1, 2019

FY 2019-2020

Position	Timebase*	A	B	Steps C	D	E
Fire Chief ⁽¹⁾	Annual					69,332
	Monthly					5,778
	Hourly					83.33
City Clerk	Annual	101,834	106,926	112,272	117,886	123,780
	Monthly	8,486	8,910	9,356	9,824	10,315
	Hourly	48.96	51.41	53.98	56.68	59.51
Library Director^	Annual	122,385	128,504	134,929	141,676	148,760
	Monthly	10,199	10,709	11,244	11,806	12,397
	Hourly	58.84	61.78	64.87	68.11	71.52
Parks & Recreation Director^ <i>*Formerly Recreation Director</i>	Annual	123,947	130,144	136,652	143,484	150,658
	Monthly	10,329	10,845	11,388	11,957	12,555
	Hourly	59.59	62.57	65.70	68.98	72.43
Human Resources/IT Director^	Annual	125,899	132,194	138,804	145,744	153,031
	Monthly	10,492	11,016	11,567	12,145	12,753
	Hourly	60.53	63.55	66.73	70.07	73.57
Finance Director^	Annual	127,369	133,737	140,424	147,446	154,818
	Monthly	10,614	11,145	11,702	12,287	12,901
	Hourly	61.24	64.30	67.51	70.89	74.43
Planning & Building Director <i>*Formerly Planning & Community Services Director</i>	Annual	137,166	144,024	151,226	158,787	166,726
	Monthly	11,431	12,002	12,602	13,232	13,894
	Hourly	65.95	69.24	72.70	76.34	80.16
Police Chief^	Annual	145,869	153,162	160,821	168,862	177,305
	Monthly	12,156	12,764	13,402	14,072	14,775
	Hourly	70.13	73.64	77.32	81.18	85.24
Public Works Director	Annual	148,816	156,257	164,070	172,273	180,887
	Monthly	12,401	13,021	13,672	14,356	15,074
	Hourly	71.55	75.12	78.88	82.82	86.96
City Manager ⁽¹⁾ ^	Annual					196,526
	Monthly					16,377
	Hourly					94.48

(1) Positions do not have a pay range

*Annual timebase payrate is rounded up to the nearest whole dollar, while all other timebase payrates are rounded to the nearest cent.

**UNREPRESENTED COMPENSATION
PROGRAM
(~~Fifth~~ Sixth Amendment)**

January 1, 2018 – June 2020

Approved October 8,22 2019

**CITY OF ST. HELENA
UNREPRESENTED EMPLOYEE COMPENSATION PROGRAM**

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SECTION 1: INTRODUCTION

All provisions of this resolution only apply to At-will Executive Management, Mid-Management, and Confidential employees (together “Employees”) as defined herein.

1.1 Employee Definitions:

At-Will Executive Management Employee – an employee who serves at the will of the City Manager and who has responsibility for formulating, administering, and/or managing City policies and programs. In the City, this would typically be department heads.

Mid-Management Employee – an employee whose position is just below the department heads or City Manager and is responsible for managing a distinct responsibility area. Mid-Managers are in regular City service and are not at-will.

Confidential Employee – a Mid-Management employee, who in the course of his or her duties, has access to confidential information relating to the City’s administration of employer-employee relations. This access may include instances of an occasional but critical nature or due to the employee whose position requires the incumbent to provide direct administrative support to a manager who has such access.

1.2 Purpose of the Unrepresented Employee Compensation Program:

For At-will Executive Management, Mid-Management, and Confidential employees (together “Employees”), this resolution is adopted to promote the development of a stronger, more effective Management Team, not merely for purposes of employer-employee relations but also as a means of recognizing outstanding management performance in all public service areas. These general purposes may be achieved through several means, notably: training, more effective communication among departments, and clear identification of goals and objectives. Also inherent in such a program is the means of retaining good department heads and mid-managers and strengthening the managers (if any) who’s effectiveness and performances fall short of reasonable levels of expectation. This resolution is also referred to herein as the “Unrepresented Program.” This resolution sets forth all of the compensation and benefits for the positions set forth in section 1.3.

1.3 Employees Covered:

Employees covered under this program shall include the following:

A. At-Will Executive Management

Finance Director

Fire Chief

Library Director

Planning & ~~Community Development~~ Building Director

Police Chief

Public Works Director

[Parks & Recreation Director](#)
Human Resources & Information Technology Director
City Clerk

B. Mid-Management

Assistant Public Works Director
Chief Building Official
[Grant & Finance Manager](#)
Library Manager
Police Lieutenant
Management Analyst
Public Works ~~Manager~~ [Assistant Operations Manager](#)
Senior Management Analyst (non-Confidential)
Senior Planner
~~Water Conservation Coordinator~~
~~Utilities~~ Operations Manager

C. Confidential

[Assistant to the City Manager](#)
~~Administrative Services Finance~~ Manager
Senior [Management HR/IT](#) Analyst

Additional job classes may be added to the Unrepresented Program from time to time, based upon the creation of additional City departments/divisions, the addition of new positions, or by the reclassification of existing positions to either At-will Management, Mid-Management, or Confidential based upon the nature of the work.

1.4 Exempt Status of Employees Covered:

The City has reviewed the salaries and duties of the Employees covered under the Unrepresented Program and has determined that these employees are exempt from the overtime provisions of the federal Fair Labor Standards Act.

SECTION 2: EMPLOYMENT CONTRACTS

The Executive Management employees as designated in Section 1.3(A) shall be “At Will” employees, and shall enter into an employment contract, confirming the “At Will” status of the employee and setting forth any special pay or benefits such as severance pay. Employment contracts with all At-will Executive Management employees will be approved by the City Manager, or, in the case of the City Manager’s employment contract, approved by the Council, pursuant to the terms of the City of St. Helena Municipal Code, authorizing the City Manager to appoint all At-will Executive Management employees except the City Attorney.

SECTION 3: EMPLOYMEE SALARY COMPENSATION

3.1 *Annual Salary Adjustment:*

3.1.1 Effective in July 2018 on the first full payroll period of Fiscal 2018-19, unrepresented employees will receive a three and one-half (3 ½) percent salary increase.

3.1.2 Upon completion of the Citywide Classification and Compensation study and any City Council action that is taken as a result of recommendations identified from the study, unrepresented members and the City will commence a reopener for Fiscal Year 2019/2020.

3.2 *Salary Schedule:*

The salary ranges for Employees covered by this Unrepresented Compensation Program are set forth in Exhibit 1, attached to this resolution, and made a part hereof by reference.

3.3 *Confidential Pay Differential:*

Each Confidential employee will receive a 3% pay differential to be added to the employee's base pay. This 3% pay differential will not be added to the salary range for that job class. If at any time that a currently designated Confidential employee who receives the confidential differential is deemed to be Non-Confidential, the 3% confidential differential will cease at that time, and the City will take appropriate steps to reclassify the position.

3.4 *Bilingual Pay:*

Bilingual pay for fluency in both English and Spanish will be paid to employees who are routinely and consistently assigned to communicate in Spanish or to provide translation for City business by communicating in Spanish. For employees who are certified as fluent in both written and verbal Spanish language, bilingual pay will be five percent (5%) of the designated employee's base salary. For employees who are certified as fluent only in verbal Spanish language, bilingual pay will be two and one-half percent (2.5%) of the designated employee's base salary. Only designated employees certified by the City as fluent in both English and Spanish are eligible for this additional pay.

3.5 *Out-Of-Class Pay*

Pay for Performing Full Duties of Higher Class: When, because of the absence of a Department Head, Executive Management, Mid-Management, or Confidential personnel, an Employee performs substantially all of the functions (full-time) of a higher Classification, the Employee will receive an increase of ten percent (10%) of his/her base wage. The increase will be effective after the third (3rd) week of the assumption of those duties and continue during the period those duties are being performed by the employee on a full-time basis. Out-Of-Class-Pay must be

pre-approved, in writing, by the City Manager, and will be reportable to CalPERS as special compensation to the extent permitted by CalPERS rules and regulations.

Pay for Performing Partial Duties of Higher Class: When an Employee is temporarily assigned to perform substantial functions of a higher classification for at least a period of one month, but does not perform those additional duties on a full-time basis and/or the Employee assigned to the position normally responsible for the duties is not absent, the City Manager has the discretion to provide an increase of up to five percent (5%) of the Employee's normal base wage effective on the first day of assumption of the substantial additional duties and continuing until the City Manager determines that the assignment of the additional duties ceases. This additional pay is provided at the City Manager's sole discretion and must be pre-approved in writing. Under current CalPERS rules and regulations, this pay for performing partial duties of the higher class is not reportable special compensation.

SECTION 4: RETIREMENT BENEFITS

Management Employees are provided retirement benefits under the California Public Employee Retirement System (CalPERS) as described in this Section 4.

4.1 Tier One: 2% at 55 Retirement Program (Miscellaneous Group) and 3% at 50 (Safety Group) – Employees Hired Before July 1, 2012 (Tier One Classic Members)

This section 4.1 (including subsections) shall apply to miscellaneous employees hired before July 1, 2012.

4.1.1 2% at 55 or 3% at 50 Pension Formulas: The "2% @ 55" (for miscellaneous employees) or "3% @ 50" (for safety employees) retirement programs will be available to members covered by this Section 4.1.

4.1.2 Final Compensation Based On 12-Month Period: For the purposes of determining a retirement benefit, final compensation for members covered by this Section 4.1 shall mean the highest twelve (12) consecutive month period as specified in Government Code Section 20042.

4.1.3 Required Member Contributions:

4.1.3.1 Members covered by this Section 4.1 shall continue to pay, through payroll deduction, the full 7.0% member contribution for Miscellaneous Group and 9.0% member contribution for the Safety Group.

4.1.3.2 Miscellaneous Member Pension Cost Sharing: Beginning on the effective date of the amendment to the CalPERS contract providing for cost sharing (estimated date, Spring 2016), miscellaneous members covered by this Section 4.1 shall pay, through payroll deduction, the full 7.0% employee contribution plus an additional 1% of compensation earnable toward the City's costs for a total contribution of 8% toward the normal cost of pension benefits as permitted by Government Code Section 20516.

4.2 Tier Two: 2% at 60 Retirement Program (Miscellaneous Group) or 3% at 55 (Safety Group) for Members Hired On or After July 1, 2012, and Before December 31, 2012, and Unit Members Qualified for Reciprocity (Tier Two Classic Members):

This Section 4.2 (including subsections) shall apply to members hired on or after July 1, 2012, and before January 1, 2013. In addition, this Section 4.2 shall apply to members hired on or after January 1, 2013, who are qualified for pension reciprocity as stated in Government Code Section 7522.02(c) and related CalPERS reciprocity (Classic Member) requirements:

4.2.1 2% at 60 or 3% at 55 Pension Formulas: The “2% @ 60” (for miscellaneous) or “3% @ 55” (for safety) retirement programs will be available to members covered by this Section 4.2.

4.2.2 Final Compensation Based On 36-Month Period: For the purposes of determining a retirement benefit, final compensation for members covered by this Section 4.2 shall mean the highest annual average pensionable compensation earned during thirty-six (36) consecutive months of service.

4.2.3 Required Member Contributions

4.2.3.1 Employees covered by this Section 4.2 shall continue to pay, through payroll deduction, the full 7.0% member contribution for Miscellaneous Group and 9.0% member contribution for the Safety Group.

4.2.3.2 Miscellaneous Member Pension Cost Sharing: Beginning on the effective date of the amendment to the CalPERS contract providing for cost sharing (estimated date, Spring 2016), miscellaneous employees covered by this Section 4.2 shall pay, through payroll deduction, the full 7.0% member contribution plus an additional 1% of compensation earnable towards the City’s costs for a total contribution of 8% toward the normal cost of pension benefits as permitted by Government Code Section 20516.

4.3 Tier Three: 2% at 62 PEPPRA Retirement Tier (Miscellaneous Group) or 3% at 57 (Safety Group) is Required For Members Hired On or After January 1, 2013 and Not Qualified For Reciprocity (Not a Classic Member):

This Section 4.3 (including subsections) shall apply to members who were hired on or after January 1, 2013, and who do not qualify for pension reciprocity (not a Classic Member) as stated in Government Code Section 7522.02(c).

4.3.1 2% at 62 or 3% at 57 Pension Formulas: The “2% @ 62” (for miscellaneous) or “3% @ 57” (for safety) retirement programs will be available to members covered by this Section 4.3.

4.3.2 Final Compensation Based On 36-Months: Effective January 1, 2013, for the purposes of determining a retirement benefit, final compensation for members covered by this Section 4.3 shall mean the highest annual average pensionable compensation earned during thirty-six (36) consecutive months of service as required by Government Code Section 7522.32.

4.3.3 Required Member Contributions

4.3.3.1 Required 50% of Normal Costs: As required by Government Code Section 7522.04(g), effective January 1, 2013, members covered by this Section 4.3 shall pay, through payroll deduction, fifty percent (50%) of normal costs.

4.3.3.2 Miscellaneous Member Pension Cost Sharing: Beginning on the effective date of the amendment to the CalPERS contract providing for cost sharing (expected Spring of 2016), in addition to paying 50% of normal costs as described above, employees covered by this Section 4.3 shall pay, through payroll deduction, an additional 1.0% of pensionable compensation toward the City's cost of pension benefits as permitted by Government Code Section 20516.

4.4 Cost Sharing Implementation – All Tiers:

CalPERS mandates an election of employees, separate from adoption of this resolution, to provide for this cost sharing pursuant to Government Code Section 20516. As soon as practicable, the City will initiate the contract amendment process for miscellaneous employee cost sharing. Upon completion of the City's amendment to the CalPERS contract, miscellaneous member contributions will be made pursuant to Government Code Section 20516, Member Cost Sharing of Additional Benefits. The City will consider cost sharing for the Fire Chief at a future date.

4.5 Converting Sick Leave Balance:

An employee who retires may convert his/her unused sick leave balance to service credit as provided by Government Code Section 20965. Any accrued unused sick leave credit that is paid out at termination will not be available for conversion to service credit.

4.6 Other Options Included In CalPERS Contract: Employees shall be eligible for other options included in the City's contract with CalPERS as stated in that contract, and allowed by law.

4.7 Implementation of Internal Revenue Code Section 414(h)(2):

As permitted by Internal Revenue Code Section 414(h)(2) and Government Code Section 20516, each employee shall pay, through payroll deductions, the PERS contributions described in this Article 11 with state and federal income tax on the PERS member contribution deferred to the extent permitted by Internal Revenue Code, 26 USC Section 414(h)(2).

4.8 All Provisions Subject to Requirements of Law:

The City is required to comply with all requirements of law governing the CalPERS retirement program, including, but not limited to eligibility and reporting requirements. In implementing this Unrepresented Compensation Program Resolution and related practices, the City will comply with the requirements of law, and those legal requirements prevail over any inconsistent prior practices or prior resolutions.

SECTION 5: INSURANCE BENEFITS

5.1 General Provisions:

The City will pay the full cost of the employee's health insurance plan to cover both the employee and the employee's dependents. The City will pay the full cost for dental coverage for the employee and her/his dependents. When an employee commences

work with the City, the effective date of coverage of his/her benefits distribution selection shall be established by the individual carrier. In most cases, coverage begins the first of the month following date of hire.

Employees will choose from available insurance programs and/or health and welfare plans at the time of hire or as carriers allow during Open Enrollment periods. Dependent coverage may be added or deleted between Open Enrollment periods subject to conditions imposed by the selected carriers.

5.2 Life Insurance:

The City will provide term life insurance for each employee, not to exceed \$50,000.

Employees may elect to increase the value of their life insurance policy by \$20,000 at their own expense for a total policy value of \$70,000. Employees opting for the additional coverage will have the cost of that coverage deducted from their pay.

5.3 Short-term Disability Insurance: The City will pay for the employee's cost to participate in the State Disability Insurance (SDI) program.

5.4 Vision Care: The City will pay for vision care benefits, for the employee and all dependents through VSP Vision Care Insurance.

SECTION 6: HOLIDAYS

All Unrepresented employees shall receive 12 paid holidays per year, as follows:

<u>Holiday</u>	<u>Day Observed</u>
New Year's Day	January 1
Martin Luther King, Jr. Birthday	3 rd Monday in January
President's Day	3 rd Monday in February
Cesar Chavez Birthday	March 31 st
Memorial Day	Last Monday in May
Independence Day	July 4 th
Labor Day	1 st Monday in September
Veteran's Day	November 11 th
Thanksgiving Day	4 th Thursday in November
Day after Thanksgiving	Friday following Thanksgiving
Christmas Eve Day	December 24 th
Christmas Day	December 25 th

It is the intent of this resolution that all full-time employees receive 12 paid holidays regardless of their assigned workweek. When a holiday falls on a Saturday, the preceding Friday shall be deemed a holiday. When a holiday falls on a Sunday, the following Monday shall be deemed a holiday. When an employee is required to work on a holiday, s/he may select another day as holiday leave with pay during the fiscal year

with the consent of the City Manager.

Floating Holidays: Except for the calendar year they are hired, on January 1st of each year, employees earn 16 hours of floating holiday for use during that calendar year, taken in at least 8-hour increments. The hours must be used by the end of the calendar year and does not accrue. After five years of service, employees earn 40 hours of floating holiday.

SECTION 7: VACATION LEAVE

7.1 Vacation Entitlement:

Employees shall accumulate vacation in accordance with the following vacation entitlement schedule:

<u>Years of Continuous Service</u>	<u>Vacation Days Earned/Year</u>
1 – 5 years	10
6 th year	15
7 th year	16

This pattern continues until 20 days per year is reached. On the employee's 25th anniversary and every five years thereafter, one additional day will be awarded on that year.

7.2 Vacation Accrual:

Employees shall begin earning vacation upon the first day of employment. Vacation leave time shall be accrued as it is earned; odd fractions rounded to the nearest tenth. Vacation time shall not be taken until earned and shall be subject to other provisions of this resolution. When an employee is on a leave without pay status, s/he shall not be entitled to earn vacation.

For purposes of calculating vacation earned upon termination, the employee's final accrual will be prorated, based on the days worked in the employee's last month of employment. Upon termination of an employee's service with the City, s/he shall be paid a lump sum for all earned vacation not taken, at the employee's hourly rate then in effect.

An employee who was a member of the unrepresented compensation program before May 8, 2018 may accrue a maximum of 380 vacation hours. An employee who is hired or promoted into an unrepresented compensation position on or after May 8, 2018 may accrue a maximum of 280 vacation hours.

7.3 Vacation Usage:

An employee may take vacation at a time approved by the employee's direct supervisor, or, in the case of the City Manager, after notification of the City Council. It is the policy of the City that employees take their normal provided vacation leave each year.

Employees should not be earning vacation leave once their accrued vacation balance has reached 380 hours. All employees who have accrued at least 380 hours of vacation shall expend at least 80 hours of vacation leave per calendar year with at least 40 hours being consecutive.

SECTION 8: EXECUTIVE LEAVE

In recognition of the extra hours required to perform at the level of management, including attendance at numerous meetings outside normal working hours and the fact that employees who are exempt from FLSA are not compensated for overtime work, the following executive leave policy shall be implemented:

Each FLSA-exempt, unrepresented employee may receive up to five (5) days Executive Leave annually at the discretion of the City Manager provided on January 1st of each year. On January 1st of each year, all hours not taken in the prior year will be lost unless an extension of time is granted by the City Manager. Additionally, at-will executive staff and the Assistant to the City Manager may receive up to another five (5) days Executive Leave annually at the discretion of the City Manager provided on July 1st of each year, and all hours not taken by December 31st of the same year will be lost unless an extension of time is granted by the City Manager.

Newly hired employees shall have Executive Leave awarded to them in the following pro-rated manner:

If the employee is hired from:

January – March	40 hours awarded on the date of hire
April – June	30 hours awarded on the date of hire
July – September will	20 hours awarded on the date of hire, 40 hours additional at-
October – December will	10 hours awarded on the date of hire, 20 hours additional at-

SECTION 9: OTHER LEAVES OF ABSENCE

9.1 Sick Leave:

Employees shall accrue and use sick leave in accordance with City of St. Helena Personnel/Administrative on Sick Leave.

9.2 Family Care:

Except as otherwise required by state or federal law, sick leave may be used to care for the employee's child, spouse, or domestic partner who is incapacitated by a serious health condition as defined by state or federal Law. Sick leave utilized for Family Care shall not exceed forty-eight (48) hours per occurrence.

9.3 Bereavement Leave:

Leave with pay up to 3 days per year in state/5 days out of state shall be granted by the City Manager to employees in case of the death of spouse or domestic partner regardless of gender, parent or step-parent, grand-parent, child, or stepchild, brother or sister, parent-in-law, brother/sister-in-law, son/daughter-in-law, or any relative in the immediate household of the employee. Bereavement leave shall not be charged against any accumulated leave. Additional time off (vacation, executive leave) may be taken if approved by the City Manager.

9.4 Industrial Accident Leave:

The City shall provide paid leave and benefits consistent with the State's Worker's Compensation laws.

9.5 Miscellaneous Leave With Pay:

Employees shall be granted a leave of absence with full pay for jury duty; subpoena of the employee as a witness; or attendance in court resulting from the employee's official duties as assigned by the City Manager. Any compensation received by the employee for the above, except for travel reimbursement, shall be promptly remitted to the City by the employee.

9.6 Leave Pursuant to the Family and Medical Care Leave Act and the California Family Rights Act:

Employees shall be entitled to take leave in response to the birth or adoption of a child, or the placement of a child with the employee for foster care; the employee's own serious health condition, or to care for a child, parent or spouse of the employee who has a serious health condition; for a "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the Armed Forces; or to care for a servicemember with a serious injury or illness if the employee is the servicemember's spouse, son, daughter, parent or next of kin, as specified in the federal Family and Medical Care Leave Act (FMLA) and the California Family Rights Act (Government Code Section 12945.2). Employees may use their accrued leave balances during such leave.

If the period of leave exceeds the employer's accrued leave balances, the employee shall take the balance of the leave as unpaid leave.

9.7 Leave for Pregnancy, Childbirth and Related Medical Conditions (California Government Code Section 12945):

In addition to leave authorized by Section 9.6, eligible employees may take leave based on pregnancy, childbirth, or related medical conditions pursuant to California

Government Code Section 12945. Generally, this leave should not exceed six (6) weeks for a normal pregnancy, childbirth, or related conditions, but may be taken for a period of up to a total of four (4) months if the employee is disabled due to pregnancy, childbirth, or other medical conditions. The need for leave beyond six (6) weeks due to disability shall be verified in writing by the employee's physician. The employee may use accrued leave balances during leave taken pursuant to this Section. If the period of leave exceeds the employee's accrued leave balances, the balance of the leave shall be taken as unpaid leave.

9.8 *Leave of Absence Without Pay:*

Upon the written request of any employee, the City Manager may approve in writing a leave of absence without pay for a period up to thirty (30) calendar days. Except in the cases of illness or maternity, an employees' request for Leave Without Pay shall be submitted to the City Manager, accompanied by a recommendation or an explanation from the manager as to how an adequate level of service can be maintained during her/his absence. Such leave may be extended up to one calendar year by action of the City Council.

9.9 *Military Leave:*

An employee called to active duty in any reserve component of the Armed Forces of the United States or the National Guard shall be granted a leave of absence for the duration of said active duty. Any full-time employee on a military leave of absence shall be compensated as outlined in the City's Personnel Policies Manual if the employee provides proper documentation from the Commanding Officer concerning their active duty; or, if the employee is a Commanding Officer, with a copy of the order to report to active duty and any applicable extension orders.

SECTION 10: TRAINING AND PROFESSIONAL GROWTH

10.1 *Professional Seminars and Training:*

To promote continued development of skills, knowledge, and abilities among the Employee, the City Manager may grant time off to employee(s) for educational leave. Such leave may be received in order to attend professional, technical, or managerial workshops, courses, conferences, conventions, seminars, or related activities. The cost of attendance at these activities, including travel, per diem, registration, tuition, materials or other reasonable costs, are legitimate City expenditures as provided for in the annual City Budget.

10.2 *Professional Membership Fees:*

Most At-will Executive Management, Mid-Management, and Confidential personnel are expected to maintain membership in appropriate professional organizations. These memberships serve to acquaint the City with the current state-of-the-art in these professional areas by means of publications and special activities. The City will include the costs of these membership fees in the respective department budgets, subject to approval by the City Manager.

10.3 College Tuition Reimbursement:

An employee who is taking courses in a field related to his/her employment may receive reimbursement for tuition and/or materials up to \$1,500 per year of the reasonable cost for books and tuition per fiscal year.

SECTION 11: OTHER BENEFITS**11.1 Vehicle Reimbursement:**

Covered employees to a far greater extent than most other City employees are required to travel throughout the City and the County to fulfill their job requirements. This travel is frequently required outside of normal working hours. In recognition of this employment requirement, the City may provide either the use of a City vehicle or pay an auto allowance of \$200 per month. In addition, if travel is required by the employee in his/her personal vehicle beyond the County line, mileage shall be reimbursed at the same rate as set by the IRS.

11.2 Deferred Compensation Plan:

Employees may elect payroll deductions in an amount permissible under IRS regulations, to be placed in a deferred compensation program administered at no cost to the City. To the extent allowed by law, such monies deposited would become tax deferred and would be subject to income taxation in the year they are withdrawn from the deferred compensation program. The City shall match up to \$200 per month to the employee's contribution into the City's deferred compensation program.

11.3 Health Club Membership:

The City will pay a one-time membership fee of \$25.00 towards employee enrollment in a health clubs.

11.4 Sick Leave Payout:

11.4.1 Payout upon separation, the City will pay out 50% of accrued sick leave for an employee who was an unrepresented compensation member before May 8, 2018. An employee who is hired or promoted into an unrepresented compensation position on or after May 8, 2018 will not be eligible for any sick leave pay out.

11.4.2 Retirees conversion, upon meeting REMIFs retiree eligibility to participate in retiree benefits, an employee who was an unrepresented compensation member before May 8, 2018, will have the option of using 100% of their accrued sick leave towards health premiums. An employee who is hired or promoted into an unrepresented compensation position on or after May 8, 2018 will not be eligible to convert any of their accrued sick leave towards health premiums.

11.5 St. Helena Charity Based Events:

In recognition of the importance of being engaged with the St. Helena community, Unrepresented Employees are eligible to be reimbursed for charity event tickets related

to their employment. To be eligible for reimbursement, the event must be held within the County of Napa and directly benefit the St. Helena community. Event tickets may be purchased only for the employee up to a total reimbursable amount of \$750.00 per calendar year.

11.6 Uniform Allowance:

Sworn Personnel that are members of the unrepresented compensation program shall receive an annual uniform allowance in the amount of \$750. The Uniform Allowance will be paid twice a year: in December and June, in equal amounts.

SECTION 12: TERMINATION ALLOWANCE

12.1 Severance Pay:

In order to foster job security within a professional climate, At-will Executive Management employees who receive no protection from the City's Personnel System may be entitled to severance pay when they are discharged from the City service. At-will Management employees terminated for cause are not eligible for severance benefits.

12.2 Allowance Schedule:

At-will Executive Management employees shall generally be entitled to two (2) months' salary, excluding fringe benefits. All specific severance pay terms and conditions must be included in the employee's Employment Contract, as noted in section 2 (Employment Contracts). In no event shall an employee receive a severance that is greater than the employee's salary multiplied by the number of months left on the unexpired term of the employee's employment contract, and all severance provisions shall comply with all other requirements of law.



Report to the City Council
Regular City Council - 22 Oct 2019

Agenda Section: CONSENT ITEMS

Subject: Consideration and Adoption of a Resolution Awarding Legal Services Contract to Best Best & Krieger LLP and Appointing Kara Ueda as City Attorney.

CEQA Determination: Categorically Exempt, Section 15323

Prepared By: April Mitts, Finance Director

Reviewed By: Mark T. Prestwich, City Manager

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Per City Council Policy on the Management of Legal Services, P-CC-0001, the City of St. Helena contracts out the position of City Attorney through a request-for-proposal process and the City Attorney is appointed by a majority vote of the City Council.

DISCUSSION

On Friday, June 14, 2019, the City Council of the City of St. Helena issued a Request for Proposal (RFP) for legal services. At the close of the RFP, nine proposals were submitted to the City and the top three rated candidates/firms were selected to be interviewed.

On September 26, 2019, the City Council held a Special Closed Session meeting pursuant to Government Code Section 54957 to interview the top three candidates/firms. Following the interviews, City Council directed the City Manager to prepare an agreement for their consideration with Best Best & Krieger LLP to perform all necessary legal services with Kara Ueda to be appointed as the City Attorney.

Best Best & Krieger was established in 1891 and has provided legal services to cities, counties, special districts, and other public agencies for 128 years. The firm

currently represents 50 cities as City Attorney, and over 700 public agencies as General or Special Counsel.

FISCAL IMPACT

A summary of fees and costs for legal services performed by Best Best & Krieger LLP are as follows:

1. Basic Legal Services – Basic Legal Services include all services provide to the City that are not otherwise specifically identified as either Special Legal Services, Third Party Reimbursable Legal Services, or Public Finance Legal Services. Basic Legal Services are billed at a flat monthly rate of \$18,000.
2. Litigation and Special Legal Services, as defined in Exhibit A of the Agreement, are billed at hourly rates between \$250-\$365/hour for attorneys and at a rate of \$160-\$195/hour for paralegals. Special Counsel work would be billed at individual rates depending on the area of expertise. Partners and Of Counsel range from \$250 to \$440 per hour. Associates range from \$220 to \$270 per hour.
3. All rates are adjusted annually based on the cost of living index as identified in Exhibit A.
4. Third Party Reimbursable Legal Services will be paid at Best Best & Krieger's then current published standard private client rates as described in Exhibit B.
5. Pubic Finance Legal Services fees will be determined based upon the type of financing and the expected involvement of the attorneys involved as described in Exhibit C.
6. No separate charge is made for secretarial or word processing services; those costs are included within Best Best & Krieger's rates. Miscellaneous expenses which are covered by a standard administrative charge, currently set at 4%, which covers the cost of normal photocopying, long distance telephone calls, regular mail postage, telecopy charges, and other expenses for which individual itemization is impractical. Costs specific to City matters, such as investigation and filing fees, process server fees, required costs of travel, toll road expenses, out-of-town lodging and meals, courier and express mail services, deposition and court reporter fees, computerized legal research, and major photocopying will be itemized and will appear as separate items on the bill. Fees for other services, costs, and expenses are further described in Exhibit D.

Additional detail regarding fees and costs of legal services are in the Agreement for City Attorney Legal Services Section 3.7 Fees and Costs and in Exhibits A, B, C, and D.

The Fiscal Year 2019-20 Adopted Budget includes a budget of \$626,000 for attorney services.

RECOMMENDED ACTION

Based on City Council direction, staff recommends City Council adopt a resolution awarding Legal Services Contract to Best Best & Krieger LLP and appointing Kara Ueda as City Attorney.

ATTACHMENTS

[Resolution Legal Services BB&K](#)

[BBK Legal Services Agreement](#)

CITY OF ST. HELENA

RESOLUTION NO. 2019-_____

**Authorizing the Award of Legal Services Contract to Best Best & Krieger LLP
and Appointing Kara Ueda as City Attorney.**

RECITALS

- A. Per City Council Policy on the Management of Legal Services, P-CC-0001, the City of St. Helena contracts out the position of City Attorney through a request-for-proposal process and the City Attorney is appointed by a majority vote of the City Council; and
- B. On June 14, 2019, the City Council of the City of St. Helena issued a Request for Proposal (RFP) for legal services for the City of St. Helena; and
- C. At the close of the RFP, nine proposals were submitted to the City and the top three candidates/firms were selected to be interviewed; and
- D. On September 26, 2019, the City Council held a Special Closed Session meeting pursuant to Government Code Section 54957 to interview the top three candidates/firms; and
- E. Following the interviews, City Council selected Best Best & Krieger LLP to perform all necessary legal services with Kara Ueda to be appointed as the City Attorney.

RESOLUTION

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

- 1. Approval of this resolution is CEQA Categorically Exempt under Section 15323; and
- 2. Approves an agreement with Best Best & Krieger LLP to provide legal services for the City of St. Helena; and
- 3. Appoints Kara Ueda as City Attorney; and
- 4. Authorizes the City Manager to execute all necessary agreements.

Approved at a Regular Meeting of the St. Helena City Council on October 22, 2019, by the following vote:

Mayor Geoff Ellsworth:

Vice Mayor Paul Dohring:

Councilmember Koberstein:

Councilmember Anna Chouteau:

Councilmember David Knudsen:

APPROVED:

Geoff Ellsworth, Mayor

ATTEST:

Cindy Tzafopoulos, City Clerk

**AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF ST. HELENA, CALIFORNIA
AND
BEST BEST & KRIEGER LLP**

1. PARTIES AND DATE.

This Agreement is made and entered into as of the 22nd day of October, 2019, by and between the City of St. Helena, a municipal corporation of the State of California (“Client”) and Best Best & Krieger LLP, a limited liability partnership engaged in the practice of law (“BB&K”).

2. RECITALS.

2.1 Client wishes to engage the services of BB&K as its City Attorney to perform all necessary legal services for the Client on the terms set forth below.

3. TERMS.

3.1 Term. The term of this Agreement shall commence on October 23, 2019, and shall continue in full force and effect until terminated in accordance with Section 3.12.

3.2 Scope of Services. BB&K shall serve as City Attorney and shall perform legal services (“Services”) as may be required from time to time by the Client as set forth by this Agreement and in accordance with Client’s Policy on the Management of Legal Services, unless otherwise agreed to by the Client and BB&K. As part of the Services to be performed hereunder, BB&K shall be responsible for the following:

3.2.1 Preparation for, and attendance at, regular meetings of the Client;

3.2.2 Provision of legal counsel at such other meetings as directed by the Client;

3.2.3 Preparation or review of all Client ordinances and resolutions, together with such staff reports, orders, agreements, forms, notices, declarations, certificates, deeds, leases and other documents as requested by the Client;

3.2.4 Rendering to the officers and employees of the Client legal advice and opinions on all legal matters affecting the Client, including new legislation and court decisions, as directed by the Client;

3.2.5 Researching and interpreting laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the Client on legal matters pertaining to Client operations, as directed by the Client;

3.2.6 Performing legal work pertaining to property acquisition, property disposal, public improvements, public rights-of-way and easements, as directed by the Client;

3.2.7 Responding to inquiries and review for legal sufficiency ordinances, resolutions, contracts, and administrative and personnel matters, as directed by the Client;

3.2.8 Representing and assisting on litigation matters, as directed by the Client. Such services shall include, but shall not be limited to, the preparation for and making of appearances, including preparing pleadings and petitions, making oral presentations, and preparing answers, briefs or other documents on behalf of the Client, and any officer or employee of the Client, in all federal and state courts of this State, and before any governmental board or commission, including reviewing, defending or assisting any insurer of the Client or its agents or attorneys with respect to any lawsuit filed against the Client or any officer or employee thereof, for money or damages.

3.3 Designated City Attorney. Kara K. Ueda shall be designated as City Attorney and shall be responsible for the performance of all Services under this Agreement, including the supervision of Services performed by other members of BB&K. No change in this assignment shall be made without the consent of the Client.

3.4 Time of Performance. The Services of BB&K shall be performed expeditiously in the time frames and as directed by the Client.

3.5 Assistance. The Client agrees to provide all information and documents necessary for the attorneys at BB&K to perform their obligations under this Agreement.

3.6 Independent Contractor. BB&K shall perform all legal services required under this Agreement as an independent contractor of the Client and shall remain, at all times as to the Client, a wholly independent contractor with only such obligations as are required under this Agreement. Neither the Client, nor any of its employees, shall have any control over the manner, mode or means by which BB&K, its agents or employees, render the legal services required under this Agreement, except as otherwise set forth. The Client shall have no voice in the selection, discharge, supervision or control of BB&K's employees, representatives, or agents, or in fixing their number, compensation, or hours of service, except as provided in Client's Policy on the Management of Legal Services.

BB&K shall have no authority to bind the City in any manner or to incur an obligation, debt or liability of any kind on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred with the City.

Neither BB&K, nor any of its officers, employees or agents, shall obtain any rights to retirement, healthcare or any other benefits which may otherwise accrue to City employees. BB&K expressly waives any claim it may have to any such rights.

3.7 Fees and Costs. BB&K shall render and bill for legal services in the following categories and at rates set forth in Exhibit "A" and in accordance with the BB&K Billing Policies

set forth in Exhibit “D”, both of which are attached hereto and incorporated herein by reference. In addition, the Client shall reimburse BB&K for reasonable and necessary expenses incurred by it in the performance of the Services under this Agreement. No separate charge is made for secretarial or word processing services; those costs are included within our rates. Miscellaneous expenses are covered by a standard administrative charge, currently set at four percent (4%), which covers the cost of normal photocopying, long distance telephone calls, regular mail postage, telecopy charges, and other expenses for which individual itemization is impractical. Costs specific to City matters, such as investigation and filing fees, process server fees, required costs of travel (including mileage reimbursement at the expense rate allowed by the Internal Revenue Service), out-of-town lodging and meals, toll road expenses, courier and express mail services, deposition and court reporter fees, computerized legal research, and major photocopying (such as for voluminous colored copies) will be itemized and will appear as separate items on the bill.

3.8 Billing. BB&K shall submit monthly to the Client a detailed statement of account for Services. The Client shall review BB&K’s monthly statements and pay BB&K for Services rendered and costs incurred, as provided for in this Agreement, on a monthly basis.

3.9 Annual Reviews. The Client and BB&K agree that a review of performance and the compensation amounts referenced in this Agreement should occur at least annually using the Client’s Attorney Performance Evaluation Form.

3.10 Insurance.

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

3.10.1.1 Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001).

3.10.1.2 Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto) or if Consultant owns no vehicles, codes 8 and 9 (hired and non-owned vehicles).

3.10.1.3 Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

3.10.2 Minimum Limits of Insurance. BB&K shall maintain limits no less than:

3.10.2.1 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 or the general aggregate limit shall be twice the required occurrence limit.

3.10.2.2 Automobile: \$2,000,000 per accident for bodily injury and

property damage.

3.10.2.3 Employer's Liability: \$2,000,000 per accident for bodily injury or disease.

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

3.10.4 Primary Coverage. For any General Liability claims related to this Agreement BB&K's insurance coverage shall be primary insurance as respect to City, its officers, officials, employees and volunteers. Any General Liability insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of BB&K's insurance and shall not contribute with it.

3.10.5 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. BB&K's professional liability deductible is \$250,000 per claim / \$500,000 aggregate.

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

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

3.10.6.2 For any claims related to BB&K's conduct while performing the work of this Agreement, BB&K's General Liability insurance coverage shall be a primary insurance as respects to 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 BB&K's insurance and shall not contribute with it.

3.10.6.3 Each insurance policy required by this clause shall provide thirty (30) days prior written notice to the City prior to cancellation.

3.10.6.4 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.

3.10.7 Waiver of Subrogation. BB&K'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.

3.10.8 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.

3.10.9 Errors and Omissions. BB&K carries errors and omissions insurance with Lloyd's of London. After a standard deductible, this insurance provides coverage beyond what is required by the State of California. A separate schedule containing BB&K's insurance policies will be available for inspection upon Client's request.

3.10.10 Verification of Coverage. BB&K shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms that conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences.

3.11 Attorney-Client Privilege. Confidential communication between the Client and BB&K shall be covered by the attorney-client privilege. As used in this article, "confidential communication" means information transmitted between the Client and BB&K in the course of the relationship covered by this Agreement and in confidence by a means that, so far as the Client is aware, discloses the information to no third persons other than those who are present to further the interests of the Client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which BB&K is consulted, and includes any legal opinion formed and advice given by BB&K in the course of this relationship.

3.12 Termination of Agreement and Legal Services. This Agreement and the Services rendered under it may be terminated at any time upon thirty (30) days' prior written notice from either party, with or without cause. In the event of such termination, BB&K shall be paid for all Services authorized by the Client and performed up through and including the effective date of termination. BB&K shall also be reimbursed for all costs associated with transitioning any files or other data or documents to a new law firm or returning them to the Client.

3.13 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.14 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Napa County.

3.15 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.

3.16 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

3.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.18 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.19 Delivery of Notices. All notices permitted or required under this Agreement notices shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Client: City of St. Helena
1480 Main Street
St. Helena, CA 94575
Attention: Mark T. Prestwich, City Manager

BB&K: Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814
Attention: Kara Ueda

3.20 Indemnification.

(A) BB&K agrees to indemnify City, its officers, employees and agents against, and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein “claims or liabilities”) that may be asserted or claimed by any person, firm or entity arising from the negligent acts or omissions of BB&K hereunder, or arising from BB&K’s negligent performance of any term, provision, covenant or condition of this Agreement, except to the extent such claims or liabilities arise from the negligence or willful misconduct of City, its officers, agents or employees.

(B) City acknowledges BB&K is being appointed as City Attorney pursuant to the authority of Government Code Section 36505, and has the authority of that office. Accordingly, the City is responsible pursuant to Government Code Section 825 for providing a defense for the City Attorney for actions within the scope of its engagement hereunder. Therefore, City agrees to undertake its statutory duty and indemnify BB&K, its officers, employees and agents against and will hold and save each of them harmless from, any and all claims or liabilities that may be asserted or claims by any person, firm or entity arising out of or in connection with the work, operations or activities of BB&K within the course and scope of its performance hereunder, but nothing herein shall require City to indemnify BB&K for liability arising from its own negligence or alleged negligence. In connection herewith:

(i) City will promptly provide a defense and pay any judgment rendered against the City, its officers, agency or employees for any such claims or liabilities arising out of or in connection with such work, operations or activities of City hereunder; and

(ii) In the event BB&K, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against City for such damages or other claims solely arising out of or in connection with the work operation or activities of City hereunder, City agrees to pay to BB&K, its officers, agents or employees any and all costs and expenses incurred by attorney, its officers, agents or employees in such action or proceeding, including, but not limited to, legal costs and attorneys' fees.

3.21 Conflicts of Interest and Anti-Fraud and Anti-Corruption Policies

3.21.1 BB&K 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 BB&K's performance of Services under this Agreement. BB&K 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. BB&K agrees to at all times avoid conflicts with the interests of City in the performance of this Agreement.

3.21.2 City understands and acknowledges that BB&K 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. BB&K is not 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.

3.21.3 BB&K 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. BB&K represents and warrants that BB&K, 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. BB&K 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 BB&K may discover, and will cooperate in any fraud or corruption investigation conducted, with respect to BB&K's service provided pursuant to this Agreement.

3.22 Compliance with Civil Rights. During the performance of this contract, BB&K agrees as follows:

3.22.1 Equal Employment Opportunity. In connection with the execution of this Agreement, BB&K 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.

3.22.2 Nondiscrimination Civil Rights Act of 1964. BB&K will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

3.22.3 Solicitations for Subcontractors including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations, made by BB&K 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 BB&K of BB&K's obligations under this Agreement and the regulations relative to nondiscrimination.

3.23 Standard of Performance.

3.23.1 BB&K 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. BB&K 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, BB&K 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 BB&K under this Agreement.

3.23.2 In order to induce City to enter into this Agreement, BB&K represents that it is duly organized, existing and in good standing under applicable state law; BB&K is licensed to perform all aspects of the Services; BB&K will employ only persons and Subconsultants with all required licenses and certifications; that BB&K is duly qualified to conduct business in the State; that BB&K 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 BB&K.

IN WITNESS WHEREOF, the Client and BB&K have executed this Agreement for City Attorney Legal Services as of the date first written above.

(signatures contained on following page)

**SIGNATURE PAGE TO
AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF ST. HELENA
AND
BEST BEST & KRIEGER LLP**

CITY OF ST. HELENA

By: _____
Mark T. Prestwich
City Manager

Date: _____

Attest:

Cindy Tzaopoulos
City Clerk

BEST BEST & KRIEGER LLP

By: _____
Kara K. Ueda
Partner

Date: _____

**EXHIBIT “A”
TO
AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF ST. HELENA
AND
BEST BEST & KRIEGER LLP**

1. Basic Legal Services – Description and Rate. Basic Legal Services shall include all services provided to Client that are not otherwise specifically identified below as either Special Legal Services, Third Party Reimbursable Legal Services, or Public Finance Legal Services (“Basic Legal Services”). The Client shall pay for Basic Legal Services at the flat rate monthly retainer amount of EIGHTEEN THOUSAND DOLLARS (\$18,000.00)

2. Special Legal Services - Description. Special Legal Services shall include the following types of services:

- A. Litigation and formal administrative or other adjudicatory hearing matters
- B. Labor relations and non-routine employment matters
- C. Non-routine real estate matters (e.g. CC&R’s, deed or title work)
- D. Complex land acquisition and disposal matters (including pre-condemnation)
- E. Non-routine public construction disputes
- F. Non-routine contract negotiation matters (including non-BB&K model agreements and franchise agreements)
- G. Non-routine and complex land use, development, and environmental (CEQA) matters
- H. Water law matters (e.g. water rights & quality)
- I. Complex public utility matters (e.g. electric, natural gas, telecommunications, water, rail or transit that involve state or federal regulatory issues)
- J. Non-routine code enforcement matters
- K. Intergovernmental Relations and Advocacy efforts (e.g. legislative and regulatory representation) at the federal and state level
- L. Other matters mutually agreed upon between BB&K and the City Manager

3. Special Legal Services – Rates. The Client shall pay for Special Legal Services at the following rates:

Kara Ueda	\$285
Ethan Walsh	\$290
Andrew Skanchy	\$290
Stacey Sheston	\$315
Gene Tanaka	\$365
Christine Wood	\$250

Kevin Wang	\$260
Paralegals	\$160-195

Other specialists may be called upon from time to time to work on matters as particular needs arise. Special Counsel work would be billed at individual rates depending upon the area of expertise. Hourly rates for those attorneys fall within the following ranges: Partners and Of Counsel range from \$250 to \$440 per hour, Associates range from \$220 to \$270 per hour.

4. Agreement Regarding Rate Categories. If BB&K believes that a matter falls within the Special Legal Services, Third Party Reimbursable Legal Services, or Public Finance Legal Services rate categories, BB&K shall seek approval from the City Manager or his/her designee. The City Manager's or her designee's approval of such a request from BB&K shall not be unreasonably withheld.

5. Other Billing Personnel. If, as, and when BB&K employs additional or different billing personnel, this Agreement may be supplemented by written administrative memoranda, providing for the categories and billing rates for such personnel, which memoranda may be approved by the City Manager.

6. Annual Adjustments; Other Mutual Adjustments. The rates or amounts provided for in this Appendix A shall be automatically increased as follows: Blended rates and retainer amounts will be adjusted annually using the cost of living index. At the start of the Client's fiscal year and every year thereafter during the term of this Agreement, rates and amounts shall be increased for the change in the cost of living for the twelve (12) month period published for the most recent calendar year end, as shown by the U.S. Department of Labor in its All Urban Consumers Index set forth in the San Francisco-Oakland-Hayward, CA area, provided, however, that such adjustment shall never be lower than zero percent (0%) nor more than five percent (5%). Individual rates which are specific to individual attorneys and/or legal personnel are reviewed annually and may be increased from time to time with advanced written notice to the client. In addition to the automatic rate increases, either BB&K or the Client may initiate consideration of a rate increase at any time.

**EXHIBIT “B”
TO
AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF ST. HELENA
AND
BEST BEST & KRIEGER LLP**

THIRD PARTY REIMBURSABLE BILLING POLICIES

1. Third Party Reimbursable Legal Services - Description. Third Party Reimbursable Legal Services shall include legal services provided to the City for which the City receives reimbursement from a developer or other third party. These reimbursable legal services include, but are not limited to, review of CC&Rs; establishment of financing districts (i.e., Community Facilities Districts; Assessment Districts; Landscape and Lighting Maintenance Districts); the processing of land use/environmental projects for which the City is entitled to reimbursement, as well as defending any challenges to project entitlements or any dispute or litigation related to such reimbursable legal services.
2. Third Party Reimbursable Legal Services - Rates. The Client shall pay for Third Party Reimbursable Legal Services at BB&K's then current published standard private client rates. Upon execution of this Agreement, BB&K shall provide a copy of its published rate schedule to the Client. BB&K shall also provide annual written updates to the Client when changes are made to the published rate schedule.

**EXHIBIT “C”
TO
AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF ST. HELENA
AND
BEST BEST & KRIEGER LLP**

PUBLIC FINANCE & BOND BILLING POLICIES

Public Finance & Bond Rates. BB&K will provide bond counsel, special counsel or disclosure counsel services at the request of the Client. Such bond counsel and special counsel services include the preparation of all legislative approvals and legal documentation relating to the appropriate sale and delivery of the bonds, notes or other obligations. BB&K will also prepare such closing certificates and legal opinions necessary for the delivery of the bonds. As disclosure counsel, we will prepare the disclosure documents for the Client and conduct the necessary due diligence related to the transaction. Our fees will be determined based upon the type of financing and the expected involvement of the attorneys involved. We will provide the Client with a detailed description of our services and our fees and reimbursable costs upon the Client's request. Notwithstanding the foregoing, in those cases where the fees are reimbursable by a third party, at BB&K's option it may proceed on an hourly basis and utilize the Third Party Reimbursable Legal Services category provided for in this Amendment, including with respect to services rendered for the formation of, or annexation to, a CFD (of either the City or other local public agency), as well as the negotiation and preparation of funding agreements and joint financing agreements. Legal services related to the Client's compliance with its continuing disclosure covenants and provide such necessary advice on the Client's compliance shall be billed as Special Legal Services, above.

EXHIBIT "D"
TO
AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN
CITY OF ST. HELENA
AND
BEST BEST & KRIEGER LLP

BB&K BILLING POLICIES

Our century of experience has shown that the attorney-client relationship works best when there is mutual understanding about fees, expenses, billing and payment terms. Therefore, this statement is intended to explain our billing policies and procedures. Clients are encouraged to discuss with us any questions they have about these policies and procedures. Clients may direct specific questions about a bill to the attorney with whom the client works or to Michelle Stafford of our Accounting Department. Any specific billing arrangements different from those set forth below will be confirmed in a separate written agreement between the client and the firm.

Fees for Professional Services

Unless a flat fee is set forth in our engagement agreement with a client, our fees for the legal work we will undertake will be based in substantial part on time spent by personnel in our office on that client's behalf. In special circumstances which will be discussed with the client and agreed upon in writing, fees will be based upon the novelty or difficulty of the matter, or the time or other special limitations imposed by the client.

Hourly rates are set to reflect the skill and experience of the attorney or other legal personnel rendering services on the client's behalf. All legal services are billed in one-tenth of an hour (0.10/hour) or six-minute increments. Our attorneys are currently billed at rates from \$220 to \$440 per hour, and our administrative assistants, research assistants, municipal analysts, litigation analysts, paralegals, para professionals and law clerks are billed at rates from \$150 to \$290 per hour. Additional consultants and/or specialists are available as needed and their rates will be charged at the rate then in effect for such personnel. These hourly rates are reviewed annually to accommodate rising firm costs and to reflect changes in attorney status as lawyers attain new levels of legal experience. Any increases resulting from such reviews will be instituted automatically and will apply to each affected client, after advance notice.

Fees For Other Services, Costs and Expenses

We attempt to serve all our clients with the most effective support systems available. No separate charge is made for secretarial or word processing services; those costs are included within our rates. Miscellaneous expenses are covered by a standard administrative charge, currently set at four percent (4%), which covers the cost of normal photocopying, long distance telephone calls, regular mail postage, telecopy charges, and other expenses for which individual

itemization is impractical. Costs specific to City matters, such as investigation and filing fees, process server fees, required costs of travel, toll road expenses, out-of-town lodging and meals, courier and express mail services, deposition and court reporter fees, computerized legal research, and major photocopying (such as for voluminous colored copies) will be itemized and will appear as separate items on the bill.

We may need to advance costs and incur expenses on your behalf on an ongoing basis. These items are separate and apart from attorneys' fees and, as they are out-of-pocket charges, we need to have sufficient funds on hand from you to pay them when due. We will advise the client from time to time when we expect items of significant cost to be incurred, and it is required that the client send us advances to cover those costs before they are due.

Advance Deposit Toward Fees And Costs

Because new client matters involve both a substantial undertaking by our firm and the establishment of client credit with our accounting office, we require an advance payment from clients. The amount of this advance deposit is determined on a case-by-case basis discussed first with the client, and is specified in our engagement agreement.

Upon receipt, the advance deposit will be deposited into the firm's client trust account. Our monthly billings will reflect such applications of the advance deposit to costs and not to attorney's fees. At the end of engagement, we will apply any remaining balance first to costs and then to fees. We also reserve the right to require increases or renewals of these advanced deposits.

By signing the initial engagement agreement, each client is agreeing that trust account balances may be withdrawn and applied to costs as they are incurred and to our billings, after presentation to the client. If we succeed in resolving your matter before the amounts deposited are used, any balance will be promptly refunded.

Monthly Invoices and Payment

Best Best & Krieger LLP provides our clients with monthly invoices for legal services performed and expenses incurred. Invoices are due and payable upon receipt.

Each monthly invoice reflects both professional and other fees for services rendered through the end of the prior month, as well as expenses incurred on the client's behalf that have been processed by the end of the prior month. Processing of some expenses is delayed until the next month and billed thereafter.

Our fees are not contingent upon any aspect of the matter and are due upon receipt. All billings are due and payable within ten days of presentation unless the full amount is covered by the balance of an advance held in our trust account. If a bill is not paid within 30 days, a late charge of one percent per month on the unpaid invoice shall be added to the balance owed, commencing with the next statement and continuing until paid.

It is our policy to treat every question about a bill promptly and fairly. It is also our policy that if a client does not pay an invoice within 60 days of mailing, we assume the client is, for whatever reason, refusing to pay. We will then advise the client by letter that the client may pay the invoice within 14 days or the firm will take appropriate steps to withdraw as attorney of record. If the delay is caused by a problem in the invoice, we must rely upon the client to raise that with us during the 14-day period. This same policy applies to fee arrangements which require the client to replenish fee deposits or make deposits for anticipated costs.

From time to time clients have questions about the format of the bill or description of work performed. If you have any such questions, please ask them when you receive the bill so we may address them on a current basis.

Changes in Fee Arrangements and Budgets

It may be necessary under certain circumstances for a client to increase the size of required advances for fees after the commencement of our engagement and depending upon the scope of the work. For example, prior to a protracted trial or hearing, the firm may require a further advance payment to the firm's trust account sufficient to cover expected fees. Any such changes in fee arrangements will be discussed with the client and mutually agreed in writing.

Because of the uncertainties involved, any estimates of anticipated fees that we provide at the request of a client for budgeting purposes, or otherwise, can only be an approximation of potential fees.

BEST BEST & KRIEGER LLP



Report to the City Council
Regular City Council - 22 Oct 2019

Agenda Section: OLD BUSINESS

Subject: Review and Discussion of Possible Back-up/Standby Generator Regulations

CEQA Determination: Not a CEQA project

Prepared By: Philip Henry, Building Official

Reviewed By: Aaron Hecock, Acting Planning & Building Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Prior to the PG&E Public Safety Power Shutdown (PSPS) of October 9 & 10, 2019, PG&E had notified its customers that as part of its Community Wildfire Safety Program power shutoffs could occur in the future. This resulted in the City experiencing a noticeable increase in permit applications for standby home generators. The City Council discussed permitting fees for home generators on August 27, 2019, and a standalone generator permit fee was adopted by the Council on September 10, 2019. Additionally, City Council directed staff to bring back a discussion item related to standby/back-up generators placement/setbacks, maximum sound-levels (dba ratings), and allowable generator testing run times/days. This request was based on an informational bulletin detailing the requirements for installation of emergency generators within the City of Santa Monica that was submitted as public comment; the Santa Monica bulletin is attached to this report.

During the recent PSPS event, the St. Helena Police Department received six (6) noise complaints related to generators. It is not known if these calls were related to permanent standby home generators or to portable generators which tend to produce more noise.

Below is a summary of generator requirements for several jurisdictions in Northern California as well as the City of Santa Monica.

Sonoma Municipal Code – Generators: Back-up generators are to be operated only during power outages or testing, and shall not be tested on weekends or holidays, or between the hours of 5:00 PM and 8:00 AM. Noise shall not exceed 65 dbA intermittent, or 55 dbA constant within the Public Right-of-Way, or an exterior noise level of 50 dbA at the property line if located within 100 feet of a residential dwelling, or in excess of the SMC (noise) ordinance if not located within 100' of a dwelling unit. Generators, wherever possible shall be located underground or screened so as to not be visible to the general public. Generators shall at all times be operated and maintained to comply with the noise regulations of the SMC, and shall be operated and maintained in a manner that will minimize noise impacts to surrounding residents.

American Canyon Municipal Code – Generators: The maximum exterior noise level generated by noise sources outside dwelling units shall comply with the following: Single Family & Duplexes – 10:00 PM to 7:00 AM, 50 dbA maximum; 7:00 AM to 10:00 PM, 60 dbA max. For multi-family residential, 10:00 PM to 7:00 AM, 55 dbA maximum; 7:00 AM to 10:00 PM, 60 dbA max.

Butte County Residential Generator Noise: Noise levels shall be regulated pursuant to Chapter 41A (noise Control). Chapter 41A allows a maximum of 70 dbA during daytime (7:00 AM - 7:00 PM), 60 dbA during evenings (7:00 PM to 10:00 PM), and 55 dbA during nighttime (10:00 PM to 7:00 AM). Generators not meeting the standards set forth in Chapter 41A shall be brought into compliance in any of the following ways: a. Cessation of operation; b. Retrofitting the generator with a manufacturer approved muffler or exhaust silencer; c. Repair of the generator; d. Replacement with conforming generator; e. Enclosure of generator.

Exceptions: 1. The use of any generator related to an emergency in order to protect life or property; or during a temporary power outage; and 2. The operation of any generator for commercial agricultural use.

San Jose Municipal Code – Generators: Maximum noise levels set forth in this title shall not be exceeded. Maximum noise levels at property lines are 55 dbA at residential properties, 60 dbA at commercial properties, and 70 dbA at industrial properties. If the applicable air quality or noise levels are exceeded, a conditional use-permit shall be required. Stand-by or Back-up generators shall not exceed a maximum time period of four (4) consecutive months in any twelve (12) month period. Testing of generators is limited to 7:00 AM to 7:00 PM, Monday through Friday.

Santa Monica Requirements for Generators: Generators are not allowed in front or side yard setbacks, unless fully enclosed below grade i.e., within a subterranean garage or vault. Generators shall comply with exterior noise standards for the zoning the equipment is located in. Residential zoning is limited to 60 dbA 7:00 AM to 10:00 PM, and 50 dbA 10:00 PM to 7:00 AM. Mechanical equipment may not be located on the side of any building which is adjacent to a residential building on an adjoining lot. Roof

locations may be used when the mechanical equipment is enclosed in a sound-rated parapet enclosure.

DISCUSSION

The City of St. Helena currently enforces a maximum 65 dbA noise level at 50 feet from installed equipment through the building permit process where generator specifications are confirmed through manufacturer documentation. This is based on the SHMC leaf blower ordinance since the City does not specifically regulate back-up/stand-by generators. Most standby generators on the market comply with 65 dbA (or less) under full-load @ 23 feet as they are typically enclosed in an insulated housing.

Should the Council desire additional regulations, the Chief Building Official recommends establishing generator noise limits of 65 dbA at 50' from the equipment within residential zoning districts and also limiting the testing of equipment to the hours of 8:00 AM to 5:00 PM Monday through Friday which could be achieved through a zoning code amendment. The Council may also desire to provide exceptions to noise limits similar to Butte County which provides exceptions for use of generators during emergencies, temporary power outages, and generators for commercial agricultural use.

Additionally, Staff can develop an informational bulletin similar to the City of Santa Monica to establish the submittal requirements for generator installations, including the setbacks (3' from property lines and no installations within the front-yard 20' setbacks), maximum noise levels (limited to 65 dbA @ 50' from equipment), and limit testing of stand-by generators to 8:00 AM to 5:00 PM Monday through Friday except on City recognized holidays. There is a reasonable expectation that testing of generators is limited to the stated time/days to reduce unnecessary and unwanted noise.

Due to the number of small lots and high-water table within the City, it is likely not feasible, nor practical, to build an above-ground structure or below-ground vault to house standby generators and still comply with zoning setbacks or ensure a water-free environment for the electrical equipment. Therefore, it is not staff's recommendation that generators be installed below ground or within structures to reduce noise levels beyond what is provided by the manufacturer's enclosure.

FISCAL IMPACT

Not applicable.

RECOMMENDED ACTION

Provide direction to the City Manager.

ATTACHMENTS

[Santa Monica Informational Bulletin](#)



Building & Safety Division

INFORMATIONAL BULLETIN

Requirements for Emergency Generators

General Requirements

- Exhaust termination shall comply with section 506.9 of the California Mechanical Code.
- The noise level shall not exceed the levels prescribed based on the zone or location of the installation as specified in SMMC 4.12
- Fuel supply, storage and fueling requirements shall comply with the International Fire Code or other Fire Department requirements based on the occupancy type.
- Electrical installations shall comply with the California Electrical Code.
- AQMD approval is required for diesel and gas-fired generators.

Permit Submittal Requirements

- Plans shall include the following: Site Plan, Line Diagram, Noise Decibel Level, Screening and/or Physical Protection, Exhaust Termination Location, Manufacturer's Installation Instructions and Fuel Tank Supply or Natural Gas Line.
- ARB packet for review of generator and any proposed screening. Generator may require ARB review, in which case an ARB Application, plan and other material will also be required.

Noise Tests

The Santa Monica Municipal Code requires a noise test for all new mechanical equipment placed outdoors or when it may be heard outdoors. Before any final inspection request for such equipment, the property owner or contractor must submit a report showing that the equipment meets the allowable sound levels for the Noise Zone and proposed hours of operation (SMMC 4.12.160 (c)).

Prohibited Locations

Generators are not allowed in front or side yard setbacks, unless fully enclosed below grade i.e., within a subterranean parking garage or vault.

Requirements for Roof Installations

Mechanical equipment may be installed on the roof when the following conditions are met:

Engineered plans are submitted and approved for the construction of the screening and adequacy of the roof support and equipment anchorage. Screens and anchorage shall be designed for all California requirements for structural design including wind and seismic loads. Adequacy of the roof support and equipment anchorage shall consider the vertical and lateral load capacities of the proposed building (SMMC Article VIII) and California Building Code, latest edition. Generator slab or footing supports must be designed to resist all vertical and lateral loads.

B&S B-203-10/15/99

Rev 9/08/11

(See SMMC over)

4.12.050

Designated noise zones.

Approved By: _____

Ron Takiguchi, P.E. Building Official

The properties hereinafter described are hereby assigned to the following noise zones:

Noise Zone I. All noise or vibration sources located within any residential ("R" or "OP") district created by prior Municipal Code Section 9103 or any revisions thereto.

Noise Zone II. All noise or vibration sources located within any commercial district (any "C" district), including any neighborhood commercial district, created by prior Municipal Code Section 9103 or any revisions thereto.

Noise Zone III. All noise or vibration sources located within any manufacturing or industrial district (any "M" district) as created by prior Municipal Code Section 9103 or any revisions thereto. (Prior code Sec. 4304; added by Ord. No. 1638CCS Sec. 1, adopted 7/28/92)

4.12.060 Exterior noise standards.

(a) The following noise standards, unless otherwise specifically indicated, shall apply to all property with a designated noise zone during the times indicated:

Noise Zone Districts	Days of the Week	Time Interval	Allowable Exterior Noise Equivalent Level
I-Residential	Monday through Friday	7 a.m. to 10 p.m.	60 dBA
	Saturday and Sunday	8 a.m. to 10 p.m.	
	Monday through Friday	10 p.m. to 7 a.m.	50 dBA
	Saturday and Sunday	10 p.m. to 8 a.m.	
II-Commercial	Every Day	7 a.m. to 10 p.m.	65 dBA
		10 p.m. to 7 a.m.	60 dBA
III-Manuf./Indust.	Every Day	All times	70 dBA

(b) For each Noise Zone, the allowable exterior median noise level shall be reduced by 5 dBA for impulse or simple tone noises, or for noises consisting of speech or music. If the ambient noise level exceeds the allowable exterior noise level standard, the ambient noise level shall be the standard.

(c) Except as provided for in this Chapter, it shall be unlawful for any person at any location within the City to create any noise, or to allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person, which causes the noise level to exceed:

(1) The noise standard for the applicable Noise Zone for a cumulative period of more than 15 minutes in any half-hour; or

(2) A maximum instantaneous noise level equal to the value of the noise standard plus 20 dBA at any time and for any period of time. (Prior code Sec. 4305; added by Ord. No. 1638CCS Sec. 1, adopted 7/28/92)

4.12.130 Location, screening and noise measurements of mechanical equipment.

In addition to satisfying the requirements of Section 9.04.10.02.390, all development project applications must contain the following information:

(a) A list of all permanent mechanical equipment to be placed outdoors and all permanent mechanical equipment to be placed indoors which may be heard outdoors.

(b) Mechanical equipment shall not be located on the side of any building which is adjacent to a residential building on the adjoining lot. Roof locations may be used when the mechanical equipment is installed within a sound-rated parapet enclosure.

(c) Final approval of any mechanical equipment installation will require a noise test in compliance with Section

4.12.040. Equipment for the test shall be provided by the owner or contractor and the test shall be conducted by the owner or contractor. A copy of noise test results on mechanical equipment shall be submitted to the Community Noise Officer for review to ensure that noise levels do not exceed maximum allowable levels for the applicable noise zone. (Prior code Sec. 4315; added by Ord. No. 1638CCS Sec. 1, adopted 7/28/92)

Rev 5/30/08 jg



Report to the City Council
Council Meeting of October 22, 2019

Agenda Section: **Old Business**

Subject: Consideration, discussion and direction regarding policy of the City of St. Helena pertaining to the provision of water services to “new development” on property located outside the City of St. Helena city limits

CEQA Determination: Not a “project” as defined in CEQA Guidelines Section 15378(a); Common Sense exemption, as set forth in CEQA Guidelines 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

INTRODUCTION

At the City Council’s May 14, 2019 regular meeting, the Council discussed the practice of the Public Works Director issuing water will-serve letters outside the City limits. Council directed staff to work with a Council subcommittee to develop a draft policy, resolution and/or ordinance, for Council consideration and approval addressing will-serve letters and water use agreements for water service outside the City limits.

The focus of the discussion herein relates solely to the policy for consideration and approval of will-serve letters to serve “new development” on property located outside the city limits. The terms and conditions under which the City will consider the approval of a water use agreement to serve “new development” on property located outside the city limits will be the topic of a future agenda item once the Council subcommittee has had an opportunity to meet and develop a recommendation for the Council’s consideration. While the focus of this discussion is regarding the conditions under which the City will serve “new development” on property located outside the city limits, the conditions under which the City will serve “new development” on property within the city limits must not get lost.

BACKGROUND

On May 14, 2019, the City Council adopted the St. Helena 2040 General Plan Update (“General Plan”), which includes a Public Facilities and Services Element that addresses, among other matters, water. For a discussion of the City’s water supply, distribution system, water demand, safe annual yield of the water system, water shortage emergencies and water recycling, readers are directed to a synopsis of Chapter 4 of the General Plan regarding water appended hereto (Attachment 1), or to the City’s website at:

https://www.cityofsthenana.org/sites/default/files/fileattachments/planning_resources/page/3505/final_plan_compiled.pdf.

General Plan Policies

With the backdrop as set forth in the Public Facilities and Services Element, the City’s General Plan identified the following policies related to the provision of water:

- PF1.1 Require that the approval of new development be contingent upon the ability of the City to provide water without exceeding the safe annual yield of its water supply system.
- PF1.2 Adopt and implement equitable water conservation measures for both residential and non-residential users so that the City can supply water within the safe yield of its water system.
- PF1.3 Prohibit water service to new customers outside the city limits unless a potential threat to health and safety can be demonstrated.
- PF1.4 Proactively reduce the City’s commitment to provide water to uses outside the city limits.
- PF1.5 Continue to implement and update as necessary the City’s Water Management Plan Ordinance and the City’s Ordinance containing the Water Use Efficiency Guidelines, along with other existing water conservation ordinances and measures.
- PF1.6 Aggressively promote adoption of “best practices” for reducing water usage in the existing housing stock through the City existing Ordinances and Water Conservation Plans.

While all of the aforementioned General Plan policies apply to water service provided by the City, policies PF1.1, PF 1.3 and PF 1.4 have more direct application to service outside the City limits.

St. Helena Municipal Code

Consistent with General Plan policy PF1.3, the City of St Helena Municipal Code (SHMC) prohibits **new** water service connections or water main extensions outside the city limits except under limited circumstances. The City may provide fire service or reclaimed water service. See SHMC §13.04.050.H. Similarly, consistent with General Plan policy PF1.3 and PF1.4, “new development” on property located outside the city limits must have an existing water service connection so as not to run afoul of SHMC §13.04.050.H., and water service from the City to serve the “new development” requires

a water use agreement approved by the City Council. See SHMC §13.12.030.G¹.

DISCUSSION

The focus of the discussion herein relates solely to the consideration and adoption of a policy related to the issuance of will-serve letters to serve “new development” on property located outside the City limits. Policies from other water service jurisdictions (American Canyon, Modesto, Beverly Hills, Bella Vista Water District (Shasta County), Phoenix AZ) were reviewed and considered in developing the following discussion and are appended to this report (Attachments 4 through 7).

As defined in SHMC §13.12.020, “new development” means any construction project involving (i) any freestanding building that contains water-using fixtures, (ii) any floor area additions to existing non-residential structures, or (iii) any residential additions or remodeling that increases the number of independent living units².

Eligibility for Will Serve Letter

In addition to the General Plan policies and SHMC provisions, the Council may wish to augment a will-serve letter policy with additional criteria applicable to “new developments”, including, but not limited to the following:

- First, it is suggested that the applicant must show, based on substantial evidence, that the existing service connection to the parcel upon which the “new development” is to be constructed was either (i) previously approved by LAFCO or (ii) was established on or before January 1, 2001.

Government Code §56375 (p) provides that a LAFCO’s power includes authorizing a city or district to provide new or extended services outside its jurisdictional boundaries pursuant to Section 56133. Section 56133 provides a LAFCO the authority to approve the extension of services by a city or district outside its jurisdictional boundary and within its sphere of influence. Thus, in order for a parcel of property located outside the City limits to have an existing water service connection, LAFCO would have had to approve the extension of water service outside the City’s jurisdictional boundary. Alternatively, subsection (e) of section 56133 outlines exceptions to the LAFCO’s authority, and one of those speaks to service that a city or district was providing on or prior to January 1, 2001. Accordingly, if the City was providing water service to a parcel of property located outside the City limits prior to January 1, 2001, then LAFCO approval would not have been required.

- Second, if it is shown that the existing service connection was approved by LAFCO

¹ SHMC §13.04.09 provides that “[u]nder special circumstances, the city council reserves the right and power to contract separately with any person for the sale and delivery of water within or outside the corporate limits of the city at wholesale rates to be fixed and agreed upon by resolution of the council.” This reserved authority of the Council relative to sale and delivery of water within or outside the city limits at wholesale rates is distinguished from the limitation on new water service or connections outside the city limits per §13.04.050.H because delivery of water service to customers are at retail rates, whereas SHMC §13.04.09 is reserving to the council the ability to sell water at wholesale rates. Thus, SHMC §13.04.09 reserves to the Council the ability to sell water to other water service providers, such as the city of Napa, not to retail customers. Otherwise, if SHMC 13.04.09 is read to allow the Council to provide new service connections outside the city limits to new development, SHMC §13.04.09 is at odds and conflicts with 13.04.050.H, not to mention a number of general plan policies cited herein.

² “New development” is also defined at SHMC §13.04.010, and it includes “any residential additions or remodeling that increases overall water usage at the water meter”.

or was otherwise exempt from LAFCO approval, it is suggested that the applicant must show, based on substantial evidence, that the water service has not been abandoned due to non-use for some period of time. In the context of non-conforming uses, the SHMC defines abandonment as “any giving up, closing, surrender, interruption, termination or discontinuance of the nonconforming use for a period of sixty (60) continuous days, regardless of intent to surrender the nonconforming use.” In a similar respect, a water service connection outside the City limits can be viewed akin to a non-conforming use. Accordingly, perhaps the applicant should be required to show, based on substantial evidence, that the water service has not been given up, closed, surrendered, interrupted, terminated or discontinued for a period of sixty (60) continuous days, regardless of intent to surrender the water service.

- Third, it is suggested that the applicant must show, based on substantial evidence, that the parcel upon which the “new development” is to be constructed does not have an alternative source of water that satisfies all applicable health, safety and other codes related to the proposed “new development”.
- Fourth, the applicant must demonstrate, on the basis of a quantitative water demand analysis, that the project is water neutral in accordance with the City’s Water Neutrality Policy ([Attachment 2](#)) which currently provides for off-site retrofit and payment of in-lieu fees to achieve water neutrality. Other jurisdictions have off-set measures other than retrofits, such as constructing or funding city capital projects that result in reduced demand or increase supply of potable water, such as replacing leaking water main lines and replacing inefficient water meters, as well as water efficiency improvements to existing residential, commercial and industrial landscaping. Some recent City Council discussions have touched on development of a revised water neutrality policy that goes beyond retrofits.

Will Service Letter Approving Authority

The Council should consider where authority will generally lie with respect to the issuance of will serve letters, i.e., the City Council, or City staff (presumably the City Manager or Public Works Director) and what circumstances, if any, should trigger prior Council approval. Note that in either instance, in order to comply with the provisions of the SHMC, the issuance of a will serve letter will require and be conditioned upon approval of a water use agreement by the City Council.

“New Development” Requiring Water Use Agreement

Existing Code requires that water service to all “new development” outside the City be subject to execution of a Council approved water use agreement. The adopted Council Goals and workplan include a work item related to water use agreement modifications. The Mayor and Vice Mayor comprise the designated subcommittee assigned to that task. The Council may wish to consider adoption of a separate policy or City Code modifications related to water use agreements, and in particular to those that are entered into in conjunction with a will-serve letter for new development outside the City limits. While not intended to be discussed as part of this agenda item, enclosed are some water use agreement terms and conditions developed by staff for consideration by the subcommittee (Attachment 3).

RECOMMENDED ACTION

Staff recommends that the City Council consider the discussion above, take public comment, and provide direction regarding the following:

1. Eligibility criteria for will-serve letters, including approving authority;
2. Whether to move forward with consideration of revisions to water neutrality ordinance, such as capital improvements, and timing of such work within the adopted work plan;
3. Timing of discussion and elements and/or terms and conditions of Water Use Agreements for “New Development”, developments within the City and/or modifications to existing agreements.

Following City Council discussion and direction, staff will then work toward preparation of appropriate legislation to implement the Council direction for its consideration at a future meeting.

ATTACHMENTS

1. [Synopsis of Chapter 4-Public Facilities and Services Element of St. Helena 2040 General Plan Update Regarding Water](#)
2. [St. Helena Water Neutral Policy for Development](#)
3. [Conceptual Water Use Agreement Terms-Conditions](#)
4. [Will-Serve Policies: City of American Canyon and Modesto](#)
5. [City of Beverly Hills – Preliminary Draft Water Will Serve Guidelines](#)
6. [Bella Vista Water District – Will Serve Letter Policy](#)
7. [Phoenix, AZ – Policy and Procedures for Obtaining Retail Water and Sewer Service to Areas Located Outside City of Phoenix Limits](#)

ATTACHMENT 1

SYNOPSIS OF CHAPTER 4-PUBLIC FACILITIES AND SERVICES ELEMENT OF ST. HELENA 2040 GENERAL PLAN UPDATE REGARDING WATER

WATER

Water Supply

The City has three sources of potable water: Bell Canyon Reservoir, water purchased from the City of Napa, and groundwater. The City extracts potable water from two groundwater wells at its Stonebridge Well Complex located near the Napa River, south of Pope Street. The City also has two sources of non-potable water: Lower Reservoir on York Creek and a groundwater well just north of the access to the Pope Street Bridge. The non-potable water is used almost exclusively for irrigation. The City also owns a capped well on its Adams Street property. This well is a potential future source of groundwater and potentially, if treated, of potable water.

Bell Canyon Reservoir is the City's primary source of potable water, and the City has the right to divert and store 3,800 acre-feet (AF) at Bell Canyon, although the available physical storage is significantly less at approximately 1,800 AF. This amount of water is physically available only when all hydrologic and hydraulic conditions are optimal for surface water diversions. Water from Bell Canyon Reservoir is treated at the Louis Stralla Treatment Plant, located near the reservoir. The plant has a treatment capacity of 4.3 million gallons per day (mgd). The plant typically operates at 3.5 mgd, less than peak demand.

Lower Reservoir is an off-stream reservoir with a physical capacity of between 200 and 225 AF. The City has a pre-1913 claim to store up to 160 AF in this reservoir. However, the City has no facility to treat water from Lower Reservoir. About 50 AF per year from the reservoir has been used for irrigation by Spring Mountain Winery and by RLS Middle School. The City has also supplied Lower Reservoir water to local contractors for construction purposes.

The City treats water produced at its two groundwater wells at the Stonebridge Well Complex (Stonebridge Wells Nos. 1 & 2) at a small treatment plant near the wells. These wells are located near the Napa River, south of Pope Street. The City typically operates both wells at the same time. A third well, also near the Napa River but just north of Pope Street, provides untreated water that is used for irrigation in nearby areas, including Jacob Meily Park. The City routinely monitors the elevation of the aquifer in the area of the City wells. The spring and fall elevation levels have declined since Stonebridge Well No. 1 went into production in 1992. While the decline is disconcerting, the City is not able to assess the long-term significance without further study.

The City also purchases significant water quantities from the City of Napa, having entered into a long-term water supply agreement for that purpose in September 2006, as amended in April 2009 and November 2011. The initial term of the contract expires on December 31, 2035. Under the delivery terms, through the year 2035, Napa is required to deliver 600 AF of water per year to the City of St. Helena and the City is required to take and pay for 600 AF each year. The City has the option to purchase additional water from

Napa (above the 600 AF) if Napa has the water to sell. Water purchased from the City of Napa is much more expensive than water produced by the City from Bell Canyon or the City wells. In 2012, the annual cost of 600 AF was approximately \$1.2 million. The price escalates at the rate of 3 percent per year (subject to some potential adjustment). At the same time, the reliability of Napa water (as Napa must deliver 600 AF in all years) provides much needed assurance that the City will receive significant water in drought years.

Most recently, Napa water has become an increasing percentage of St. Helena's total supply, as increased deliveries under the Napa contract are impacting the total mix. The City is also seeking to reduce its withdrawal of groundwater in non-drought years, in order to give the aquifers in the area of the Stonebridge Well Complex an opportunity to recharge.

Distribution System

The existing distribution area covers a large area inside and outside of the city limits. The network extends from Lodi Lane, two miles north of the city, to Niebaum Lane, in the unincorporated community of Rutherford, three miles south of the city. In 2015 the City provided water service to approximately 2,312 connections. Of those, 348 connections are located outside the City's jurisdictional boundary. Eighteen industrial customers are, with one exception, wineries. "Other" water consumers include institutional users, such as churches and schools. Customers outside city limits include residential, commercial, and industrial customers.

Like all water suppliers, the City has had some "unaccounted-for water loss." Unaccounted-for water loss is the difference between the metered quantity of water produced or purchased by the City and the metered quantity of water sold to all City customers. Unaccounted-for water is therefore not available for sale ("unavailable water"). Unavailable water is attributed to unmetered water lost due to leaks, unauthorized use, firefighting (including flushing of hydrants), system maintenance, and inaccurate meters. The City believes that most unavailable water is occurring under the streets in its aging distribution system. This is a difficult, expensive, and long-term issue to resolve. The City recognizes that it must maintain unaccounted-for water loss at an acceptable level in its municipal systems. Accordingly, the City has hired Carollo Engineers to prepare an Underground Utilities Master Plan, which includes a condition assessment of current water infrastructure to document infrastructure shortcomings and prioritize critical infrastructure projects.

Water Demand

Total existing metered potable water demand averaged about 1,900 acre-feet per year between 2000 and 2015 and has declined in recent years due to improved water use efficiency and short-term demand reductions. Meaningful savings have been observed in residential water consumption which is also the largest user category. General commercial and industrial (winery) usage, when added together, have also significantly declined in recent years, including in low rainfall years. For land uses outside the city limits, metered potable water demand averaged 142 acre-feet per year based on average water demand for 2002-2008.

The Safe Annual Yield of the Water System

Experience has showed that the City has inadequate water to supply customer

demand without imposition of water emergency restrictions in recent years, which has led to the establishment of a “Safe Annual Yield” of the Water System. Often “safe yield” is thought of as that supply that can be reliably delivered under worst-case (drought) conditions. However, it was also apparent that under such an approach, the demand on the City’s water system, even at the reduced levels of recent years, exceeded the “safe annual yield,” if so defined. Such an inflexible approach was viewed as too restrictive for planning purposes.

As a result, the City undertook to establish its own definition of “safe annual yield,” as follows: “The safe annual yield of the St. Helena water supply system is that quantity of water which can be reliably delivered on an annual basis through most rainfall years, including a Dry Year (rainfall at 22” to 25.9”), without undue hardship on water customers through water shortage restrictions.”

The City defined “undue hardship” as “three or more consecutive months of Phase II water restrictions or Phase III water restrictions,” as provided in the SHMC.

The calculation of safe yield is made according to the above definition using an estimate of water available from the City’s three sources under current operating conditions and under the rainfall conditions included in the definition. On the demand side, the estimated demand equals total water actually supplied (including unavailable water) averaged over the past five years. A five-year average seeks to even out anomalies that can impact yearly demand, especially due to wide variations in rainfall that can occur from year-to-year.

Based on water supplies available in 2013, the City estimated that the safe annual yield of its water system is 1,950 AF. With average five year demand (which must include unavailable water) less than the annual safe yield in 2013, the City calculated that its water surplus was 80 AF. Citywide demand has shown a declining trend since 2002, mainly due to the decline in residential water demand.

Water Shortage Emergencies

In 2011, the City adopted a Water Shortage Emergency Ordinance, which incorporated the definition of annual safe yield, and requires a yearly calculation of the annual safe yield. If the City’s water balance pursuant to the safe yield calculation is in deficit, then the City must comply with Phase I water restrictions. Most importantly, this requires that any new water demand, such as from a new project, must be completely offset by a reduction in current water demand, to the satisfaction of the Director of Public Works. Phases II and III involve the imposition of mandatory water restrictions on customers. If Phase II appears imminent, the City Council must appoint a Water Board which, if Phase II is implemented, will work with the Director of Public Works to ensure compliance by all sectors (residential, commercial, and industrial) with Phase II restrictions. Phase III restrictions are severe.

Water Supplies

The City needs to obtain new water supplies and/or achieve more water savings, even under current conditions in order to reliably meet the current and future water demand. At the same time, the City recognizes that any new water supply, even if forthcoming, is likely to be expensive, potentially increasing the unit cost of potable

water. Thus, the main emphasis going forward will be on conservation, seeking to reduce demand by all classes of users.

Water Recycling Potential

The City recognizes the imperative to recycle water and the value of putting recycled water to beneficial use. The demand for recycled water is likely to be highest during the driest months when flows into the City's sewage treatment plant are at their lowest. This means that, under current conditions, recycled water could not be a meaningful factor in augmenting supply for non-potable use without the addition of substantial storage capacity. It would be necessary to provide recycled storage, pumping, and distribution facilities that includes, at minimum, 400 AF of storage. The City does not own land at a location suitable for such storage capacity, and at this time the cost of purchasing land and constructing such storage, a large capital cost, would not be fiscally justifiable to the water system's rate payers. Accordingly, at present, recycled water to serve non-potable uses will not factor into the City's overall water policy and analysis.

St. Helena Water Neutral Policy for Development

City Codes Relating to Water Use

The 1993 General Plan provides at policy 9.2.1 that "new development" shall be contingent upon the ability of the City to provide water without exceeding safe yield.

Pursuant to the City Council meeting of March 22, 2011, the City Council adopted the definition of "Safe Yield" as proposed by the Safe Water Yield Committee as follows:

"The safe annual yield of the St. Helena water supply system is that quantify of water which can be reliably delivered on an annual basis through most rainfall years, including a Dry year (rainfall at 22" to 25.9") without undue hardship on water customers through water shortage restrictions. It is recognized that the safe annual yield, as so defined, could place significant hardship on water customers in a Critically Dry Year (rainfall at 21.9" or less) or in periods of two or more consecutive Dry Years."

The City's Safe Water Yield Committee recently reported that the St. Helena potable water supply system, under current conditions, **is not currently in balance** under the definition of safe yield as adopted by the City Council.

Per the City Council meeting of March 22, 2011, item 17, the CC adopted the definition of Safe Yield as proposed by the Safe Yield Committee, and it is now City policy. This policy will therefore be applied to new development.

"New development" means any of the following construction projects that have not received a certificate of occupancy from the city or county building department prior to September 13, 1994, or that was issued a building permit and did not construct a foundation prior to September 13, 1994:

1. Any freestanding building that contains water-using fixtures;
2. Any floor area additions to existing nonresidential structures;
3. Any residential additions or remodeling that increases the number of independent living units.

Water Demand Analysis

The applicant must be water-neutral (from the City-delivered water system) through any combination of on-site water conservation measures and/or off-site retrofitting and/or well water. Water neutrality shall be demonstrated in a quantitative water analysis of the project.

The analysis must consist of the calculation of the baseline existing demand, the proposed water demand, a comparison of the two and the proposed retrofits to achieve a zero water use increase from the proposed development. Flows are calculated in gallons per day (gpd) with two (2) occupants per bedroom. Offices, dens, tv rooms, etc. are considered bedrooms with or without a closet.

If onsite retrofits cannot achieve net zero increase, the developer shall identify offsite retrofits. The City does not maintain a list of offsite retrofit needs. Per City Municipal Code 13.12.050, the developer shall be responsible for identifying residential or nonresidential properties eligible for retrofitting and verify to the department of public works that the required number of retrofits have been completed prior to the issuance of a certificate of occupancy.

Existing

Use of the flows from the Napa County Alternative Sewer Treatment System Standards to calculate existing water use is acceptable to the City Public Works Department. The commercial standards are attached; for residential projects, use of 150 gpd/bedroom is accepted. For onsite irrigation with City water, calculation of actual usage is obtained by ascertaining the number of drippers/sprinklers and the time watered and using 75% of the total value, assuming no irrigation in the winter months.

Proposed

Proposed water conservation efforts shall be compared to those existing flows quantitatively. Those standards can be found at websites for the LEED standards, Energy Star standards and major cities like San Francisco's water conservation guides. Water conservation devices proposed in the water analysis will be required by conditions of approval, must be included on the building plans and inspected/verified at certificate of occupancy.

Acceptable theoretical demand for residential flows/uses:

Toilet	3 flushes/day/occupant
Faucet	0.25 min/3 times/day/occupant
Shower	8 min/shower/day/occupant
Kitchen faucet	4 min/day/occupant
Clothes washer	0.37 load/day/occupant
Dishwasher	0.1 load/day/occupant

Typical calculation:

Fixture	Flow Rate		Flow Duration		Daily Uses		Number of Occupants		Gallons per Day
	gal/min or gal/flush		(min., flush, load, etc.)		per Occupant				
Showerheads	2	x	8	x	1	x	10	=	160
Sink Faucets	1.5	x	0.25	x	3	x	10	=	11
Kitchen Faucet	1.5	x	4	x	1	x	10	=	60
Toilet	1.3	x	1	x	3	x	10	=	39
Clothes Washer	19.7	x	1	x	0.37	x	10	=	73
Dish Washer	6.3	x	1	x	0.1	x	10	=	6

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Great strides have been achieved by applicants through the use of low flow toilets, waterless urinals, sensor driven faucets, smart yard sensors, low flow dishwashers and washing machines. Retrofitting off-site is acceptable, though the City does not maintain a list of facilities.

Retrofit fees are not being accepted by the Public Works Director in lieu of actual retrofit applications.

TABLE 4

TYPE OF OCCUPANCY	GALLONS PER DAY
Airports	5 per passenger
Campgrounds:	
Campground with central comfort station	35 per person
Campground with flush toilet, no showers	25 per person
Day Camps (no meals)	15 per person
Luxury Camp, private bath	100 per person
Summer and seasonal	50 per person
Churches (sanctuary)	5 per seat
With kitchen wastes	7 per seat
Country Club	125 per person
Factories	35 per person per shift
Hospitals	250 per bed space
Kitchen waste only	25 per bed
Laundry waste only	40 per bed
Hotels/Motels with private bathroom (no kitchen waste)	60 per two person room
Hotels/Motels without private bathroom (no kitchen waste)	50 per two person room
Hotel/Motel with private bath and kitchen	75 gallons per person
Institutions other than hospitals	125 per bed space
Movie Theaters	5 per seat
Offices	20 per employee
Picnic parks with toilets and showers	10 per person
Picnic parks with toilet waste only	5 per person
Resort camps with limited plumbing	50 gallons per person
Restaurants:	
Kitchen waste (multi-use utensils)	5 per meal served
Kitchen waste (disposable utensils)	3 per meal served
And add the following for type of facility present:	
Conventional sit down	10 per person
Short Order	8 per person
Bar and Cocktail	3 per person
School (non-boarding)	20 per student
With gym and showers add	5 per student
With cafeteria using disposable utensils	3 per meal served
Self service laundries	50 gallons per wash
Service station	10 gallons per vehicle served
Retail stores	20 per employee
For public restrooms add	1 per 10 square feet
Swimming pools and bathhouses	10 per person
Tourist camps or mobile home parks with individual bath units	100 per person
Tourist camps or trailer parks with central bathhouse	75 per person
Work or construction camps (semi-permanent)	50 per person
Wine tasting facility (no meals served)	3 per person
Employee	15 per employee

ATTACHMENT 3

CONCEPTUAL WATER USE AGREEMENT TERMS-CONDITIONS

- The project applicant must be obligated to comply with all requirements applicable to water service generally as set forth in Chapters 13.04 and 13.12 of the SHMC, as they may be amended, modified or added to over time.
- The project applicant must contractually commit to design, fund and construct/implement any on-site or off-site retrofitting (or offsets) identified to achieve water neutrality or comply with measures established through a revised neutrality policy
- The project would be subject to ongoing mandatory audits to promote adoption of “best practices” for water conservation.
- In order to mitigate the impacts of the “new development”, the project applicant must pay all one-time development impact fees set forth in Chapter 3.32 of the SHMC (e.g. public safety, civic, park, water, sewer (if connected to the City’s wastewater collection and treatment system), traffic) generally applicable to development within the city limits on the basis of the total development footprint (i.e. existing plus additions).
- Further, residential “new development” shall comply with the City’s inclusionary housing or in-lieu fee requirements as set forth in SHMC § 17.146.050. Non-Residential “new development” shall comply with the City’s housing impact fee as set forth in SHMC §17.146.040.
- To offset the tax and other revenue loss to the City by the project applicant not annexing into the City, the project applicant would be required to enter into a payment in-lieu of taxes (“PILOT”) agreement that would be recorded against the property and run with the land.
 - For a residential “new development” project, the PILOT would require annual payment to the City of a sum roughly equivalent to the amount of property tax the City would otherwise receive if the parcel were within the city limits (e.g. 16% x 1% x assessed value of property), subject to an annual escalator (e.g. not to exceed greater of 2% or CPI).
 - For a non-residential “new development” project, in addition to annual payment of a sum roughly equivalent to forgone property tax discussed above, the PILOT would also require annual payments roughly equivalent to the amount of business license tax the City would otherwise receive if the parcel were within the City limits and, with respect to any hotel, motel or short term lodging use, monthly payments of transient occupancy tax (calculated at the City’s rate) the City would otherwise receive if the parcel were within the City limits.
- The project applicant must agree to waive any protest to payment of development impact fees, in-lieu housing fees, or provision of affordable housing units, established to mitigate the impact of the “new development” on the City, as well as payments under the PILOT imposed as a surcharge on outside city water

customers to offset the tax and other revenue loss to the city by not annexing into the city.

- The project applicant shall agree to connect to the City's wastewater collection and treatment system, if the project site is within the city's sewer service area, unless the city council finds it creates an undue hardship on the project applicant.
- The project applicant must agree to utilize recycled water in its business operations or for landscaping and irrigation purposes, if and when it becomes available to the project site.
- The city may impose any other requirements that are appropriate to the specific development being proposed, such as but not limited to, participation in a benefit assessment district.
- In approving a water use agreement, the City is not making any determination as to land use entitlements required from Napa County for the proposed "new development", and the approval of a water use agreement shall not be construed to be an expression of the City's official position regarding the use or intensity of use of the property and shall not preclude the City from expressing its official position regarding the "new development" at a future date.
- A water use agreement approved by the City could provide for a sunset that gives the City the right to terminate the agreement if (i) two years after approval of said agreement by the City the project applicant has not secured all required land use entitlements required from Napa County for the "new development", or (ii) two years after approval of all land use entitlements required from Napa County for the "new development" the project applicant has not commenced construction of the "new development" as evidenced by issuance of a building permit by Napa County, or (iii) two years after commencement of construction of the "new development" the project applicant has not completed construction of the "new development" as evidenced by issuance of a certificate of occupancy by Napa County.
- Any changes to the description of the "new development" should void the water use agreement unless, at the sole discretion of the city council, the water use agreement is amended.
- Connection of water service as provided in the water use agreement shall be contingent upon the City, at the time of request for connection, having sufficient water based on their contractual entitlements and owned water, and shall further be contingent upon the City having sufficient treatment and delivery capacity to comply with all laws and regulations concerning the delivery of domestic water. All City commitments to deliver water shall, during shortage conditions, be subject to the provisions of the then current provisions of Article 2 Water Shortage Emergencies, Drought and Water Conservation, Chapter 13.04 Water Service System, Title 13 Public Services of the St. Helena Municipal Code.

3/21/2019

Zero Water Footprint | City of American Canyon, CA

Zero Water Footprint

INTRODUCTION

Water is a finite resource. The City of American Canyon is committed to conserving water as we believe it is our duty to use this precious resource responsibly so that it is here for us to use far into the future.

State of the City Presentation - Zero Water Footprint



ZERO WATER FOOTPRINT POLICY

As a part of ongoing water conservation efforts in the commercial sector, the City of American Canyon adopted a Zero Water Footprint policy. Also known as ZWF, the primary goal of this policy is that there is no loss in reliability or increase in water rates for existing water service customers due to new demand for water within the City's water service area.

In order to meet our ZWF standards, Developers must ensure that all new developments offset the amount of increased potable water that will be consumed by their project on a one-to-one basis. As part of the process, Developers are first required to minimize their demand for new potable water by using water efficient fixtures, consuming recycled water for non-potable uses when available, dual

3/21/2019

Zero Water Footprint | City of American Canyon, CA

plumbing buildings, installing water wise landscaping and irrigation, and other appropriate measures. Once the Developer, working with the City, has refined their plan to minimize potable water needs, the City works with them to evaluate the water footprint of the project and the proposed offset to determine if the project has achieved a ZWF.

There are several ways to meet our ZWF requirements. Depending on the size and scope of the project, a variety of methods may be used. During the development process, the City and Developer work in partnership with each other to identify the most appropriate ZWF methods for offsetting the increase in potable water consumption. These methods might include:

- Contributing to the City's existing conservation programs, including our popular Cash-for-Grass turf conversion program, toilet retrofits, and similar community-wide programs.
- Eliminating an existing public use of potable water by converting it to recycled water, such as city park and landscaping irrigation.
- Constructing or funding city capital projects that directly result in reduced demand for potable water or increased capacity to produce recycled water, including but not limited to replacing leaking main lines, replacing inefficient water meters, and treatment improvements at the water reclamation facility.
- Contributing toward the expansion of the City's reclaimed water system by extending the purple pipeline to locations not currently served by recycled water.
- Acquiring water supply from another source.

Methodology for Determining Zero Water Footprint and Developing Water Supply Reports

NAPA JUNCTION PHASE III

Napa Junction Phase III is a wonderful example of a successful ZWF project. The Canyon Ridge Apartments located on the site are dual-plumbed. This means that every residential unit flushes with reclaimed water. Landscaping throughout the site features drought-resistant plants and reclaimed water irrigation. The irrigation system contains rain sensors that automatically pause irrigation if the system detects rain.

The Developer also extended the reclaimed water pipe (also known as purple pipe) from Green Island Road to the Napa Junction Phase III project site, then through to Main Street Park. This action allowed the City to provide reclaimed water to all the

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Zero Water Footprint | City of American Canyon, CA

current landscaping contained in and around WalMart, surrounding businesses, the frontage road along Highway 29, and Main Street Park.

All of these actions combined mean that the Developer has provided the ability to discontinue use of valuable potable water in these locations. In turn, that potable water is secured for use in their residential and retail units without a significant impact to current City water supply.

CONCLUSION

We believe that through our Zero Water Footprint policy, we can effectively manage our supply of fresh water as a sustainable resource, while also protecting our water environment as we work towards meeting future City growth and demand.

		City of American Canyon Will-Serve Application	
Owner or Legal Representative's Name:		Date:	
Company or Legal Entity Name:		Applicant's Name:	
Owner Address:		Applicant Email:	
Owner Email:		Applicant Phone #:	
Owner Signature:		Project Engineer:	
Project Name:		Project Address:	
Project APN:			
Project Description:			
Permit Number:		Time of Operation	
Status of Environmental Clearance:		hours/day:	
Permit Status:		days/week:	
Land Use:		months/year:	
Property Zoning:			
Lot Size (acres):		Building Size (sqft) :	
Anticipated Potable Water Demand			
Average Day Demand*		Maximum (Peak) Day Demand*	
Domestic (gpd):		Domestic (gpd):	
Irrigation (gpd):		Irrigation (gpd):	
Industrial (gpd):		Industrial (gpd):	
Total:		Total:	
*ATTACH CALCULATIONS AND REFERENCES USED Average Day Demand (ADD) shall be total demand for one year divided by three hundred sixty-five days/year. Maximum Day Demand (MDD) shall be the largest single day's demand in a normal year.			
Comments:			
Cost of Water Supply Report/Will-Serve Letters – The cost to process a Will-Serve application shall be fully borne by the applicant and will be based on the actual cost of staff time. If the City elects to use consultant services, the applicant shall pay the consultant's rate plus 15% for administrative overhead. An initial deposit of \$2,000 shall be included at the time of application submission.			

Owner & Applicant Acknowledgements and Notification

I declare under penalty of perjury that I am the owner of said property. I certify that all of the submitted information is true and correct to the best of my knowledge and belief. I understand that any misrepresentation of submitted data may invalidate any approval of this application. I agree to pay all fees and recoverable costs for processing the application.

Property Owner Signature(s) _____ **Date** _____

I declare under penalty of perjury that I have the written authority from property owner to file this application. I certify that all of the submitted information is true and correct to the best of my knowledge and belief. I understand that any misrepresentation of submitted data may invalidate any approval of this application. I agree to pay all fees and recoverable costs due to the City for processing the application, whether it is approved, denied, or appealed.

Applicant Signature(s) _____ **Date** _____

Partnerships & Corporations

In the case of a partnership, all general and limited partners shall be identified. In the case of a corporation, all shareholders owning 10% or more of the stock and all officers and directors shall be identified.

Name	Address	Signature

Additional recipients of project correspondence

If you desire project correspondence and notice of meetings to be sent to parties other than the Applicant and Property Owner, please list their names, address and telephone numbers below.

Name	Address	Telephone number

Indemnification Agreement by Applicant

The applicant shall defend, indemnify, and hold harmless the City of American Canyon ("City"), its elected officials, officers, employees, attorneys, representatives, boards, commissions, volunteers and agents from and against all claims, actions, including actions to arbitrate or mediate, damages, losses, judgments, liabilities, expenses and other costs, or proceedings against the City, its elected officials, officers, employees, attorneys, representatives, boards, commissions, volunteers, or agents to attack, modify, set aside, void, or annul an approval, conditional approval, permit, entitlement, environmental document, environmental clearance, mitigation plan, or any other document or any of the proceedings, acts, or determinations taken, done, or made prior to granting of such approval, conditional approval, permit, entitlement, environmental clearance, environmental document, mitigation plan, or other document, by the City, including, without limitation, an action against an advisory agency, appeal board, or legislative body within the applicable limitation period.

The obligation to defend, indemnify and hold the City harmless shall include the payment of all legal costs and attorney's fees (including a third party award of attorney's fees), arising out of, resulting from, or in connection with the City's act or acts leading up to and including approval of any environmental document or mitigation plan granting approvals to the applicant, incurred on behalf of, or by, the City, its elected officials, officers, employees, representatives, attorneys, boards, commissions, volunteers and agents in connection with the defense of any claim, action, or proceeding challenging the entire or a portion of an approval, conditional approval, permit, entitlement or any other document of any related claim.

The obligation to defend, indemnify, and hold the City harmless shall include, but not be limited to, the cost of preparation of any administrative record by the City, staff time, copying costs, court costs, or attorney's fees arising out of a suit or challenge contesting the adequacy of a permit, approval, conditional approval, entitlement, environmental document, mitigation plan, environmental clearance, Water Supply Report, Will-Serve Letter or any other document or approval related to the applicant's project.

The City will promptly notify the applicant of any claim, action, or proceeding and will cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim, action, or proceeding, or the City fails to cooperate fully in the defense, the applicant shall not be responsible to defend, indemnify, or hold harmless the City.

In the event a legal challenge to a City permit, approval, conditional approval, environmental document, environmental clearance, mitigation plan, entitlement or any other document, proceeding, determination, or action related to the applicant's project is successful, and an award of attorneys' fees is granted against the City, the applicant shall be responsible to timely pay the full amount of such an award.

Applicant's printed name	Applicant's signature	Date
_____	_____	_____



DEVELOPER DEPOSIT PROJECT SET UP FORM

APPLICANT INFORMATION (PLEASE PRINT)

APPLICANT NAME: _____

ADDRESS: _____

PHONE: _____ E-MAIL: _____

CONTACT PERSON: _____

BILLING INFORMATION (PLEASE PRINT)

BILLING PARTY: _____

ADDRESS: _____

PHONE: _____ E-MAIL: _____

CONTACT PERSON: _____

As an authorized representative of the applicant, I hereby consent by my signature below, that I understand the following:

The service of processing an application for a new or increased water demand through the City of American Canyon is of primary benefit to the applicant. The cost of processing an application is charged according to the hours spent by staff in reviewing and analyzing the project including checking plans, writing reports, conducting water audits, and verifying water demand estimates. The applicant receiving the benefit from the service shall pay the cost of these services. Total cost varies according to the size of the project and the complexity of the issues involved. At the City's sole discretion, a consultant may process the application. Pursuant to City Council Resolution 2008-79 for development applications, the applicant will pay all costs for consultant services inclusive of any applicable "in-house" administrative costs. Project specific expenditures such as City Attorney services, postage for mailing public notices, advertising, etc. have been excluded from the hourly rates. These project specific expenditures will be billed "at cost" on a project by project basis to the applicant.

The deposit creates an open account to which processing time is charged. Processing charges will automatically be drawn against the deposit funds until the minimum balance is remaining. All service charges will be invoiced to the applicant on a monthly basis. Accompanying the invoice will be a statement, which will include a description of services rendered during the billing period. Payment is due within 15 days of the invoice. **If payment is not received within 7 working days after the invoice due date, all development activities will be suspended until payment is received.**

At the conclusion of the Will-Serve process, after full payment of all invoices is received, any remaining deposit amounts will be refunded to the applicant.

DATE: _____ SIGNATURE: _____

COMMUNITY DEVELOPMENT USE ONLY

NEW PROJECT DEPOSIT: \$2,000

MINIMUM INITIAL DEPOSIT MET? (CHECK) ____ YES ____ NO

MINIMUM DEPOSIT AMOUNT: \$2,000

DEPOSIT WAIVED – EXPLAIN:

☐ ADDITIONAL DEPOSIT (EXISTING PROJECT)

☐ CASH BOND \$ _____

☐ REOPEN OLD PROJECT

PROJECT # _____

RECEIPT # _____

PROJECT NAME: _____

RELATED PROJECTS:

CITY STAFF: _____ DATE: _____

City of Modesto
“Will-Serve Letter” Request

The “Will-Serve” Letter is prepared by the Land Development Engineering Division of the Community & Economic Development Department. A “Will-Serve” Letter is issued upon the City’s completion of an analysis determining that all conditions of approval are met.

“Conditions of Approval”

WATER: Request for service to property located outside the city limits of Modesto and inside the ultimate water service area. (*City Policy #5.001*)

1. The requested proposed property connection must be within current City water service area.
2. The City will need to determine whether it is reasonable to extend water service based on the quantity of water used, type of water used and the overall impact on the water system.
3. If the property is outside the current City water service area, the applicant will need Local Agency Formation Commission (LAFCO) (fees may apply) approval prior to issuance of a will-serve letter.
4. The City water system, in proximity to the proposed service area, must have the capacity to provide the amount of water required for the proposed connection.
5. If a water main exists adjacent to the property, and if said main is of sufficient size to provide the required service to the property, the water main is considered available.
6. If a water main does not exist adjacent to the property or if the existing water main is not sufficient size to serve the property, the City Engineer may approve a water main extension to the proposed property. Specific Council approval is required of any proposed water main extension where the cost exceeds \$20,000. The size and design of said water main extension shall be as approved by staff and shall be installed by the owner, as required by the Modesto Municipal Code and the City of Modesto Standard Specifications.
7. The property owner must agree to pay all City connection fees prior to connecting to the water system.
8. The property owner must agree to pay all monthly water service charges.
9. The property owner must agree to annex when requesting to do so by the City of Modesto.

Any request for water connection to property located outside the City limits, which does not comply with the above conditions, may be specifically reviewed by the City Council.

SEWER: Request for service to property located outside the Modesto Municipal Sewer District and inside the ultimate sewer service area. (*City Policy #5.002*)

1. The requested proposed property connection must be must be within the current sewer service area.
2. The City sewer system in proximity to the proposed service area must have the capacity to receive the amount and type of discharge from the proposed connection. In addition, the type and quantity of discharge must be in compliance with existing City, State and Federal codes.
3. If the property is located outside City limits, the applicant will need Local Agency Formation Commission (LAFCO) (fees may apply) approval prior to issuance of a will-serve letter.
4. A sewer lateral must exist adjacent to the proposed property and must be of a size that is sufficient for the proposed use and is available for direct connection. A sewer main is considered if one of the following is true:
 - a. The pipe diameter is 10” or less.
 - b. A manhole exists adjacent to the property, which would allow a house sewer line connection at no more than a 45-degree angle from either property line.
5. The property owner must agree to pay all City connection fees prior to connecting to the sewer.
6. The property owner must agree to pay all monthly sewer service charges.
7. The property owner must agree to annex when requested by the City of Modesto.

Any request for sewer connection to property located outside the current Sewer District boundaries that does not comply with the above conditions may be specifically reviewed by the City Council.

APPLICANT COPY

To Request a “Will-Serve” Letter

Instructions for completing the attached WILL SERVE LETTER REQUEST FORM:

1. Owner Name/Phone number of owner
2. Mailing address of owner
3. Applicant Name /Phone number of applicant
2. Mailing address of applicant
3. City / State / Zip Code
4. Property address for which you are applying for the Will-Serve Letter
5. Assessor’s Parcel Number (APN) of property you are applying for
6. Type of service you are requesting:
 - a. Water Only b. Sewer Only c. Water & Sewer
7. Type of Construction: Existing or Proposed
 - a. New Building b. Building Addition c. Building replacement/correction
8. Type of structure and expected demand (house, church, multi-purpose room, number of bathrooms)
9. Attachments as required:
 - a. Fire Flow Test Results (for water requests only)
 - i. Call Modesto Fire Marshal at (209) 571-5553 to determine if fire flow test can be performed (except Salida properties)
 - ii. Salida properties call Salida Fire Department at (209) 545-0365
 - b. Map showing site location and project layout if available.
 - c. Copy of the Grant Deed showing ownership and the legal description of the property.
10. Public agency you are working with other than City of Modesto.
11. Signature of applicant acknowledging receipt of “Conditions of Approval”

RETURN THE COMPLETED FORM TO:

Community & Economic Development Department
Land Development Engineering
1010 10th Street, 3rd Floor, Suite 3100
P.O. Box 642
Modesto, CA 95353
Attn: Eva Dankha-Kelly

For City Use Only:

Application No.: _____



**City of Modesto
WILL SERVE LETTER REQUEST FORM**

Date Stamp

1. Owner Name: _____ Owner Phone # _____

2. Owner Mailing Address: _____

3. City: _____ State: _____ Zip Code: _____

4. Applicant Name: _____ Applicant Phone # _____

5. Applicant Mailing Address: _____

6. City: _____ State: _____ Zip Code: _____

7. Property Address, City, Zip _____

(If different from Mailing Address)

8. Assessor Parcel Number (APN): _____

9. Will Serve Request for: ☐ Water Only ☐ Sewer Only ☐ Water & Sewer

10. Type of Construction: ☐ Existing construction ☐ Proposed construction
☐ New Building ☐ Building Addition ☐ Building replacement/correction

11. Type of structure (s) to be served by City of Modesto services:

- ☐ Single Family Residence ☐ Residential Development
☐ Multi-Family Residential ☐ Commercial Industrial Institutional

Expected Demand; Brief description of existing structure(s)/project that will receive City Service(s)

(i.e. # of units, # of restrooms):

12. Attachments as required:

- ☐ Fire Flow test results (For water requests only – Your request will be delayed if not attached)
☐ Map showing site location and project layout attached, if available
☐ Copy of Grant Deed showing ownership and legal description of the property

13. Is the applicant working with another public agency (County, City, etc)? ☐ Yes ☐ No

Agency _____ Contact Name _____ Phone# _____

14. Signature of Applicant acknowledging receipt of Conditions of Approval _____

For City of Modesto Use Only:

- ☐ In City Limits
☐ In Sphere of Influence
☐ In/Contiguous to/Near Former Del Este Water Service Area
☐ In Modesto Municipal Sewer District #1
☐ In Ultimate Sewer Service Area
☐ LAFCO Approval Required



CITY OF BEVERLY HILLS
PUBLIC WORKS SERVICES DEPARTMENT

MEMORANDUM

TO: PUBLIC WORKS COMMISSION

FROM: Vince Damasse, Water Resources Manager *[Signature]*
Trish Rhay, Assistant Director of Public Works Services, Infrastructure
& Field Operations *[Signature]*

DATE: April 18, 2016

SUBJECT: UPDATE ON WATER WILL SERVE POLICY GUIDELINES

ATTACHMENT: 1. Draft Preliminary Water Will Serve Policy Guidelines

OBJECTIVE

The following staff report updates the Public Works Commission on the status of the development of a Water Will Serve Policy.

BACKGROUND

At the Commission's request, staff has surveyed and researched similar water agencies and their best management practices in the development of a formal Water Will Serve Policy. Staff has completed that research and analysis and has drafted a preliminary outline of a Water Will Serve Policy Guidelines (Attachment 1) for the Commission's comment and discussion.

Staff has prepared a brief PowerPoint presentation summarizing the background and framework of the draft preliminary Water Will Serve Policy Guidelines. Staff is working with the City's Planning Department, City Attorney's office, and the City of West Hollywood Community Development Department in finalizing the details of the proposed Water Will Serve Policy Guidelines.

RECOMMENDATIONS

Staff recommends the Public Works Commission receive and file this report update and provide any comments and/or input on the proposed Water Will Serve Policy Guidelines following staff's presentation.

DRAFT PRELIMINARY WATER WILL SERVE POLICY GUIDELINES

APRIL 2016

PRELIMINARY DRAFT WATER WILL SERVE GUIDELINES

Purpose

The City of Beverly Hills (the “City”) provides water service for approximately 11,500 metered connections within the City’s boundaries and to a portion of the City of West Hollywood. The City’s water will serve policy serves as a guideline for potential applicants, customers, and/or developers who desire to apply for water service from the City of Beverly Hills Public Works Services Water Department. For proposed new developments, re-developments (in-fill development), or projects within the City’s boundaries and/or within its water service area that will require water service, the developer must request a “Will Serve” letter from the City. This document is required by the City’s Community Services Department and/or local jurisdictional agencies for processing Tentative Tract Maps or development reviews.

Application for Water Service

In order to obtain new water service and/or modification to existing water service, an applicant must complete, sign, and submit a Water Will Serve / Water Availability Request application form for water service (Exhibit A). Included with the application are required documents and fees for processing and determining the conditions for water service for the project. Depending on the nature and complexity of the project, required documents may include but not be limited to site plans, building plans, tentative maps, title reports, water demand calculations, landscape/irrigation plans, and other conditions and any other documents which may be relevant to providing an applicant water service.

Application Processing and Staff Analysis

1. Once an application for water service is received, staff will determine the completeness of the application. The completeness of the application will include as needed the payment of applicable processing, permit, plan check, and other related fees. The applicant will be notified if the application is complete or if additional information is needed to be submitted to the City to complete processing of the application. Requirements may include any or all of the following;
 - a. Processing, plan check and permit fees, inspection, and/or other fees and deposits.
 - b. Certified/stamped engineered calculations, plans, specifications, engineer’s estimates of the proposed water improvements indicating points and sizes of connections, main line extensions, location of valves, hydrants, fire lines, backflow prevention devices, and associated water appurtenances. All water improvement plans shall be stamped by a licensed CA Civil Engineer and shall meet the City of Beverly Hills water standards, Standard Specifications

for Public Works Construction - “Greenbook” (latest edition), and American Water Works Association (AWWA) standards, whichever is more stringent.

- c. Certified/stamped water demand estimates at ultimate build-out including proposed average day demand (ADD), Maximum Day Demand (MDD), and Peak Hour Demands (PHD) domestic demands. Demands shall also include all irrigation and fire flow demands. Fire flow demands, requirements, and other conditions of approval shall be provided by the applicant from the local governing Fire Department Authority in writing for the City’s review. Fire flow testing data shall be recent and not older than 1 year old. Any fire flow data older than 1 year, shall require additional fire flow testing and payment of applicable fire flow testing fees.
 - d. Water area studies and/or other planning documents.
 - e. Grant of easement(s) to the City, where applicable.
 - f. Dedication of facilities to the City.
 - g. Environmental documentation i.e. California Environmental Quality Act (CEQA) compliance.
 - h. Meter installation fees and construction deposits.
 - i. Payment of sureties.
 - j. Other project-related documents as required or as requested by the City.
2. A Will Serve Letter issued to an applicant shall be valid for a period of 1 year from the receipt of the water service application. If construction has not been completed by that timeline, the availability of water service becomes null & void. Applicant(s) must re-submit an application for Will Serve or availability of water service including repayment of all applicable fees in effect at the time of the re-application.

At the request of the applicant, the Will Serve letter for an applicant undergoing the development entitlement process may remain conditionally in effect as long as the entitlement is in effect. However, after 1 year, the City shall re-evaluate the application for availability of water service to ensure the conditions of the original water service application request remain unchanged. Applicant shall be responsible for any re-application processing fees, plan check, permit, capacity, and other related fees in effect at the time.

A sample Will Serve/Water Availability letter is provided in Exhibit B.

3. Connection of water services as provided in a Will Serve letter shall be contingent upon the City, at the time of request for connection, having sufficient water based on their contractual entitlements and owned water, and shall further be contingent upon the City having sufficient treatment and delivery capacity to comply with all laws and regulations concerning the delivery of domestic water. All City commitments to deliver water shall, during shortage conditions, be subject to the provisions of the then current Water Shortage Contingency Plan and/or adopted Water Shortage Emergency Measures.
4. Per the City of Beverly Hills Municipal Code, applicant(s) must adhere to the City's adopted water ordinances, capacity, impact, and/or exaction fees, groundwater management, urban water management plan, and related water conservation policies and goals. If the applicant's development and/or project is outside the City's limits but within its water service area, the applicant shall abide by the more stringent of the conservation policies and procedures.
5. If the project and/or development includes commercial, industrial, landscaping, and/or fire services, all such services shall include backflow prevention devices installed and inspected by the City of Beverly Hills prior to water service activation. The property owner shall be responsible for proper testing of backflow prevention devices by the City and/or cross-connection control authority.
6. Certain projects, depending on the size, may be subject to Senate Bill (SB 610 Water Code Section 10910 et. Seq. "Water Supply Assessments" and SB 221 Government Code Section 66473.7 "Written Verifications of Water Supply."

Water Supply Assessment (WSA):

A Water Supply Assessment is required if the development is classified as a "project" as defined in Water Code Section 10912.

Section 10912. For the purposes of this part, the following terms have the following meanings:

- (a) "Project" means any of the following:
 - (1) A proposed residential development of more than 500 dwelling units.
 - (2) A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.
 - (3) A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.

- (4) A proposed hotel or motel, or both, having more than 500 rooms.
- (5) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.
- (6) A mixed use project that includes one or more of the projects specified in this subdivision.
- (7) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

The applicant will prepare the Water Supply Assessment for the City's review and approval.

Written Verification of Water Supply:

A "Written Verification of Water Supply" is required if the development requires approval of a tentative tract map (Government Code 66473.7(b)(1)).

Section 66473.7(b)(1) The legislative body of a city or county or the advisory agency, to the extent that it is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, shall include as a condition in any tentative map that includes a subdivision a requirement that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be requested by the subdivision applicant or local agency, at the discretion of the local agency, and shall be based on written verification from the applicable public water system within 90 days of a request.

Section 66473.7(a)(1) "Subdivision means a proposed residential development of more than 500 dwelling units, except that for a public water system that has fewer than 5,000 service connections, "subdivision" means any proposed residential development that would account for an increase of 10 percent or more in the number of the public water system's existing service connections.

The City will prepare the written verification.

- 7. Depending on the complexity of the development and/or project and for any project and/or development not subject to a formal WSA as delineated in Item 6 above, the City at its sole discretion, can request a Water Feasibility Analysis (WFA) be performed and paid for by the Developer or project applicant for the City's approval. The Water Feasibility Analysis to be performed shall include a detailed analysis of the proposed development's or project's impact on the City's water system and what mitigation measures are to be utilized to mitigate those impacts.

The City reserves the right to perform the water feasibility analysis with its own staff and/or outside consultant. The Developer and/or applicant shall pay for all costs incurred by the City for the WFA effort.

8. If and when recycled water becomes readily available to a development and/or project, the City may request at its discretion upon the availability of such supplies for the applicant to utilize recycled water as part of the City's on-going water conservation efforts.

Plan Check

1. The applicant or its designated engineer will submit plans, calculations, and specifications to the City for water systems improvement plan check and analyses. The City staff and/or its consultant shall review all required plan check submittals to ensure the proposed water improvements design and construction conforms to the City's standards and policies, best management practices, laws, and regulations.
2. As part of the plan check process, City staff or its designated consultant shall evaluate the City's ability or the feasibility to provide the estimated demands and the on-site and off-site impacts of those water demands on the City's current water infrastructure from the proposed development or project. Depending on the complexity of the project, this water supply evaluation could be performed via a number of methods including hydraulic analyses and hydraulic water modeling.
3. The applicant shall be responsible for all plan check fees and/or deposits including fees associated with outside party plan review, hydraulic analyses, and hydraulic modeling that may be required for the evaluation of the applicant's water service application request.

City Fees and Costs

1. Applicants for Will Serve Letters shall be responsible for payment or reimbursement to the City as provided in the City's adopted rates, charges, and fees in existence on the date that a request by the applicant for connection to the City's water system is made. These fees may include but are not limited to plan check, permit, inspection, capacity, exaction, and other related impact fees as adopted by or in effect by the City at the time of applicant's application for water service.
2. The City establishes and periodically updates fees, charges, and cost reimbursements which are applicable to connection of water service to real property being developed in the City or within the City's water service area. The fees established by the City which are applicable to a Will Serve Letter for which

an applicant will be responsible are set forth in the City's schedule of rates, taxes, and fees.

3. City fees and costs are typically updated not more frequently than annually although additional fees and costs may be adopted by City Council members at any time. An applicant for a Will Serve Letter shall be responsible at the time that such fees are to be collected to pay or reimburse the City for all fees and costs in existence on the date of the request for connection.

Water Services Conditions Agreement

1. If as a result of the plan checking and water availability analyses, it is determined that a proposed project and/or development requires the construction of new or additional City water infrastructure improvements in order to provide the water service requested, the applicant will be required to enter into a Water Services Conditions Agreement between the applicant and the City.
2. The Water Services Conditions Agreement ("WSCA") will set forth all terms and conditions of water service for the applicant by the City and will describe in detail the responsibilities of the applicant and the City with respect to the construction of and payment for any required City water infrastructure improvements. Unless otherwise noted or agreed upon, the applicant as a result of his developer impacts to the City's water system, shall be responsible for the planning, design, and construction of the additional water infrastructure improvements required to serve his new Development and/or project.
3. In the event that a WSCA is required for the applicant's proposed development or project, the applicant will be responsible to execute and deliver the WSCA prior to approval of project improvement plans by the City and to pay or to reimburse the City for fees and expenses incurred by the City for its preparation of the WSCA.

Exhibit A

Water Will Serve / Water Availability Request Form



City of Beverly Hills Public Works Services

345 Foothill Road, Beverly Hills, CA 90210

310-285-2467 ■ 310-278-1838 (fax) ■ www.beverlyhills.org

Water Will-Serve/Availability Request

DATE: _____ Delivery of Will-Serve Notice: ☐ Mail ☐ Pick-up ☐ Email ☐ Fax#

APN: _____ Property Address: _____

Lot No: _____ Tract or Block: _____

Is there existing service to this parcel? ☐ Yes ☐ No If so, Account Number: _____

PLANNED USE:

☐ Single-Family Residential

☐ Multi-Family Residential

☐ Commercial ☐ Fireline ☐ Landscape

Multiple Units: # of Units _____

☐ Apartments

☐ Condos

☐ Hotels/Motels

Type (restaurant, car wash, etc.) _____

Total number of meters requested: _____ Size of Meter(s): _____

Name/Company: _____

Mailing Address: _____

Primary Phone: _____ Secondary Phone: _____

Email Address: _____

Estimated Potable Water Demand*

Average Day Demand* (ADD):	Maximum Day Demand* (MDD):	Peak Hour Demand* (PHD):
Domestic: gpm	Domestic: gpm	Domestic: gpm
Irrigation: gpm	Irrigation: gpm	Irrigation: gpm
Fire: gpm	Fire: gpm	Industrial: gpm
Total: gpm	Total: gpm	Total: gpm

*ATTACH REFERENCES USED AND CALCULATIONS FOR TOTAL WATER DEMAND (INCLUDING SITE PLAN SHOWING PROPOSED CONNECTIONS).

Comments:

I understand that the City of Beverly Hills is willing to supply water to the subject property with the following conditions: (Conditions are subject to change without notice.)

1. This Water Will-Serve Request is not a guarantee of service. All conditions of approvals must be met prior to connection to the public water system.
2. This property is subject to all City of Beverly Hills policies, rates and fees in effect when fees are paid, including, but not limited to, processing, plan check, capacity/exaction, inspection, permitting and all other associated costs.
3. Exact location of the water meter is to be determined by owner and approved by the City of Beverly Hills.
4. Detailed calculations and plans may be required for City approval prior to installation of water services.
5. Once issued, the Will-Serve Letter will remain effective for 1 year from the date approved (subject to the attached conditions).
6. Owner should confirm that mainline pressure is sufficient to serve the planned elevation of any improvements. In some cases, pressure-reducing valves or booster pumps may be required.

Signed: _____ Printed Name: _____

☐ Owner ☐ Agent

FOR CITY PERSONNEL USE ONLY

COBH Service Area? ☐ Yes ☐ No

Capacity & Groundwater Exaction Fee paid? ☐ Yes ☐ No

Main upsizing required? ☐ Yes ☐ No

Existing Main Location & Size _____

Comments: _____

APPROVAL:

Signature: _____ Date: _____

Exhibit B

Sample Water Will Serve / Water Availability Letter



Vince Damasse, Water Resources Manager
Department of Public Works Services

April 12, 2016

Mr. Don Shealy
123 Doheny Drive
West Hollywood, CA 90210

RE: Water Will Serve / Water Availability
Project Location: 123 Doheny Drive West Hollywood CA
Job No.: D1234

Dear Mr. Shealy:

The letter confirms that your proposed development lies within the City of Beverly Hills water service area. Based on the City's analysis of your proposed water demands and the impacts to the City's water infrastructure, the City can provide water service to the proposed project subject to the following conditions of approval:

1. This determination of water availability will remain valid for one (1) year from the date of this letter. If the installation of these water improvements has not been completed within this one (1) year time frame, the City is under no obligation to serve the project and this letter becomes null and void. After the availability period has expired, the applicant must re-apply for this water will serve / availability letter. Additional processing, plan-checking, and associated fees may apply.
2. Applicants for Will Serve Letters shall be responsible for payment or reimbursement to the City as provided in the City's adopted rates, charges, and fees in existence on the date that a request by the applicant for connection to the City's water system is made. These fees may

City of Beverly Hills 345 Foothill Road Beverly Hills, California 90210 t(310) 285-2467 f(310) 278-1838
BeverlyHills.org

include but are not limited to plan check, permit, inspection, capacity, exaction, and other related impact fees as adopted by or in effect by the City at the time of applicant's water will serve request.

3. If the above-referenced project includes commercial, industrial, landscaping, or fire services, all such services shall require backflow prevention devices installed and tested in accordance with the City's policy, requirements, and specifications prior to being constructed.
4. If as a result of the plan checking and water availability analyses, it is determined that a proposed project and/or development requires the construction of new or additional City water infrastructure improvements in order to provide the water services requested, the applicant will be required to enter into a Water Services Conditions Agreement between the applicant and the City.
5. The Water Services Conditions Agreement ("WSCA") will set forth all terms and conditions of water service for the applicant by the City and will describe in detail the responsibilities of the applicant and the City with respect to the construction of and payment for any required City water infrastructure improvements. Unless otherwise noted or agreed upon, the applicant as a result of his developer impacts to the City's water system shall be responsible for the planning, design, and construction of the additional water infrastructure improvements required to serve his new Development and/or project.
6. In the event that a WSCA is required for the applicant's proposed development or project, the applicant will be responsible to execute and deliver the WSCA prior to approval of project improvement plans by the City and to pay or to reimburse the City for fees and expenses incurred by the City for its preparation of the WSCA.
7. The 8-inch Ductile Iron pipeline (700 LF) based on the City's hydraulic analysis from the intersection of Harland Ave. and Keith Ave. on Doheny Drive where the applicant's proposed development connects to for domestic water service shall be upsized to a 10-inch Ductile Iron pipeline including valves, service laterals, meters, hydrants, and associated appurtenances.

Please contact me at 310-285-2491 should you have additional questions and/or concerns. We look forward to working with you.

Vince Damasse, Water Resources Manager
Department of Public Works Services

WILL SERVE LETTER POLICY

Adopted by the Board of Directors on October 27, 2014

Bella Vista Water District (the “District”) provides water services within the District’s Service Boundary in Shasta County, California. Periodically, the District receives from a property owner requests for the District to provide to a regulatory agency a “Will Serve Letter.” A Will Serve Letter provides notification to the regulatory agency and the applicant that the District has sufficient water and facilities available to serve the property/properties and that the District will serve the real property/properties owned by the applicant subject to this policy and conditions contained in the Will Serve Letter. Will Serve Letters will be considered by the District upon receipt of a complete application and will describe the location, type of service and the specific conditions under which the District will provide service. Residential Developments of four (4) or fewer parcels may be approved by the District’s General Manager. Subdivision and Commercial Developments must be approved by the Board of Directors. This Will Serve Policy adopted by the Board of Directors of the District sets forth the policies of the District with respect to the issuance of Will Serve Letters.

The District’s General Manager will report on any Will Serve Letters issued by the District at the next regularly scheduled Board of Directors meeting.

Additionally, the District’s General Manager will provide a report annually on the status of all issued and unexpired Will Serve Letters during the planning process for the upcoming fiscal year.

Section 1 - Will Serve Letters

1. District Will Serve Letters are issued to regulatory agencies consistent with this policy and on behalf of an applicant to provide an indication of the District’s willingness and ability to provide domestic water service to real property/properties within the District’s Service Boundary. A Will Serve Letter outlines the general conditions under which the District will provide such water service. It is the District’s conditional commitment to provide domestic water service to new customers.
2. The District will not issue a Will Serve Letter for real property which is not within the District’s Boundary at the time of the request for the Will Serve Letter.

Section 2 - Eligibility & Criteria

1. Applications for Will Serve Letters requesting water service outside of the District’s then existing Service Boundary will only be processed upon approval of an annexation of the affected real property by the District’s Board of Directors in accordance with the District’s adopted Annexation Policy and contingent upon completion of the annexation of the real property into the District’s Service Boundary through the Shasta County

Local Agency Formation Commission, and obtaining Bureau of Reclamation approval for inclusion of the real property within the District's Service Area, at the applicant's sole cost and expense.

2. A Will Serve Letter issued by the District to an applicant shall terminate at the sooner to occur of ten (10) years after the date of the Will Serve Letter or (unless connection to the District water system has been made prior to the termination or expiration of any use permit, tentative map or parcel division approval) upon the termination or expiration of any building permit issued to the applicant for construction of improvements on the real property which is the subject of the Will Serve Letter.
3. Connection of water services as provided in a Will Serve Letter shall be contingent upon the District, at the time of request for connection, having sufficient water based upon their contractual entitlements and owned water, and shall further be contingent upon the District having sufficient treatment and delivery capacity to comply with all laws and regulations concerning the delivery of domestic water. All District commitments to deliver water shall, during shortage conditions, be subject to the provisions of the then current Water Shortage Contingency Plan and/or adopted Water Shortage Emergency Measures.

Section 3 - District Fees and Costs

1. Applicants for Will Serve Letters shall be responsible for payment or reimbursement to the District as provided in this policy of all District fees and costs in existence on the date that a request by the applicant for connection to the District's water system is made. Connections to the District's water system will be made only to real property which has, at the time of the request for connection, a valid building permit.
2. The District establishes and periodically updates fees, charges and cost reimbursements which are applicable to connection of water service to real property being developed in the District. The fees established by the District which are applicable to a Will Serve Letter for which an applicant will be responsible are as set forth on **Exhibit "A"** attached hereto.
3. District fees and costs are normally updated not more frequently than annually although additional fees and costs may be adopted by the District's Board of Directors at any time. An applicant for a Will Serve Letter shall be responsible at the time that such fees are to be collected to pay to or reimburse the District for all fees and costs in existence on the date of the request for connection.

Section 4 - Application for Will Serve Letter - Form

1. Any person or entity requesting a Will Serve Letter from the District shall fully complete and submit to the District an "Application for Will Serve Letter" in the form

attached hereto as **Exhibit “B”**. The application will not be considered received by the District until such time as all information required thereon has been provided and the form has been duly executed as provided in the form.

2. An applicant will be required to pay at the time of the submission of the Application for the Will Serve Letter those District administrative fees then in effect for the submissions of an Application for Will Serve Letter together with any deposits required for engineering fees and attorneys’ fees, all as provided on **Exhibit “A”** hereto.
3. Following receipt by the District of a complete Application for Will Serve Letter, together with any fees or costs required at the time of the filing of the application, the District will have up to 21 days to review the request. During the review process the District may require the applicant to furnish the District with such other and further information as the District deems pertinent to review and process the application. If during the District’s initial review of the application, the District determines that there are additional fees or costs which are required to evaluate and process the application, the District will provide an estimate of these additional fees and costs in writing to the applicant. The District requires collection of all fees and costs at the times provided in **Exhibit “A”** hereto. Will Serve requests that must be approved by the District’s Board of Directors will be presented to the Board for their consideration at their next regularly scheduled meeting following the completion of the review process.
4. The District will not provide water service to any property in the event of non-payment of any applicable fees or costs.

Section 5 –Development Agreement

1. Applicants who request a Will Serve Letter from the District to supply water to a proposed development which requires the construction of new or additional District water distribution system improvements in order to provide water service requested, will be required to enter into a Development Agreement between the applicant and the District.
2. The Development Agreement will set forth all terms and conditions of water service for the applicant by the District and will describe in detail the responsibilities of the applicant and the District with respect to the construction of and payment for any required District water distribution system improvements.
3. In the event that a Development Agreement is required for the applicant’s proposed development, the applicant will be responsible to execute and deliver the Development Agreement prior to approval of project improvement plans by the District’s General Manager and to pay or to reimburse the District for fees and expenses incurred by the District for its District engineer and attorney in the preparation of the Development Agreement.

Will Serve Policy adopted by the Bella Vista Water District on _____ and
last amended on _____.

The undersigned, an applicant for a Will Serve Letter from the Bella Vista Water District
acknowledges receipt of the Will Serve Policy this ____ day of _____,
20____.

Authorized Signature

Date

Name (print)

EXHIBIT “A”

**WILL SERVE LETTER FEE SCHEDULE
October 28, 2014**

Administrative Fees

Administrative Fees are to be paid at the time an application for a will serve letter or application for connection to the District is received, whichever first occurs.

- (a) District Administrative Overhead Filing
& Research\$ 50.00
(or as superseded in the District Policy Manual “Appendix A – Schedule of Rates and Charges”)
- (b) Projects requiring an “Agreement for Water System Improvements” shall first execute a Reimbursement Agreement setting forth the terms and conditions to reimburse the District for all project related expenses including staff, engineering and legal expenses associated with the project and preparation of the Off Site Improvements/Development Agreement.

Engineering and Attorney Fees

For subdivisions that will create more than 4 parcels and commercial/industrial projects that will require review by the District’s Engineer and/or Attorney a deposit of \$500.00 (or as superseded in the District Policy Manual “Appendix A – Schedule of Rates and Charges”) each for engineering and attorney fees is to be collected at the time the District receives an application. After the District’s receipt of a complete application, applicants will be provided with an estimate of all District Engineering and Attorney fees to be incurred. Estimated Engineering and Attorney fees in excess of the initial deposit are to be paid upon receipt of the estimate. Engineering and Attorney fees in excess of the deposits will be billed to the applicant by the District upon receipt of the bills thereafter, and are payable immediately. Deposits in excess of final billing will be refunded to the applicant.

Connection Fees

Connection fees are to be paid at the time the real property is connected to the District water system. Connection fees include the following fees and costs pursuant to District’s Policy as amended: Capital Improvement Fees, Water Meter Set Fees and Service Line Installation Fees.

EXHIBIT "B"
APPLICATION FOR WILL SERVE LETTER

Date: _____

APPLICANT INFORMATION

Name: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone #: _____ Fax #: _____
 E-Mail: _____

PROPERTY INFORMATION

Location of Property(s): _____

Legal Description: _____

(Include Section, Township and Range)

Assessor's Parcel Number (APN) of lot(s) to be served: _____

Service address of parcel(s) served: _____

Planning Department Development Number: _____

Type of Use:

- | | | |
|--|------------------------------|-----------------------------|
| a) Single Family Residence | Yes ☐ | No ☐ |
| b) Multi Family Residence | Yes ☐ | No ☐ |
| c) Residential Development
(Including Residential Subdivisions) | Yes ☐ | No ☐ |
| d) Commercial/Industrial | Yes ☐ | No ☐ |

Number of Units: _____ Type: _____

THE FOLLOWING ITEMS MUST BE SUBMITTED

- 1. Notarized “Request for Will Serve Letter” Form.
- 2. Multi-Family, Residential and Commercial/Industrial Developments must supply plans.
- 3. Check payable to the Bella Vista Water District for all fees associated with the Request for Will Serve Letter Form.
- 4. **Please Note:** Payment for Will Serve Letter fees and the Request Form will not be accepted until all required items have been submitted.

WILL SERVE LETTER ADDRESSEE INFORMATION

This Will Serve Letter needs to be sent to:

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone #: _____ Fax #: _____
E-Mail: _____

Property Owner(s) Name, Address and Phone Number:

Name:	Address:	Phone #;
_____	_____	_____
_____	_____	_____

I (We) the undersigned applicant(s) do hereby request a Will Serve Letter from Bella Vista Water District for the real property(s) described in this application. The undersigned certifies under penalty of perjury that I (we) have the authority to make this request and have provided correct information. I (we) understand and agree that I (we) will be responsible for and will pay all fees and costs associated with the Will Serve Letter as provided for in the Will Serve Policy of the Bella Vista Water District.

Dated this _____ day of _____ 20_____

(Notarial Acknowledgement Required)

Exhibit “C” – Standard Will Serve Letter

{Date}

City of Redding	or	Shasta County Department of Resource Management
Building Department		Planning Division
P.O. Box 496071		1855 Placer Street, Suite 103
Redding, CA 96049-6071		Redding, CA 96001-1759

Re: {Project Name and (Parcel Map, APN, or Proponent)}

This is to inform you that the above referenced real property lies within the Bella Vista Water District's current contract boundary.

Water service by the District to this project will be provided contingent upon compliance with all rules, regulations, policies, resolutions, fees, and specifications that are in effect at the time connection to the District’s water system is requested.

The District requires receipt of and an opportunity to comment on:

1. Tentative maps for the real property or use permit applications as the case may be;
2. Review and acceptance of improvement plans for construction of needed water system improvements; and
3. Review and acceptance of completed water system improvements whether on site or off site and which are associated with this property

{And, if applicable}

- {4. Completion of the conditions as set forth in an “Agreement for Water System Improvements” for the proposed project. (Note: This project will require an Agreement for Water System Improvements between the applicant and the District with terms and conditions as provided by the District.)}

Connection of water service as provided in a Will Serve Letter shall be contingent upon the District, at the time of request for connection, having sufficient water based upon their contractual entitlements and owned water, and shall further be contingent upon the District having sufficient treatment and delivery capacity to comply with all laws and regulations concerning the delivery of domestic water. All District commitments to deliver water shall, during water supply shortage conditions, be subject to the provisions of the then current District Water Shortage Contingency Plan and/or Adopted Water Shortage Emergency Measures.

This Will Serve Letter shall terminate at the sooner to occur of either ten (10) years after the date of the Will Serve Letter or upon the termination or expiration of any building permit issued to the applicant for construction of improvements on the real property which is the subject of the Will Serve Letter (unless connection to the District water system has been made prior to the termination or expiration of any use permit, tentative map or parcel division approval).

City of Redding (or Shasta County Department of Resource Management)

(Date)

Page 2 of 2

Should you require additional information, please contact the District office.

Sincerely,

General Manager or District Engineer

cc: File



**City of Phoenix
Water Services Department**

Engineering Policy P-105
Adopted June 10, 2009
Page 1 of 8

**Policy and Procedures for Obtaining Retail Water and Sewer Service to Areas
Located Outside City of Phoenix Limits**

Purpose

To describe the conditions, requirements, and procedures for obtaining City of Phoenix retail water and sewer service connections to areas located outside the corporate limits of the City of Phoenix.

Applicability

The policies and procedures described herein are applicable for outside City retail service only. This document is not applicable for outside City wholesale service to municipalities or agencies that are governed via intergovernmental agreements.

This policy will be suspended during times of declared drought by the City of Phoenix.

Background

The City of Phoenix provides water and sewer service to some areas outside its City corporate limits. These areas include unincorporated areas of Maricopa County and areas within the corporate limits of the Town of Paradise Valley and the Town of Cave Creek.

References

In general, the terms and conditions under which service(s) is provided by Phoenix are set forth in the following chapters of the Phoenix City Code and Water Services Department standards:

- Chapter 19A, B, C and D for Development Occupational Fees
- Chapter 28 Sewer
- Chapter 29 Development Impact Fee Ordinance
- Chapter 30 Water Resources Acquisition Fee
- Chapter 37 Water
- Appendix A.2 Development Services Department Fee Schedule
- City of Phoenix Water Services Department Design Standards Manual for Water and Wastewater Systems

Definitions

Certificate of Convenience and Necessity (CC&N): An area granted to a private water company by the Arizona Corporation Commission providing the private water company the sole right to provide water.

Development Occupational Fee: A fee imposed to reimburse the City for costs from connection to the City's water and/or sewer system, which will result in increased usage and demands on the City's system thereby adding to the burden on existing public facilities, and requiring expansion or enlargement thereof.

Distribution Main: Water pipelines (typically 12-inch diameter or less) that take water from transmission mains and deliver it to individual customers through service connections.

Fire Flow Requirements: The minimum flow requirements per the International Fire Code and the Design Standards Manual for Water and Wastewater Systems.

Incorporated: Land that is governed by local (municipal) authority, i.e. Town of Paradise Valley and Town of Cave Creek.

Main Extension: An extension of a City public water distribution main or sewer main beyond its existing facilities.

Pressure Zone: A specific area, which is elevation dependent, where operating water pressure ranges from 50 pounds per square inch (psi) to 100 psi.

Sewer Service Connection: A sewer serving an individual property that extends from a sewer tap on the City public sewer to the property line or to the easement line of the property to be served. It may also be identified as a Building Connection or House Connection.

Unincorporated: Land in the County that is not governed by a local authority.

Water Resources Acquisition Fee: A development impact fee required to pay for additional water supplies needed to support new development within the City of Phoenix. This fee went into effect on January 1, 1990.

Water Service Connection: A water line serving an individual property that extends from the City water distribution main to the meter located at the property line or to the easement line of the property to be served.

Policy for Retail Water Service

1. The City's general policy for providing retail water service to outside City customers will depend on the property's location and the City's obligation for providing water service.
 - a. Unincorporated County Areas That Are Not Located Within a Certificate of Convenience and Necessity (CC&N) From a Private Water System That Was Acquired By the City of Phoenix And That Are Not Located Within Another Municipality's Service Area

The City will provide service through a water service connection if a property fronts an operating City water distribution main, the main is within

the correct pressure zone, there is sufficient capacity in the water system, and all City Code and Water Services Department Design Standards associated with obtaining water services are met. Water main extensions will be permitted only after annexation of the property is completed and approved by the Phoenix City Council. The property requesting annexation must be contiguous to the City of Phoenix corporate boundary.

- b. Unincorporated County Areas That Are Located Within a Certificate of Convenience and Necessity (CC&N) For a Private Water System That Was Acquired By the City of Phoenix

The City will provide service through a water service connection if a property fronts an operating water distribution main if the main is in the correct pressure zone, there is sufficient capacity in the water system, and all City Code and Water Services Department Design Standards associated with obtaining water service are met. Water main extensions are permitted subject to requirements.

- c. Incorporated Areas That Are Not Located Within a Certificate of Convenience and Necessity (CC&N) For a Private Water System That Was Acquired By The City Of Phoenix and That Are Not Located Within Another Municipality's Service Area

The City will provide service through a water service connection if a property fronts an operating water distribution main if the main is in the correct pressure zone, there is sufficient capacity in the system, and all City Code and Water Services Department Design Standards associated with obtaining water service are met. Water main extensions are not permitted outside this service area.

- d. Incorporated Areas Located Within a Certificate of Convenience and Necessity (CC&N) For a Private Water System That Was Acquired By the City of Phoenix

The City will provide service through a water service connection if a property fronts an operating water distribution main if the main is in the correct pressure zone, there is sufficient capacity in the system, and all City requirements associated with obtaining water service are met. Water main extensions are permitted subject to requirements.

- e. Incorporated or Unincorporated Areas That Are Located Within a Defined Water Service Area

If the City has established a defined water service area within an incorporated or unincorporated area, the City will allow a water service connection if a property fronts an operating water distribution main if the main is in the correct pressure zone, there is sufficient capacity in the

system, and all City Code and Water Services Department Design Standards associated with obtaining water service are met. Water main extensions are permitted subject to requirements.

- f. Water service within other jurisdictions that are not described above will require an Intergovernmental Agreement (IGA) between the City and the other jurisdiction.
2. All service connections and main extensions shall comply with all applicable standards and code requirements, including, but not limited to, Phoenix City Code, City of Phoenix Water Services Department Design Standards, International Fire Code, Maricopa Association of Governments (MAG) Standards, and Phoenix Supplements to MAG Standards.
3. Service connections and main extensions shall be located in public right-of-way meeting the standards of the City of Phoenix. An easement, license or non-revocable permit is required for main extensions in the public right-of-way. If the service connection or main extension cannot be installed in right-of-way, a dedicated easement meeting City of Phoenix design requirements will need to be approved by the City of Phoenix Water Services Department.
4. Applicants shall be required to pay all applicable outside City of Phoenix development fees, impact fees, connection fees, repayment agreement fees, and permit fees.
5. The property to be served shall meet the same development water standards required of properties within the City of Phoenix limits that seek water service. For development standards not related to water infrastructure, the requirements will not exceed the local jurisdiction requirements.
6. The City has the authority to deny or discontinue service if the service connection could threaten or endanger the safe, efficient and adequate service.
7. The current outside City water service areas are shown in Appendix A.

Policy for Retail Sewer Service

1. The City's general policy for providing retail sewer service to outside City customers will depend on the property's location and the City's obligation for providing sewer service.
 - a. Unincorporated County Areas That Are Not Located Within Another Municipality's Service Area

The City will allow a sewer service connection if a property fronts an

operating sewer main that is less than 27-inches in diameter, there is sufficient capacity in the system to meet peak hour wastewater flows, and all City Code and Water Services Department Design Standards associated with obtaining sewer service are met. If a property fronts an operating sewer main that is 27-inches or greater in diameter and there is sufficient capacity in the system to meet peak hour wastewater flows, the City will allow a sewer service connection if an existing manhole on the sewer is located within the frontage of the property. Sewer main extensions will be permitted only after annexation is completed and approved by the Phoenix City Council. The property requesting annexation must be contiguous to the City of Phoenix corporate boundary.

b. Unincorporated County Areas That Are Located Within a Designated Sewer Service Area

If the City has established a defined sewer service area within an unincorporated area, the City will allow a sewer service connection if a property fronts an operating sewer main that is less than 27-inches in diameter (mains 27-inches and larger are interceptor sewers that are not intended for tapping), there is sufficient capacity in the system to meet peak hour wastewater flows, and all City Code and Water Services Department Design Standards associated with obtaining sewer service are met. Sewer main extensions are permitted subject to requirements.

c. Incorporated Areas That Are Not Located Within Another Municipality's Service Area

The City will allow a sewer service connection if a property fronts an operating sewer main that is less than 27-inches in diameter (mains 27-inches and larger are interceptor sewers that are not intended for tapping), there is sufficient capacity in the system to meet peak hour wastewater flows, and all City Code and Water Services Department Design Standards associated with obtaining sewer service are met. Sewer main extensions are not permitted.

d. Incorporated or Unincorporated Areas That Are Located Within a Defined Sewer Service Area

If the City has established a defined sewer service area within an incorporated or unincorporated area, the City will allow a sewer service connection if a property fronts an operating sewer main that is less than 27-inches in diameter (mains 27-inches and larger are interceptor sewers that are not intended for tapping), there is sufficient capacity in the system to meet peak hour wastewater flows, and all City Code and Water Services Department Design Standards associated with obtaining sewer service are met. Sewer main extensions are permitted subject to requirements.

- e. Sewer service within other jurisdictions that are not described above will require an Intergovernmental Agreement (IGA) between the City and the other jurisdiction.
2. All service connections and main extensions shall comply with all applicable standards and code requirements, including, but not limited to, Phoenix City Code, City of Phoenix Water Services Department Design Standards, International Fire Code, Maricopa Association of Governments (MAG) Standards, and Phoenix Supplements to MAG Standards.
3. Service connections and main extensions shall be located in public right-of-way meeting the standards of the City of Phoenix. An easement, license or non-revocable permit is required for main extensions in the public right-of-way. If the service connection or main extension cannot be installed in right-of-way, a dedicated easement meeting City of Phoenix design requirements will need to be approved by the City of Phoenix Water Services Department.
4. Applicants shall be required to pay all applicable outside City of Phoenix development fees, impact fees, connection fees, repayment agreement fees, and permit fees.
5. The property to be served shall meet the same development sewer standards required of properties within the City of Phoenix limits that seek sewer service. For development standards not related to sewer infrastructure, the requirements will not exceed the local jurisdiction requirements.
6. The City has the authority to deny or discontinue service if the service connection could threaten or endanger the safe, efficient and adequate service.
7. The current outside City sewer service areas are shown in Appendix B.

Procedures

Service Connections

1. All service requests shall be made at the Water Services Department, Technical Support Division Counter, 200 West Washington Street, 8th Floor, Phoenix, Arizona 85003. All forms can be obtained and fees paid at this location.
2. To initiate a request for service, complete form "Information Required for Will Serve Letter Requests for Properties Outside of Phoenix City Limits." (Exhibit A). Water Services Department staff will review the service request, assess the service availability and capacity, and provide a letter to the applicant either denying service or approving service with stipulation requirements.

3. If water or sewer service is approved for connection, the applicant will be required to fill out an Application for Water or Sewer Service Outside City or Special Circumstances form (Exhibit B).
4. The following items are required to process the service applications:
 - a. Provide a copy of building/plumbing permit from the applicable jurisdiction – e.g. Maricopa County, Paradise Valley, or Town of Cave Creek.
 - b. If no sewer is available, provide a copy of approved septic permit from Maricopa County.
 - c. Provide a legal description, parcel assessor number and address of the property.
 - d. If applicable, the Agreement to Annexation form (Exhibit C or Exhibit D) from the City Clerk Department is required. The form must be signed and notarized by the property owner.
 - e. If applicable, submit a Non-Fire Service Acknowledgement form (Exhibit E). This document must be recorded through the Maricopa County Recorder's office prior to submitting the water application. Non-Fire Service Acknowledgement is required for areas having substandard water mains and do not have adequate water pressure to accommodate a public fire hydrant or fireline for fire protection.
 - f. If in an impact fee area, commercial properties are required to submit the number of plumbing fixture units for the wastewater impact fee calculation.
5. Water and sewer service connections shall comply with City of Phoenix codes and design standards.
6. All fees must be paid prior to installation of services. Development Occupational Fees for outside City are 1½ times inside City rates per Phoenix City Code Chapter 19A and 19C.

Water and Sewer Main Extensions

1. Water Services Department staff will review the request to determine if capacity is available and stipulate any necessary requirements for a water or sewer main extension. Any new service or change in use that will result in increased demands for water must consider that the change may require additional improvements to the City's water or sewer system at the owner's/developer's expense.

Engineering Policy P-105
Policy and Procedures for Obtaining Retail Water and
Sewer Service to Areas Located Outside City of Phoenix Limits
Adopted June 10, 2009
Page 8 of 8

2. Plan submittals for water and sewer main extensions shall be submitted for review and approval to the Water Services Department, Technical Support Division Counter, 200 West Washington Street, 8th Floor, Phoenix, Arizona 85003.
3. Plan submittals for water and sewer main extensions shall also be submitted for review and approval to Maricopa County Department of Environmental Services and to the municipality or unincorporated area where the main is located if applicable.
4. Plan submittals shall comply with the guidelines provided in the City of Phoenix Water Services Department Design Standards Manual, City of Phoenix Design Checklists, Maricopa Association of Governments (MAG) Uniform Standard Details, Specifications for Public Works Construction and the City of Phoenix Supplements to MAG. Plan review fees will be assessed at time of submittal. Permits will be required for inspection of water/sewer main. Fees will be assessed at time of issuance of inspection permit. A separate right-of-way permit may be required by the other jurisdiction.

If the applicant disagrees with the required guidelines and is seeking relief or modification, the applicant may be subject to the Technical Appeal Process.

Deviation from this policy will require City Council approval.

W&WWSrvOutPhxArea - Policy

Exhibits A, B, C, D and E Are examples only.

To obtain the most updated form, please contact Water Services Department, Technical Support Division or the City Clerk Department.

Technical Support Division 602-495-5601
City Clerk Department 602-262-6811

EXHIBIT A



City of Phoenix
Water Services Department

**Information Required for "Will Serve" Letter Requests
For Properties Outside of Phoenix City Limits**

Please Print

1. Legal address/ Location of property: _____
 2. Assessor's Parcel Number: _____
 3. Jurisdiction Area: Paradise Valley ☐ County ☐ Town of Cave Creek ☐
 4. Provide legal description (attach with form if necessary)**

- **If parcel has been recently subdivided, provide copy of recorded survey.
5. Property Use: Single Family Residential ☐ Commercial Use ☐ Other _____
 6. Type of service being requested: Water ☐ Sewer ☐ Fire Protection ☐
 7. Reason for request of water/sewer service: _____
 8. Is property currently being served by Water Services Department?
No ☐ Yes ☐ If yes, please provide account number _____
 9. Provide elevations of property: *High elevation* _____ *Low elevation* _____
 10. Provide size of service(s) needed for this request: _____
 11. Who should letter be addressed to?
Contact name: _____
Address, City, State, Zip: _____
Phone number: (_____) _____ Fax Number: (_____) _____
Email Address: _____

Letters will not be provided over-the-counter.

Please allow at least one week to respond to all requests.

Fax or mail this form and additional information to:

City of Phoenix, Water Services Department

Technical Support Division

200 W. Washington St, 8th floor

Phoenix, AZ 85003

Phone 602-495-5601, Fax 602-495-5461



City of Phoenix

Water Services Department, Technical Support Division
200 W. Washington St., 8th Fl., Phoenix, AZ 85003
Office: 602.495.5601 FAX: 602.495.5461

EXHIBIT B

Application for Water or Sewer Service Outside City or Special Circumstances (Waterline must front the property)

Permit Number: _____ Date Sold: _____
Receipt Number: _____ Application Number: _____

1. Service Address: _____ QS #: _____
City: _____ Zip Code: _____
2. Legal Description of Property (as found on deed): _____
3. Maricopa County Assessor Parcel Number (APN): _____
4. Property Owner's Name: _____

BILLING INFORMATION IF DIFFERENT FROM ABOVE:

5. Name (If different from owner): _____
Street Address: _____
City/Zip Code: _____ Phone #: _____
Name of Representative: _____ Phone #: _____
(If different from owner)
6. Reason for request of new service: _____
7. Size of Property: _____ Acres ☐ Residential ☐ Commercial
8. Connecting to City of Phoenix:
☐ Water: Meter Size Requested: _____ (3/4", 1", 1.5", 2")
☐ Sewer: Currently connected to: ☐ Septic ☐ Other: _____

Copies of the following items are required to continue application process:

- ☐ Copy of building permit or on-site plumbing permit
- ☐ Copy of septic permit
- ☐ Copy of legal description
- ☐ If the property is in the County: an Annexation or Release Letter from the City Clerk Office must be provided. The City Clerk can be contacted at 602.262.6837 and is located on the 15th floor of the City Hall Building.
- ☐ If the property is in Paradise Valley: a written request to connect to the City of Phoenix sewer system must be submitted to The Technical Support Division Counter for department review and approval.
- ☐ A County Recorded "Non-Fire Service Form" with property exhibit, must be provided for **all** Paradise Valley water meters and for **any** substandard water mains (example 2", 3", 4").
- ☐ If the property is in an Impact Fee Area: commercial properties are required to submit form to calculate drainage fixture units. This applies to both water and sewer services.

EXHIBIT B

**Application for Water and Sewer Service Request
Outside City or Special Circumstances**

‘ALL FEES ARE SUBJECT TO CHANGE’

Thank you for your recent application for the water and/or sewer service within the City of Phoenix limits. Based upon the information provided, the following fees apply. Please review this information carefully.

Water Resource Acquisition Fee:	Quarter Section
Water Development Fee	Application Number
Water Impact Fee	Size & Type of Service
Water Impact Admin Fee	Main Size & Type
Water Installation Fee	Main Dimension & Location
Water Repayment Fee	Acceptance Date:
Construction Water Access (Taplist MO)	Impact Area
Sewer Development Fee	WRA Area
Sewer Impact Fee	Pressure Zone
Sewer Impact Admin Fee	Kill Existing Service
Sewer Installation Fee	Meter Use/Code
Sewer Permit Fee	ROW permit required
Sewer Repayment Fee	Tech Hold
Sewer Repayment Admin Fee	Application Processed By:
Paving Surcharge Fee	Fee Checked By:

TOTAL COST _____

Notes:

FOR OFFICE USE ONLY

- **Property Records:** Provide property records with APN, address, owner's name, quarter section
- **Full Services (tap and meter):**
 - o Red card to customer
 - o If the main to be tapped is in right-of-way, generate exhibit for County/PV permit
 - o 2", 3", 4" water mains need authorization from Distribution and Collection
- **Meter Only:** Verify the size and whether the tap is functional "hot"
 - o Tap List
 - o WCIS
 - o Field Investigation
- **Sewer Taps:** Requires a contractor who is licensed to do work in the right-of-way
- **Paving Surcharge Contacts:**
 - o Streets Department – 602.256.4335
 - o Paradise Valley – 480.348.3692
 - o County Streets – 602.506.8791

EXHIBIT C



City of Phoenix

To: Residential Property Owners Requesting
New Water Service from the City of Phoenix

Date: _____

From: Mario Paniagua
City Clerk

Subject: ANNEXATION REQUEST

In conjunction with a request for new water service from the City of Phoenix to residential property which is outside of but contiguous to the existing corporate limits of the City, City Policy requires that a property owner request and agree to sign for annexation into the City. The owner of record or the designated representative must read and sign this annexation request. **This letter does not represent a commitment by the City of Phoenix to provide water service.** When this completed, signed and notarized request is received by the City Clerk Department, the City will initiate the annexation process and the Water Services Department will process your request for new water service to residential property. Water Services will notify you when all requirements have been satisfied and if water services will be provided.

If you have any questions regarding annexation, please contact the City Clerk Department, located on the 15th floor of City Hall, 200 W Washington Street, Phoenix, AZ, 85003, at 602-262-6837.

Annexation Request

I, _____, the owner, or the owner's designated representative, of the property legally described below, in consideration for becoming eligible for water service from the City of Phoenix, request annexation into the City and agree to sign an annexation petition when it is presented to me. Should I sell my property prior to the annexation petition being presented to me, I agree to bind the purchaser to this commitment.

Legal description of property: _____

Owner's Name _____ Parcel No. _____

Mailing Address _____

Telephone Number _____ Fax Number _____

Signature: _____ Date: _____
(Owner or Designated Representative)

Subscribed and sworn to before me this _____ day of _____.

(Notary Public)

EXHIBIT D



To: Residential Property Owners Requesting
New Water Service from the City of Phoenix

Date: _____

From: Mario Paniagua
City Clerk

Subject: AGREEMENT FOR ANNEXATION

In conjunction with a request for new water service from the City of Phoenix to residential property which is outside the existing corporate limits of the City, City Policy requires that a property owner agree to sign for and support annexation of the property into the City at such time as annexation becomes feasible. The owner of record, or the designated representative, must read and sign an Annexation Agreement. This letter does not represent a commitment by the City of Phoenix to provide water service. When this completed, signed and notarized form is returned to the City Clerk Department, the Water Services Department will process your request for new water service to residential property. Water Services will notify you when all requirements have been satisfied and that water service will be provided.

If you have any questions regarding annexation, please contact the City Clerk Department, located on the 15th Floor of City Hall, 200 West Washington Street, Phoenix, Arizona 85003, at (602) 262-6837.

Annexation Agreement

I, _____, the owner, or the owner's designated representative, of the property legally described below, in consideration for becoming eligible for water service from the City of Phoenix, agree to sign a petition in support of annexation of the property into the City of Phoenix if and when it is presented to me. Should I sell my property prior to the City's annexation request, I agree to bind all future purchasers to this commitment. I am aware and agree that the City may charge a rate differential for water service outside the City limits.

Legal description of property _____

Owner's Name _____ Parcel No. _____

Mailing Address _____

Telephone Number _____ Fax _____

Signature: _____ Date: _____

(Owner or Designated Representative)

Subscribed and sworn to before me this _____ day of _____.

(Notary Public)

EXHIBIT E



NON-FIRE SERVICE ACKNOWLEDGEMENT

Property address or Location:

Total Acreage of Property _____

Parcel Assessor Number (APN#) _____

Legal Description (☐ see attachment):

The City of Phoenix, a municipal corporation will provide domestic water service for the property upon application and payment of prevailing fees. The owner/developer acknowledges that the domestic water service to be provided to the property by the City of Phoenix does not provide for industry accepted fire flows, or that there are no fire hydrants available within 500 feet from property. The owner/developer further acknowledges that the City of Phoenix cannot provide adequate water volume and/or pressure to the property as may be necessary to fight fires which may occur within the property. Fire service by others may be available through a fire department or fire fighting service company. However, water supply for fighting fires for this property would need to be supplied and transported by these providers.

Developer / Owner Name: _____
(Please Print)

(Signature) Date

Attested by: _____ Notary Seal:

☐ Attachment: Exhibit (check box if applicable)

c: Town of _____ Engineer
Maricopa County Planning Department

NON-FIRE SERVICE ACKNOWLEDGEMENT FORM PROCEDURES

1. Acknowledgement form must be filled out by the property owner/developer.
2. Attach an exhibit (8 ½ x 11) which will reflect a current accurate legal description of the property, as recorded on the current deed. If the parcel is a new lot split, the exhibit must also include a drawing of the land survey showing all lots and stamped by a registered land surveyor. The land survey must be approved by the Maricopa County Planning Department or the proper agency prior to the water service application. If water service is being requested for more than one lot, each parcel must have its own form with the correct parcel assessor number.
3. Property owner/developer is to record with the Maricopa County Recorder the Acknowledgement with all attachments and submit a copy of the recorded documents to the Water Services Department, Technical Support Counter Staff prior to requesting water service. If a development includes CC&R's, the developer must also record (or amend existing) CC&R's to include the suggested wording shown below, and submit a recorded copy of the new recorded CC&R's to the Technical Support counter staff prior to approval.

“The domestic water service to be provided to the property by the City of Phoenix does not provide for industry accepted fire flows, and therefore, the City of Phoenix cannot provide adequate water volume and/or pressure to the Property as may be necessary to fight fires which may occur within the property.”



Report to the City Council
Regular City Council - 22 Oct 2019

Agenda Section: NEW BUSINESS

Subject: Quarterly Grant Report for FY 2020 Q1, for the period ending September 30, 2019

CEQA Determination: Not a CEQA project

Prepared By: Mandy Kellogg, Admin Services Mgr

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

This report covers grant activity for the 1st Quarter of Fiscal Year (FY) 2020.

DISCUSSION

New Awarded Grant Applications in FY 2020 1st Quarter

The City of St Helena was awarded three new grants during 1st Quarter of Fiscal Year 2020.

Agency	Project	Amount
Housing and Community Development (HCD) - SB2 Planning Grant	Updates to current zoning code in order to implement housing policies and directives identified in the General Plan and 2015 Housing Element.	\$ 160,000
Bullet Proof Vest Partnership	Purchase four bulletproof vests.	\$ 1,356
Metropolitan Transportation Commission (MTC) - TDA 3	Pratt and Elmhurst Crosswalk Improvements	\$ 50,000

Applications Pending

The City has three grant applications pending.

Agency	Project	Amount
CalOES/FEMA - HMPG	Purchase of generators and upgrading electrical panels to provide emergency backup power to City facilities.	\$ 495,675
Department of Alcoholic Beverage Control	Alcohol Policing Partnership Program - Training and education programs, decoy operations, and development of an Alcoholic Beverage - Responsible Beverage Sales and Service Ordinance.	\$ 40,000
Alzheimer's Foundation of America	Project Lifesaver Program to provide services to locate at-risk citizens that are prone to wandering.	\$ 5,000

CalOES/FEMA: Emergency Backup Power - A Notice of Interest was submitted to CalOES for an emergency backup power project and was determined to be eligible in February 2018. The total project cost is estimated at \$660,900 and requires a 25% cash match. Applications are being reviewed by CalOES and were to be submitted to FEMA for additional review on October 9, 2018; however, due to multiple disasters the review process was delayed. CalOES contacted the City on March 11, 2019 requesting a modification to the original application. Based on the type of projects that Hazard Mitigation Grants can fund it was determined that the City can only request a portable generator for a location if there was not a possible option to install a permanent generator. CalOES recommended a modification to the original application to include fixed generators where possible. The application was modified to include three fixed generators at the Library, Stonebridge Wells, and Flood Control Project. One portable generator was included in the application modification for Madrone Knoll due to site constraints. The modifications to the application were submitted to CalOES on March 20, 2019. On April 15, 2019, the City received notification that Cal OES has submitted the City's grant application to FEMA for grant review and funding consideration.

Department of Alcoholic Beverage Control: Alcohol Policing Partnership Program - An application was submitted to the Department of Alcoholic Beverage Control in March 2019. If eligible the City will receive funding to create training and education programs for licensed establishments, students and parents, and citizens. Funding will also be used for the Police Department will conduct decoy operations to further enforcement within the City. In addition, the City will develop a policy and procedure related to responsible beverage sales and service, which will assist with the development of an Alcoholic Beverage - Responsible Beverage Sales and Service Ordinance. The total amount of funding requested is \$40,000.

Alzheimer's Foundation of America: Project Lifesaver Program - The City submitted an application on June 30, 2019. If the application is approved the City will

receive funding for services and technology to locate at-risk citizens as quickly as possible that are prone to wandering and becoming lost. The total amount of funding requested is \$5,000.

Active Grants

These are grant awards with signed agreements. This chart identifies the grant award, required match, and percent expended. Staff is currently managing \$6.5 million in active grant funds.

Grant	Project	Award Amount	Additional Project Funding	% Grant Funds Expended	Notes
CENIC on behalf of Califa	Connection to CalRen Hub at St. Helena Public Library	Based on discounts applied	\$ -	0.0%	The CENIC connection was completed in March 2019.
Department of Water Resources (DWR)	Comprehensive Flood Control Project	\$2,371,333	\$20,000,000	100.0%	Holding \$237,000 in retention until Conservation Easement is completed.
Environmental Protection Agency (EPA)	Upper York Creek Ecosystem Restoration	\$987,876	\$987,876	4.5%	Project will move forward in one Phase during 2020.
CalTrans/Federal - OBAG2	Main Street Pedestrian Improvements	\$1,206,000	\$351,000	0.0%	Planning and design process for the Streetscape began February 2019.
SF Bay Area Integrated Regional Water Management (IRWM)	Upper York Creek Ecosystem Restoration	\$800,000	\$1,174,119	0.0%	Not eligible for reimbursement Grant share costs until required funding match is met.
Friends & Foundation	Enhancements for Library (PT Staff, Spanish/Youth/Adult Programs, Materials, Elsie the Cat, Supplies)	\$134,150	\$ -	25.8%	The first grant disbursement of \$33,538 was received July 2019.
Metropolitan Transportation Commission - TDA 3	Hunt Avenue Sidewalk Gap Closure	\$75,000	\$ -	0.0%	Currently in construction and project is anticipated to

					be completed at the end of October 2019.
Bulletproof Vest Partnership	Purchase of one bulletproof vest	\$327	\$327	0.0%	Pending reimbursement that was requested on 06/06/2019.
CalTrans/Federal - HSIP	Replacement of 1,175 lineal feet of guardrail on Silverado Trail that is located in the City limits of St. Helena	\$556,100	\$ -	0.0%	Design phase will begin Winter 2019 and construction is anticipated to begin 2020.
Department of Justice	Prop 56 - Hire law enforcement officer to manage programs educating and enforcing issues of underage tobacco use.	\$393,514	\$ -	13.3%	2nd quarter report was submitted July 2019 and is pending reimbursement. 3rd quarter report and 2nd invoice is due 10/15/2019.

Closed Out Grants

Grant	Project	Award Amount	Cash Match	% Grant Funds Expended	Notes
Department of Housing and Community Development - HOME	Home repairs for Low-Income individuals via 0% interest loans.	\$500,000	\$ -	89.6%	All project completion reports were received by HCD in September 2019. Annual reports will continue to be submitted per the program requirements.

Flood Projects

- Measure A – On December 19, 2017, the Napa County Flood Authority approved Amendment No. 12 to the Agreement authorizing disbursement of the remaining Measure A funds through its sunset in June 2018 which was estimated to be approximately \$5.3 million. In March 2018 the City received a disbursement for \$1,053,609 and in September the City received a disbursement for \$3,970,518. In October, the City paid a total of \$5,120,250 towards the balance of the SRF Loan. In September 2019, the City received the final disbursement from the County for the remainder of Measure A funds in the amount of \$51,918.

- Department of Water Resources (DWR) – Public Works staff is working on completing the conservation easement as a requirement of the DWR grant. Once completed, the City will receive \$237,000 still held by DWR.

Non-Profit Grant Applications

For FY 2018/19 a total of 17 applications were funded, totaling \$143,700 and a fee waiver in the amount of \$1,500. Two grantees has forfeited their award in the amount of \$10,000 each and one grantee has requested a 6 month extension that was approved on June 28, 2019. The grant funding period ended on June 30, 2019. Final reports were submitted by July 30, 2019 and all reimbursement requests were processed by August 2019. For FY 2018/19 \$107,665 in grant funds were expended, \$10,000 was extended to December 30, 2019, and \$26,035 was disencumbered.

For FY 2019/20 a total of 21 applications were funded. Upon adoption of the FY 2019/20 Operating Budget, grant agreements were sent to each of the grantees. As of June September 30th, the City has executed 17 grant agreements.

Community Enrichment Grants (Attachment 1)

- 11 Awards = \$50,000

Programmatic Grants (Attachment 2)

- 10 Awards = \$169,000

FISCAL IMPACT

There is no fiscal impact associated with this report.

RECOMMENDED ACTION

Receive and file report.

ATTACHMENTS

[FY 2019/20 Community Enrichment Grants](#)

[FY 2019/20 Programmatic Grants](#)

[1st Quarter Grant Report Presentation](#)

Attachment 1

<i>FY 2019/20 Community Enrichment Grant Applications</i>		
Applicant	Description	Adopted Funding
Boys and Girls Club	Power Hour - Homework Assistance Program	5,000
Community Organizations Active in Disaster (COAD)	COAD Community Response Table-Top Exercise	2,500
Friends of the Cameo	Arts in April 2020	10,000
Kiwanis Foundation St. Helena	St. Helena Kiwanis Foundations Scholarships	1,500
Music in the Vineyards	2019 Music in the Vineyards Community Outreach Program	2,500
NapaShakes	NapaShakes On Screen in St. Helena	4,500
Nimbus Arts	Free Community Festival & Event Art Activities	6,000
Saint Helena Community Band	Saint Helena Community Band Yearly Performances	5,000
St. Helena Choral Society	3rd Annual A Capella Festival	3,000
St. Helena Historical Society	"St. Helena: History a la Carte" Project - Didactic Panels/Storyboards and Travelling Trunks Museum	5,000
Vailima Foundation	Gallery and Exhibition Improvement Project	5,000
Total Funding		50,000

Attachment 2

<i>FY 2019/20 Programmatic Grant Applications</i>		
Applicant	Description	Adopted Funding
Boys and Girls Club	Teen Center	30,000
California Federation of Women	Spelling Bee & Community Christmas Family Adoption Program	1,200
Collabria Care	UpValley Village Fee Waiver Program	6,000
Community Organizations Active in Disaster (COAD)	COAD Community Preparedness Events	5,300
Mentis	Mentis Teens Connect Teen Mental Health Program	29,400
Our Town St. Helena	Organizational Development & Assistance to Marietta HOA	25,000
Rianda House	Senior Center Wellness and Enrichment Programs	30,000
St. Helena Farmers' Market	Market Match Program	2,500
St. Helena Little League	St. Helena Little League Uniforms & Equipment	10,000
Up Valley Family Centers	Community Connections and Immigration Assistance	30,000
Total Funding		169,400



CITY OF ST. HELENA

QUARTERLY GRANT REPORT

Fiscal Year 2020 1st Quarter, for the period ending September 30, 2019

Newly Awarded Grants

- *CA Department of Housing & Community Development – SB2 Planning Grant*
 - Zoning Code updates
 - Total Estimated Project Cost = \$500,000
- *Bullet Proof Vest Partnership*
 - Purchase 4 new bullet proof vests
 - Total Estimated Project Cost = \$3,124
 - Requires Match = Estimated at \$1,768
- *Metropolitan Transportation Commission – TDA 3*
 - *Pratt and Elmhurst Crosswalk Improvements*
 - Total Estimated Project Cost = \$80,000

Pending Grant Applications

- *CalOES/FEMA HMGP – Emergency Backup Power*
- *Department of Alcoholic Beverage Control – Alcoholic Policing Partnership Program*
- *Alzheimer's Foundation of America – Project Lifesaver*

Active Grants Highlights

- *Upper York Creek Ecosystem Restoration*
 - *Environmental Protection Agency (EPA)*
 - *SF Bay Area Integrated Regional Water Management (IRWM)*
- *Friends & Foundation: Library Enhancements*
- *Metropolitan Transportation Commission – TDA 3: Hunt Avenue Sidewalk Gap Closure*
- *Department of Justice: Prop 56 Tobacco Grant*

Closed Grants Highlights

- *Department of Housing and Community Development:
HOME Grant*

Non-Profit Grants

- *Fiscal Year 2018/19*
 - Executed 17 Grant Agreements
 - \$107,665 grant funds expended
 - Two organizations forfeited grant funds
 - One organization approved for an extension
- *Fiscal Year 2019/20*
 - 21 applications funded
 - Community Enrichment – 11 Awards = \$50,000
 - Programmatic – 10 Awards = \$169,000

Questions



Report to the City Council
Regular City Council - 22 Oct 2019

Agenda Section: NEW BUSINESS

Subject: Caltrans Presentation on Highway 29 Sulphur and York Creek Bridges Barrier Rails Upgrade Project

CEQA Determination: CEQA will be completed as part of project design

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 California Department of Transportation (Caltrans) is in the environmental phase for a proposed Barrier Rails Upgrade Project over both Sulphur Creek and York Creek. The projects are currently planned for construction in 2024.

DISCUSSION

Caltrans recently held an initial coordination briefing with local agencies in St. Helena on Wednesday, October 9 to discuss the proposed projects as they will have traffic implications. Caltrans is planning a public scoping meeting for St. Helena residents and businesses in early November and will be providing a date, time and location as soon as it is available.

RECOMMENDED ACTION

Receive, discuss, and provide feedback on Caltrans presentation.

Hopper Slough Bridge Replacement Project

State Route 128 (Rutherford Road)



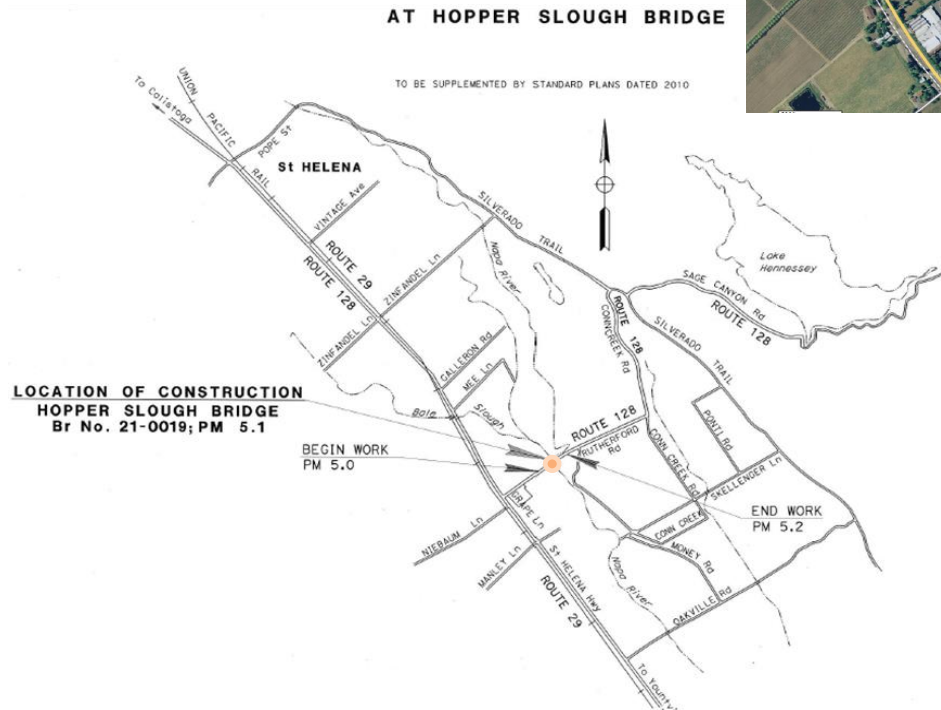
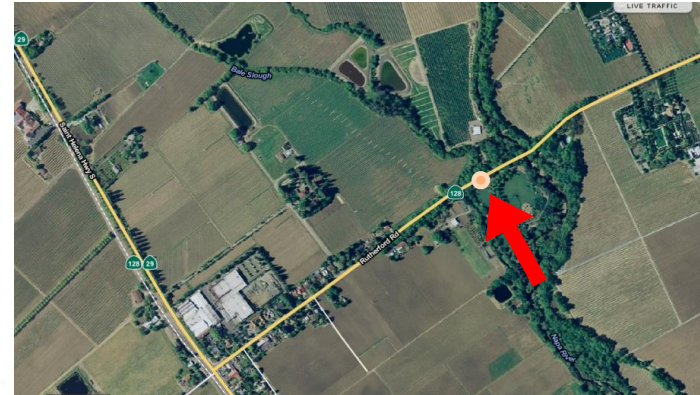
Presentation Outline

1. Project Location
2. Project Description/Complexities
3. Interim Repair Completed in May 2014
4. Proposed Project/Construction Alternatives
5. Schedule



Project Location

Hopper Slough Bridge (BR# 21-0019)
In Napa County Route 128 PM 5.12



Project Description/Complexities

Replace Hopper Slough Bridge in Napa County on State Route 128 (Rutherford Road) at Post Mile 5.12

Environmental:

- CEQA EIR and NEPA EA is Expected
- Loss of Oak Tree Canopy has Potential to Cause Significant Environmental Impacts
- Permits include 1602(Streambed Alteration), 404(Army Corps of Engineers), 401(Water Quality), and Biological Opinions from NMFS and USFWS
- Compensatory, Visual, and Off-Site Tree Mitigation Expected
- Community Impact Assessment Required During Env. Phase

R/W:

- Two Temporary Construction Easements is Anticipated
- Utilities Verification Potholing Will be Performed in Design Phase



2014 Repair Work



A section of the roadway has settled.



2014 Repair Work



The reinforced concrete Hopper Slough Bridge was built in 1921



The structure carries more than 2,000 vehicles a day.



The spall in the face of Abutment 1 was repaired in Spring 2014.



Additional cracking was noted in early May during the temporary repair of Abutment 1.

Existing Condition

NAP-128-Hopper Slough Bridge

field picture 10/27/2015

Looking East



Existing Condition

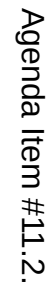
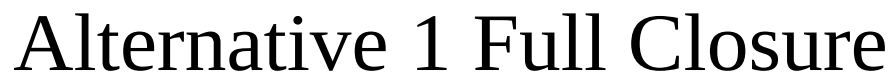
Looking West



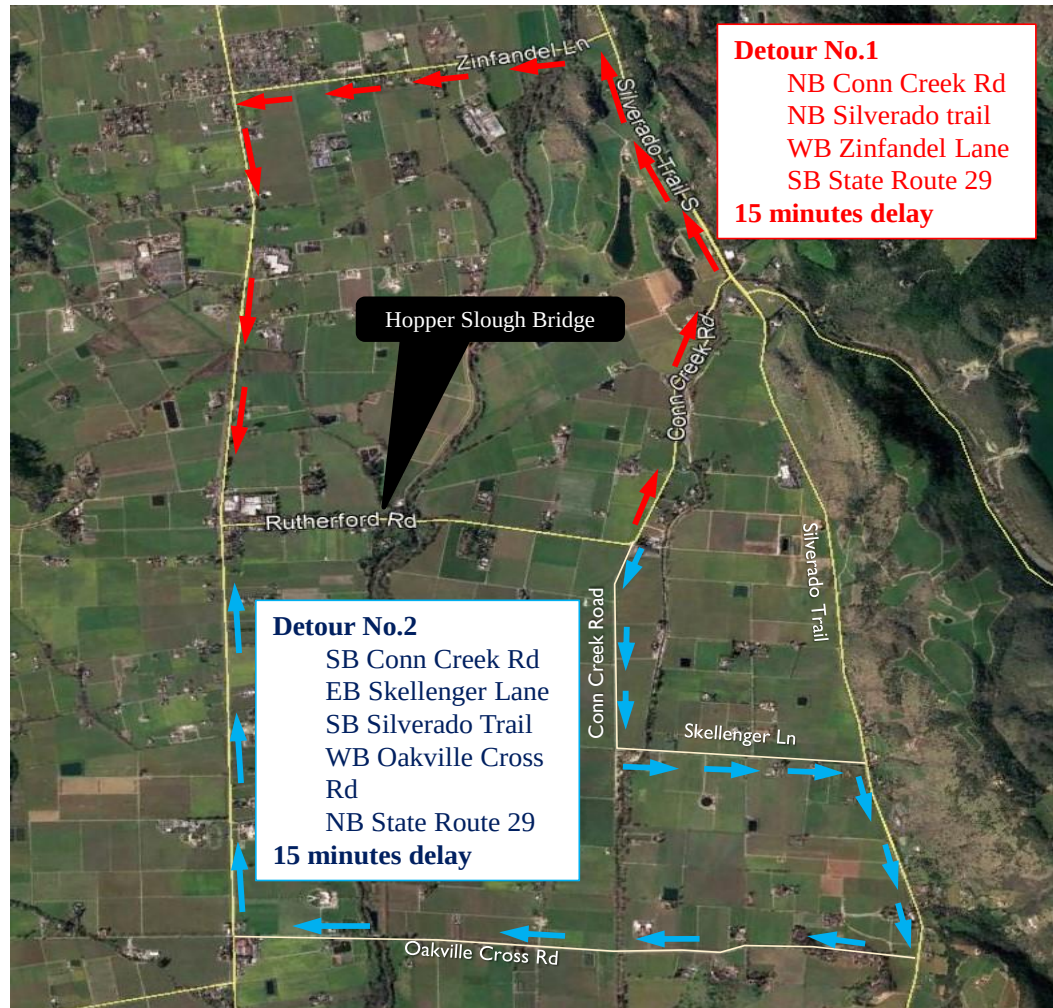
Proposed Project/ Construction

- Replace 41ft Long X 22ft Wide Bridge with 64ft Long X 44ft Wide Single-Span Bridge
- Accelerated Bridge Construction Methods Including Precast Abutments and Precast Voided Slabs will be used
- Also, H Piles that Utilize Driving Shoes to Minimize Time to Construct the Foundation Elements will be used
- **Two alternatives are proposed for traffic control:**
 - Alternative 1: Traffic to be Detoured Around the Project Site Through Local Roads
 - Alternative 2: A Temporary One-Lane Prefabricated Modular Steel Bridge with Temporary Abutments will be Constructed to Route Traffic Off the Existing Structure

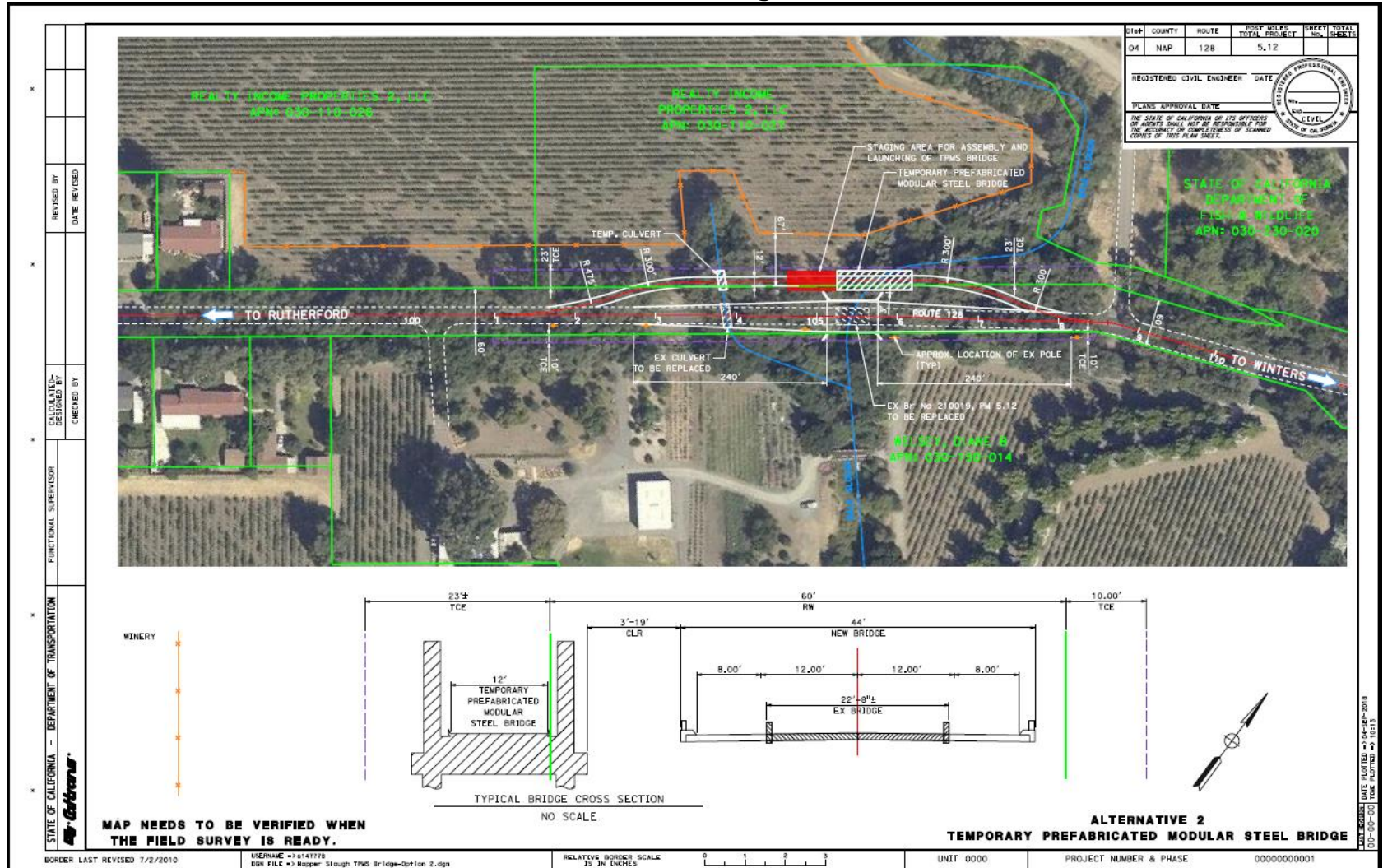




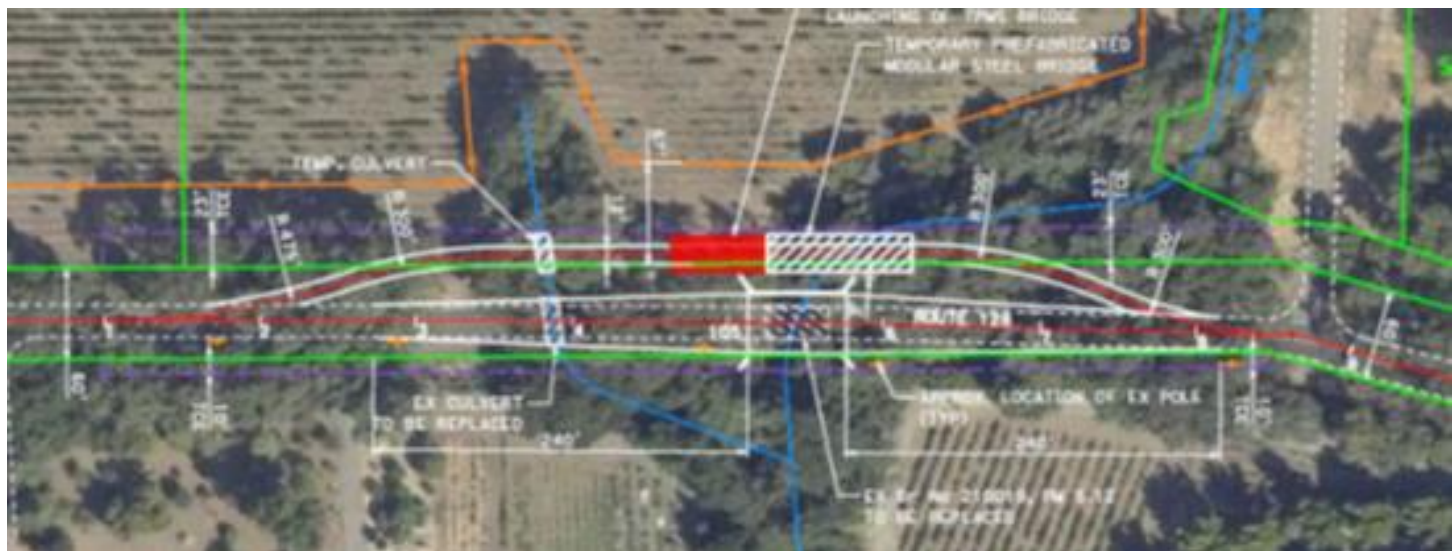
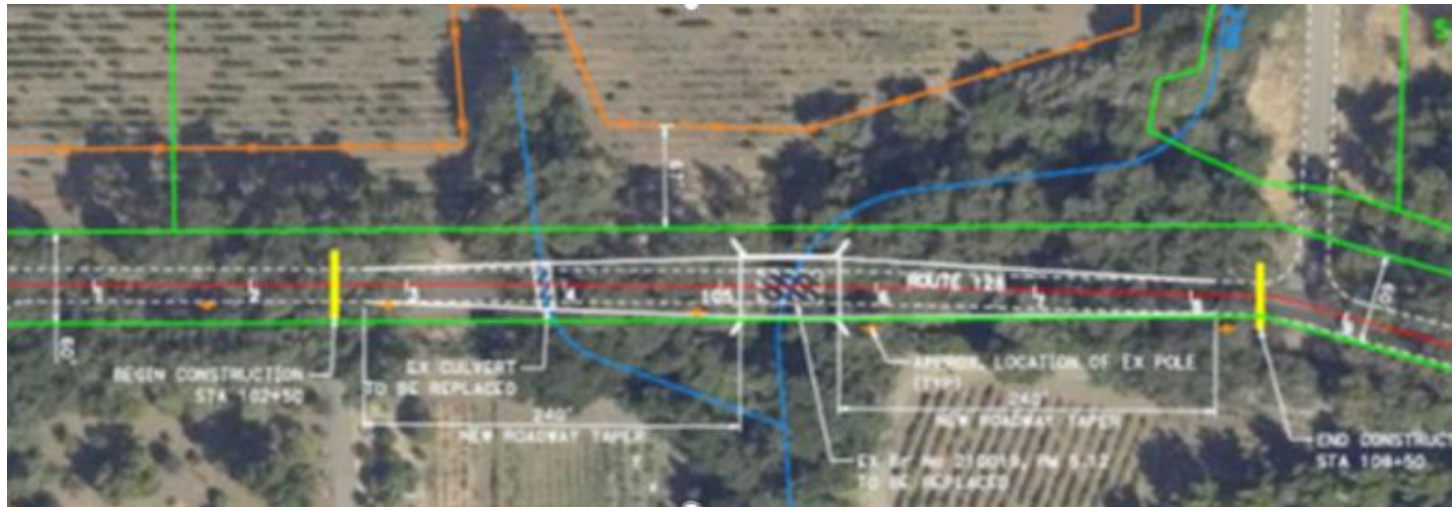
Alternative 1 Detours Plan



Alternative 2 One-Way Traffic Control



Comparison of Alternatives 1 & 2



Alternatives 1 & 2 Tree Count Impact

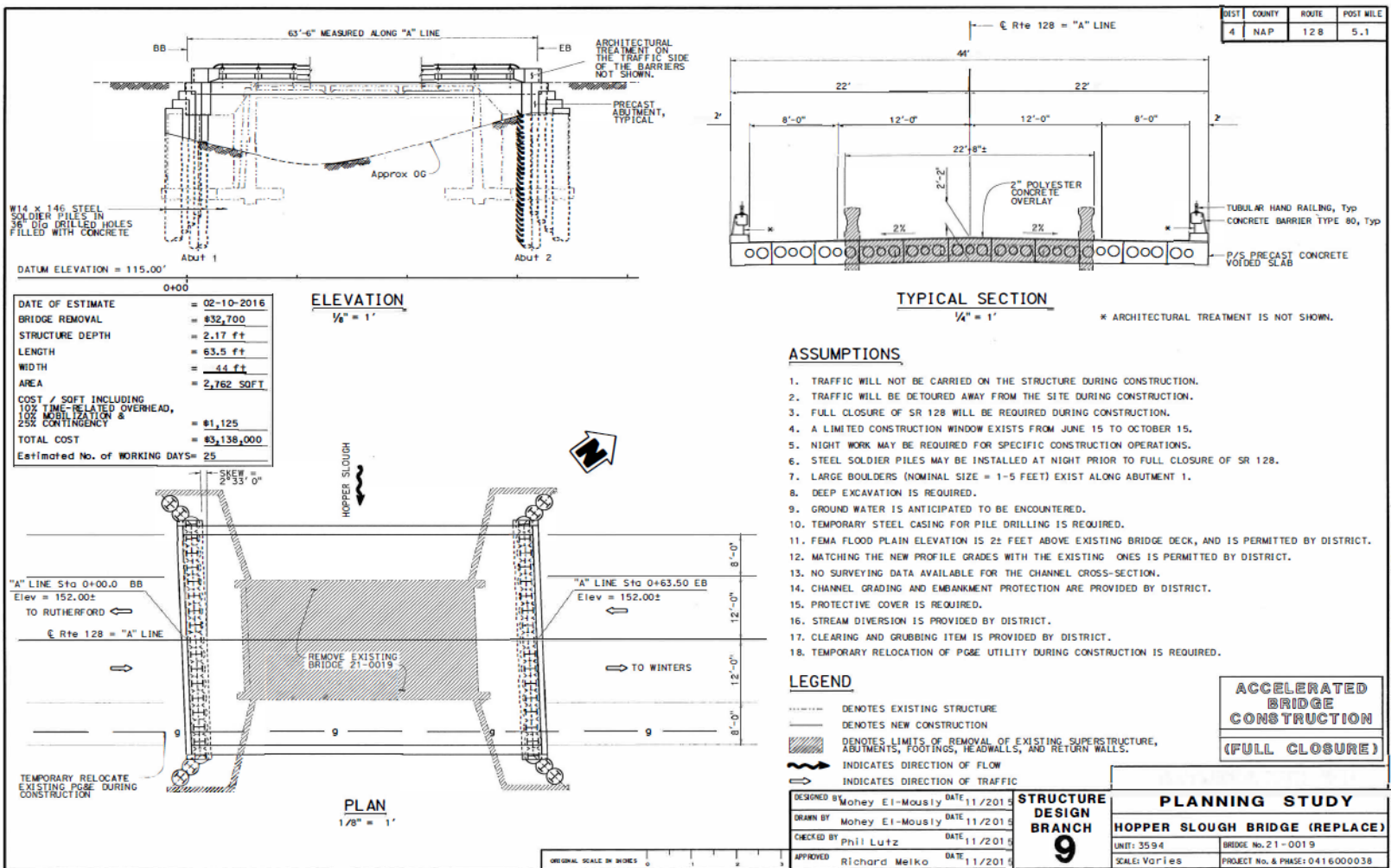
Hopper Slough	Shoulder Width	Trees Removed
Full Closure Alternative one	8'	27
	6'	22
	4'	17

Hopper Slough	Shoulder Width	Trees Removed
Temporary Bridge Alternative Two	8'	50
	6'	49
	4'	48



Preliminary Bridge Design Plan

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION - DIVISION OF STRUCTURES



Schedule

Project Milestones		Milestone Date (Month/Year)
PROGRAM PROJECT	M015	07/2018
BEGIN ENVIRONMENTAL	M020	07/2018
PA & ED	M200	10/2020
PS&E TO DOE	M377	10/2021
DRAFT STRUCTURES PS&E	M378	12/2021
RIGHT OF WAY CERTIFICATION	M410	04/2022
READY TO LIST	M460	05/2022
AWARD	M495	11/2022
APPROVE CONTRACT	M500	12/2022
CONTRACT ACCEPTANCE	M600	12/2024
END PROJECT	M800	12/2026

Public Scoping Meeting: Mid-November 2019

Public Hearing Meeting: May 2020

Current Construction Budget: \$7.8million

Current Construction Year: Summer 2023



End of Presentation

Alternative 1

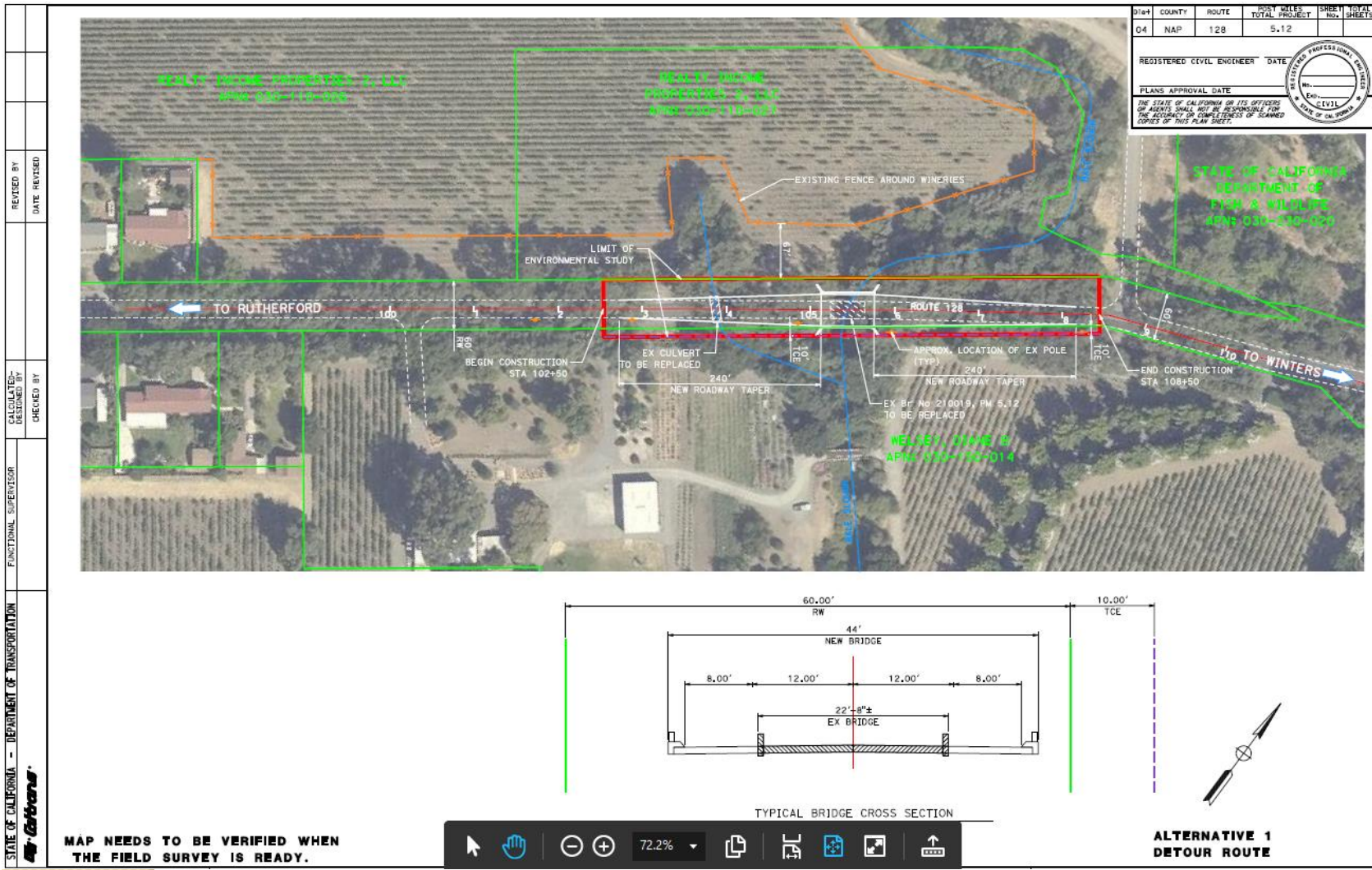
- This alternative will require full closure of SR 128
- It will take one season
- Existing bridge will be removed & reconstructed in one stage
- New structure will be constructed using Accelerated Bridge Construction methods including H pile foundation, precast abutments & precast voided slabs
- Traffic will be detoured around the project location as the highway will be closed
- Two alternative detour routes are developed- both Detour 1 or Detour 2 cause additional 15 minutes of travel time
- This alternative reduces the construction footprint, time and cost, as well as environmental impacts
- Existing R/W will accommodate all staging and storage of construction materials



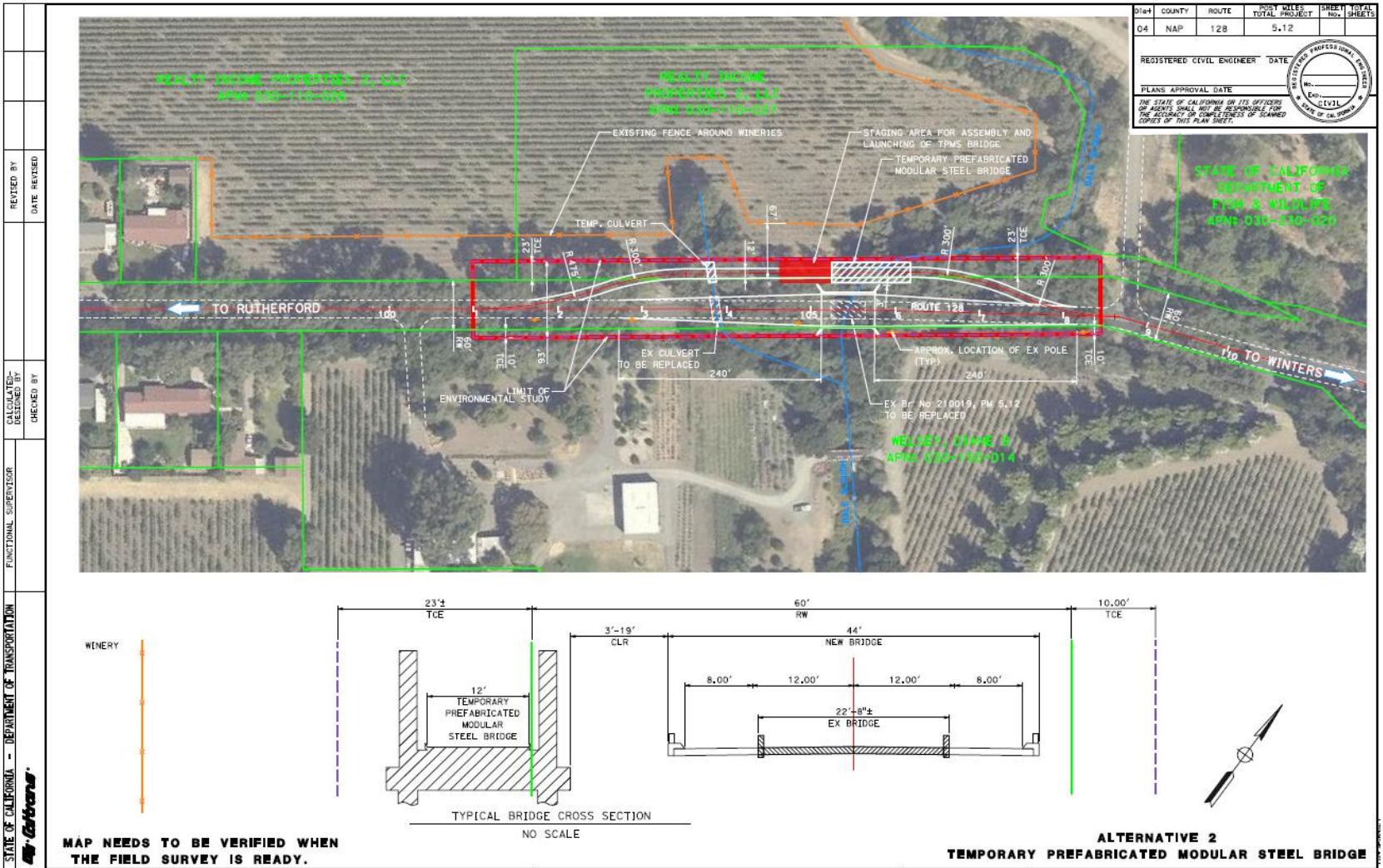
Alternative 2

- SR 128 remains open with some delay due to the one-way traffic
- Construction duration will be longer
- There will be increased cost associated with the construction and removal of the temporary bridge
- One-way traffic control signal will be installed & maintained
- Larger area will be disturbed, so more trees need to be removed & there will be greater environmental impacts
- Additional temporary easement will be required to accommodate the new alignment of the highway and temporary bridge, as well as greater disturbed area for the contractor to store equipment and materials





MAP NEEDS TO BE VERIFIED WHEN
THE FIELD SURVEY IS READY.



Sulphur and York Creek Bridges

Bridge Rails Replacement

State Route 29 in St. Helena PM 28.43 and 29.29



Sulphur Creek Bridge



York Creek Bridge

Presentation Outline

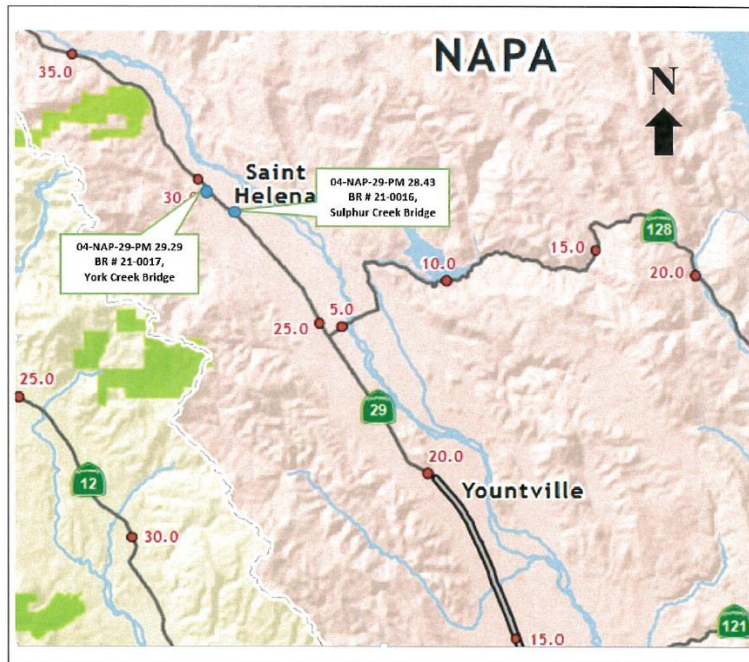
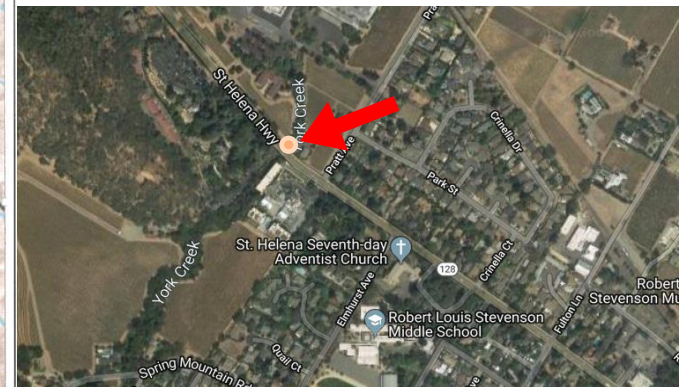
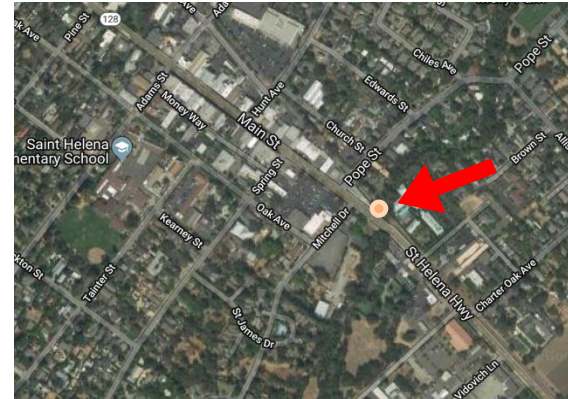
1. Project Location
2. Project Description/Complexities
3. Existing Conditions
4. Project Alternatives/Construction
4. Project Schedule
5. Questions/Comments



Project Location

Sulphur Creek Bridge (BR# 21-0016)
In Napa County Route 29 PM 28.43

York Creek Bridge (BR# 21-0017)
In Napa County Route 29 PM 29.29



Project Description

Sulphur Creek Bridge (2 Alternatives):

Alt. 1-Upgrade bridge rails without widening for 4ft. NB, and 8ft. SB shoulders

Alt. 2-Widen NB 4ft. & upgrade bridge rails for 8ft. shoulders

York Creek Bridge (1 Alternative Only):

Widen SB 1ft. & upgrade bridge rails to accommodate the 6ft. NB, 8ft. SB shoulders and the 6ft. SB sidewalk.



Project Complexities

Environmental:

- EIR (Env. Impact Report) and EA (Env. Assessment) is expected.
- The replacement of the existing stone bridge rails have potential to cause controversy within the city of St Helena due to the architectural significance. The current railings provide a rustic feeling consistent with the architecture of St. Helena. Neither bridges are on the National Register of Historic Places, however, they are listed in City of St. Helena's Master List of Historic Resources and will likely be considered Historical Resources for CEQA compliance.
- Environmental permits include 1602(Streambed Alteration), 404(Army Corps of Engineers), 401(Water Quality), Incidental Take permit from CDFW and Biological Opinions from NMFS and USFWS.

R/W:

- Additional Right of Way is required for both bridges.
- Verification of utilities will be completed during PS&E (Design Phase).
- Relocation of PG&E transmission line will be required prior to construction on both bridges



Existing Conditions At Sulphur Creek Bridge
Northbound Side: Gas Line Attached To Bridge With Straps;
Pedestrian Walkway And Napa Valley Wine Train Railroad Tracks
Southbound Side: Pedestrian Walkway With Utilities Running
Underneath. SB Side Previously Widened



LOOKING NORTH



LOOKING SOUTH

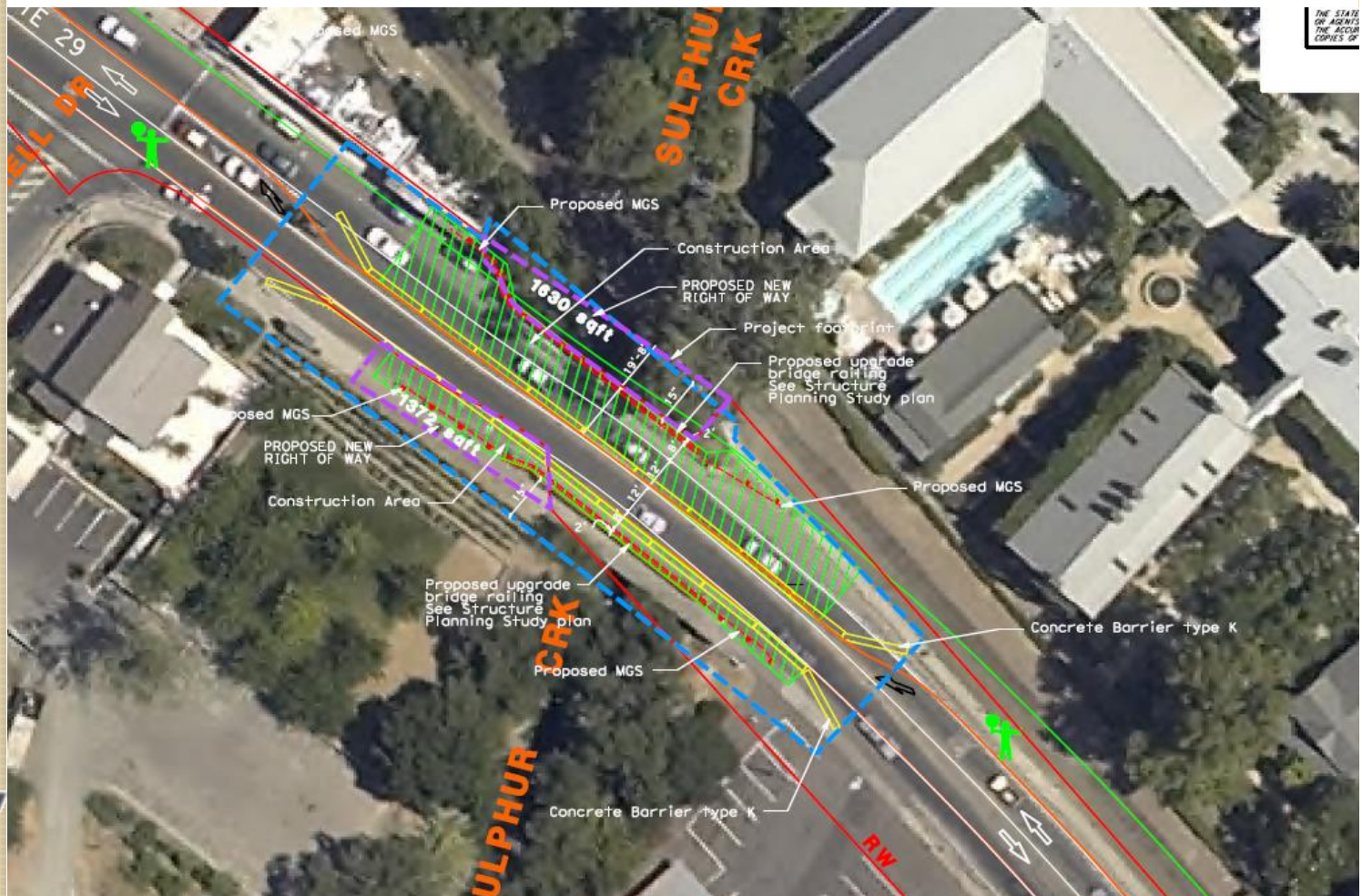


Existing Conditions at York Creek Bridge
Utilities (Light Poles, Internet Device, PG&E Gas
Transmission Line), and Beringer Winery Wooden Walkway



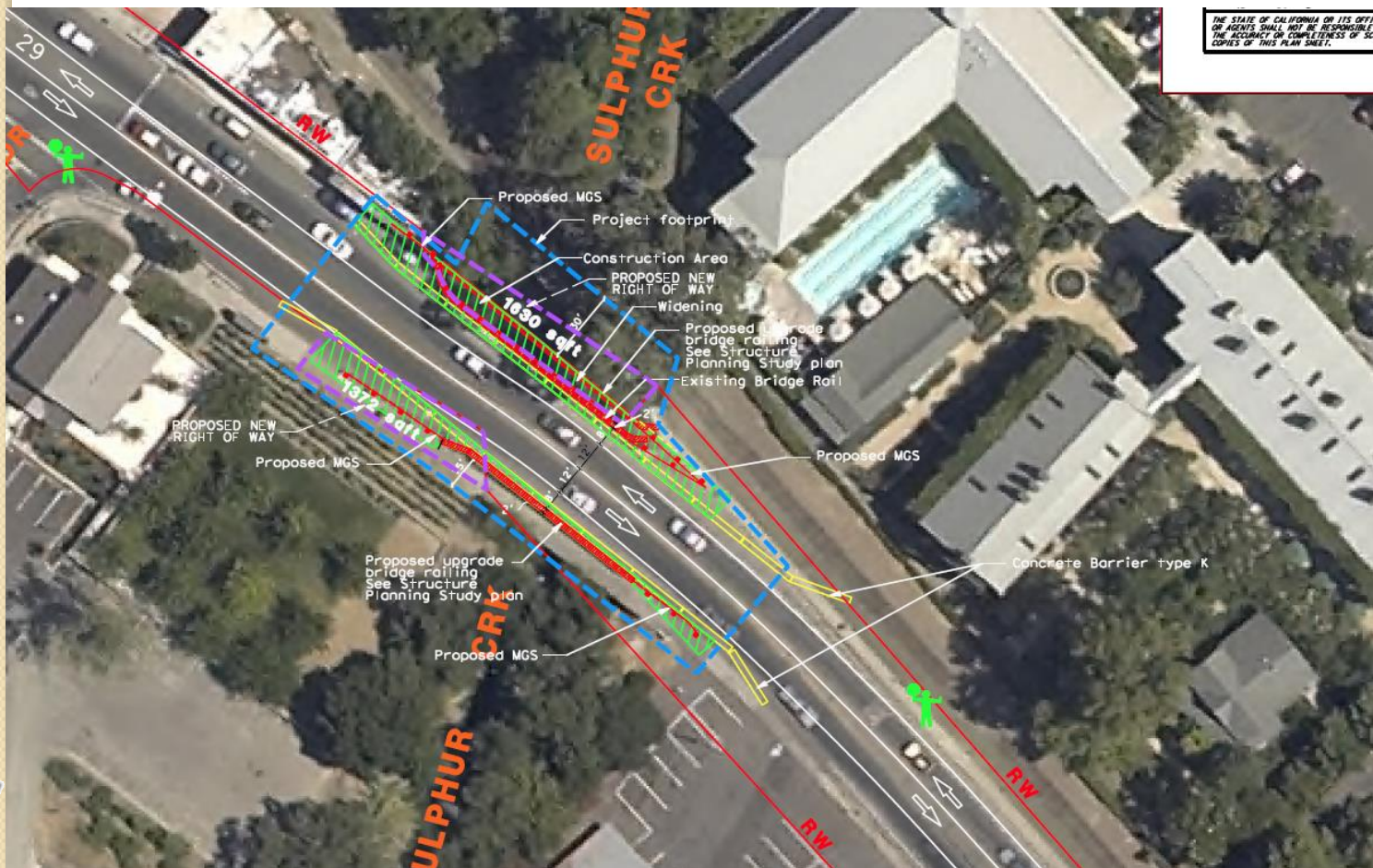
Sulphur Creek –Alt. 1

NB Lane Closed to Construct the Barrier Slab



Sulphur Creek- Alt.2

Widen NB 4'-Two 12ft. Lanes Open



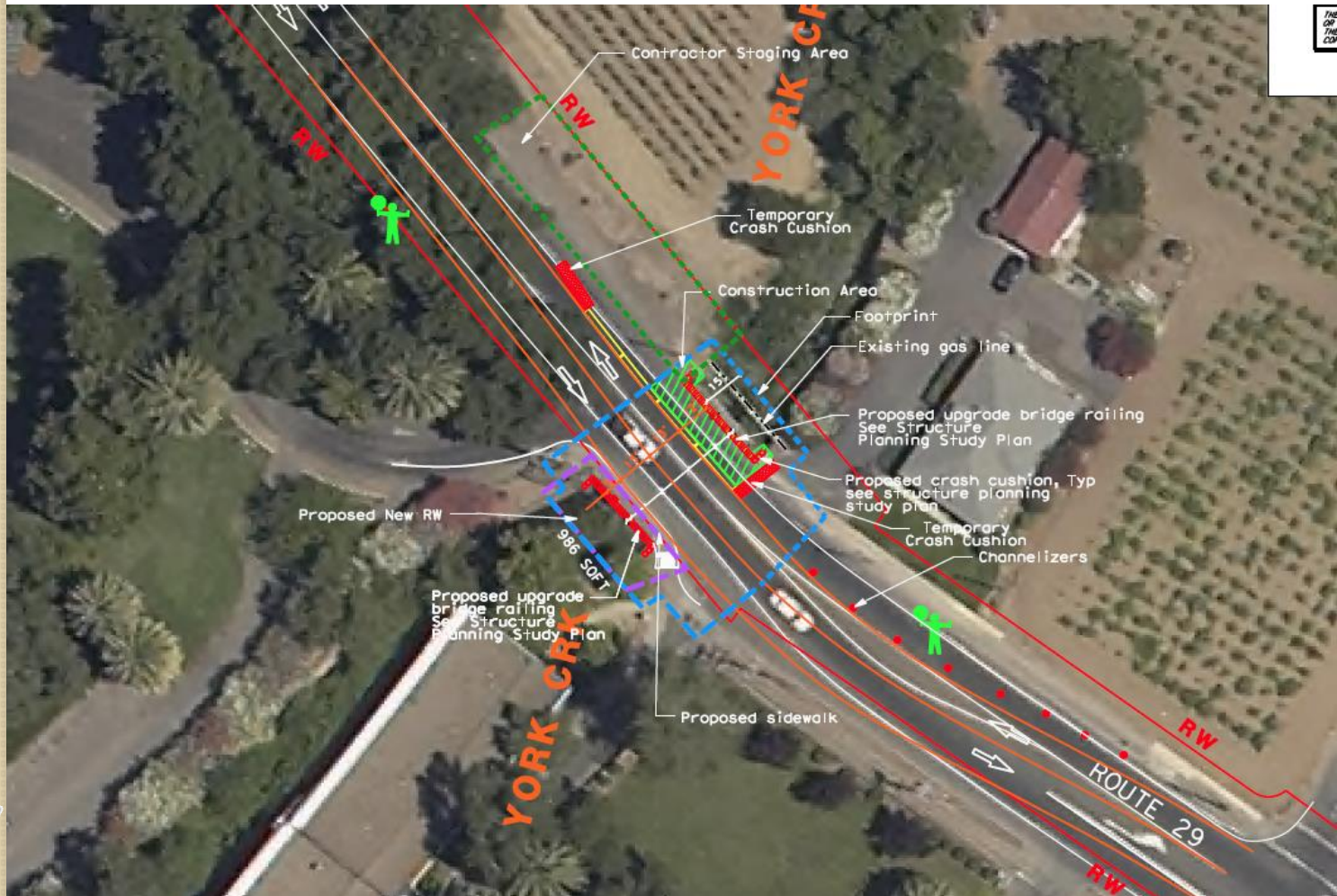
York Creek Construction-Stage 1

Widen SB 1'-Two 11ft. Lanes Open



York Creek Construction-Stage 2

Open in Both Directions with 13ft. Lanes



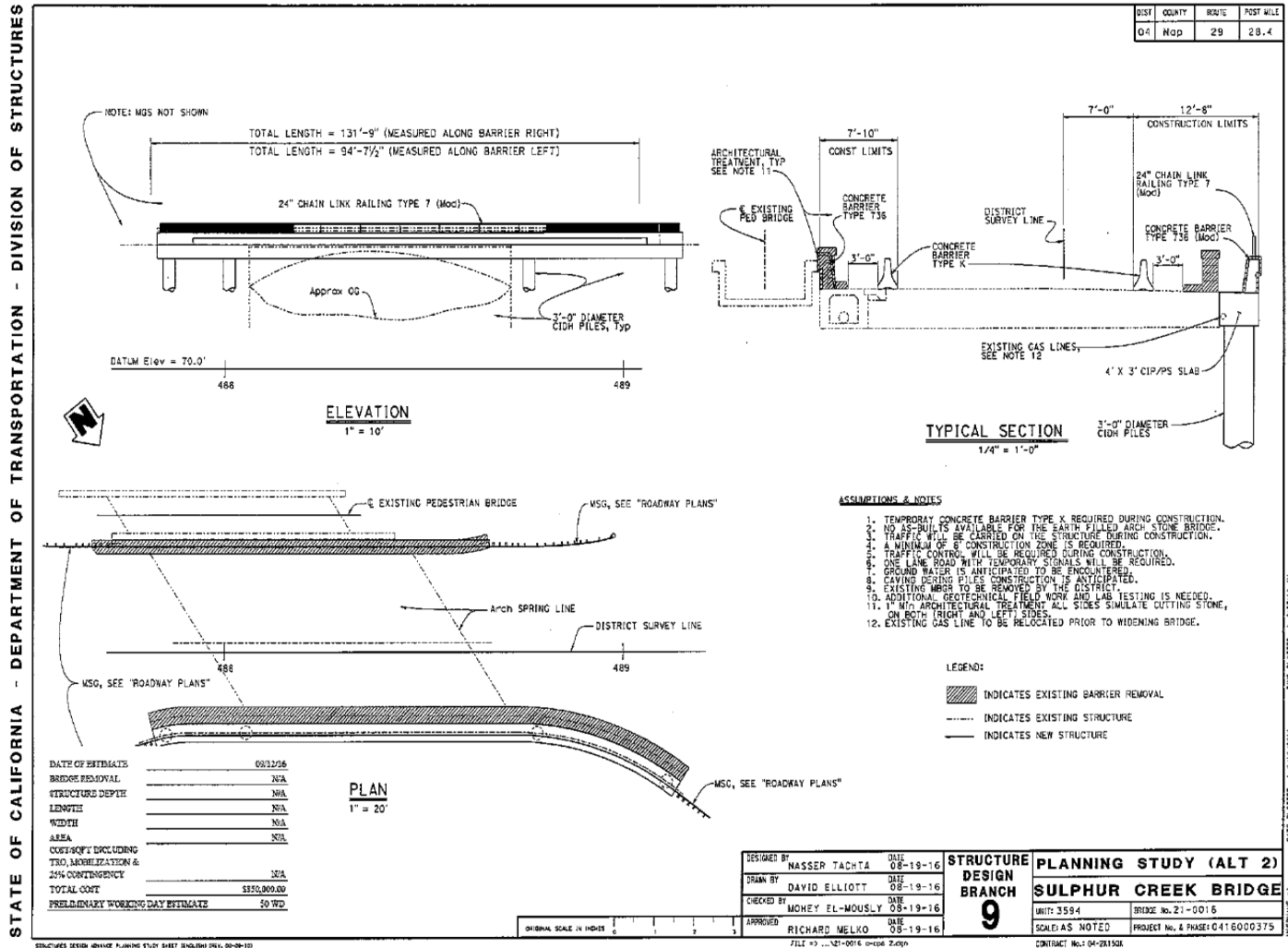
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Agenda Item #11.2.

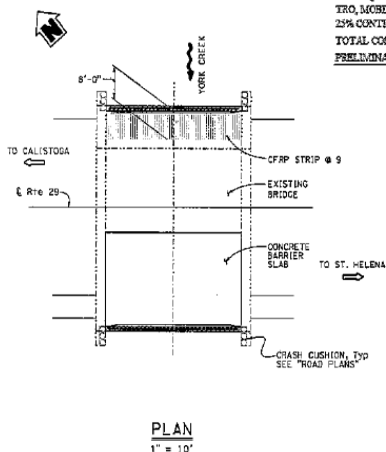
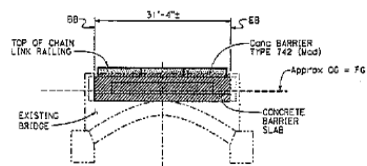


Proposed Sulphur Creek Alt. 2

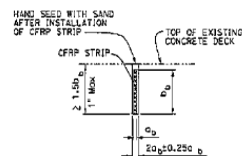


Proposed Project: York Creek

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION - DIVISION OF STRUCTURES

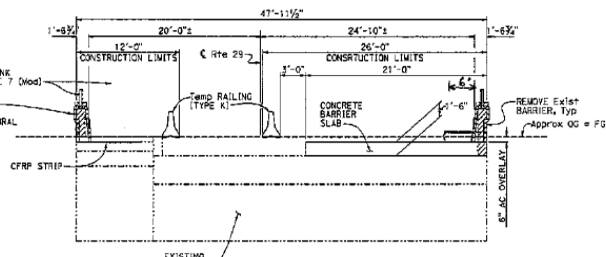


DATE OF ESTIMATE	09/12/16
BRIDGE REMOVAL	N/A
STRUCTURE DEPTH	N/A
LENGTH	N/A
WIDTH	N/A
AREA	N/A
CONTRACT INCLUDING TRO, MOBILIZATION & 25% CONTINGENCY	N/A
TOTAL COST	\$395,000.00
PRELIMINARY WORKING DAY ESTIMATE	30 W/D

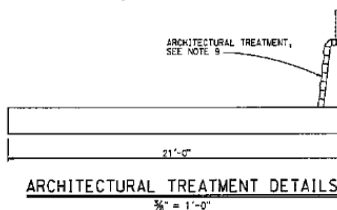


CFRP STRIP TYPICAL SECTION
NO SCALE

NOTES:
GROOVE SANDLOTS MUST TAKE PLACE AFTER OVERHANG CONCRETE REACHES A MINIMUM COMPRESSIVE STRENGTH OF 3,25 KSI.
C₉ = HORIZONTAL DIMENSION FOR MINIMUM CROSS SECTION 2 6.11 SO IN
D₉ = 0.63" OR EQUIVALENT



TYPICAL SECTION
1" = 5'



LEGEND:
CFRP - Carbon Fiber Reinforced Polymer
--- Indicates existing structure
/// Indicates concrete removal

ASSUMPTIONS & NOTES

1. TEMPORARY CONCRETE BARRIER TYPE K REQUIRED DURING CONSTRUCTION.
2. NO AS-BUILTS AVAILABLE FOR THE EARTH FILLED ARCH STONE BRIDGE.
3. TRAFFIC WILL BE CARRIED ON THE STRUCTURE DURING CONSTRUCTION.
4. A MINIMUM OF 12' CONSTRUCTION ZONE IS REQUIRED.
5. TRAFFIC CONTROL WILL BE REQUIRED DURING CONSTRUCTION.
6. GROUND WATER IS ANTICIPATED TO BE ENCOUNTERED.
7. EXISTING MGR TO BE REMOVED BY THE DISTRICT.
8. ASSUMING THE THICKNESS OF EARTH ABOVE CROWN IS MINIMUM 20 INCHES.
9. 1" MIN ARCHITECTURAL TREATMENT ALL SIDES SIMULATE CUTTING STONE ON BOTH (RIGHT AND LEFT SIDES).

DESIGNED BY N. Tachta	DATE 08-18-16
DRAWN BY C. Dickerson	DATE 08-18-16
CHECKED BY M. El-Mously	DATE 08-19-16
APPROVED R. Melko	DATE 08-19-16

STRUCTURE
DESIGN
BRANCH
9

PLANNING STUDY	
YORK CREEK BRIDGE	
UNIT: 3594	BRIDGE No. 21-0017
SCALE: As Noted	PROJECT No. & PHASE: 0416000375
CONTRACT No. 04-2E150A	

ORIGINAL SCALE IN INCHES 0 1 2 3

FILE # 14-04-00004101-0011-0-000-000

DATE PLOTTED: 09/14/2016 TIME PLOTTED: 9:30:17 AM USERNAME: c3



Schedule

<u>Milestone (MS)</u>	<u>MS Date</u>
CIRC DPR & DED EXT	09/01/20
PA & ED	03/01/21
PROJ PS&E	01/01/23
R/W CERT	04/01/23
RTL	04/03/23
HQ ADVERT	07/24/23
AWARD	09/01/23
APPROVE CONTRACT	10/20/23
CONTRACT ACCEPT	12/01/25

Public Scoping Meeting: November 5, 2019 From 5:30 to 7:30 PM

Public Hearing Meeting: October 2020

Current Construction Budget: \$4.1 million

Current Construction Year: Summer 2024



Public Scoping Meeting



STATE ROUTE 29 SULFUR AND YORK CREEKS BRIDGE RAILS REPLACEMENT PROJECT



Caltrans proposes to replace the rails to meet current standards on two bridges on **State Route 29 in St. Helena**. The project is in the Environmental phase and Caltrans is evaluating alternatives in an effort to avoid adversely affecting the environmental resources within the vicinity of the project area.



YOU ARE INVITED TO A PUBLIC SCOPING MEETING OPEN HOUSE. ALL ARE WELCOME.

OPEN HOUSE

Tuesday, November 5, 2019, 5:30-7:30 p.m.

Grace Episcopal Church, 1314 Spring Street, St. Helena, CA 94574

You are invited to obtain more information on the project online at
<https://dot.ca.gov/caltrans-near-me/district-4>

You may provide comments on this project during the comment period from
October 23, 2019 to November 20, 2019.

You may provide comments on this project during the comment period from
October 23, 2019 to November 20, 2019 to the following:

CALTRANS DISTRICT 4

ATTN: Nathan Roberts, Associate Environmental Planner

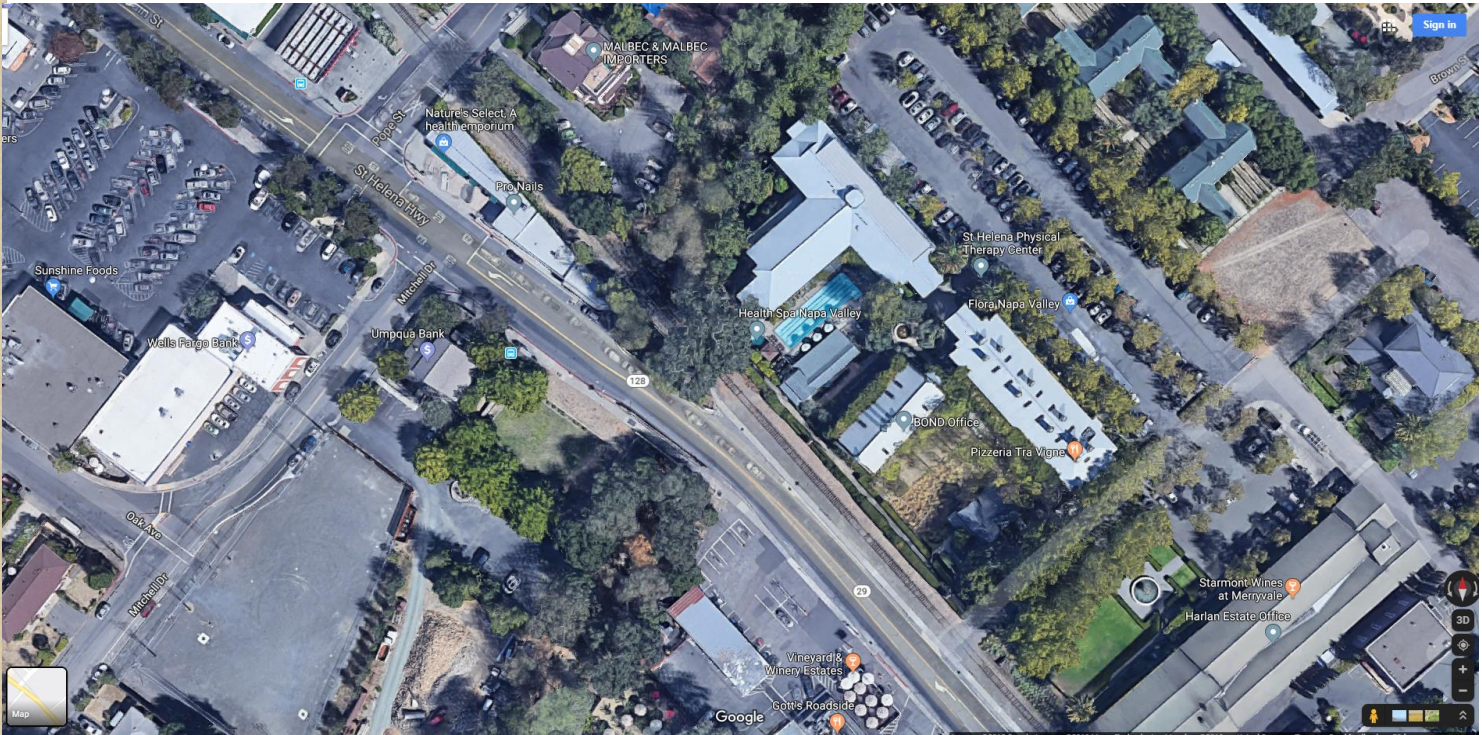
P.O. Box 23660, Office of Environmental Analysis, MS-8B

Oakland, CA 94623-0660

(510) 286-6303 or Nathan.Roberts@dot.ca.gov



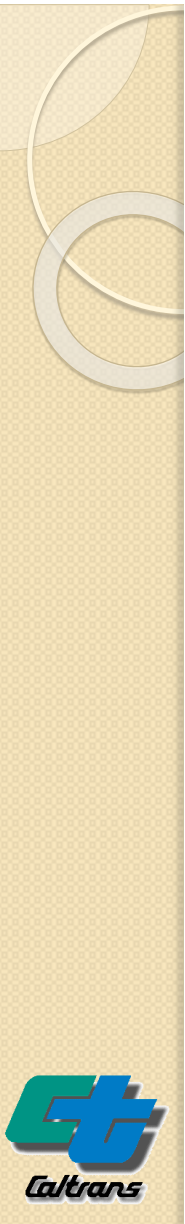
Sulphur Creek



York Creek



End of Presentation/Questions





Report to the City Council
Council Meeting of October 22, 2019

Agenda Section: **New Business**

Subject: Consideration and adoption of Resolution of the City Council of the City of St. Helena Regarding the Refund Of Defense Cost On Appeal Application of Joseph C. McGrath Pursuant to St. Helena Municipal Code §17.08.060 In A Range From \$0.00 To An Amount Not To Exceed \$87,201.37

CEQA Determination: Not a "project" as defined in Section 15378(a) subject to CEQA; further, even if deemed a "project" subject to CEQA, exempt from CEQA under the common sense exemption set forth in Section 15061 (b)(3), in that it can be seen with certainty that the proposed action will have no impact on the environment.

Prepared By: Michael G. Biddle, City Attorney

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

INTRODUCTION

At its regular meeting of August 27, 2019, the City Council approved Ordinance No. 2019-6 amending and adding provisions to the City of St. Helena Municipal Code (SHMC) authorizing applications for refunds of the City's defense costs on appeal to residential projects. The Ordinance became effective on September 26, 2019. A copy of the Ordinance is appended to this report as Attachment 1.

On September 26, 2019, Joseph C. McGrath filed an application regarding his residential project at 632 McCorkle Avenue, as provided for in Section 17.08.200 of the SHMC. A copy of the Refund Of Defense Cost On Appeal Application of Joseph C. McGrath ("Application") is appended to this report as Attachment 2. As noted in the Application, Mr. McGrath is requesting to be released of his obligation to indemnify the City for the defense costs incurred by the City in the proceeding before the Court of Appeal in

McCorkle Eastside Neighborhood Group v. City of St. Helena. The City incurred \$87,201.37.

DISCUSSION

Section 17.08.060.C of the SHMC provides that the City Council may authorize a refund of the City's defense costs on appeal paid by Applicant in accordance with Section 17.08.200. 26.

Section 17.08.200.A.(c) defines what constitutes a "residential project". The project at 632 McCorkle Avenue is clearly a "residential development project" as defined in Section 17.146.020 of the SHMC and the permit application for the project was submitted to the City after January 1, 2016. However, the project must also satisfy the requirements of subsections A, B or C of Section 17.146.050 of the SHMC and, if in compliance with subsections A or B of Section 17.146.050 of this code, the units must also qualify towards satisfying the City's regional housing needs allocation for households of very low incomes, lower, or moderate incomes.

Subsection B of Section 17.146.050 is the City's alternative equivalent process and on March 13, 2018, the City Council approved Mr. McGrath's alternative equivalent proposal pursuant to Resolution No. 2018-38, a copy of which is appended to this report as Attachment 3. Pursuant to the approved alternative equivalent proposal, the unit at 1246 Grayson Avenue is to be deed-restricted for 20 years for rental to low-income households and the unit at 1244 Grayson Avenue is to be deed restricted for 20 years for rental to moderate income households. An Affordable Housing Agreement has been prepared to implement the aforementioned restrictions and has been fully executed and acknowledged and is in the possession of the City Clerk for recording. Thus, the Application relative to the project at 632 McCorkle Avenue satisfies the definition of a "residential project".

A review of the final decision on appeal issued in McCorkle Eastside Neighborhood Group v. City of St. Helena confirms that the decision of the City approving the residential project was affirmed. Accordingly, in accordance with Section 17.08.200.D, the City Clerk scheduled the Application for consideration by the City Council on October 8, 2019. Consistent with the amount identified in the Application, the City Attorney and Finance Director confirm that the City's defense costs on appeal were \$87,201.37 as noted below:

McGrath Appeal Related Costs		
Year	Month	Amount
2017	December	419.12
2018	January	4,065.47
2018	February	451.36
2018	March	1,128.40
2018	April	
2018	May	2,708.16
2018	June	14,927.12
2018	July	16,152.24
2018	August	3,197.48
2018	September	2,575.92
2018	October	1,418.56
2018	November	8,317.92
2018	December	16,614.90
2019	January	2,772.64
2019	February	322.40
2019	March	9,349.60
2019	April	1,676.48
2019	May	620.00
2019	June	483.60
	TOTAL TO-DATE	87,201.37

It should be noted that the City of St. Helena has paid the firm of Burke, Williams & Sorensen ("Burke") a total of \$84,421.29, and the bills highlighted in yellow in the amount of \$2,780.08 remain outstanding. Thus, Mr. McGrath has not paid for any of the City's defense costs.

As provided in Section 17.08.200.F, if the applicant has not paid all trial court litigation defense costs, City's defense costs on appeal, or complied with any other indemnity requirements or conditions, then unless waived by the City Council upon a showing of good cause by the applicant, as determined by the City Council in its sole and exclusive discretion, the Application shall be denied. Presumably, Mr. McGrath has not paid for any of the City's defense costs on appeal based on a prior understanding between the City and Mr. McGrath. Accordingly, should the City Council so determine good cause exists, the City Council may waive the fact that Mr. McGrath has not paid for the City's defense costs on appeal and, while it would not need to provide Mr. McGrath a refund of defense costs paid, Mr. McGrath is requesting to be released of his obligation to indemnify the City for the defense costs on appeal in the amount of \$87,201.37.

FISCAL IMPACT

If the City Council grants Mr. McGrath's request to be released of his obligation to indemnify the City for the defense costs on appeal *in total* for the full amount of \$87,201.37,

then the City will need to make payment to Burke in the amount of \$2,780.08 for the outstanding invoices from April, May and June 2019.

If the City Council grants Mr. McGrath's request to be released of his obligation to indemnify the City for the defense costs on appeal in part, then depending on the amount released by the City, Mr. McGrath will need to make payment to the City and Burke. By way of example only, if the City capped Mr. McGrath's indemnification obligation at \$50,000 and thus released him from amounts paid in excess of \$50,000, then before Mr. McGrath receives his final certificate of occupancy for the residential project at 632 McCorkle Avenue, Mr. McGrath will need to make payment to the City in the amount of \$47,219.92 and to Burke in the amount of \$2,780.08 for the outstanding invoices from April, May and June 2019.

If the City Council denies Mr. McGrath's request to be released of his obligation to indemnify the City for the defense costs on appeal in total for the full amount of \$87,201.37, then before Mr. McGrath receives his final certificate of occupancy for the residential project at 632 McCorkle Avenue, Mr. McGrath will need to make payment to the City in the amount of \$84,421.29 and to Burke in the amount of \$2,780.08 for the outstanding invoices from April, May and June 2019.

RECOMMENDED ACTION

Accordingly, staff recommends the City Council consider the Application and all appropriate testimony and public comment and then:

1. Consider and take action regarding waiver of fact that Mr. McGrath has not paid any of the City's defense costs on appeal to date, which otherwise requires denial of the Application, presumably because of a prior understanding between City and Mr. McGrath.
2. If aforementioned waiver granted, then either:
 - i. Grant Mr. McGrath's request to be released of his obligation to indemnify the City for the defense costs on appeal in total for the full amount of \$87,201.37; or
 - ii. Grant Mr. McGrath's request to be released of his obligation to indemnify the City for the defense costs on appeal in part, and specify the amount of the obligation to be released; or
 - iii. Deny Mr. McGrath's request to be released of his obligation to indemnify the City for the defense costs on appeal in total for the full amount of \$87,201.37.
3. Adopt conforming resolution (Attachment 4) to reflect the decision of the City Council.

ATTACHMENTS

[Attachment 1: Ordinance No. 2019-6](#)

[Attachment 2: Refund of Defense Cost On Appeal Application of Joseph C. McGrath](#)

[Attachment 3: Resolution No. 2018-38 – Approving McGrath Alternative Equivalent Proposal](#)

[Attachment 4: Resolution](#)

CITY OF ST. HELENA

ORDINANCE NO. 2019-6

AMENDING SECTION 17.08.060 AND ADDING SECTION 17.08.200 TO CHAPTER 17.08 OF TITLE 17 OF THE ST. HELENA MUNICIPAL CODE AUTHORIZING REFUNDS OF CITY'S DEFENSE COSTS ON APPEAL TO RESIDENTIAL PROJECTS

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

SECTION 1. Amending Section 17.08.060 And Adding Section 17.08.200 To Chapter 17.08 Of Title 17 Of The St. Helena Municipal Code. Section 17.08.060 is hereby amended and Section 17.08.200 is hereby added to Chapter 17.08 of Title 17 of the St. Helena Municipal Code to read in their entirety as shown on Exhibit A, attached hereto and incorporated herein by reference.

SECTION 2. 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 adopt this Ordinance 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 adopt this Ordinance was deemed to be a project subject to CEQA, the City Council finds the proposed Ordinance 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.

SECTION 3: General Plan Consistency. The City Council finds this Ordinance is consistent with the St. Helena General Plan.

SECTION 4. Severability. The City Council hereby declares every section, paragraph, sentence, cause and phrase 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.

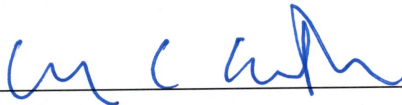
SECTION 5: Inclusion in the St. Helena Municipal Code. It is the intention of the St. Helena City Council that the text in Exhibit A of this Ordinance be made a part of the St. Helena Municipal Code and that the text may be renumbered or re-lettered and the word

"Ordinance" may be changed to "Section," "Chapter," or such other appropriate word or phrase to accomplish this intention.

SECTION 6. Effective Date; Retroactive Effect. This Ordinance shall take effect and be in force (thirty) 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. Further, the City Council of the City of St. Helena hereby affirms its intent that the effect of this Ordinance shall apply retroactively to permit applications for a "residential project" submitted on or after January 1, 2016, that has obtained a "final decision on appeal", as those terms are defined in this Ordinance.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on the 13th day of August 2019, and was adopted at a regular meeting of the St. Helena City Council on the 27th day of August, 2019, by the following vote:

Mayor Ellsworth:	<u>Yes</u>
Vice Mayor Dohring:	<u>Yes</u>
Councilmember Chouteau:	<u>Yes</u>
Councilmember Knudsen:	<u>Yes</u>
Councilmember Koberstein:	<u>Yes</u>



Geoff Ellsworth, Mayor

ATTEST:

CITY OF ST. HELENA

Cindy Tzafopoulos, 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 placed upon its first reading at a regular meeting of the City Council on the 13th day of August, 2019. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 27th day of August, 2019 by the following vote:

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



Cindy Tzaopoulos, City Clerk



EXHIBIT A

Section 17.08.060 Administrative Procedures

17.08.060 Authority of final decision-making body. Conditions of approval.

A. In considering an application for a permit or other discretionary approval authorized by this title, the final decision-making body may approve, deny or modify the application consistent with the evidence presented to it and the appropriate findings required by this title. Final decision-making bodies may require changes to applications and/or impose conditions of approval in order to affect the policies of the general plan and the purpose of this title. Such conditions include but are not limited to: dedication of land; installation of specific improvements; size, design and placement of buildings or structures; landscaping; the defense and indemnity of the City in litigation challenging the approval; and limitations on use and/or hours of operation. Such conditions shall be reasonably related to the use of the property for which the permit or other discretionary approval is requested. (Prior code § 27.405)

B. Notwithstanding the provisions of subsection A above, the final decision making body may condition its approval of an application for a permit or other discretionary approval for a residential project, as defined in Section 17.08.200.A.(c) below, to relieve the Applicant from the obligation to provide for the City's defense costs on appeal, as defined in Section 17.08.200.A.(a) below.

C. Notwithstanding the provisions of subsection A above, if the final decision making body has not relieved an Applicant of a residential project from the obligation to provide for the City's defense costs on appeal pursuant to subsection B above, upon application by an Applicant in accordance with Section 17.08.200 of this code, the City Council may authorize a refund of the City's defense costs on appeal paid by Applicant.

17.08.200 Refund of City's Defense Costs on Appeal.

A. As used in this Section, and Section 17.08.060 of this code, the following terms shall be defined as follows:

(a) "City's defense costs on appeal" shall mean all expenses, costs and fees, including attorneys' fees, incurred by City and paid for by Applicant in defense of or an appeal of a trial court entry of judgment regarding the City's approval of a residential project, from the date of entry of the trial court judgment through the date of the final decision on appeal.

(b) "Final decision on appeal" shall mean the issuance of a remittitur by the California Supreme Court, or the court of appeal, to the trial court in accordance with California Code of Civil Procedure §§ 43, 912;

(c) "Residential project" shall mean (i) a "residential development project" defined in Section 17.146.020 of this code, (ii) which satisfies the requirements of subsections A, B or C of Section 17.146.050 of this code and, if in compliance with subsections A or B of Section

17.146.050 of this code, the units must also qualify towards satisfying the City's regional housing needs allocation for households of very low incomes (as defined by Section 50105 of the Health and Safety Code), lower incomes (as defined by Section 50079.5 of the Health and Safety Code), or moderate incomes (as defined by Section 50093 of the Health and Safety Code), and (iii) a permit application for the residential project was submitted in accordance with Section 17.08.040 of this code on or after January 1, 2016.

B. An application to request a refund of the City's defense costs on appeal, shall be filed by an Applicant with the City Clerk no later than (i) thirty (30) calendar days following the filing of an appeal of a trial court entry of judgment regarding the City's approval of a residential project, or (ii) thirty (30) calendar days following the effective date of this Section of the code with respect to a residential project that has received a final decision on appeal prior to the effective date of this Section of the code. Failure to timely file an application required by this subsection shall forfeit Applicant's ability to request a refund of the City's defense costs on appeal, unless waived by the City Council upon a showing of good cause by the Applicant, as determined by the City Council in its sole and exclusive discretion.

C. Upon receipt of the application required by subsection B above, the City Clerk shall identify, confirm and note the date of receipt of the application and transmit a copy thereof to the City Attorney and Finance Director. The City Attorney and Finance Director shall take all necessary steps to thereafter separately account for the City's defense costs on appeal.

D. Upon issuance of a final decision on appeal, the Applicant shall transmit a copy forthwith to the City Clerk, who shall promptly provide a copy to the City Attorney and Finance Director. If the final decision on appeal reverses or overturns the City's approval of the residential project, in whole or in part, then the application shall be dismissed forthwith by the City Manager, which decision shall be final and non-appealable. If the final decision on appeal affirms the City's approval of the residential project, then the City Clerk shall schedule the application for consideration by the City Council at their next available regular meeting.

E. The City Attorney and Finance Director shall provide to the City Council in connection with its consideration of the application the total amount of the City's defense costs on appeal. Further, the City Attorney shall advise whether the Applicant has, to date, paid all trial court litigation defense costs, City's defense costs on appeal, and complied with all other indemnity requirements or conditions.

F. The City Council may, in its sole and exclusive discretion, following its consideration of the application and all appropriate testimony and public comment, deny or approve the application. In connection with approval of an application, the City Council shall appropriate and allocate funds, as necessary, and authorize the City Manager and Finance Director to refund to the Applicant, in accordance with subsection G below, a fixed sum, as determined by the City Council, in a range from zero dollars (\$0.00) to an amount not to exceed the City's defense costs on appeal. Furthermore, if the residential project is part of a mixed use development (as defined in Section 17.04.160 of this code), the eligible refund amount shall not exceed the City's defense costs on appeal times the quotient of the floor area devoted to the residential project divided by the floor area devoted to the entire mixed use development. The foregoing notwithstanding, if the Applicant

has not paid all trial court litigation defense costs, City's defense costs on appeal, or complied with any other indemnity requirements or conditions, then unless waived by the City Council upon a showing of good cause by the Applicant, as determined by the City Council in its sole and exclusive discretion, the application shall be denied.

G. Within thirty (30) calendar days following issuance by the City of a final certificate of occupancy for the residential project, the City Manager and Finance Director shall take such steps as are necessary to refund to the Applicant the fixed sum determined by the City Council in accordance with subsection F above. The foregoing notwithstanding, in the event the City Manager becomes aware prior to issuing the refund approved by the City Council that the Applicant has not paid all trial court litigation defense costs, City's defense costs on appeal, or complied with any other indemnity requirements or conditions not previously considered by the City Council, the application shall be returned to the City Council for reconsideration.

H. Applicant shall have no right to transfer or assign to any third party, or to pledge or otherwise hypothecate, the sum appropriated, allocated and approved by the City Council to be refunded to the Applicant in accordance with subsection F above, and any such attempt by Applicant to transfer, assign, pledge or hypothecate said sum shall be null and void.

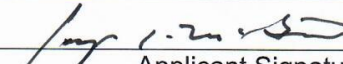
I. The provisions of Section 17.08.060 and 17.08.200 are not intended to and shall not be deemed or interpreted to relieve an Applicant of a residential project of the requirement, condition or obligation to pay trial court litigation expenses, costs and fees, including attorneys' fees, incurred by City in connection with the defense of the City's approval of the residential project, City's defense costs on appeal, or any other indemnity requirement, condition or obligation, including without limitation the requirement, condition or obligation to indemnify the City from and against any damages, costs and/or attorney's fees should the City's approval of the residential project be reversed.



REFUND OF DEFENSE COST ON APPEAL APPLICATION

City of St. Helena
1480 Main St.
St. Helena CA 94574
(707) 967-2792

FILE NUMBER: _____

PROPERTY & BILLING INFORMATION			
Application Date 09/26/19	Project Number and Address 632 McPOCKLE	Appeal Related Costs \$ 87,201.37	
Applicant Name JOSEPH C. MCGRATH	Daytime Phone Number 925-212-7196	Other Phone Number 510-995-7456	
Mailing Address 387 CAMINO SOBRANTE	City ORINDA	State CA	Zip Code 94563
Email joe.mcgrath65@gmail.com			
EXPLANATION OF REQUEST FOR REFUND			
(Attach supporting documentation and legal bills related to appeal) I AM SEEKING RELEASE FROM INDEMNIFICATION OF THE CITY OF ST HELENA FOR THE DEFENSE COSTS INCURRED BY THE CITY IN THE APPEAL PORTION OF THE PETITION BROUGHT AGAINST THE CITY BY "ST HELENA RESIDENTS FOR AN EQUITABLE GENERAL PLAN" AND "EASTSIDE McPOCKLE..." THE AMOUNT IS \$87,201.37 AND CAN BE FOUND IN INVOICE RECORDS FROM BURKE-WILLIAMS. WAIVER IS ALLOWED BY SECT 17.08.060.			
PLEASE READ & SIGN THE FOLLOWING STATEMENTS AS ACKNOWLEDGED AND REQUIRED BY THIS AGREEMENT			
I am requesting a refund under Ordinance 2019-6 adopted by the City of St. Helena on August 27, 2019. By signing this form I certify the information provided is accurate and true, and agree to comply with all requirements as set forth in the policy. I certify that I have read, understand and agree to the terms and conditions as stated per St. Helena Municipal Code (SHMC) Section 17.08.060 and 17.08.200. See Exhibit A attached.			
 Applicant Signature		JOSEPH C. MCGRATH Print Name	
		09/26/19 Date	
PLEASE SUBMIT APPLICATIONS TO:		QUESTIONS?	
City of St. Helena: City Clerk 1480 Main Street St. Helena, CA 95404		Email: Aaron Hecock ahecock@cityofsthelena.org Website: www.cityofsthelena.org Phone: 707-968-2659	

STAFF USE ONLY	
Total Dollar Amount Refunded	
Prior Fee Waiver on file ☐ No ☐ Yes Date: ____/____/____	Documentation Attached ☐ No ☐ Yes
Additional Department Notes:	
Refund Request is hereby: ☐ Approved ☐ Denied	
Reason for Approval/ Denial:	
Resolution:	
STAFF USE ONLY	
Refund Amount Approved	Date refund was issued
Refund Verified by City Employee and Date of Verification	
Date: ____/____/____	

EXHIBIT A**Section 17.08.060
Administrative Procedures****17.08.060 Authority of final decision-making body. Conditions of approval.**

A. In considering an application for a permit or other discretionary approval authorized by this title, the final decision-making body may approve, deny or modify the application consistent with the evidence presented to it and the appropriate findings required by this title. Final decision-making bodies may require changes to applications and/or impose conditions of approval in order to affect the policies of the general plan and the purpose of this title. Such conditions include but are not limited to: dedication of land; installation of specific improvements; size, design and placement of buildings or structures; landscaping; the defense and indemnity of the City in litigation challenging the approval; and limitations on use and/or hours of operation. Such conditions shall be reasonably related to the use of the property for which the permit or other discretionary approval is requested. (Prior code § 27.405)

B. Notwithstanding the provisions of subsection A above, the final decision making body may condition its approval of an application for a permit or other discretionary approval for a residential project, as defined in Section 17.08.200.A.(c) below, to relieve the Applicant from the obligation to provide for the City's defense costs on appeal, as defined in Section 17.08.200.A.(a) below.

C. Notwithstanding the provisions of subsection A above, if the final decision making body has not relieved an Applicant of a residential project from the obligation to provide for the City's defense costs on appeal pursuant to subsection B above, upon application by an Applicant in accordance with Section 17.08.200 of this code, the City Council may authorize a refund of the City's defense costs on appeal paid by Applicant.

17.08.200 Refund of City's Defense Costs on Appeal.

A. As used in this Section, and Section 17.08.060 of this code, the following terms shall be defined as follows:

(a) "City's defense costs on appeal" shall mean all expenses, costs and fees, including attorneys' fees, incurred by City and paid for by Applicant in defense of or an appeal of a trial court entry of judgment regarding the City's approval of a residential project, from the date of entry of the trial court judgment through the date of the final decision on appeal.

(b) "Final decision on appeal" shall mean the issuance of a remittitur by the California Supreme Court, or the court of appeal, to the trial court in accordance with California Code of Civil Procedure §§ 43, 912;

(c) "Residential project" shall mean (i) a "residential development project" defined in Section 17.146.020 of this code, (ii) which satisfies the requirements of subsections A, B or C of Section 17.146.050 of this code and, if in compliance with subsections A or B of Section

17.146.050 of this code, the units must also qualify towards satisfying the City's regional housing needs allocation for households of very low incomes (as defined by Section 50105 of the Health and Safety Code), lower incomes (as defined by Section 50079.5 of the Health and Safety Code), or moderate incomes (as defined by Section 50093 of the Health and Safety Code), and (iii) a permit application for the residential project was submitted in accordance with Section 17.08.040 of this code on or after January 1, 2016.

B. An application to request a refund of the City's defense costs on appeal, shall be filed by an Applicant with the City Clerk no later than (i) thirty (30) calendar days following the filing of an appeal of a trial court entry of judgment regarding the City's approval of a residential project, or (ii) thirty (30) calendar days following the effective date of this Section of the code with respect to a residential project that has received a final decision on appeal prior to the effective date of this Section of the code. Failure to timely file an application required by this subsection shall forfeit Applicant's ability to request a refund of the City's defense costs on appeal, unless waived by the City Council upon a showing of good cause by the Applicant, as determined by the City Council in its sole and exclusive discretion.

C. Upon receipt of the application required by subsection B above, the City Clerk shall identify, confirm and note the date of receipt of the application and transmit a copy thereof to the City Attorney and Finance Director. The City Attorney and Finance Director shall take all necessary steps to thereafter separately account for the City's defense costs on appeal.

D. Upon issuance of a final decision on appeal, the Applicant shall transmit a copy forthwith to the City Clerk, who shall promptly provide a copy to the City Attorney and Finance Director. If the final decision on appeal reverses or overturns the City's approval of the residential project, in whole or in part, then the application shall be dismissed forthwith by the City Manager, which decision shall be final and non-appealable. If the final decision on appeal affirms the City's approval of the residential project, then the City Clerk shall schedule the application for consideration by the City Council at their next available regular meeting.

E. The City Attorney and Finance Director shall provide to the City Council in connection with its consideration of the application the total amount of the City's defense costs on appeal. Further, the City Attorney shall advise whether the Applicant has, to date, paid all trial court litigation defense costs, City's defense costs on appeal, and complied with all other indemnity requirements or conditions.

F. The City Council may, in its sole and exclusive discretion, following its consideration of the application and all appropriate testimony and public comment, deny or approve the application. In connection with approval of an application, the City Council shall appropriate and allocate funds, as necessary, and authorize the City Manager and Finance Director to refund to the Applicant, in accordance with subsection G below, a fixed sum, as determined by the City Council, in a range from zero dollars (\$0.00) to an amount not to exceed the City's defense costs on appeal. Furthermore, if the residential project is part of a mixed use development (as defined in Section 17.04.160 of this code), the eligible refund amount shall not exceed the City's defense costs on appeal times the quotient of the floor area devoted to the residential project divided by the floor area devoted to the entire mixed use development. The foregoing notwithstanding, if the Applicant



has not paid all trial court litigation defense costs, City's defense costs on appeal, or complied with any other indemnity requirements or conditions, then unless waived by the City Council upon a showing of good cause by the Applicant, as determined by the City Council in its sole and exclusive discretion, the application shall be denied.

G. Within thirty (30) calendar days following issuance by the City of a final certificate of occupancy for the residential project, the City Manager and Finance Director shall take such steps as are necessary to refund to the Applicant the fixed sum determined by the City Council in accordance with subsection F above. The foregoing notwithstanding, in the event the City Manager becomes aware prior to issuing the refund approved by the City Council that the Applicant has not paid all trial court litigation defense costs, City's defense costs on appeal, or complied with any other indemnity requirements or conditions not previously considered by the City Council, the application shall be returned to the City Council for reconsideration.

H. Applicant shall have no right to transfer or assign to any third party, or to pledge or otherwise hypothecate, the sum appropriated, allocated and approved by the City Council to be refunded to the Applicant in accordance with subsection F above, and any such attempt by Applicant to transfer, assign, pledge or hypothecate said sum shall be null and void.

I. The provisions of Section 17.08.060 and 17.08.200 are not intended to and shall not be deemed or interpreted to relieve an Applicant of a residential project of the requirement, condition or obligation to pay trial court litigation expenses, costs and fees, including attorneys' fees, incurred by City in connection with the defense of the City's approval of the residential project, City's defense costs on appeal, or any other indemnity requirement, condition or obligation, including without limitation the requirement, condition or obligation to indemnify the City from and against any damages, costs and/or attorney's fees should the City's approval of the residential project be reversed.



CITY OF ST. HELENA

RESOLUTION NO. 2018-38

**APPROVING JOE MCGRATH'S PROPOSAL TO MEET THE REQUIREMENTS OF
THE CITY'S INCLUSIONARY ORDINANCE, SHMC SECTION 17.146.050 A, FOR THE
EIGHT UNIT PROJECT LOCATED AT 632 MCCORKLE STREET BY AN
ALTERNATIVE EQUIVALENT ACTION PURSUANT TO SHMC SECTION 17.146.050
B, ACCEPTING A 20 YEAR REDUCED AFFORDABILITY DURATION, AND
ADOPTING FINDINGS**

RECITALS

A. **WHEREAS**, in January 2017, the City Council approved the design review and demolition permit for the eight-unit multifamily residential project proposed by Joe McGrath ("Applicant") for the property located at 632 McCorkle Street.

B. **WHEREAS**, at that time, the applicant presented the project as a purely market rate project, in which none of the eight units would be "affordable" regulated units, and Staff determined that an impact fee of \$40,000 would be the project's only affordable housing requirement.

C. **WHEREAS**, Staff since has determined that the project is subject to the City's affordable housing "inclusionary" ordinance (St. Helena Municipal Code ("SHMC") chapter 17.146), requiring either that (1) 20% of the project's units be "affordable" for households at specified income levels, or (2) the project applicant satisfy alternative and/or in lieu fee requirements.

D. **WHEREAS**, applying the requirements, SHMC Section 17.146.050 A and G would require Applicant's project to provide 1.6 affordable units, including (1) one unit that would be affordable for a low-income household plus, with respect to the fractional (.6) unit, either one additional affordable unit, an alternative equivalent action or payment of the housing in-lieu fee specified under SHMC Section 17.146.050 E for such fraction (\$2,837.13).

E. **WHEREAS**, two groups challenged the City Council's decision approving the project in Court. The Napa Superior Court entered judgment in favor of the City and Applicant, and the petitioner groups have appealed.

F. **WHEREAS**, in accordance with the terms of his project application and conditions of project approval, Applicant has paid the costs of the City's defense of the lawsuit.

G. **WHEREAS**, applicant has demonstrated that the costs of the litigation have substantially impacted the feasibility of, and his ability to develop the project. In addition, Applicant has incurred other unanticipated costs and expenses, including the requirement to include covered carports in the project and the remediation of soil contamination, which diminish the financial feasibility of, and jeopardize the project.

H. **WHEREAS**, Applicant has also demonstrated that the project will be financially infeasible if he is required to satisfy the City's basic inclusionary requirement under SHMC Section 17.146.050. He has stated that he may decide not to develop the project unless the City approves an alternative equivalent action as allowed under 17.146.050 B.

I. **WHEREAS**, under SHMC Section 17.146.050 J 4, affordable rental units are normally required to be affordable in perpetuity. Under SHMC Section 17.146.050 G 3, the City Council may forgive all or a portion of an affordability requirement. SHMC Section 17.146.050 J 4 includes the duration of affordable rental units' affordability as an issue of affordability. Applicant shall be required to execute the other regulatory agreements ensuring the affordability of the affordable units that he proposes to provide by his alternative equivalent action, as required by SHMC Section 17.146.050 J.

J. **WHEREAS**, Applicant has proposed an alternative equivalent action, as authorized by SHMC Section 17.146.050 B, and has requested a concession, as authorized by SHMC Section 17.146.050 F, as follows:

Alternative Equivalent Action Proposal:

- Applicant will provide one (1) two-bedroom unit at 1246 Grayson shall be affordable for a low-income household for a deed-restricted period of 20 years.
- Applicant will provide one (1) two-bedroom unit at 1244 Grayson shall be affordable for a moderate-income household for a deed-restricted period of 20 years.
- Applicant requests that the affordability duration of the two units commence at issuance of Certificate of Occupancy for the 632 McCorkle project and run for a period of 20 years.
- Applicant further requests that this component of his proposal not result in the eviction of an existing tenant, and that the existing tenant be evaluated as to whether he/she meets the qualification of this income category and proposes to freeze the current rent in the interim period.

Concession Proposal:

- The City Council will excuse Applicant from the requirement to provide Carport(s) for the project.
- The City Council will defer collection of remaining municipal fees until occupancy of the 632 McCorkle project is granted.

K. **WHEREAS**, the City engaged Kosmont Companies ("Kosmont"), a consultant with expertise in reviewing such materials and assessing the financial feasibility of such projects, to assess the financial feasibility of the Applicant's project, and to confirm Applicant's demonstration that his project will not be feasible if the project is required to satisfy the basic inclusionary requirement as prescribed. Kosmont has confirmed and concluded that the Applicant's project will not be feasible, if the project

satisfies the City's basic inclusionary requirement. The Kosmont financial analysis is attached hereto as **Attachment A**.

L. **WHEREAS**, Applicant submits, and City Council agrees, that his proposal will both further and significantly contribute to the affordable housing opportunities in the City to an equal or greater extent than compliance with the express requirements of SHMC Section 17.146.050 A or payment of the appropriate in-lieu housing fee as identified.

M. **WHEREAS**, the City of St. Helena has sought to satisfy its state-imposed housing obligations, at least in part, by planning for and approving smaller in-fill projects that are dispersed throughout the City. Such smaller in-fill projects can be financially infeasible when they provide affordable units and otherwise encounter unanticipated expenses such as litigation and soil remediation costs. Applicant's project is such a project. The City Council finds that unless the City approves Applicant's proposal, Applicant will be unable to develop his project, which provides critically-needed housing consistent with the City's above policy, and elements of the City's adopted Housing Element.

N. **WHEREAS**, excusing the Applicant from the requirement to provide carports and deferring fees, as authorized by SHMC Section 17.146.050 F, would both improve the project's financial feasibility and also substantially improve the project's design in terms of open space, light and air.

O. **WHEREAS**, Applicant's alternative equivalent action proposal advances the City's satisfaction of state RHNA requirements, and its provision of one low income unit on the west side of ST Helena will both apply to the City's satisfaction of its mileposts under the Settlement and Release entered into by the City in or around October of 2014 in that certain litigation known as *Calderon v. City of St. Helena*, et al., Case Number C 12-05819 ("Calderon Settlement") and further the goals of the adopted Housing Element.

P. **WHEREAS**, providing the affordable units at 1246 and 1244 Grayson Street serves the ongoing interest of the City in dispersing and balancing the location of affordable housing in all parts of City.

RESOLUTION

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

1. The recitals above are true and correct, incorporated herein by this reference, and adopted as the Council's findings.
2. The City Council hereby approves Applicant's proposed alternative equivalent action, as authorized by SHMC Section 17.146.050 B.
3. The City Council finds that Applicant's alternative equivalent action will both further and contribute significantly to the affordable housing opportunities in the City to an equal or greater extent than his project's compliance with the express requirements of SHMC Section 17.146.050 A or payment of the appropriate in-lieu housing fee, because:

- a. The proposal would deed restrict two existing units (to low and moderate-income residents) totaling 25-percent of the approved project's unit count, rather than the one low income unit and partial fee payment required under the standard inclusionary housing element; and
 - b. These two additional units would be located on the west side of St Helena, an area identified by some members of the community as lacking in affordable housing units.
 - c. The alternative has the added benefit of proving these units within walking distance of several schools; and
 - d. The size of the deed restricted units are slightly larger (960 vs. 945 square feet), and include a garage as an added amenity.
4. The City Council hereby forgives the requirement that affordable rental units be affordable in perpetuity.
 5. The City Council hereby directs staff to draft an affordability agreement and deed restriction limiting the rental rates on the units at 1244 and 1246 Grayson, as identified in the Alternative Equivalent Proposal.
 6. The City Council hereby excuses Applicant from the requirement that the project include carports, as a concession authorized by SHMC Section 17.146.050 F. and further allows the deferral of fee payment until occupancy of the units is granted.
 7. Regulatory Agreement shall identify when deed restriction shall go into effect and how the current tenants at 1244 and 1246 Grayson Avenue will be vetted and (potentially relocated) in the instance that their income does not qualify as low or moderate income.
 8. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Resolution may have a significant effect on the environment as this Resolution in no manner changes the residential use, density or intensity of the project or the property at 1244 and 1246 Grayson Street, but instead simply defines and transfers the requirement to provide affordable units from the proposed development at 632 McCorkle to the existing units at 1244 and 1246 Grayson Street, and excuses the construction of the carports at 632 McCorkle. As such, the action to adopt this Resolution is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000, et seq.) (CEQA) pursuant to CEQA Guidelines Section 15332 In-Fill Development Projects and 15061(b)(3). in that the project site is both an infill property and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, given no physical changes are proposed by this action and the elimination of the carport through a concession actually reduces the total coverage of the property, reduces the amount of overall construction activity and materials required to develop the property and allows additional light and air circulation to reach the lower floor units.
 9. The City Council hereby finds that the action to adopt this Resolution is consistent with the City's General Plan, including without limitation the Housing Element in that Housing Element policies HE2.A and HE1.H expressly direct the support of attached market rate

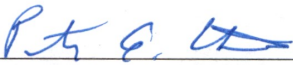
“workforce” housing for residents with incomes above the moderate level, and identify such housing shall be provided with incentives to assist with its development.

10. The City Council makes no representation regarding the effect, if any, that the adoption of this Resolution, including without limitation its forgiveness of perpetual affordability or its waiver of the carport requirement, may have on Applicant's need to comply with California state or federal laws that might apply to the construction of the Applicant's project, including but not limited to the California Prevailing Wage Law. Applicant shall bear sole responsibility for ensuring that the project is completed in compliance with all applicable laws and regulations.

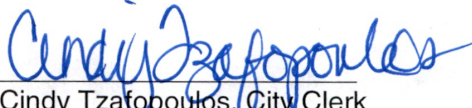
Approved at a Regular Meeting of the St. Helena City Council on March 13, 2018 by the following vote:

Mayor Galbraith:	Yes
Vice Mayor White:	Yes
Councilmember Dohring:	Yes
Councilmember Ellsworth:	Yes
Councilmember Koberstein:	Yes

APPROVED:


Peter White, Vice Mayor

ATTEST:


Cindy Tzafopoulos, City Clerk



CITY OF ST. HELENA

RESOLUTION No. 2019-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA REGARDING THE REFUND OF DEFENSE COST ON APPEAL APPLICATION OF JOSEPH C. MCGRATH PURSUANT TO ST. HELENA MUNICIPAL CODE §17.08.060 IN A RANGE FROM \$0.00 TO AN AMOUNT NOT TO EXCEED \$87,201.37

RECITALS

WHEREAS, Ordinance No. 2019-6 adopted August 27, 2019, amended the City of St. Helena Municipal Code (SHMC) to authorize applications for refunds of the City's defense costs on appeal to residential projects; and

WHEREAS, on September 26, 2019, Joseph C. McGrath filed an application regarding his residential project at 632 McCorkle Avenue, as provided for in Section 17.08.200 of the SHMC, requesting to be released of his obligation to indemnify the City for the defense costs incurred by the City in the proceeding before the Court of Appeal in McCorkle Eastside Neighborhood Group v. City of St. Helena, in the amount of \$87,201.37; and

WHEREAS, Section 17.08.060.C of the SHMC provides that the City Council may authorize a refund of the City's defense costs on appeal paid by an Applicant of a residential project, as defined, in accordance with Section 17.08.200, and with respect to a residential project that has received a final decision on appeal prior to the effective date of the Ordinance, Section 17.08.200.B requires the Application to be filed within 30 calendar days of the effective date of the Ordinance, and Mr. McGrath's Application was timely filed on September 26, 2019; and

WHEREAS, the Application relative to the Mr. McGrath's project at 632 McCorkle Avenue satisfies the definition of a "residential project" and a review of the final decision on appeal issued in McCorkle Eastside Neighborhood Group v. City of St. Helena confirms that the decision of the City approving the residential project was affirmed; and

WHEREAS, in accordance with Section 17.08.200.D of the SHMC, the City Clerk scheduled the Application for consideration by the City Council on October 8, 2019, and consistent with the amount identified in the Application, the City Attorney and Finance Director confirm that the City's defense costs on appeal were \$87,201.37; and

WHEREAS, the City of St. Helena has paid the firm of Burke, Williams & Sorensen ("Burke") a total of \$84,421.29, and the amount of \$2,780.08 remains outstanding, and thus Mr. McGrath has not paid for any of the City's defense costs; and

WHEREAS, as provided in Section 17.08.200.F of the SHMC, if the applicant has not paid all trial court litigation defense costs, City's defense costs on appeal, or complied with any other indemnity requirements or conditions, then unless waived by the City Council upon a showing of good cause by the applicant, as determined by the City Council in its sole and exclusive discretion, the Application shall be denied; and

WHEREAS, Mr. McGrath has not paid for any of the City's defense costs on appeal presumably based on a prior understanding between the City and Mr. McGrath; now, therefore, be it

RESOLVED, that the City Council of the City of St. Helena hereby determines 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 adopt this resolution 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 adopt this resolution was deemed to be a project subject to CEQA, the City Council finds the proposed resolution 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.A. The City Council hereby determines that good cause exists for the failure of Mr. McGrath not to have paid the City's defense cost on appeal based on a prior understanding with the City, and hereby waives said requirement.

OR

2.B. The City Council hereby determines that good cause does not exist for the failure of Mr. McGrath not to have paid the City's defense cost on appeal and accordingly the Application is denied in total.

3.A. The City Council hereby grants Mr. McGrath's request to be released of his obligation to indemnify the City for the defense costs on appeal in total for the full amount of \$87,201.37.

OR

3.B. The City Council hereby grants Mr. McGrath's request to be released of his obligation to indemnify the City for the defense costs on appeal in part for the amount of \$_____.

OR

3.C. The City Council hereby denies Mr. McGrath's request to be released of his obligation to indemnify the City for the defense costs on appeal in total for the amount of \$87,201.37.

4. The City Council directs that if it grants the Application in part per paragraph 3.B. above, or denies it in total per paragraph 3.C. above, City staff shall not issue a final certificate of occupancy for the project at 632 McCorkle Avenue until all sums due and owing the City of St. Helena and the firm of Burke, Williams and Sorensen have been paid in full. If the City Council grants the Application in total per paragraph 3.A. above, then this paragraph 4 shall have no force or effect.

APPROVED AND ADOPTED, by the City Council of the City of St. Helena at a Regular Meeting held on October 22, 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

OAK #4831-5079-7481 v1

Cindy Tzaopoulos

From: Joe McGrath <joe.mcgrath65@gmail.com>
Sent: Thursday, October 17, 2019 11:31 AM
To: Cindy Tzaopoulos; Mark Prestwich; Geoff Ellsworth; David Knudsen; Anna Chouteau; Mary Koberstein; Paul Dohring; Aaron Hecock; Joe McGrath
Subject: Letter re: 10/22/19 Agenda Item 11.3 - 632 McCorkle Indemnification
Attachments: Letter_to_SHCouncil_102219_AI_11.3.pdf; Order Granting in Part and Denying in Part Petitioners' Motion to Tax Co....pdf

Hi Cindy:

Can you please ensure that the Council receive a hard copy of the two attached documents.
 The content of the letter is in text below.

Thanks,

Joe

10/17/19

Dear Mr. Mayor and Council Members:

I would like to provide some additional context to the pending 10/22/19 Council decision to release this Applicant from the indemnification provisions regarding the Appellate portion of McCorkle Eastside Neighborhood Group v. the City of St. Helena.

I have spent a total of \$4.498M constructing critically needed workforce housing units in the City of St. Helena. This tally does not include nearly 3000 hours of my personal time investment. Since receiving our Final Certificate of Occupancy in early July – in just three months - we have filled all 8 units with a combination of working professionals and CIA Students. This is testimony to the demand for this type of housing, unfortunately further illustrated by the recent announcement to shutter Cook's Tavern due to lack of available service personnel.

The actual rents for these units fall below the "Moderate" 2019 rent limits as determined by Napa County Housing and Urban Development for both the (6) two bedrooms, \$2505 versus \$2712, and the (2) three bedrooms, \$2990 versus \$3012. As you are aware, we also deed-restricted two affordable units at my property on Grayson Ave. In total, the McCorkle project has contributed 10 units affordable housing stock in St. Helena.

Unfortunately, due to legal challenges and other unforeseen factors, the quality of this investment is poor. Based on actual rents and projected expenses, the expected Net Operating Income of this project in its first full year is \$170,000. That translates to a CAP rate of approximately 3.75% (CAP rate reflects the unlevered return on investment). Were I to include my personal time, the return would be in the 2-3% range. Had this project not had to defend its legal entitlements from spurious challenges, the CAP rate would be over 4%. There are not many investors who would take on the inherent risk of development for this type of return, at this scale, particularly in a litigious environment. At the same time, the pace and costs of providing suitable housing stock in St. Helena with heavily subsidized Affordable projects like Turley and Brenkle cannot possibly meet the need.

Let me also please remind the Council that the property at 632 McCorkle was fully entitled for its present use - prior to the submittal of this application. The project application made no requests of the City for variances or concessions, and fully complied with the Municipal Code and all applicable California Building Codes, and was at the lowest density allowed by the Zoning Code. The legal challenge regarding this application was nothing less than a legal challenge to the existing St. Helena General Plan. This project was simply caught in the crossfire.

Over the course of two years, I spent \$386K in legal fees defending this project and existing entitlements (this number does not include the \$87K subject to decision in front of you). \$208K of that were checks written directly to the Burke, Williams & Sorenson LLP, Counsel for the City at that time. At the City's established billing rate that translates to 670 hours of billable time by the City attorney (over 1/3 of a person-year). In contrast, my attorney (a land use and CEQA expert) and her team billed approximately 340 hours on this matter, including answering the Petition to the California Supreme Court, which the City inexplicably chose not to participate. It is worth noting that I had no choice in the defense strategy of the City, nor any ability to provide direction to the City's attorneys, nor challenge billable hours. At the time the Superior Court ruling was appealed, I requested thru Tom Brown that my attorney take on the full defense of the Appeal in an effort to reduce costs. That offer was not considered.

It is also worth noting that in Superior Court Petitions to overturn Municipal rulings, the Petitioner is responsible for the costs of assembling the Administrative Record. The McCorkle Eastside Neighborhood Group was nominally charged (approximately \$7K, I believe) for only the costs of the City Staff time and effort in compiling the record and not charged for the City Attorney time dedicated to this task. Meanwhile Burke and Williams charged this Applicant nearly \$76k for this effort (based on Burke Williams own itemization of invoices). After prevailing in Superior Court on the Petition, the Napa Superior Court ruled in a separate Motion to Tax Costs, that the Petitioner *was* in fact responsible for attorney and/or paralegal costs associated with assembly of the Administrative Records, and awarded these costs to be recovered by me from the Petitioner (meaning, that the Petitioner – not the Applicant - should have been charged these costs by the City). However, the Superior Court ruled that \$76k was an unreasonable sum and only awarded a small portion of that – approximately \$18K. Part of the reason for the diminutive award was that the City Attorney would not allow itemized invoices to be presented – citing a Confidentiality Agreement with the City. This despite charging me over \$5k to itemize their invoices. We have recovered just over \$9k of that to-date from the Petitioner. This ruling is an indictment on the efficacy and reasonableness of the charges presented by the City Attorney in this matter, and to whom they were charged. I have attached the Order to this letter for your perusal.

I would also like to remind the Council, that, at the time that I requested the City to release me of the indemnification provisions for the Appeal portion of the legal challenge, we stood at a critical juncture as to the viability of the Project (I likened this to being stuck in the middle of a river and going forward or going back equally perilous). In early 2018, just after Superior Court ruling had been appealed, and literally days from receiving our Building Permit and the vested rights to build, (and over two years into the application process), the City discovered that it had misinterpreted its own Municipal Code. I was now told that we would be required to provide two affordable units out of the eight. For over two years I had been told by the Planning Staff that I could pay an in-lieu of \$40K that would be directed to the Affordable Housing Fund. The 20-yr Net Present Value of dedicating two affordable units (at low income restrictions) is approximately \$500K. This was the straw that broke the Camel's back and the impetus for requesting relief from the Council.

I would also like to respond to the notion that the City is "subsidizing" a developer. In total we have paid approximately \$198K in Municipal Fees and Permits to build this Project. We have improved our portion of McCorkle Ave to City Standards. The Property now contributes nearly \$35K in annual property taxes. Prior to my purchase of the property the taxes were less than \$1000/year (prior assessment value of \$63K). We have deed restricted two affordable (one low and one moderate) units for 20 years, worth a Net Present Value of approximately \$375K, and we have built a sensibly scaled and attractive infill apartment unit that provides workforce housing and at rents that meet the "affordable" housing threshold for Moderate income.

I would request that the City honor its commitment to me to take on the costs associated with the City's defense in the appellate portion of this legal challenge. I proceeded to build this project at a critical juncture based on this commitment. Honoring this commitment will demonstrate that the City is serious about solving the affordable housing crisis in St. Helena and help ensure that my hometown remains an economically diverse and vibrant community.

Sincerely,

Joe McGrath

ENDORSED

MAR 26 2018

CLERK OF THE NAPA SUPERIOR COURT
BY: C. TYLER
DEPUTY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,
COUNTY OF NAPA

MCCORKLE EASTSIDE NEIGHBORHOOD
GROUP, an unincorporated association; and
ST. HELENA RESIDENTS FOR AN
EQUITABLE GENERAL PLAN, a California
domestic nonprofit corporation,

Petitioners,

vs.

CITY OF ST. HELENA; CITY COUNCIL OF
ST. HELENA; and DOES 1-20, inclusive,

Respondents.

JOE MCGRATH; and DOES 21-30, inclusive,

Real Parties in Interest.

Case No.: 17CV000205

ORDER GRANTING IN PART AND
DENYING IN PART PETITIONERS'
MOTION TO TAX COSTS

Petitioners' Motion to Tax Costs came on for hearing on March 2, 2018. Having read and considered the papers submitted in support of and in opposition to the Motion and having heard oral argument, the Court took the matter under submission, and now rules as follows:

Petitioners' Motion is GRANTED IN PART AND DENIED IN PART. It is clear to the Court that, under the circumstances of this case, Petitioners are liable under Public Resources Code section 21167.6 to pay Real Party "any reasonable costs and fees imposed for the

preparation of the record of proceedings....” (See *St. Vincent’s Sch. For Boys, Catholic Charities CYO v. City of San Rafael* (2008) 161 Cal.App.4th 989, 1013; see also *Citizens for Ceres v. City of Ceres* (2016) 3 Cal.App.5th 237, 245 (*Ceres*).) It is also clear to the Court that it is possible for attorney and paralegal fees to be recovered as costs of preparing the record pursuant to section 21167.6. (See *The Otay Ranch, L.P. v. County of San Diego* (2014) 230 Cal.App.4th 60 (*Otay Ranch*).) Public Resources Code section 21168 specifically references Code of Civil Procedure section 1094.5, which provides, “[i]f the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.” There is no dispute that Real Party In Interest, Joe McGrath, is a prevailing party in this case. The less clear issue for the Court is whether Real Party has adequately shown that the attorney and paralegal fees sought, in the amount of \$76,325, qualify as recoverable costs for preparation of the record.

In *Otay Ranch*, the Fourth District upheld the trial court’s exercise of discretion in finding that fees for attorney services were reasonably necessary for preparation of the record. In opposition to a motion to tax in that case, however, “[t]he County presented declarations from...defense counsel, and a paralegal explaining the process of assembling the administrative record and why it was reasonably necessary to expend attorney and paralegal time to prepare the administrative record. The County also submitted supporting billing statements.” (*Id.* at p. 66.) Armed with such supportive information presented through affidavits and billing statements from the parties actually performing the work, the Court of Appeal was able to hold: “Given the history and complexity of the project and how the documents were maintained, we cannot conclude the trial court exceeded the bounds of reason in determining it was ‘reasonably necessary’ for the County’s retained counsel and paralegals to prepare the administrative record

since the County ‘did not have the resources or experienced personnel to prepare the [r]ecord.’”
(*Id.* at p. 70.)

The First District has also addressed this issue in *Coalition for Adequate Review v. City and County of San Francisco* (2014) 229 Cal.App.4th 989 (*Coalition*). In that case, the Court of Appeal specifically addressed whether legal labor costs to review a record of proceedings “for completeness” in connection with certification pursuant to section 21167.6 are recoverable record preparation costs. The Court of Appeal found they were not on the ground that allowance of sizeable costs for such standard labor “would defeat the Legislature’s aim of providing for lower-cost record preparation alternatives.” (*Id.* at p. 1059.) It went on to explain that such work “can easily blur into review for strategy, implicating the kind of attorney fee award neither authorized nor sought here.” (*Ibid.*) In arriving at this decision, it cited *Wagner Farms, Inc. v. Modesto Irrigation Dist.* (2006) 145 Cal.App.4th 765, 779 (*Wagner Farms*) for its finding that the trial court abused its discretion in approving labor costs where there was “no basis in the record for separating the time necessary for preparation of the [record] and the time claimed...that went beyond that merely related to preparing the [record].” As further explained in *Wagner Farms*, it is incumbent upon the party seeking costs under section 21167.6 to provide adequate detail from which the court can conclude that the work was truly reasonably necessary for preparation of the record as opposed to legal work defending the case. (*Id.* at p. 775.)

In the instant case, the descriptions of labor attached to the Memorandum of Costs are admittedly vague, counsel for Real Party having explained at oral argument that only paraphrased descriptions were provided because the time records themselves were subject to a confidentiality agreement. It is clear, however, that much of these costs were for attorney and paralegal labor that, while arguably related to preparation of the record, was not reasonably

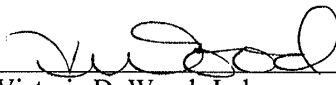
necessary for the actual preparation of it. Mr. McGrath's counsel even conceded at oral argument that at least some of the fees for opposing Petitioner's Motion to Conduct Limited Discovery and to Augment the Administrative Record, heard on August 24, 2017 ("Petitioner's Discovery/Augmentation Motion"), cannot reasonably be considered preparation of the record, specifically those incurred with regard to the discovery portion of the motion. Based on the legal authority addressed above, the Court finds that none of the legal fees incurred in connection with Petitioner's Discovery/Augmentation Motion constituted a cost of preparing the record. Such work certainly "blurs" into strategy and legal defense of the case, as cautioned by the First District in *Coalition*. The Court will therefore tax all attorney and paralegal fees claimed in connection with that motion.

With regard to all other claimed fees, the Court is left to consider the relative level of complexity of this case, the size of the administrative record, and the information provided about the work performed by Real Party's attorneys to address challenges in record preparation as set forth in the declarations filed in support of its opposition to Petitioners' Discovery/Augmentation Motion. Factoring in all this information, the Court concludes that, in addition to the 8 hours of labor billed directly by the City Attorney, it was reasonable and necessary for Real Party to incur 48 hours of paralegal work (at \$135/hour) and 40 hours of attorney work (at \$305/hour) for a total of \$18,680. With the total amount of fees claimed by Real Party being \$76,325, the Motion to Tax is granted as to \$57,645 of that amount.

Finally, Petitioners' argument that a noticed motion was required to recover costs is not well-taken. Mr. McGrath is entitled to costs pursuant to Public Resources Code section 21168, not Code of Civil Procedure section 1033.5, subdivision (a)(10)(B). It does not appear the Court

of Appeal has required noticed motions in cases involving similarly situated parties. (*Ceres*,
supra, 3 Cal.App.5th 237, 240; *Coalition*, *supra*, 229 Cal.App.4th 989, 1047.)

Dated: 3.23 18


Victoria D. Wood, Judge

Superior Court of California

County of Napa
825 Brown Street
Napa. CA 94559

Case #: 17CV000205

McCorkle Eastside Neighborhood Group et al vs City of St Helena et al

David Stanley Bradshaw

400 Capitol Mall, Ste 1600
Sacramento, CA 95814

Thomas Benton Brown

1901 Harrison St., Ste 900
Oakland, CA 94612

Amanda Jean Monchamp

50 California St., Ste 2800
San Francisco, CA 94111

Certificate of Mailing/Service

I hereby certify that I am not a party to this cause and that a copy of the foregoing Order Granting in Part and Denying in Part Petitioner's Motion to Tax Costs was:

- ☒ **mailed** (first class postage pre-paid) in a sealed envelope
- ☐ **certified copy faxed** to Napa Sheriff's Department at (707) 253-4193
- ☐ **personal service** – personally delivered to the party listed above
- ☐ **placed in attorney/agency folders** in the ☐ Criminal Courthouse ☐ Historic Courthouse

at Napa, California on this date and that this certificate is executed at Napa, California this Date. I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing within the United States Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 3/26/2018

Richard D. Feldstein, Court Executive Officer

C. TYLER

Casey Tyler, Deputy Court Executive Officer



Report to the City Council
Regular City Council - 22 Oct 2019

Agenda Section: NEW BUSINESS

Subject: Consideration and proposed approval of a resolution approving the POW/MIA flag to be flown on the City's ceremonial flag pole:

1. **The week preceding and week after Memorial Day (Last Monday in May).**
2. **The week preceding and week after Veterans Day (November 11th).**

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 Craig Pina, American Legion Commander St. Helena Post 199, and Mayor Ellsworth formally requested in writing to the City Manager for the POW/MIA flag to be flown on the City's ceremonial flag pole during:

1. The week preceding and week after Memorial Day (Last Monday in May).
2. The week preceding and week after Veterans Day (November 11th)

FISCAL IMPACT

There is no fiscal impact.

RECOMMENDED ACTION

Approve Resolution authorizing the MIA/POW flag to be flown on the City's ceremonial flag pole during the requested times.

ATTACHMENTS

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

[POW MIA Flag Request](#)

[Resolution POW MIA Flag](#)



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**

Page 2 of 2

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.

POW MIA FLAG

Sept. 16 2019

I would like to support this request by the American Legion to explore periods when the POW-MIA flag could fly above St. Helena City Hall on our ceremonial flagpole.

My understanding is this flag was adopted at the Federal level to fly above federal buildings on certain days.

I also support the suggestion of flying it together with the American Legion flag give it added presence/context.

Geoff Ellsworth
Mayor
St. Helena

American Legion Post 199 from St. Helena would like to request the POW-MIA flag to fly together with the American Legion Flag each year for a period of one or two weeks, preferably two, during both the Memorial Day time frame of the last Monday in May, as well during the period around Veterans Day which occurs each year on Nov. 11.

The POW- MIA flag flies above federal buildings on certain dates including these two days of remembrance and serves as a symbol or POW/MIAs from all U.S. wars.

We would plan to raise the flags in conjunction with a ceremony.

Craig Pina

A handwritten signature in black ink that reads "Craig Pina". The signature is written in a cursive style with a large, stylized "P".

POST 199 COMMANDER



July 22, 2019

St. Helena City Council:

The St. Helena American Legion Post 199 will provide a POW-MIA (Prisoner of War-Missing In Action) Flag to be flown on the new flag pole in front of city hall. Please accept our thanks in advance for this important recognition of our fellow soldiers who did not come home. We would like to be present at the official hanging of this important flag.

Respectfully yours,

A handwritten signature in cursive script that reads 'Craig Pina'.

Craig Pina

Commander Post 199

Mike Griffin

Post 199 Representative

A handwritten signature in cursive script that reads 'Mike Griffin'.

AMERICAN LEGION Post 199
1291 Madrona Ave. P.O. Box 177 St. Helena, CA. 94574

CITY OF ST. HELENA

RESOLUTION No. 2019-

**Authorizing the POW/MIA Ceremonial Flag to be Flown
during Memorial Day and Veterans Day**

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. A request was received by Craig Pina, American Legion Commander St. Helena Post 199, and Mayor Ellsworth for the POW/MIA flag to be flown during:
 - 1. The week preceding and week after Memorial Day (Last Monday in May).
 - 2. The week preceding and week after Veterans Day (November 11th)

RESOLUTION

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

- 1. Authorizes a MIA/POW ceremonial flag to be flown the week preceding and week after Memorial Day and Veterans Day.

Approved at a Regular Meeting of the St. Helena City Council on October 22, 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