



AMENDED 12-4-20
City of St. Helena
Regular City Council Meeting
Tuesday, December 8, 2020 @ 6:00 PM

In accordance with Executive Order N-29-20, and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. We will address the Order in the following ways: Members of the public may not physically attend meetings. The City Council meeting will be live-streamed on Comcast Channel 28 and on the City's website, barring technical difficulties. Those members of the public wishing to participate must do so remotely via Zoom electronic meetings in the following ways; by either logging onto the Zoom link located on the meeting agenda (please download the app to your computer or mobile device) and enter the meeting ID or by calling a listed number and enter the meeting ID. Public comment for City Council meetings will be accepted via email to publiccomment@cityofsthelena.org. All public comments must be emailed by 4:00 PM prior to the meeting. Emailed public comments will not be read out loud but will be publicly available and attached to the on-line City Council agenda.

Please see the end of the agenda for detailed PUBLIC PARTICIPATION instructions. Spanish translation for this meeting will be offered. To access Spanish translation, you will need to join the meeting using the Zoom app from a computer, iPad or Iphone. You will see an icon on the screen that will allow you to choose Spanish translation. To learn how to use Zoom, please see the instructions below.

Please click the link below to join the meeting: <https://us02web.zoom.us/j/89990242284>

Or iPhone one-tap: US: +16699006833,,89990242284# or +12532158782,,89990242284#

Or Telephone: Dial(for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099

Meeting ID: 899 9024 2284

International numbers available: <https://us02web.zoom.us/j/89990242284>

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

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Ciudad de Santa Helena Reunión Especial del Ayuntamiento Jueves, 10 de November 2020  
@ 6:00 PM

De acuerdo con las órdenes ejecutivas N-25-20, N-29-20, y la orientación del Departamento de Salud Pública de California sobre reuniones, se permite la participación pública virtual. Seguiremos la Orden de la siguiente manera: Los miembros del público no pueden asistir físicamente a las reuniones. La reunión del Ayuntamiento de la Ciudad se transmitirá en vivo por el Canal 28 de Comcast y en el sitio web de la Ciudad, salvo dificultades técnicas. Aquellos miembros del público que deseen participar deben hacerlo de forma virtual a través de las reuniones electrónicas de Zoom de las siguientes maneras; iniciando sesión en el

enlace Zoom ubicado en la agenda de la reunión (descargue la aplicación en su computadora o dispositivo móvil) e ingrese la ID de la reunión o llamando al número ubicado en la agenda e ingrese la ID de la reunión. Se aceptarán comentarios públicos para la reunión del Ayuntamiento por correo electrónico a [publiccomment@cityofsthelena.org](mailto:publiccomment@cityofsthelena.org). Todos los comentarios públicos se harán públicos y se adjuntarán a la agenda y no se leerán en voz alta. Todos los comentarios públicos que se reciban después de las 4:00 PM se adjuntarán a la

agenda al díasiguiente.

Consulte el final de la agenda para obtener instrucciones detalladas de PARTICIPACIÓN PÚBLICA. Se ofrecerá traducción al español para esta reunión. Para acceder a la traducción al español, deberá unirse a la reunión utilizando la aplicación Zoom desde una computadora, iPad o iPhone. Verá un icono en la pantalla que le permitirá elegir la traducción al español. Para aprender a utilizar Zoom, consulte las instrucciones a continuación.

Habrà traducción en español durante la junta

Haga clic en el enlace a continuación para participar en la reunión:

<https://us02web.zoom.us/j/89990242284>

O por iPhone one-tap: US: +16699006833,,89590375822# or +12532158782,,89590375822#

O por Teléfono: Marque(para mejor calidad, marque número basado en su ubicación actual):

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ID de la Reunión: ID: 899 9024 2284

Números Internacionales

Disponibles:

<https://us02web.zoom.us/j/89990242284>

TENGA EN CUENTA: Cualquier persona que desee hablar sobre un tema en la agenda o hacer un comentario en la sección de "comentario público" de la agenda puede hacerlo, pero por favor observe el límite de tiempo de cuarto minutos.

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.

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. Arbor Day Proclamation presented to Carlos Uribe, Public Works Assistant Operations Manager/City Arborist 17  
[Arbor Day Proclamation](#)

7. STAFF BRIEFING

- 7.1. City Manager COVID-19 update

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 November 24, 2020 19 - 26  
Prepared By: Cindy Tzaferopoulos, City Clerk  
Recommendation:  
Approve  
[11-24-20 Regular City Council - Minutes](#)

- 8.2. Consideration and proposed approval of a resolution: (1) approving Redwood Empire Municipal Insurance Fund merger with Public Agency Risk Sharing Authority of California to create the California Intergovernmental Risk Authority (CIRA) and adopting the CIRA Joint Powers Agreement and Bylaws; and (2) adopting the REMIF Joint Powers Agreement and Bylaws which allow the self-insured health plan (Anthem Blue Cross/Blue Shield) to remain under the care, custody, and control of REMIF. 27 - 136

CEQA Determination: Not a CEQA project

Prepared By: Kathy Robinson, Human Resources & IT Director

Recommendation:

Approve resolution (1) approving Redwood Empire Municipal Insurance Fund merger with Public Agency Risk Sharing Authority of California to create the California Intergovernmental Risk Authority (CIRA) and adopting the CIRA Joint Powers Agreement and Bylaws; and (2) adopting the REMIF Joint Powers Agreement and Bylaws which allow the self-insured health plan (Anthem Blue Cross/Blue Shield) to remain under the care, custody, and control of REMIF.

[Staff Report - Pdf](#)

- 8.3. Consideration and proposed approval of a resolution duly approving and adopting publicly available pay schedules in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5 which includes a revised salary schedule for part-time Casual Worker classification 137 - 141

CEQA Determination: Not a CEQA project

Prepared By: Kathy Robinson, Human Resources & IT Director

Recommendation:

Staff recommends City Council duly approve and adopt publicly available pay schedules in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5 which includes a revised salary schedule for the part-time Casual Worker classification, and make no other changes to the salary schedules for other classifications.

[Staff Report - Pdf](#)

- 8.4. Consideration and proposed adoption of a Resolution making sole source findings in support of and awarding a Construction Contract with Got Power, Inc. doing business as CD & Power for CIP Project No. C20-06 Emergency Back-up Power in the amount not-to-exceed \$285,755.25 and authorizing the Director of Public Works to approve change orders not to exceed 10% of the original contract amount. 143 - 231

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

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

Recommendation:

Adopt a Resolution making sole source findings in support of and awarding a Construction Contract with Got Power, Inc. doing business as CD & Power for CIP Project No. C20-06 Emergency Back-up Power in an amount not-to-exceed \$285,755.25 and authorizing the Director of Public Works to approve change orders not-to-exceed 10% of the original contract amount.

[Staff Report - Pdf](#)

- 8.5. Consideration and proposed adoption of a Resolution (1) amending the Fiscal Year 2020-2021 adopted Capital Improvement Program Budget to include CIP Project No. C21-01 PSPS Emergency Back-up Power and authorizing a budget of \$350,000; (2) authorizing a budget decrease of \$50,000 from CIP Project W-106 Pump Station Upgrades with water funds being reallocated to C21-01; (3) authorizing a fund balance transfer of up to \$50,000 from Fund 763 Water CIP to Fund 733 Civic CIP upon completion of CIP Project No. C21-01 to be used towards the purchase and installation of the fixed generator at the Louis Stralla Water Treatment Plant; and (4) approving an Equipment Purchase Agreement with Gonneville, Inc. for CIP Project No. C21-01 PSPS Emergency Back-up Power for an amount not-to-exceed \$272,158.07. 233 - 290

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

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

Recommendation:

Consideration and proposed adoption of a Resolution (1) amending the Fiscal Year 2020-2021 adopted Capital Improvement Program Budget to include CIP Project No. C21-01 PSPS Emergency Back-up Power and authorizing a budget of \$350,000; (2) authorizing a budget

decrease of \$50,000 from CIP Project W-106 Pump Station Upgrades with water funds being reallocated to C21-01; (3) authorizing a fund balance transfer of up to \$50,000 from Fund 763 Water CIP to Fund 733 Civic CIP upon completion of CIP Project No. C21-01 to be used towards the purchase and installation of the fixed generator at the LSWTP; and (4) approving an Equipment Purchase Agreement with Gonnevillle, Inc. for CIP Project No. C21-01 PPS Emergency Back-up Power for an amount not-to-exceed \$272,158.07.

[Staff Report - Pdf](#)

- 8.6. Consideration and proposed approval of a Resolution approving an Equipment Purchase Agreement for a portable generator with Gonnevillle, Inc. for CIP Project No. W-106 Pump Station Upgrades for an amount not-to-exceed \$87,318.76. 291 - 324

CEQA Determination: Exempt

Prepared By: Martin Beltran, Management Analyst

Recommendation:

Adopt a Resolution approving an Equipment Purchase Agreement for a portable generator with Gonnevillle, Inc. for the CIP Project No. W-106 Pump Station Upgrades for an amount not-to-exceed \$87,318.76.

[Staff Report - Pdf](#)

- 8.7. Consideration and proposed approval of a resolution (1) ratifying an emergency public project without public bidding relating to the Glass Fire, and (2) ratifying a Commercial Service Agreement STH Contract: FY2021-039 with Restoration Management Company in an estimated amount of \$500,000 based on time and materials for smoke mitigation at 10 City facilities. 325 - 335

CEQA Determination: Exempt from CEQA pursuant to Sections 21080(b)(3) and (4)

Prepared By: April Mitts, Finance Director

Recommendation:

Approval of a resolution: (1) ratifying an emergency public project without public bidding relating to the Glass Fire and (2) ratifying a Commercial Service Agreement STH Contract: FY2021-039 with Restoration Management Company in an estimated amount of \$500,000 based on time and materials for smoke mitigation at 10 City facilities.

[Staff Report - Pdf](#)

- 8.8. Consideration and proposed approval of a Resolution accepting the certification of the vote for the November 3, 2020 St. Helena General Municipal Election 337 - 345

CEQA Determination: Not a CEQA project

Prepared By: Cindy Tzafoopoulos, City Clerk

Recommendation:

Adopt the resolution accepting the certification of the vote for Mayor, Council Members, and Advisory Measure G.

[Staff Report - Pdf](#)

- 8.9. Consideration and Proposed Approval of a Resolution Approving Napa Valley Transportation Authority Joint Powers Agreement Amendment No. 12 347 - 435

CEQA Determination: Not a CEQA project

Prepared By: Cindy Tzaopoulos, City Clerk

Recommendation:

Staff recommends adopting the resolution approving the Napa Valley Transportation Authority Joint Powers Agreement Amendment No. 12.

[Staff Report - Pdf](#)

- 8.10. Consideration and approval of a Resolution authorizing: (1) a budget increase of \$30,000 to 561-5000-2130 in FY 2020-21 for costs associated with Phase II Water Restriction implementation and (2) use of Water Fund Balance in the amount of \$30,000 in FY 2020-21. 437 - 440

CEQA Determination: Not a CEQA project

Prepared By: Martin Beltran, Management Analyst

Recommendation:

Staff recommends City Council approve a Resolution authorizing: (1) a budget increase of \$30,000 to 561-5000-2130 in FY 2020-21 for costs associated with Phase II Water Restriction implementation and (2) use of Water Fund Balance in the amount of \$30,000 in FY 2020-21.

[Staff Report - Pdf](#)

- 8.11. \*NEW ITEM ADDED 12-4-20 441 - 445  
Consideration and proposed adoption of a resolution certifying the Measure T Maintenance of Effort (MOE) for Fiscal Year 2020.

CEQA Determination: Not a CEQA project

Prepared By: Mandy Kellogg, Finance Manager

Recommendation:

Adopt a resolution certifying the Measure T Maintenance of Effort (MOE) for Fiscal Year 2020.

[Staff Report - Pdf](#)

9. PUBLIC HEARINGS

- 9.1. Discussion of and Direction on the Potential Activities and Projects for Inclusion in the 2021 Community Development Block Grant (CDBG) Applications 447 - 462

CEQA Determination: Exempt from the requirements of CEQA for sections 15332, 15301, and 15303

Prepared By: April Mitts, Finance Director

Recommendation:

Provide direction on the activities and projects to be considered for funding under the 2021 Community Development Block Grant program.

[Staff Report - Pdf](#)

[Public Comment.Mary Stephenson](#)

10. OLD BUSINESS

- 10.1. Discussion and update on the City of St. Helena Water Supply and Phase II Water Emergency (~~Staff report forthcoming~~ Provided 12-4-20) 463 - 475

CEQA Determination: Not a CEQA project  
Prepared By: Martin Beltran, Management Analyst  
Recommendation:  
No action required at this time.

[Staff Report - Pdf](#)  
[Public Comment.Alan Galbraith](#)

11. NEW BUSINESS

- 11.1. Recognition of Outgoing Council Member David Knudsen and Mary Koberstein  
(A recess in recognition of outgoing Council Member David Knudsen and Mary Koberstein will be held.)
- 11.2. Oath of Office administered by City Clerk Cindy Tzaopoulos to Mayor-Elect Geoff Ellsworth and Council Member-Elect Eric Hall and Lester Hardy
- 11.3. Consideration of the Vice Mayor Nomination Made by the Mayor and Requiring Council Approval 477 - 517

CEQA Determination: Not a CEQA project  
Prepared By: Cindy Tzaopoulos, City Clerk  
Recommendation:  
Mayor nominates Vice Mayor for Council approval.

[Staff Report - Pdf](#)

- 11.4. Discussion and direction regarding a crosswalk study on Spring Street and Madrona Avenue, including possible adoption of a resolution appropriating Gas Tax Funds in an amount not-to-exceed \$10,000 to complete this study and/or providing direction to advance a more comprehensive Citywide Active Transportation and Safe Routes to School Plan. 519 - 555

CEQA Determination: Not a CEQA project  
Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Recommendation:

City Council discussion and direction regarding a crosswalk study on Spring Street and Madrona Avenue, including possible adoption of a resolution appropriating Gas Tax Funds in an amount not-to-exceed \$10,000 to complete this study and/or providing direction to advance a more comprehensive Citywide Active Transportation and Safe Routes to School Plan.

[Staff Report - Pdf](#)  
[Public Comment.Chris Cole](#)  
[Public Comment.Tony Albright](#)  
[Public Comment.Glenn Smith](#)



[Public Comment.Pam Smithers](#)  
[Public Comment.Sophia Tsilimigras](#)  
[Public Comment.Denise Henquet](#)  
[Public Comment.Laura Symon](#)

- 11.5. 2021 City Council assignments to various City and Napa County Committees, Boards and Commissions 557 - 581

CEQA Determination: Not a CEQA project  
 Prepared By: Cindy Tzaopoulos, City Clerk  
 Recommendation:

1. Affirm or recommend City Council Liaisons to each committee:
  - a. Active Transportation/Sustainability Committee
  - b. Library Board of Trustees
  - c. Parks and Recreation Commission
2. Affirm or recommend appointment to various City/County collaborative agency committees:
  - a. One Alternate - City/SHUSD/Chamber/NVC (Monrovia)
  - b. One Primary/One Alternate - Association of Bay Area Governments (ABAG) General Assembly
  - c. One Primary - Napa Valley Tourism Corporation/ St. Helena Tourism Improvement District (SHTID)
  - d. One Alternate - Napa County City Selection Committee Alternate
  - e. Two Primary - Napa County Regional Climate Action Committee
3. Make recommendation to the Napa County Board of Supervisors to affirm or recommend new member:
  - a. One Alternate - Napa County Flood Control and Water Conservation District
  - b. One Primary - Napa County Youth Opportunities Commission
  - c. One Primary and One Alternate - Napa Valley Transportation Authority (NVTa)
  - d. One Primary and One Alternate - Napa County Watershed Information Center & Conservancy (WICC)
  - e. One Primary and One Alternate - Upper Valley Waste Management Board

[Staff Report - Pdf](#)  
[Public Comment.Rob Anglin](#)

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

- 12.1. **January City Council Meetings:**

**1/12 (Staff reports due 12/23)**

**1/26 (Staff reports due 1/8)**

**STAFF BRIEFING:**

1/12 & 1/26 Update on Waste Water Treatment Plant Upgrade Project by Erica Ahmann Smithies, Public Works Director and City Engineer

|                                                                   |
|-------------------------------------------------------------------|
| 1/26 Monthly Water Update                                         |
| 1/12 & 1/26 City Manager COVID-19 update                          |
| <b>CONSENT:</b>                                                   |
| Fire Department - Approving Sale of Surplus Apparatus (Rescue-17) |
| Glass fire termination of emergency                               |
| 1/12 Amendment to Oscar Larson Contract                           |
| 1/12 NOC of Upper York Creek                                      |
| 1/12 Interpretation Services contract                             |
| 1/12 Award Housing Element contract                               |
| 1/12 Employee handbook                                            |
| <b>PH or OLD / NEW BUSINESS:</b>                                  |
| OB 1/12 Streetscape and Downtown sewer lateral discussion         |
| 1/12 Appoint Water Advisory Board Members                         |
| PH 12/8 - CDBG Grant discussion-planning technical assistance     |
| 1/12 Surplus property policy                                      |
| 1/12 Hunt Avenue Check in                                         |
| 1/12 2021 Mtg Calendar review                                     |
| OB 1/12 – Elm Tunnel Tree Assessment                              |

13. ADJOURNMENT

The next Regular City Council meeting is scheduled for January 12, 2020, at 6:00 p.m.

I do hereby certify that a copy of the foregoing agenda was posted on the City website on December 2, 2020. Reposted December 4, 2020.

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.

#### **THE CITY OF ST. HELENA ENCOURAGES ONLINE PUBLIC PARTICIPATION IN VIRTUAL CITY COUNCIL MEETINGS**

St. Helena, CA– The City of St. Helena is committed to public participation in City government in a manner that is consistent with guidance provided by the Napa County Public Health Official and Governor Newsom's Executive Order N-25-20. These guidelines relate to social distancing, and are intended to protect everyone by limiting the spread of COVID-19 in our community. In adherence to these guidelines, the St. Helena City Council will host a Virtual Council Meeting on Zoom; a free teleconferencing tool that enables users to watch and/or call into the meeting from their computers or phones. This meeting will be open to public and allows for live public comment. The meeting will also be recorded, livestreamed, and posted on the City's website after the adjournment of the meeting if technical difficulties occur: <https://sthelena.civicweb.net/Portal/>

**The ZOOM web link, meeting ID, and phone number will be listed at the top of the City Council Meeting Agenda. You will be required to enter the meeting ID, but there will be no password or participant ID.**

#### **How to Watch or Listen to Council Meetings:**

1. Watch on Comcast Channel 28
2. Watch the livestreaming video on the City's website
3. Watch and Listen on Zoom.us by clicking on the link in the Council Agenda
4. Listen only by calling the Zoom number listed on the Council Agenda

#### **Watch Council Meeting by Joining the Zoom Meeting:**

1. **By Computer, Tablet, or Smart Phone:**
  1. Before joining the virtual City Council Meeting, it is highly encouraged that you download the Zoom App. To sign up for your own free account, visit [zoom.us/signup](https://zoom.us/signup) and enter your email address. You will receive an email from Zoom (no-reply@zoom.us). In this email, click Activate Account.
  2. If you are logged into your account, Enter the **Meeting ID** listed on the City Council Agenda. If you have not created an account go to: <https://zoom.us/join> and enter the **Meeting ID**
  3. Select if you would like to connect audio and/or video and tap **Join Meeting**.

4. For specific instructions for your device, go to: <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

1. **Listen Only by Telephone:**

1. **Dial** the number listed on the Council Agenda.
2. At the prompt, enter the **Meeting ID** provided on the top of the City Council Meeting Agenda and **Press #**. **A participate ID is not required.**
3. To disconnect from the meeting, hang up the phone.

### **Ways to Provide Public Comment:**

While attending the virtual City Council Meeting, the public will have the opportunity to provide live public comment during Public Forum and after each agenda item. When it is the appropriate time for public comment the Mayor will verbally open public comment. At this time each individual is permitted 4 minutes to speak.

1. **Send a Public Comment in by 4:00 PM Prior to the Meeting to:**  
[publiccomment@cityofsthelena.org](mailto:publiccomment@cityofsthelena.org)

The easiest way to provide public comment is to email your public comment. Public comments may be emailed to [publiccomment@cityofsthelena.org](mailto:publiccomment@cityofsthelena.org). Please include in the subject line "COMMENT TO COUNCIL and the AGENDA ITEM". Any public comment is required to be submitted no later than 2 hours before the scheduled meeting and will be included as an attachment to the agenda. All public comments will be made publicly available and attached to the agenda item and will not be read out loud. All public comments that are received after 4:00 PM will be attached to the agenda the following day.

2. **Provide Comment through Zoom meeting from a computer, tablet, or smart phone**

This option allows the public to virtually attend the meeting as a muted 'attendee' with no video or screen sharing capabilities. You will be able to see and hear those participating in the meeting, but they will not be able to hear you until the host unmutes you.

If you wish to provide public comment during a specific agenda item or during public forum, you can use the "**raise hand**" feature located in the control panel at the bottom of your screen. The icon is a small blue hand. In Windows you can also use the Alt+Y keyboard shortcut to raise or lower your hand. In Mac you can also use the Option+Y keyboard shortcut to raise or lower your hand.

The host will be notified that you've raised your hand and you will be placed in a queue with all incoming requests.

When it is your turn to speak, you will be notified that the host has unmuted you. To be removed from the queue, just click the '**raise hand**' button again.

3. **Call in to the ZOOM meeting from a cell phone or landline phone only**

This option allows the member of the public with the opportunity to verbally participate in public comment.

If you wish to speak during public comment time dial **\*9** on your telephone.

The host will be notified that you would like to speak and you will be placed in a queue with all incoming requests.

When it is your turn to speak, you will be notified that the host has unmuted you. You may press **\*9** again if you wish to be removed from the queue.

You will be notified at the end of your statement that you have been muted.

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En cumplimiento de la Ley de Estadounidenses con Discapacidades, si necesita asistencia especial para participar en esta reunión, llame a la Oficina del Secretaría de la Ciudad (707) 967-2792. La notificación 72 horas antes de la reunión, como lo requiere la Sección 202 de la Ley de Estadounidenses con Discapacidades, permitirá a la Ciudad hacer arreglos razonables para garantizar la accesibilidad a esta reunión.

LA CIUDAD DE ST. HELENA ALIENTA LA PARTICIPACIÓN PÚBLICA EN LÍNEA EN REUNIONES VIRTUALES DEL CONSEJO DE LA CIUDAD

St. Helena, CA– La Ciudad de St. Helena está comprometida con la participación pública en el gobierno de la Ciudad de manera que sea consistente con la guía proporcionada por el Oficial de Salud Pública del Condado de Napa y la Orden Ejecutiva N-25-20 del Gobernador Newsom. Estas pautas se relacionan con el distanciamiento social y están destinadas a proteger a todos al limitar la propagación de COVID-19 en nuestra comunidad. En cumplimiento de estas pautas, el Ayuntamiento de St. Helena organizará una Reunión del Consejo Virtual sobre Zoom; Una herramienta de teleconferencia gratuita que permite a los usuarios mirar y / o llamar a la reunión desde sus computadoras o teléfonos. Esta reunión estará abierta al público y permite comentarios públicos en vivo. La reunión también se grabará, se transmitirá en vivo y se publicará en el sitio web de la Ciudad después de la clausura de la reunión si se presentan dificultades técnicas: <https://sthelena.civicweb.net/Portal/>

El enlace web de ZOOM, la identificación de la reunión y el número de teléfono se enumerarán en la parte superior de la Agenda de la reunión del Ayuntamiento. Se le pedirá que ingrese la ID de la reunión, pero no habrá contraseña ni ID de participante.

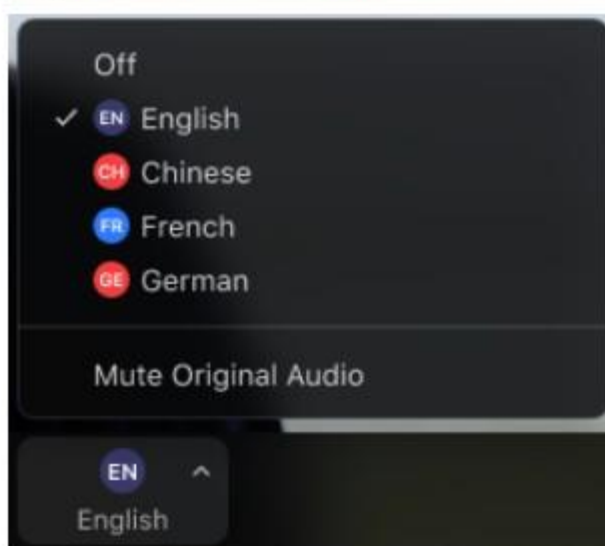
Cómo escuchar la interpretación de un idioma



1. En los controles de la reunión o el seminario web, haga clic en **Interpre**



2. Haga clic en el idioma que desee escuchar.



3. (Opcional) Para escuchar solo el idioma interpretado, haga clic en **Siler**



1. En los controles de la reunión, toque ... Más.



2. Toque **Interpretación de idiomas**.
3. Toque el idioma que desee escuchar.



4. (Opcional) Toque el botón de alternancia **Silenciar audio original**.



5. Haga clic en **Finalizado**.

Cómo ver o escuchar las reuniones del Consejo:

1. Veala a través del canal 28 de Comcast
2. Vea el video de transmisión en vivo en el sitio web de la ciudad
3. Mire y escuche en Zoom.us haciendo clic en el enlace en la Agenda del Consejo
4. Escuche llamando al número de Zoom listado en la Agenda del Consejo

Vea la reunión del Consejo uniéndose a la reunión Zoom:

1. **Por computadora, tableta o teléfono:**
 - a. Antes de unirse a la reunión virtual del Ayuntamiento, le recomendamos que descargue la aplicación Zoom. Para registrarse en su propia cuenta gratuita, visite zoom.us/signup e ingrese su dirección de correo electrónico. Recibirá un correo electrónico de Zoom (no-reply@zoom.us) . En este correo electrónico, haga clic en Activar cuenta.
 - b. Si ha iniciado sesión en su cuenta, ingrese la ID de la reunión que figura en la Agenda del Ayuntamiento. Si no ha creado una cuenta, vaya a: <https://zoom.us/join> e ingrese la ID de la reunión
 - c. Seleccione si desea conectar audio y / o video y toque Unirse a la reunión. re. Para

obtener instrucciones específicas para su dispositivo, vaya a:
<https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

2. Escuche solo por teléfono:

- a. **Marque** el número que figura en la Agenda del Consejo.
- b. Cuando se le solicite, ingrese la **ID de la reunión** provista en la parte superior de la Agenda de la reunión del Concejo Municipal **y presione #. No se requiere una identificación de participación.**
- c. Para desconectarse de la reunión, cuelgue el teléfono

Formas de proporcionar comentarios públicos:

Mientras asiste a la reunión virtual del Ayuntamiento, el público tendrá la oportunidad de proporcionar comentarios públicos en vivo durante el Foro Público y después de cada tema de la agenda. Cuando sea el momento apropiado para comentarios públicos, el Alcalde abrirá verbalmente los comentarios públicos. En este momento, cada individuo tiene permitido 4 minutos parahablar.

1. Envíe un comentario público por adelantado a publiccomment@cityofsthelena.org

La forma más fácil de proporcionar comentarios públicos es enviar su comentario público por correo electrónico. Los comentarios públicos pueden enviarse por correo electrónico a publiccomment@cityofsthelena.org. Incluya en la línea de asunto "COMENTARIO AL CONSEJO y el PUNTO DEL PROGRAMA". Cualquier comentario público debe presentarse a más tardar 2 horas antes de la reunión programada y se incluirá como un archivo adjunto a la agenda. Todos los comentarios públicos se harán públicos y se adjuntarán al artículo de la agenda y no se leerán en voz alta. Todos los comentarios públicos que se reciban después de las 4:00 PM se adjuntarán a la agenda al día siguiente.

- 2. Proporcione comentarios a través de la reunión Zoom desde una computadora, tableta o teléfono inteligente

Esta opción permite que el público asista virtualmente a la reunión como un "asistente" silenciado sin capacidades de video o pantalla compartida. Podrá ver y escuchar a los participantes en la reunión, pero no podrán escucharlo hasta que el anfitrión de permiso.

Si desea proporcionar comentarios públicos durante un elemento específico de la agenda o durante un foro público, puede usar la función "levantar la mano" ubicada en el panel de control en la parte inferior de la pantalla. El icono es una pequeña mano azul. En Windows también puede usar el atajo de teclado Alt + Y para subir o bajar la mano. En Mac también puedes usar el atajo de teclado Alt + Y para subir o bajar lamano.

Se le notificará al anfitrión que ha levantado la mano y se lo colocará en fila con todas las solicitudes entrantes

Cuando sea su turno de hablar, se le notificará que el anfitrión le ha dado permiso de hablar. Para ser retirado de la fila, simplemente haga clic de nuevo el botón "levantar la mano".

3. Llame a la reunión de ZOOM desde un teléfono fijo o móvil solamente

Esta opción le permite al miembro del público la oportunidad de participar verbalmente en comentarios públicos.

Si desea hablar durante el tiempo de comentarios públicos, marque * 9 en su teléfono.

Se le notificará al anfitrión que le gustaría hablar y se colocará en fila con todas las solicitudes entrantes.

Cuando sea su turno de hablar, se le notificará que el anfitrión le ha dado permiso de hablar. Puede presionar * 9 nuevamente si desea ser eliminado de la fila.

City of St. Helena PROCLAMATION

ARBOR DAY

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and Arbor Day is now observed throughout the nation and the world, and

WHEREAS, trees reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal, and

WHEREAS, the City of St. Helena has been recognized as a Tree City USA by The National Arbor Day Foundation for 22 years and desires to continue its tree-planting practices

NOW, THEREFORE, let it be known that the City of St. Helena has declared the 10th day of December 2020, as Arbor Day and will be holding tree plantings in recognition of Arbor Day for the purpose of expressing our support for efforts to protect our trees and woodlands.

Dated: December 8, 2020

Geoff Ellsworth, Mayor
City of St. Helena

MINUTES
City of St. Helena
Regular City Council Meeting
Tuesday, November 24, 2020 @ 6:00 PM

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

Absent: None

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PUBLIC FORUM:

No public comment was received.

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

City Attorney Ethan Walsh noted that there was no reportable action taken at the November 16, 2020, special City Council closed session meeting.

Reports by Staff and City Council Members were made.

6. PRESENTATIONS AND PUBLIC RECOGNITIONS

6.1 None

7. STAFF BRIEFING

7.1 Update on Waste Water Treatment Plant Upgrade Project by Erica Ahmann Smithies, Public Works Director and City Engineer

Public Works Director Erica Ahmann Smithies provided an update.

7.2 Upper York Creek Dam Project Update by Erica Ahmann Smithies, Public Works Director and City Engineer

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Public Works Director Erica Ahmann Smithies provided an update.

7.3 City Manager COVID-19 update

City Manager Mark Prestwich provided an update.

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 November 10, 2020 (Provided prior to the meeting)
Prepared By: Cindy Tzaopoulos, City Clerk

- 8.2 Consideration and proposed adoption of a Resolution accepting the work and final CIP Project C19-02 Rehabilitate Crane Park Tennis Courts construction costs of \$227,130 and directing the filing of the Notice of Completion

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

Prepared By: Edrees Argand, Assistant Engineer

Recommendation:

Adopt the attached Resolution accepting the work and final project construction costs of \$227,130 and directing the filing of the Notice of Completion for CIP Project C19-02 Rehabilitate Crane Park Tennis Courts.

- 8.3 Consideration and proposed adoption of a Resolution accepting the work and final CIP Project No. R21-03 2020 LNU Emergency Fire Clearing construction costs of \$51,024.63 and directing the filing of the Notice of Completion

CEQA Determination: This work will be conducted under a Statutory Exemption identified under Sections(s) 15269, 15282 and 15284 of the California Environmental Quality Act

Prepared By: Edrees Argand, Assistant Engineer

Recommendation:

Adopt the attached Resolution accepting the work and final project construction costs of \$51,024.63 and directing the filing of the Notice of Completion for CIP Project R21-03 2020 Emergency Fire Clearing.

Item 8.4 was removed from consent.

- 8.4 ~~Consideration and proposed adoption of a resolution authorizing the City Manager to execute Amendment No. 1 to STH Contract: FY2020-086 in the amount of \$15,000, to the Professional Service Agreement with BKF for designing Capital Improvement Project R19-05 Grayson and South Crane Avenue Rehabilitation for an amount not to exceed \$190,139 and authorizing a budget increase of \$15,000 to CIP Project R19-05 with available funding~~

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~~transferred from Fund 774 Sewer Impact Fees.~~

- 8.5 Consider approval and grant of authorization to City Manager to enter into agreements for the acceptance of trail easements with Treasury Wine Estates Americas Company and C. Mondavi & Family in furtherance of the Napa Valley Vine Trail project.

CEQA Determination: Acceptance of the easements is simply a step the implementation of the Vine Trail project, for which the Napa Valley Transportation Authority (NVTa) is the lead agency for purposes of CEQA. NVTa approved a Final Mitigated Negative Declaration (SCH 2020060572) and adopted a Mitigation Monitoring and Reporting Program for the portion of the Vine Trail project extending from St. Helena to Calistoga on August 19, 2020. Any environmental impacts of this portion of the Vine Trail project were addressed in the MND adopted by NVTa.

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

Adopt the Resolution approving an Amendment to and Ratification of Agreement Granting Bicycle Pathway Easement between the City and Treasury Wine Estates Americas Company and adopt the Resolution approving a Trail Easement Agreement between C. Mondavi & Family and the City.

- 8.6 Consideration and proposed approval of a resolution (1) ratifying an emergency public project without public bidding relating to the Glass Fire; (2) approving the Equipment Purchase Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$236,712.47 for design and fabrication of the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04; (3) approving the Construction Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$153,170.00 to construct the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04; and (4) authorizing the Director of Public Works to approve contract change orders up to 20% of the contract amount.

CEQA Determination: Exempt from CEQA pursuant to Sections 21080(b)(3) and (4)

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

Approval of a resolution resolution (1) ratifying an emergency public project without public bidding relating to the Glass Fire; (2) approving the Equipment Purchase Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$236,712.47 for design and fabrication of the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04; (3) approving the Construction Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$153,170.00 to construct the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04; and (4) authorizing the Director of Public Works to approve contract change orders up to 20% of the contract

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amount.

- 8.7 Consideration and Proposed Approval of a Resolution authorizing (1) the Director of Public Works to approve Change Orders to the following Construction Contracts: (a) up to \$138,155.82 with McCullough Construction, Inc. STH Contract: FY2021-026 for Emergency Fire Clearing and Debris Cleanup at Tank 1A, Tank 2, Bell Canyon Access Roads, and LSWTP due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$238,155.82, (b) up to \$46,253.32 Taylor Bailey, Inc. STH Contract: FY2021-028 for Emergency fire Clearing and Debris Removal at Meadowood tanks due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$146,253.32.

CEQA Determination: Exempt from CEQA pursuant to Sections 21080(b)(3) and (4)

Prepared By: Martin Beltran, Management Analyst

Recommendation:

Consideration and Proposed Approval of a Resolution authorizing (1) the Director of Public Works to approve Change Orders to the following Construction Contracts: (a) up to \$138,155.82 with McCullough Construction, Inc. STH Contract: FY2021-026 for Emergency fire Clearing and Debris Cleanup at Tank 1A, Tank 2, Bell Canyon Access Roads, and LSWTP due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$238,155.82, (b) up to \$46,253.32 Taylor Bailey, Inc. STH Contract: FY2021-028 for Emergency Fire Clearing and Debris Removal at Meadowood tanks due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$146,253.32.

- 8.8 Consideration and proposed adoption of a Resolution approving an Equipment Purchase Agreement with Gonnevill, Inc. for the CIP Project No. C20-06 Emergency Back-up Power an amount not-to-exceed \$314,544.97. (Staff report forthcoming. Provided 11-22-20)

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

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

Recommendation:

Adopt the Resolution approving an Equipment Purchase Agreement with Gonnevill, Inc. for the CIP Project No. C20-06 Emergency Back-up Power in an amount not-to-exceed \$314,544.97.

Vice Mayor Paul Dohring moved to approve Consent items 8.1 through 8.3 and 8.5 through 8.8. The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

AYES: Vice Mayor Paul Dohring, Council Member Mary Koberstein, Mayor

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Geoff Ellsworth, Council Member David Knudsen, and Council Member Anna Chouteau

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: None

- 8.4 Consideration and proposed adoption of a resolution authorizing the City Manager to execute Amendment No. 1 to STH Contract: FY2020-086 in the amount of \$15,000, to the Professional Service Agreement with BKF for designing Capital Improvement Project R19-05 Grayson and South Crane Avenue Rehabilitation for an amount not to exceed \$190,139 and authorizing a budget increase of \$15,000 to CIP Project R19-05 with available funding transferred from Fund 774 Sewer Impact Fees.

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

Prepared By: Edrees Argand, Assistant Engineer

Recommendation:

Staff recommends City Council adopt a Resolution authorizing the City Manager execute Amendment No. 1 to STH Contract: FY2020-086 in the amount of \$15,000, to the Professional Service Agreement with BKF for designing Capital Improvement Project R19-05 Grayson and South Crane Avenue Rehabilitation for an amount not to exceed \$190,139 and authorizing a budget increase of \$15,000 to CIP Project R19-05 with available funding transferred from Fund 774 Sewer Impact Fees.

City Manager Mark Prestwich reported on this item.

No public comment was received.

Vice Mayor Paul Dohring moved to approve 8.4. The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

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

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: None

9. PUBLIC HEARINGS

9.1 None

10. OLD BUSINESS

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10.1 None

11. NEW BUSINESS

11.1 Consideration and approval of a Resolution approving City of St. Helena Policy P-FI-0020 Acceptance of Donations and Charitable Gifts to the City.

CEQA Determination: Exempt

Prepared By: April Mitts, Finance Director

Recommendation:

Staff recommends City Council adopt a Resolution approving City of St. Helena Policy P-FI-0020 Acceptance of Donations and Charitable Gifts to the City.

Finance Director April Mitts reported on this item.

No public comment was received.

Vice Mayor Paul Dohring moved to approve a resolution approving City of St. Helena Policy P-FI-0020 Acceptance of Donations and Charitable Gifts to the City as amended adding the additional language of "may be considered for acceptance by the City Council". The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

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

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: None

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

12.1	<u>December City Council Meetings:</u> 12/3 6pm Diversity Mtg 12/76pm After action report townhall 12/8 (Staff reports due 11/20) 12/22 Cancelled TBD Governance Mtg TBD Goal Setting (January or February) <i>STAFF BRIEFING:</i> 11/24 Upper York Creek Dam Project Update by Erica Ahmann Smithies, Public Works Director and City Engineer 11/24 Update on Waste Water Treatment Plant Upgrade Project by Erica Ahmann Smithies, Public Works Director and City Engineer
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12/8 Monthly Water Update
12/8 & 12/22-cancelled City Manager COVID-19 update
CONSENT:
12/8 Consideration and proposed approval of a resolution duly approving and adopting publicly available pay schedules in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5 which includes revised salary schedule for all part-time Casual Worker classification
12/8 NVTa Amendment 12
1/12 Surplus property policy
12/8 NOC of Upper York Creek
Glass fire termination of emergency
12/8 Approve resolution supporting merger of PARSAC and REMIF into one JPA called CIRA (California Intergovernmental Risk Agency)
12/8 Certify the November 3, 2020 and City Council transition
12/8 PSPS Grant purchase of generators
12/8 Amendment to Oscar Larson Contract
PH or OLD / NEW BUSINESS:
12/8 Hunt Avenue Check in
PH 12/8 - CDBG Grant discussion-planning technical assistance
PH 12/8- CDBG Grant request from OTSH
OB 12/8 Water Emergency Phase II Discussion
OB 12/8 – Elm Tunnel Tree Assessment
12/8 Vice Mayor selection
12/8 2021 City Council assignments to various City and Napa County Committees, Boards and Commissions
January City Council Meetings:
1/12 (Staff reports due 12/23)
1/26 (Staff reports due 1/8)
Presentation
STAFF BRIEFING:
1/12 & 1/26 Upper York Creek Dam Project Update by Erica Ahmann Smithies, Public Works Director and City Engineer
1/12 & 1/26 Update on Waste Water Treatment Plant Upgrade Project by Erica Ahmann Smithies, Public Works Director and City Engineer
1/12 Monthly Water Update
1/12 & 1/26 City Manager COVID-19 update
CONSENT:
Fire Department - Approving Sale of Surplus Apparatus (Rescue-17)
Glass fire termination of emergency

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1/12 Employee handbook
<i>PH or OLD / NEW BUSINESS:</i>
1/12 Appoint Water Advisory Board Members

13. ADJOURNMENT

Mayor Ellsworth adjourned the meeting at 6:46 p.m.

The regular meeting minutes of November 24, 2020 was adopted at the December 8, 2020 regular City Council meeting.

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk



Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed approval of a resolution: (1) approving Redwood Empire Municipal Insurance Fund merger with Public Agency Risk Sharing Authority of California to create the California Intergovernmental Risk Authority (CIRA) and adopting the CIRA Joint Powers Agreement and Bylaws; and (2) adopting the REMIF Joint Powers Agreement and Bylaws which allow the self-insured health plan (Anthem Blue Cross/Blue Shield) to remain under the care, custody, and control of REMIF.

CEQA Not a CEQA project
Determination:

Prepared By: Kathy Robinson, Human Resources & IT Director

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Rather than purchasing commercial insurance through a commercial insurance carrier, the City of St. Helena participates in an intergovernmental arrangement through which a group of cities and towns (referred to as the "members") contribute to a shared fund that pays for liability and workers' compensation claims and provides risk management services. That fund is often commonly referred to as a pool. Pools are empowered to exist through the sections of the California Government Code known as a Joint Powers Authority (JPA), which allow two or more like entities to pool funds to pay for claims.

The City of St. Helena is currently a member of the pool named the Redwood Empire Municipal Insurance Fund (REMIF). The pool functions as an extension of the City of St. Helena and is governed by a Board of Directors comprised of members in the pool.

Public entity pools are fundamentally different from conventional insurance. The primary purpose of any public entity pool is to manage and reduce underlying risks to the benefit of public entity members and the public at large. Conventional insurers exist primarily to finance losses while public pools are collaborating partners that help public entities create, foster, and manage safe environments in order to minimize personal, physical, and property damages and losses.

DISCUSSION

The Redwood Empire Municipal Insurance Fund (REMIF) is a public entity pool representing 15 small to medium sized cities/towns. REMIF was formed in 1976 with a mission to provide workers' compensation coverage in response to increasing and unaffordable commercial rates. Coverage was expanded in the mid-1980s to include liability coverage and other services.

The Public Agency Risk Sharing Authority of California (PARSAC) is a public entity pool representing 34 small to medium sized cities/towns and one fire district. PARSAC was formed in 1986 with a mission to provide liability coverage in response to the insurance crisis that eliminated commercial coverage for cities. Coverage was expanded in 1990 to include workers' compensation coverage and other services.

PARSAC and REMIF provide a pooled liability program, pooled workers' compensation program, and coverage for group purchased property, Board of Directors public officials' errors and omissions, auto physical damage, special events, fidelity bonds, cyber liability, and other ancillary benefits.

REMIF has a pooled medical/health program.

Both REMIF and PARSAC focus on managing and maintaining a financially stable risk sharing pool for members and their respective Board of Directors have a conservative funding and investment philosophy. They share a similar philosophy to embrace diverse opinions, have discussions that are constructive and collaborative, encourage participation from the members, balance member interests with those of the pool, and work together towards a greater good.

Both pools also share a similar culture in that the pool is member owned, member governed, member driven, and exists to serve its members. The organizations are also similar in that they serve small to medium sized cities/towns, and share a similar footprint in Northern California, although PARSAC has presence throughout the State. A comparison matrix of the lines of coverage and services offered by both pools are listed below:

LINES OF COVERAGE	PARSAC	REMIF
Liability	Yes	Yes
Employment Practices Liability	Yes	Yes

Automobile Liability	Yes	Yes
Property Damage (3rd party)	Yes	Yes
Workers' Compensation	Yes	Yes
Auto Physical Damage	Yes	Yes
Public Official Errors and Omissions	Yes	Yes
Property Damage (for members' property)	Yes	Yes
Special Events Coverage	Yes	Yes
Fidelity Bond	Yes	Yes
Employee Benefits (dental, vision, LTD, life)	Yes	Yes
Medical Benefits (actives and retirees)	No	Yes

SERVICES OFFERED	PARSAC	REMIF
Safety Program	Yes	Yes
Grants	Yes	No
Consultation and referral services	Yes	Yes
Customized risk management presentations	Yes	No
Video and print resource library	Yes	No
Regional and onsite risk management training	Yes	Yes
Web-based OSHA safety courses	Yes	Yes
In person OSHA safety courses	No	Yes
Web-based employment practices courses	Yes	Yes
On-site risk assessments	Yes	Yes
Post-accident assistance and mitigation	Yes	Yes
Operational Best Practice Templates	Yes	No

Given the similarities between the two agencies, REMIF and PARSAC explored a strategic partnership, which ultimately led to a proposed merger between the two organizations. Rather than one pool merging into the other, the Board of Directors for the pools directed the creation of a new pool (called the California Intergovernmental Risk Sharing Authority or CIRA). There will be great benefits in shared resources, shared expenses, and drawing on strengths from each member of the pool. Benefits also include succession planning, an increase in robust, stable programs, shared training resources, long term program sustainability, and elimination of redundancies. While a merger may result in realized savings to the members of both pools, the intent of a merger between PARSAC and REMIF is to have long term stability, sustainability while adding depth and breadth to the agencies, with the singular goal of better serving its members.

After over a year of in-depth analysis of such a merger, the Board of Directors for both pools directed the merger of the organizations, effective 07/01/21, creating a new pool, CIRA. To proceed, the individual members must seek adoption of the CIRA agreements and staff is recommending that City Council adopt the CIRA Joint Powers Agreement

and Bylaws, and direct staff to work with CIRA on steps necessary to complete the merger.

While the intent of the merger is to merge the liability, workers' compensation, and property programs there is also an interest, for the time being, to have the self-insured health plan remain under the care, custody, and control of REMIF. Due to REMIF maintaining the self-insurance health plan, this requires changes to the underlying Joint Powers Agreement and Bylaws. It is recommended the City Council adopt the revised REMIF Joint Powers Agreement and Bylaws.

FISCAL IMPACT

The total fiscal impacts are unknown at this time; however, the merger will consolidate the operations and expenses of both pools. CIRA will work towards eliminating redundant expenses which will lower long term operating costs. Consolidating operations will also achieve greater economies of scale, improve service delivery, and place CIRA in better position to leverage its larger size for better services, rates, and coverage with external service providers and excess insurers. Participation in the larger organization will also result in more predictable funding and reserving forecasts (with more available data) which reduces the likelihood of future assessments. The merged organization will be more fiscally viable and provide greater long term stability and sustainability

RECOMMENDED ACTION

Approve resolution (1) approving Redwood Empire Municipal Insurance Fund merger with Public Agency Risk Sharing Authority of California to create the California Intergovernmental Risk Authority (CIRA) and adopting the CIRA Joint Powers Agreement and Bylaws; and (2) adopting the REMIF Joint Powers Agreement and Bylaws which allow the self-insured health plan (Anthem Blue Cross/Blue Shield) to remain under the care, custody, and control of REMIF.

ATTACHMENTS

[Attachement 1. Resolution Approving REMIF and PARSAC merger into CIRA](#)

[Exhibit A. CIRA JPA Agreement - Approved by PARSAC-REMIF](#)

[Exhibit B. CIRA Bylaws - Approved by PARSAC-REMIF](#)

[Exhibit C. REMIF Amended JPA Agreement](#)

[Exhibit D. REMIF Amended Bylaws](#)

[Attachment 2. CIRA and REMIF - signature pages for JPA agreements](#)

Attachment 1

CITY OF ST. HELENA

RESOLUTION NO. 2020-_____

Resolution (1) Approving Redwood Empire Municipal Insurance Fund merger with Public Agency Risk Sharing Authority of California to create the California Intergovernmental Risk Authority (CIRA) and adopting the CIRA Joint Powers Agreement and Bylaws; and (2) adopting the Redwood Empire Municipal Insurance Fund (REMIF) Joint Powers Agreement and Bylaws which allow the self-insured health plan (Anthem Blue Cross/Blue Shield) to remain under the care, custody, and control of REMIF

RECITALS

- A. The City of St. Helena participates in an intergovernmental arrangement through which a group of cities and towns (referred to as the “members”) contribute to a shared fund that pays for liability and workers’ compensation claims and provides risk management services known as a Joint Powers Authority (JPA), which allow two or more like entities to pool funds to pay for claims; and
- B. The City of St. Helena is currently a member of the pool named the Redwood Empire Municipal Insurance Fund (REMIF). This pool functions as an extension of the City of St. Helena and is governed by a Board of Directors comprised of members in the pool; and
- C. REMIF is a public entity pool representing 15 small to medium sized cities/towns and was formed in 1976 with a mission to provide workers’ compensation coverage in response to increasing and unaffordable commercial rates; and
- D. Coverage was expanded in the mid-1980s to include liability coverage and other services; and
- E. The Public Agency Risk Sharing Authority of California (PARSAC) is a public entity pool representing 34 small to medium sized cities/towns and one fire district. PARSAC was formed in 1986 with a mission to provide liability coverage in response to the insurance crisis that eliminated commercial coverage for cities; and
- F. Coverage was expanded in 1990 to include workers’ compensation coverage and other services; and
- G. PARSAC and REMIF provide a pooled liability program, pooled workers’ compensation program, and coverage for group purchased property, Board of Directors public officials’ errors and omissions, auto physical damage, special events, fidelity bonds, cyber liability, and other ancillary benefits; and

- H. REMIF has a pooled medical/health program; and
- I. Both pools focus on managing and maintaining a financially stable risk sharing pool for members, and the Board of Directors for each pool have a conservative funding and investment philosophy; and share a similar philosophy to embrace diverse opinions, have discussions that are constructive and collaborative, encourage participation from the members, balance member interests with those of the pool, and work together towards a greater good; and
- J. Both pools also share a similar culture in that the pool is member owned, member governed, member driven, exists to serve its members, and are similar in that they serve small to medium sized cities/towns and share a similar footprint in Northern California, while PARSAC has presence throughout the State; and
- K. Given the similarities between the two agencies, REMIF and PARSAC explored a strategic partnership, which ultimately led to a proposed merger between the two organizations; and
- L. Rather than one pool merging into the other, the Board of Directors for the pools directed the creation of a new pool (called the California Intergovernmental Risk Sharing Authority or CIRA); and
- M. The intent of a merger between PARSAC and REMIF is to have long term stability, sustainability, and adding depth and breadth to the agencies, with the singular goal of better serving the members; and
- N. After over a year of in-depth analysis of such a merger, the Board of Directors for both pools directed the merger of the organizations, effective 07/01/21, creating a new pool, CIRA; and
- O. To proceed, the individual members must seek adoption of the CIRA agreements and staff is recommending that City Council adopt the CIRA Joint Powers Agreement and Bylaws, and direct staff to work with CIRA on steps necessary to complete the merger; and
- P. While the intent of the merger is to merge the liability, workers' compensation and property programs, there is also an interest to have the self-insured health plan remain under the care, custody and control of REMIF; and
- Q. Due to REMIF maintaining the self-insurance health plan, changes are necessary to the current Joint Powers Agreement and Bylaws with REMIF.

RESOLUTION

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

1. Approves Redwood Empire Municipal Insurance Fund merger with Public Agency Risk Sharing Authority of California to create the California Intergovernmental Risk Authority (CIRA); and
2. Adopts the CIRA Joint Powers Agreement (Exhibit A) and Bylaws (Exhibit B); and
3. Adopts the Redwood Empire Municipal Insurance Fund (REMIF) Joint Powers Agreement (Exhibit C) and Bylaws (Exhibit D) allowing the self-insured health plan (Anthem Blue Cross/Blue Shield) to remain under the care, custody, and control of REMIF.

Approved at a Regular Meeting of the St. Helena City Council on December 8, 2020, 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 Tzaopoulos, City Clerk

**AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT
OF THE
CALIFORNIA INTERGOVERNMENTAL RISK AUTHORITY
(formerly Public Agency Risk Sharing Authority of California)**

This Amended and Restated Joint Exercise of Powers Agreement of the California Intergovernmental Risk Authority ("CIRA" or "Authority") ("Agreement"), formerly known as the Public Agency Risk Sharing Authority of California ("PARSAC"), is entered into by and among the public entities, hereafter referred to as "Members", each of which is organized and existing under the laws of the State of California and is a signatory to this Agreement and listed in Appendix "A", attached hereto and made a part hereof. This Agreement supersedes the Public Agency Risk Sharing Authority of California [PARSAC] Joint Powers Agreement dated May 25, 2017 as of, and is effective on, July 1, 2021 ("Effective Date").

RECITALS

1. The Authority was originally created as the California Municipal Insurance Authority effective May 21, 1986 pursuant to that certain Joint Powers Agreement Creating the California Municipal Insurance Authority ("Original JPA Agreement"). The Original JPA Agreement was revised and restated effective July 1, 1989 and then again effective November 19, 1993 when the original name was changed to the Public Agency Risk Sharing Authority of California. Subsequent restatements were approved effective May 31, 1996, December 13, 2002, December 12, 2003, May 20, 2005, May 31, 2007, and May 26, 2011. The most recent restatement is the PARSAC Joint Powers Agreement which was approved effective May 25, 2017 ("PARSAC Agreement").

2. Labor Code Section 3700 authorizes public entities, including members of a pooling arrangement under a joint powers authority, to fund their own workers' compensation claims.

3. Government Code Sections 989 and 990 authorize a local public entity to insure itself and its employees against tort or inverse condemnation liability.

4. Government Code Section 990.4 authorize a local public entity to fund insurance and self-insurance in any desired combination.

5. Government Code Section 990.6 provides that the cost of insurance is an appropriate public expenditure.

6. Government Code Section 990.8 authorizes two or more local public entities to enter into an agreement to jointly fund such expenditures under the authority of the Joint Exercise of Powers Act (Gov. Code Section 6500 et seq.).

7. Government Code Section 6500 et seq. authorizes two or more public entities to jointly exercise, under an agreement, any power which is common to each of them.

8. Each Member that is a party to this Agreement desires to join with the other Members to fund programs of insurance for workers' compensation, liability, property and other coverages to be determined and for other purposes set forth in this Agreement.

9. The governing body of each Member has determined that it is in the Member's own best interest, and in the public interest, to execute this Agreement and participate as a Member of the Authority.

In consideration of the recitals, mutual benefits, covenants, and agreements set forth in this Agreement, the Members agree as follows:

**ARTICLE I.
CALIFORNIA INTERGOVERNMENTAL RISK AUTHORITY
AS SUCCESSOR TO AND EXPANSION OF PARSAC**

- A. Authority Created. The Authority was originally formed on May 21, 1986 as the California Municipal Insurance Authority by operation of the Original JPA Agreement and subsequently renamed as the Public Agency Risk Sharing Authority of California effective November 19, 1993. The Authority was, and is, formed pursuant to the provisions of Article I (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California ("Code"), which authorizes two or more public agencies, by a joint powers agreement entered into respectively by them and authorized by their legislative or governing bodies, to exercise jointly any power or powers common to the member agencies.
 - 1. Name Change. As of the Effective Date, the Public Agency Risk Sharing Authority of California shall be known as the California Intergovernmental Risk Authority, hereinafter referred to as "CIRA" or the "Authority."
 - 2. Separate Entity. Pursuant to Code Sections 6506 and 6507, from its inception, the Authority has, is, and shall be a public entity separate and independent from the Members which is governed exclusively by the Authority's Board of Directors ("Board").
- B. Membership in the Authority as of the Effective Date. As of the Effective Date, the membership of the Authority shall consist of the members of PARSAC and the members of the Redwood Empire Municipal Insurance Fund ("REMIF"), with respect to only those that have approved this Agreement as of the Effective Date, as listed in Appendix "A".
- C. Future Membership. Membership in the Authority is open to public entities throughout the State of California, if such public entities meet the requirements specified in the Bylaws and are approved by the Board.

**ARTICLE II.
PURPOSE**

The purpose of the Authority is to exercise the powers of the Members to jointly accomplish the following:

- A. Develop comprehensive Programs with the objective to reduce the cost of risk against which the Members are authorized or required to protect against by insurance, self-insurance, or pooling. Such Programs may include, but are not limited to, coverages for tort liability, workers'

compensation, employee health benefits, loss to real or personal property, or liability arising out of the ownership, maintenance, or use of real or personal property.

- B. The design of the Programs may evolve with the needs of the Members and in accordance with contemporary economic and financial conditions. Programs may therefore operate on an insured, pooled, self-funded, or other appropriate basis whereby the Members share some portion, or all, of the costs of Program losses.
- B. Jointly secure administrative and other services including, but not limited to, general administration, underwriting, risk management, loss prevention, claims adjusting, data processing, brokerage, accounting, legal and other services related to any authorized purpose.

ARTICLE III.

PARTIES TO THE AGREEMENT AND RESPONSIBILITIES OF MEMBERS

- A. Each Member represents and warrants that it intends to, and does hereby, contract with all other Members listed in Appendix "A", and any new members admitted to the Authority. Each Member also represents and warrants that the withdrawal or expulsion of any Member shall not relieve any Member of its rights, obligations, liabilities or duties under this Agreement or the individual Programs in which the Member participates.
- B. Each Member agrees to be bound by and to comply with all the terms and conditions of the Governing Documents and any Resolution or other action adopted by the Board as they now exist or may hereinafter be adopted or amended. Each Member assumes the obligations and responsibilities set forth in the Governing Documents, as they may be amended.
- C. Each new Member agrees to participate for a minimum of five years, except that members of PARSAC and REMIF as of June 30, 2021 must continue for a minimum of two years thereafter. Also, each new Member agrees to meet its obligations and responsibilities as set forth in the Governing Documents.

ARTICLE IV.

POWERS

The Authority shall have the powers common to its Members. As provided by Government Code Section 6509, the Authority's power is subject to the restrictions upon the manner of exercising the power of the Member specified in the Bylaws. Under this Agreement, the Authority is authorized, in its own name, to do all acts necessary and to exercise such common powers to fulfill the purposes of this Agreement, including but not limited to the following:

- A. Make and enter contracts;
- B. Employ agents and employees;
- C. Incur debts, liabilities or obligations;
- D. Receive, collect, invest, and disburse funds;

- E. Receive contributions and donations of property, funds, services and other forms of assistance;
- F. Acquire, construct, manage, maintain, hold, lease or dispose of real and personal property; and
- G. Sue and be sued in its own name and settle any claim against it.

**ARTICLE V.
BOARD OF DIRECTORS**

- A. The Authority shall be governed by the Board. Each Member shall appoint a representative to the Board and an alternate representative, each of whom shall meet the parameters set forth in the Bylaws. In the absence of a resolution of the Board providing otherwise, representatives and alternates will serve without compensation by the Authority.
- B. The Member's representative and/or alternate representative shall be removed from the Board upon the occurrence of any one of the following events: (1) the expulsion or withdrawal of the Member from the Authority; (2) the death or resignation of the Member representative; (3) the Member gives notice that the Member representative is no longer employed by the Member; or (4) as otherwise provided in the Authority's Bylaws.
- C. The Board shall exercise all powers and conduct all business of the Authority, either directly or by delegation of authority to committees or other bodies or individuals.

**ARTICLE VI.
ADMINISTRATION OF PREEXISTING OBLIGATIONS**

- A. All liabilities and obligations of the Authority existing prior to the Effective Date ("Preexisting Obligations") will be administered under the terms and conditions of the PARSAC Agreement. For this purpose, the PARSAC Agreement in effect on June 30, 2021, which is attached hereto as Appendix B, is hereby made a part of this Agreement and incorporated herein by this reference.
- B. The Board shall appoint a committee made up of representatives of Authority members that were members prior to the Effective Date to make recommendations to the Board regarding the administration of the Preexisting Obligations. As to specific agenda items relating to such matters, only Directors representing Members who were members of the Authority prior to the Effective Date may vote, and as to such items, a quorum shall be determined solely by reference to the number of Members that were members of the Authority prior to the Effective Date.
- C. All assets of the Authority existing on June 30, 2021 shall be reserved by the Authority for the sole purpose of administering the Preexisting Obligations. Similarly, all assets of REMIF shall be used exclusively for the purpose of administering the obligations of REMIF.

**ARTICLE VII.
OFFICERS**

- A. The Board shall elect a President, Vice-President, Treasurer, and Auditor/Controller. The President, Vice-President, and Auditor/Controller must be Directors. The General Manager shall serve as Secretary of the Board. The manner of election and term of office of elected officers and their authority and responsibilities shall be as set forth in the Authority's Bylaws. If any of the elected officers ceases to be a Member's representative, the resulting vacancy shall be filled as provided in the Authority's Bylaws. The Board may elect such other officers as it considers necessary.
- B. As permitted by Government Code Section 6505.6, the Treasurer shall comply with the duties and responsibilities set for the subdivisions (a) through (d) of Government Code Section 6505.5, and shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Government Code Section 6505. The Treasurer will have no vote on the Board unless the Treasurer is also a Director.
- C. The Board shall appoint a General Manager who shall act as Secretary of the Board and as the Chief Administrative Officer of the Authority. Although an officer, the General Manager shall not have a vote on the Board or any committee of the Authority.

**ARTICLE VIII.
MEETINGS AND RECORDS**

- A. Not less than once a year, the Board and all standing committees shall hold regular meetings as set forth in the Bylaws of the Authority. Special meetings may be called as provided in the Bylaws.
- B. All meetings of the Board, and appointed committees, including without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act (Section 54950 et. seq. of the Government Code).
- C. Minutes of regular, adjourned regular, and special meetings of the Authority shall be kept under the direction of the Secretary. After each meeting, the Secretary shall cause copies of the minutes to be forwarded to each Board member for review and approval at the next regular meeting.

**ARTICLE IX.
BUDGET**

The Board shall adopt an annual budget prior to the beginning of each Fiscal Year.

**ARTICLE X.
REGULAR AUDITS AND REVIEWS**

- A. The Board shall cause an annual financial audit of the accounts and records to be prepared by a Certified Public Accountant in compliance with California Government Code Sections 6505 and

6505.5 or 6505.6 with respect to all receipts, disbursements, other transactions and entries into the books of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Government Code Section 26909 and shall conform to generally accepted accounting standards. A report of each such audit shall be filed as a public record with the Board, each of the Members, and the auditor/controller of the county in which the Authority's administrative office is located. The report shall be filed within twelve months of the end of the fiscal year under examination. The Authority shall pay all costs for such financial audits.

- B. The Board shall cause an annual actuarial review to be prepared for each of the Programs of the Authority and a report of such actuarial review shall be made available for inspection by the Board and the Members. The Authority shall pay all costs for such actuarial review.
- C. The Board shall cause a claims audit of the administration of the claims for each of the Programs of the Authority at least biannually. A report of such claims review shall be made available for inspection by the Board and the Members. The Authority shall pay all costs for such claims reviews.

ARTICLE XI. ADMISSION OF NEW MEMBERS

- A. Any public entity eligible for membership as stated in Article I may apply for membership in the Authority and participation in one or more of the Authority's Programs at any time. To be considered, the applicant must submit any documentation or information requested by the Authority and pay any costs required to analyze their application and determine their initial contribution.
- B. The Authority shall review all applications by potential new members to determine if they meet the requirements provided for in the Bylaws and any relevant Board policies to determine whether and on what conditions to admit the applicant.
- C. Upon approval for membership by two-thirds vote of the Board, to become a Member the applicant must execute this Agreement and pay any contributions or premiums required to participate in the Program(s) for the initial Program Year in which the applicant will participate.

ARTICLE XII. WITHDRAWAL

- A. After the initial commitment period described in Article III, any Member which enters a Program may withdraw from that Program by compliance with the requirements stated in the Bylaws for withdrawal from the Program.
- B. Withdrawal of a Member does not terminate its rights to coverage arising under any Program in which it participated for the years in which it participated. A Member that has withdrawn from a Program may later seek to renew participation in the Program subject to any terms and conditions set forth in the Bylaws.

- C. A Member that has withdrawn from all of the Authority's Programs shall no longer have a right to a representative on the Board, but shall remain liable for assessments and other obligations arising from the Program Years in which it participated.
- D. As soon as administratively feasible after the Effective Date, the Members of the Authority shall agree on the method of apportioning the CalPERS retirement obligations of the Authority in the event of a default event as defined by Government Code Section 6508.2. Until such time, and in the event of a default event, the terms of the Public Agency Risk Sharing Authority of California (PARSAC) Agreement for Apportion of Retirement Obligations dated May 25, 2017, and attached hereto as Exhibit "C", shall apply with respect to all Members of the Authority.

ARTICLE XIII. EXPULSION

The Board may expel any Member from the Authority and/or from a Program for material breaches of the Governing Documents consistent with the provisions of the Bylaws, subject to any warning or probationary provisions in the Governing Documents. Expulsion does not terminate the obligations of either the Authority or the Member incurred prior to the expulsion.

ARTICLE XIV. TERMINATION AND DISTRIBUTION

- A. This Agreement shall continue in full force and effect until terminated. Termination of this Agreement shall also constitute the termination of all Programs. This Agreement may be terminated at any time by the vote of three-fourths of the Members; provided, however, that this Agreement and CIRA shall continue to exist for the purpose of disposing of all claims and paying its obligations for employees' health and pension benefits, before the distribution of assets, and any other functions necessary to wind up the affairs of CIRA.
- B. Upon termination of this Agreement, all assets of each Program of CIRA shall be distributed among the Members which participated in such Programs, in accordance with the retrospective premium adjustment process in effect during the term of this Agreement. Such distributions shall be determined within six [6] months after the disposal of the last pending claim or other liability covered by all Programs of the Authority. The Board may in its sole discretion determine that earlier distributions are appropriate as to Programs for which there remains no claim or liability.
- C. Following the termination of this Agreement, any Member which was a participant in any Program of CIRA shall pay any additional amount of premium, determined by the Board or its designee in accordance with a retrospective premium adjustment, which may be necessary to enable final disposition of all claims arising from losses under that Program during the Member's period of participation.
- D. The Board is vested with all powers of CIRA for the purpose of concluding and dissolving the business affairs of CIRA. The Board may designate legal counsel and any committee or person to carry out a plan of dissolution adopted by the Board.

**ARTICLE XV.
LIABILITY OF MEMBERS, DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS**

- A. Pursuant to Government Code section 6508.1, except as to liabilities to a public retirement system, the debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, or obligations of any Member. However, each Member shall remain liable to the Authority for contributions assessed by the Authority to pay its debts, liabilities, or obligations.
- B. The debts, liabilities or obligations incurred by either PARSAC or REMIF prior to the Effective Date shall not constitute the debts, liabilities or obligations of the other. Notwithstanding the preceding, the Authority intends to be the successor to the CalPERS pension obligations of REMIF pursuant to California Government Code Section 20508. As such, the liability to CalPERS with respect to service credited under REMIF's CalPERS contract, and the continuing liability to CalPERS of the Authority with respect to service credit accrued both prior to and after the Effective Date under the Authority's CalPERS contract, shall be the contractual liability of the Authority. The Authority and REMIF shall separately enter into an agreement to provide for the allocation of liability, and the payment of related contributions, with respect to service credit accrued prior to the Effective Date.
- C. The representatives to the Board of Directors and to each of the Programs and any officer, employee, contractor, or agent of the Authority shall use ordinary care and reasonable diligence in the exercise of their power and in the performance of their duties under this Agreement. Directors, officers, committee members of the Authority shall be liable for any act or omission within the scope of their office or employment by the Authority only in the event that they act or fail to act because of actual fraud, corruption, or actual malice or willfully fail or refuse to conduct the defense of a claim or action in good faith or to reasonably cooperate in good faith in the defense conducted by the Authority.
- D. The Authority shall defend and indemnify its directors, officers, and employees to the same extent as any other public entity of the State of California is obliged to defend and indemnify its employees pursuant to Government Code Section 825, et seq., or other applicable provisions of law. Nothing herein shall limit the right of the Authority to purchase insurance to satisfy this obligation.
- E. The Authority shall indemnify, protect, defend, and hold harmless each and all of the Members, and their officials, agents, and employees, for and from any and all liability, claims, causes of action, damages, losses, judgments, costs, or expenses (including attorney fees) resulting from an injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement by the Authority, by one or more of the Members, or any of their officials, employees, agents, or independent contractors.

**ARTICLE XVI.
NOTICES**

Notices to each Member under this Agreement shall be sufficient if mailed to its respective address on file with the Authority. Any Member may designate any other address in substitution of the foregoing address to which such notice will be given at any time by giving five days written notice to the Authority and all other Members.

**ARTICLE XVII.
AMENDMENTS**

This Agreement may be amended at any time with the approval of two-thirds of the Directors on the Board acting with the approval of their governing bodies, except that any amendment that reduces the voting requirement for termination of the Authority must be approved by three-fourths of the Directors on the Board acting with the approval of their governing bodies. Authority of the Member representative (director) to give such approval may be delegated such in advance by the Member's governing body, or in the absence of such prior delegation by action of a Member's governing body to approve the proposed amendment. The amended Agreement shall take effect on the first day of the month following the Authority's receipt of notice of approval by two-thirds of the Members, unless otherwise stated in the Amendment, and once effective shall apply to all Members regardless of whether a particular Member approved the amendment. Refusal to execute or comply with the amended Agreement shall be a basis for expulsion of the Member. A Member that does not approve of the amendment may withdraw from the Authority and all its Programs at the end of the fiscal year next following the effective date of the amendment, notwithstanding the five-year minimum commitment provided for in Article III, Section C.

**ARTICLE XVIII.
SEVERABILITY**

Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

**ARTICLE XIX.
COMPLETE AGREEMENT**

The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein, except as to the Bylaws.

**ARTICLE XX.
TERM OF AGREEMENT**

This Agreement shall become effective upon execution, and shall continue in effect until satisfaction of all obligations created hereunder following termination of the Authority created by this Agreement.

**ARTICLE XXI.
COUNTERPARTS**

The Agreement may be executed in multiple counterparts, each of which shall be considered an original.

**ARTICLE XXII.
ARBITRATION**

Any controversy arising out of this Agreement shall be submitted to binding arbitration, which shall be conducted in accordance with the provisions of the California Arbitration Act (California Code of Civil Procedure § 1280 et seq.).

**ARTICLE XXIII.
FORCE MAJEURE**

No party will be deemed to be in default where failure or delay in performance of any of its obligations (other than payment obligations) under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, actions of legislative, judicial, executive, or regulatory government bodies or other cause, without fault and beyond the reasonable control of such party ("Force Majeure"). If any such events shall occur, the time for performance by such party of any of its obligations under this Agreement will be extended by the parties for the period of time that such events prevented such performance. Upon the occurrence of an event of Force Majeure, the affected party shall: (i) promptly notify the other parties of such Force Majeure event, (ii) provide reasonable details relating to such Force Majeure event and (iii) implement mitigation measures to the extent reasonable.

**ARTICLE XXIV.
DEFINITIONS**

The following definitions shall apply to the provisions of this Agreement and the Bylaws of the Authority:

- A. "Agreement" shall mean this Agreement, as it may be amended from time to time, creating the California Intergovernmental Risk Authority.
- B. "Board" or "Board of Directors" shall mean the governing body of the Authority.
- C. "Bylaws" shall mean the Bylaws attached to this Agreement, as amended from time to time by the Board consistent with the amendment provisions in the Bylaws.

- D. "Claim(s)" shall mean demand(s) made against the Member arising out of occurrences which are covered or alleged to be covered by the Authority's Memorandums of Coverage or policies of insurance.
- E. "Fiscal Year" shall mean the period of time commencing on July 1 of each year and ending on June 30 of the following year.
- F. "Governing Documents" shall mean this Agreement, the Bylaws of the Authority, each Program's Memorandum of Coverage, the Master Program Document, , and any other document stipulated as a Governing Document in the Bylaws or by action of the Board.
- G. "Insurance" shall mean insurance or reinsurance purchased by the Authority to cover Claims against or losses of the Authority and/or its Members.
- H. "Jurisdiction" shall mean the territory in which the Authority may exercise its powers; i.e., the State of California.
- I. "Member" shall mean any public entity authorized to be a member of a Joint Powers Authority, which is a party to this Agreement and is participating in one or more Programs.
- J. "Memorandum of Coverage" shall mean a document issued by the Authority for each Program specifying the coverages and limits provided to the Members participating in the Program.
- K. "Participation" or "participating" shall refer to a Member that has elected to join and take part in a Program.
- L. "Pooling" shall mean group self-insurance as allowed by Government Code section 990.8, Labor Code section 3700, or any other applicable law.
- M. "Program" shall mean those coverage programs of risk sharing, insurance, self-insurance, pooling and risk management services created by the Authority to manage specific types of risks.
- N. "Program Year" shall mean the annual period in each Program to be segregated for determination of coverage premiums or assessments.
- O. "Risk Management" shall mean the process of identifying, evaluating, reducing, transferring, and eliminating risks. Risk Management includes, but is not limited to, various methods of funding claims payments, purchasing insurance, legal defense of claims, controlling losses, and determining self-insured retention levels and the amount of reserves for potential claims.

IN WITNESS WHEREOF, the undersigned party hereto has executed this Agreement on the date indicated below.

California Intergovernmental Risk Authority ["CIRA"]

Date: _____ By: _____
Name/Title

Attest: _____
Secretary, CIRA

Member Entity: _____

Date: _____ By: _____
Name/Title

Attest: _____
City/Town Clerk

APPENDIX "A"

CALIFORNIA INTERGOVERNMENTAL RISK AUTHORITY MEMBERS

- | | |
|----------------------------|---|
| 1. City of Arcata | 27. City of Point Arena |
| 2. City of Amador City | 28. City of Rancho Cucamonga |
| 3. City of Avalon | 29. Rancho Cucamonga Fire Protection District |
| 4. City of Belvedere | 30. City of Rancho Santa Margarita |
| 5. City of Blue Lake | 31. City of Rohnert Park |
| 6. City of California City | 32. City of San Juan Bautista |
| 7. City of Calimesa | 33. City of Sebastopol |
| 8. City of Calistoga | 34. City of Sierra Madre |
| 9. City of Citrus Heights | 35. City of Sonoma |
| 10. City of Clearlake | 36. City of South Lake Tahoe |
| 11. City of Cloverdale | 37. City of St. Helena |
| 12. City of Coalinga | 38. City of Tehama |
| 13. City of Cotati | 39. City of Trinidad |
| 14. City of Eureka | 40. Town of Truckee |
| 15. City of Ferndale | 41. City of Twentynine Palms |
| 16. City of Fort Bragg | 42. City of Ukiah |
| 17. City of Fortuna | 43. City of Watsonville |
| 18. City of Grass Valley | 44. City of Wheatland |
| 19. City of Healdsburg | 45. City of Wildomar |
| 20. City of Highland | 46. City of Willits |
| 21. City of Lakeport | 47. Town of Windsor |
| 22. City of Menifee | 48. Town of Yountville |
| 23. City of Nevada City | 49. City of Yucaipa |
| 24. City of Placentia | 50. Town of Yucca Valley |
| 25. City of Placerville | |
| 26. City of Plymouth | |

APPENDIX "B"

PARSAC Agreement

PARSAC
JOINT POWERS AGREEMENT

Revised & Adopted May 25, 2017

Public Agency Risk Sharing
Authority of California

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**PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA [PARSAC]
JOINT POWERS AGREEMENT**

THIS AGREEMENT is made in the State of California by and among those municipalities organized and existing under the laws of the State of California, hereinafter referred to as "Member Entity[ies]," which are parties' signatory to this Agreement. All such Member Entities are listed in Appendix "A", which is attached hereto and made a part hereof.

RECITALS

- A. California Government Code Section 6500 and following permits two or more public agencies by agreement to jointly exercise any power common to the contracting parties.
- B. California Government Code Section 990.4 permits a local public entity to self-insure, purchase insurance through an authorized carrier, or purchase insurance through a surplus line broker, or any combination of these;
- C. California Government Code Section 990.6 provides that the cost of insurance provided by a local public entity is a proper charge against that local public entity;
- D. California Government Code Section 990.8 permits two or more local entities to, by a joint powers agreement, provide insurance for any purpose by any one or more of the methods specified in Government Code Section 990.4 and provides that such pooling of self-insured claims or losses does not constitute the business of insurance under the California Insurance Code;

E. California Labor Code Section 3700(c) permits all political subdivisions of the State of California, including each member of a pooling arrangement under a joint exercise of powers agreement to self-insure against workers' compensation claims by securing a certificate of consent from the Department of Industrial Relations;

F. Each of the Member Entities, which is a party to this Agreement, desires to join with the other Member Entities to fund programs of insurance for workers' compensation, liability, property and other coverages to be determined and for other purposes set forth in Article III of this Agreement;

G. The governing body of each Member Entity has determined that it is in its own best interest and in the public interest that this Agreement be executed and that it participate as a member of the Public Agency Risk Sharing Authority of California [PARSAC] created by this Agreement; and

H. As of the effective date of this Agreement, this Agreement shall replace and supersede the Joint Powers Agreement Creating the Public Agency Risk Sharing Authority of California, dated May 21, 1986, as amended on November 20, 1987, July 1, 1989, and November 19, 1993, May 31, 1996, December 13, 2002, December 12, 2003, May 20, 2005, May 31, 2007, December 2, 2010, May 26, 2011 and May 25, 2017.

Now, therefore, in consideration of the above facts and the mutual benefits, promises and agreements set forth below, the Member Entities hereby agree as follows:

AGREEMENT

ARTICLE I DEFINITIONS

The following terms shall have the following definitions:

- A. **"Agreement"** shall mean this Revised and Restated Joint Powers Agreement creating the Public Agency Risk Sharing Authority of California [PARSAC].
- B. **"Alternate"** shall mean the person designated by the Member Entity to act as a director of PARSAC in the absence of the Director. The Alternate shall have the same responsibility, power and authority as the Director when acting in the Director's stead.
- C. **"Board"** or **"Board of Directors"** shall mean the governing body of PARSAC.
- D. **"Bylaws"** shall mean the Bylaws of PARSAC, revised as of May 27, 2010, and as they may be further amended or revised.
- E. **"Claims"** shall mean any demand[s] made against a Member Entity to recover for monetary damages within, or alleged to be within, the scope of coverage provided by any of PARSAC's Memoranda of Coverage [or any commercial insurance policy related to a PARSAC Program].
- F. **"PARSAC"** shall mean the Public Agency Risk Sharing Authority of California created by this Agreement.
- G. **"Covered Loss"** shall mean any loss resulting from a claim or claims against a Member Entity which is in excess of its Self-Insured Retention and which is covered by any of PARSAC's Memoranda of Coverage [or insurance policy related to a PARSAC Program].
- H. **"Deposit Premium"** shall mean the estimated amount determined for each Member Entity necessary to fund each layer of coverage for each Policy Year of each

Program of PARSAC.

I. **“Executive Committee”** shall mean that committee of the Board, constituted and exercising the authority set forth in this Agreement and in the Bylaws.

J. **“Fiscal Year”** shall mean the period of time ending on June 30 of each year during which PARSAC is in existence.

K. **“Incurred Loss”** shall mean the amount of monies paid and reserved by PARSAC to investigate, defend and satisfy a demand or demands made against a Member Entity.

L. **“Insurance”** shall mean commercial insurance policies which PARSAC may purchase for its Member Entities, from time to time, in order to effect a transfer of risk. The term "Insurance" shall not mean any self-insurance, risk-sharing or pooling of losses or risks.

M. **“Liability Program Participant”** shall refer only to members of PARSAC that have been approved and are in good standing to participate in the Liability Program.

N. **“Member Entity”** shall mean any California public entity which is a party signatory to this Agreement including any other agency for which the City Council sits as the Governing board.

O. **“Memorandum of Coverage”** shall mean the document or documents issued by PARSAC specifying the type and amount of coverages provided under any Program to the Member Entities by PARSAC.

P. **“Program Year”** shall mean a period of time, usually 12 months, for which each Program is to determine Deposit Premiums, Retrospective Premiums, and Retrospective Premium Adjustments.

Q. **“Program”** shall mean arrangements to cover specific types of claims which may include, but not be limited to, property, workers' compensation, and comprehensive liability claims.

R. **“Public Entity”** shall mean a county, city, whether general law or chartered, city and county, town, district, political subdivision, joint powers authority, or any board, commission, or agency thereof providing a municipal service, excluding school districts.

S. **“Retrospective Premium”** shall mean, the amount determined retrospectively as each Member Entity's share of losses, reserves, expenses and interest income as may be determined periodically for any Program.

T. **“Retrospective Premium Adjustment”** shall mean the amount necessary to periodically adjust the Deposit Premium, or prior Retrospective Premiums if any, to the newly calculated Retrospective Premium amount.

U. **“Self-Insured Retention”** or **“SIR”** shall mean the amount of loss from each occurrence which the Member Entity shall retain and pay directly and which shall not be shared by the Member Entities of PARSAC.

V. **“Workers’ Compensation Program Participant”** shall refer only to members of PARSAC that have been approved and are in good standing to participate in the Workers’ Compensation Program.

W. **“Group Purchase Programs”** shall mean coverage programs provided by insurance policies where there is no self-insurance, risk sharing or pooling.

ARTICLE II PARTIES TO THE AGREEMENT

Each Member Entity is a party to this Agreement and agrees that it intends to, and does contract with, all other parties who are signatories of this Agreement and with such other parties as may later be added. Each Member Entity also agrees that the expulsion or withdrawal of any Member Entity from this Agreement shall not affect this Agreement nor the remaining parties as to the other Member Entities then remaining.

ARTICLE III PURPOSES

This Agreement is entered into by the Member Entities in order to:

- A. Create the Public Agency Risk Sharing Authority of California to carry out the purposes listed below and to exercise the powers contained in this Agreement;
- B. Develop effective risk management programs to reduce the amount and frequency of their losses;
- C. Share some portion, or all, of the cost of their losses;
- D. Jointly purchase commercial insurance, associate with other risk-sharing pools, or self-insure against risks;
- E. Jointly purchase administrative and other services including, but not limited to, underwriting, risk management, loss prevention, claims adjusting, data processing, brokerage, accounting and legal services when related to any of the other purposes;
- F. Provide other joint powers risk sharing authorities with management services;
and
- G. Do all things necessary to carry out the foregoing purposes, as well as all things necessary to implement the terms of this Agreement as permitted by law.

**ARTICLE IV
CREATION OF THE PUBLIC AGENCY
RISK SHARING AUTHORITY OF CALIFORNIA**

Pursuant to the California Government Code, the Member Entities hereby agree to continue in existence a public entity, separate and apart from the parties to this Agreement, to be known as the Public Agency Risk Sharing Authority of California ["PARSAC"]. The debts, liabilities or obligations of PARSAC shall not constitute debts, liabilities or obligations of any party to this Agreement. However, a Member Entity may separately contract for, or assume responsibility for, specific debts, liabilities or obligations of PARSAC.

**ARTICLE V
TERM OF AGREEMENT**

This Agreement shall become effective as of the date hereof and shall continue in full force and effect until terminated in accordance with Article XXVI.

**ARTICLE VI
POWERS OF PARSAC**

PARSAC shall have the powers common to its Member Entities in California and all additional powers permitted to a joint powers authority by California law, and the parties hereby authorize PARSAC to do all acts necessary to exercise such powers to fulfill the purposes of this Agreement including, but not limited to, the following:

- A. Make and enter into contracts;
- B. Incur debts, liabilities and obligations;
- C. Acquire, hold, lease or dispose of real and personal property, contributions and donations of property, funds, services and other forms of assistance;
- D. Sue and be sued in its own name and settle any claim against it;
- E. Employ agents and employees;

- F. Acquire, construct, manage, maintain or operate buildings, works or improvements;
- G. Receive, collect, and disburse monies; and invest money not required for immediate necessities; and
- H. Exercise all powers necessary and proper to carry out the terms and provisions of this Agreement.

ARTICLE VII RESPONSIBILITIES OF MEMBER ENTITIES

Each member entity shall:

- A. Sign this Agreement and its legally enacted amendments and participate in PARSAC's Liability Program and/or Workers' Compensation Program;
- B. Sign a Membership Resolution for each Program;
- C. Pay Deposit Premiums, Retrospective Premium Adjustments, and any Special Assessments to PARSAC on or before the due date;
- D. Appoint, elect or remove representatives to serve as director and alternate on the Board, which representatives are expressly authorized to act on behalf of the Member Entity on all matters coming before the Board;
- E. Assure that its representative director or alternate attends at least one meeting of the Board annually;
- F. Assure that its representative director and alternate keep informed about PARSAC's activities and assist them in doing so;
- G. Approve Amendments to this Agreement as set forth in Article XXIX; provided, however, the Member Entity may, by resolution or ordinance, authorize its director and alternate on the Board to approve and execute amendments on behalf of the Member Entity

without the necessity of a resolution or ordinance of the legislative body of the Member Entity confirming or ratifying such amendment.

H. File, in a prompt and timely manner, all statewide, county, and locally-mandated reports and filings, including but not limited to the Fair Political Practices Commission's Statement of Economic Interests;

I. Undertake a risk management audit of its facilities and activities, conducted by a person and/or firm approved by PARSAC's Executive Committee and, based upon such report, to evidence correction, elimination and/or clarification of all noted deficiencies or recommended corrections to the satisfaction of PARSAC's Executive Committee. Risk management audits may be required by the Executive Committee as frequently as it chooses. Risk management audits may be paid by PARSAC and charged back to Member;

J. Provide PARSAC with a copy of its most recent audited annual financial statements prepared by a Certified Public Accountant; or, if not available, provide PARSAC with the most recent set of unaudited monthly financial statements, and any other financial material as may be requested by PARSAC from time to time;

K. Cooperate with, communicate and assist in a timely manner, PARSAC and any insurer, provider of excess coverage, claims adjuster, legal counsel or other service provider engaged or retained by PARSAC in all matters relating to this Agreement;

L. Promptly cooperate with PARSAC to determine and/or clarify any incidents which might become losses, the cause of any and all actual losses, and methods to bring about settlement of claims;

M. Comply with its obligations and responsibilities under this Agreement, the

Bylaws, the Memoranda of Coverage, the Risk Management Standards, PARSAC's policies and procedures, and any other contract or requirement [as any of the foregoing may be created or amended] necessary to implement this Agreement or any Program;

N. Pay any fines or penalties assessed by the Board or any regulatory agency that are attributable to the Member Entity's failure to perform in accordance with self-insurance regulations or comply with the provisions of this Agreement. An appeal may be filed with the appropriate regulatory agency. All decisions of the Board are final.

O. Use an Executive Committee-approved third-party claims administrator for claims handling, under such circumstances as the Board of Directors may require.

Failure to comply with any of the obligations under this section may be grounds for expulsion pursuant to Article XXIV of this Agreement.

ARTICLE VIII BOARD OF DIRECTORS

Except as otherwise provided in this Agreement or in the Bylaws, the powers of PARSAC shall be exercised, its property shall be controlled, and its affairs shall be conducted by its Board of Directors whose meetings, functions and activities shall be governed by the Bylaws.

The Board shall be composed of one director who represents and acts on behalf of each respective Member Entity which participates in PARSAC's Liability and/or Workers' Compensation Program. The number of persons on the Board shall be equal to the number of Member Entities. In addition, each Member Entity shall appoint a second individual as alternate director, who shall have the authority to attend, participate in, and vote at any meeting of the Board when the respective director is absent. Each director and alternate director shall be an elected official or employee of the respective Member Entity, shall be appointed by the

respective Member Entity's governing body, and shall serve at its pleasure. If a director or alternate ceases to be an employee or elected official of a Member Entity for any reason, his or her position on the Board and any of its committees shall immediately terminate.

The Board of Directors shall have the following powers and functions:

A. The Board shall exercise all powers and conduct all business of PARSAC, either directly or by delegation of authority to other bodies or persons pursuant to this Agreement and applicable law;

B. The Board shall form an Executive Committee from its membership. In the Bylaws the Board shall delegate to that Committee such powers as it sees fit;

C. The Board may form such other committees as it deems appropriate in conducting PARSAC's business;

D. The Board shall elect PARSAC's officers;

E. The Board shall cause to be prepared and adopt PARSAC's annual operating budget;

F. The Board shall develop, or cause to be developed, and shall review, modify as necessary, and adopt each of PARSAC's Programs, including all provisions for reinsurance and administrative services necessary to carry out such Program;

G. The Board shall contract or otherwise provide for necessary services to PARSAC and to Member Entities. These necessary services may include, but shall not be limited to, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, claims adjusting, and legal defense services;

H. The Board, either directly or through the Executive Committee, shall provide policy direction to PARSAC's General Manager;

I. The Board shall receive and act upon reports of its committees and the General Manager, either directly or through the Executive Committee;

J. The Board shall establish monetary limits upon any delegation of the claims payment and settlement authority, beyond which a proposed settlement must be referred to the Board for approval;

K. The Board may require that PARSAC review, audit, report upon, and make recommendations with regard to the safety or claims administration functions of any Member Entity insofar as those functions are affecting PARSAC's liability or potential liability. The Board may forward any or all such recommendations to the Member Entity with a request for compliance and a statement of potential consequences for noncompliance;

L. The Board shall receive, review and act upon periodic reports and audits of PARSAC's funds;

M. The Board may amend, repeal or adopt new Bylaws, this Agreement or other key documents;

N. The Board may increase, decrease, or otherwise amend the coverages, limits and other terms of any Memorandum of Coverage;

O. The Board shall approve any proposal by the Executive Committee for Special Assessments from the Member Entities before such Special Assessments are billed;

P. The Board may expel a Member Entity from any Program or from membership in PARSAC pursuant to Article XXIV of this Agreement;

Q. The Board may ratify actions of the Executive Committee, where such ratification is required before the action becomes final;

R. The Board may enter into a joint venture or contractual arrangement with any

similar entity and may also enter into a merger or acquisition agreement with a similar entity, provided that if PARSAC is not the surviving entity in any such merger or acquisition, such action shall require approval by the vote of three-fourths of the Member Entities; and

S. The Board shall have such other powers and functions as are provided for in this Agreement, the Bylaws, and applicable law.

ARTICLE IX OFFICERS

The officers of PARSAC shall be the President, Vice President, Treasurer, and Auditor/Controller, and their qualifications and duties shall be those set forth in the Bylaws.

ARTICLE X EXECUTIVE COMMITTEE

There shall be an Executive Committee, all of whose members shall be directors. The Executive Committee shall set policy for and direct the administration of PARSAC on a day-to-day basis and may, without limitation, provide incentives and impose penalties, financial or otherwise, for performing or failing to perform in conformance with PARSAC requirements, programs, standards and policies. The composition, specific authority and meeting arrangements of the Executive Committee shall be set forth in the Bylaws.

ARTICLE XI ADMINISTRATION

PARSAC shall have a general manager, who shall be appointed or terminated by the Executive Committee, shall be responsible to the Executive Committee for the efficient and effective administration of PARSAC, and who shall serve as the Secretary of PARSAC. The General Manager shall attend all meetings of the Board, the Executive Committee, and other committees of the Board (but shall have no vote), shall prepare and maintain all minutes of meetings of the Board and its Committees, notices of meetings, and records of PARSAC, and

shall carry out all duties set forth in the Bylaws.

ARTICLE XII BUDGET

The Executive Committee shall recommend and the Board shall adopt an annual operating budget prior to the beginning of each Fiscal Year.

ARTICLE XIII ANNUAL AUDITS AND REVIEWS

A. **Financial Audit.** The Auditor/Controller shall cause an annual financial audit of the accounts and records to be prepared by a Certified Public Accountant in compliance with California Government Code Sections 6505 and 6505.5 or 6505.6 with respect to all receipts, disbursements, other transactions and entries into the books of PARSAC. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Government Code Section 26909 and shall conform to generally accepted accounting standards. A report of each such audit shall be filed as a public record with the Board, each of the Member Entities, and the auditor/controller of the county in which PARSAC's administrative office is located. The report shall be filed within twelve [12] months of the end of the fiscal year under examination. PARSAC shall pay all costs for such financial audits.

B. **Actuarial Review.** The Board shall cause an annual actuarial review to be prepared for each of the Programs of PARSAC and a report of such actuarial review shall be made available for inspection by the Board and the Member Entities. PARSAC shall pay all costs for such actuarial review.

C. **Claims Audit.** The Board shall cause a biannual claims audit of the administration of the claims for each of the Programs of PARSAC. A report of such claims review shall be made available for inspection by the Board and the Member Entities. PARSAC

shall pay all costs of such claims reviews.

**ARTICLE XIV
ESTABLISHMENT AND ADMINISTRATION OF FUNDS**

PARSAC shall be responsible for the strict accountability of all funds and the reporting of all receipts and disbursements in accordance with generally accepted accounting principles. It will comply with all provisions of law relating to this subject, including California Government Code Sections 6500-6525.

The Treasurer of PARSAC shall establish and maintain such funds and accounts as may be required by good accounting practices and by the Board. Separate accounts shall be established and maintained for each Program Year of each Program of PARSAC. Books and records of PARSAC in the hands of the Treasurer or other designated person shall be open to inspection at all reasonable times by members of the Board or authorized representatives of the Member Entities.

The Treasurer shall have the custody of and disburse PARSAC's funds. He or she may delegate disbursing authority to such persons as may be authorized by the Board to perform that function provided that, pursuant to Government Code Section 6505.5, the Treasurer shall:

- A. Receive and acknowledge receipt of all funds of PARSAC and place them in the treasury to the credit of PARSAC;
- B. Be responsible upon his or her official bond for the safekeeping and disbursement of PARSAC's funds so held by him or her;
- C. Pay any sums due from PARSAC as approved for payment by the Board or by any body or person to whom the Board has delegated approval authority, making such payments from PARSAC's funds upon warrants drawn by the Auditor;
- D. Verify and report in writing to PARSAC and to Member Entities, as of the first

day of each quarter of the fiscal year, the amount of money then held for PARSAC, the amount of receipts since the last report, and the amount paid out since the last report;

E. Prepare a complete written report of all financial activities within one hundred and twenty [120] days after the close of each fiscal year for such fiscal year to the Board and to each Member Entity; and

F. Receive, invest, and disburse funds in accordance with the procedures established by the Board or the Bylaws and in conformity with applicable law.

Pursuant to Government Code Section 6505.1, the General Manager, the Treasurer, and such other persons as the Board may designate shall have charge of, handle, and have access to PARSAC's property.

PARSAC shall secure and pay for a fidelity bond or bonds, in an amount or amounts and in form specified by the Board, covering all officers and employees of PARSAC who are authorized to hold or disburse PARSAC's funds and all officers and employees who are authorized to have charge of, handle, and have access to PARSAC's property.

The Authority shall defend and indemnify its directors, officers, and employees to the same extent as any other public entity of the State of California is obliged to defend and indemnify its public employees pursuant to California Government Code Section 825, *et seq.*, or other applicable provisions of law.

The Authority may insure or self-insure itself to the extent deemed necessary by the Board against loss, liability and claims arising out of or connected to the conduct of the Authority's activities.

ARTICLE XV SUPPORT OF PARSAC'S GENERAL EXPENSES

Costs of staffing and supporting PARSAC [hereinafter called PARSAC's general

expenses] shall be equitably allocated among the various Programs by the Board, and shall be funded by the Member Entities which participate in such Programs [and ex-Member Entities] in accordance with such allocations.

ARTICLE XVI DEPOSIT PREMIUMS

The Deposit Premiums for the Liability and Workers' Compensation Programs shall be set at a level estimated to be sufficient, as determined by the Executive Committee, to cover PARSAC's budget for each Policy year. The Deposit Premiums for the Member Entities shall be set by PARSAC using various rating and underwriting criteria, such as:

- [1] The Member Entity's payroll;
- [2] The Member Entity's exposure base;
- [3] The results of an on-site underwriting inspection;
- [4] The Member Entity's prior claims history;
- [5] Total insurable values; and/or
- [6] Employee classification ratings.

Deposit Premiums for the Liability, Workers' Compensation, and Group Purchase Programs shall be billed to the Member Entities.

At the conclusion of each Program Year, PARSAC shall conduct a payroll audit of each Member Entity to adjust for any discrepancies between estimated and actual payroll. In the sole discretion of PARSAC, an on-site payroll audit may be conducted by PARSAC or an independent auditor. Any adjustments in payrolls, either debits or credits, shall result in an assessment of additional premiums or a return of overpaid premiums. This adjustment shall be made within sixty (60) days after the date of the audit.

**ARTICLE XVII
PARSAC MEMBERSHIP**

Member Entities shall participate in PARSAC's Liability Program and/or Workers' Compensation Program as a condition of membership in PARSAC. Participation in either Program shall be a minimum of three years and the Term shall be renewed for subsequent one-year periods at the commencement of each Program Year upon payment of the applicable Deposit Premium, unless termination, withdrawal, or expulsion occurs pursuant to Articles XXIII and XXIV of this Agreement. The Executive Committee shall establish the initial SIR for each Liability or Workers' Compensation Program Participant and may require a different SIR for Program Participants from time to time, in its sole discretion.

Program Years shall begin on July 1 of each year and shall continue through the following June 30. Retroactive coverage may be provided as approved by the Board and documented on the Declaration Page of the respective Memorandum of Coverage.

**ARTICLE XVIII
MEMORANDA OF COVERAGE**

The types and amounts of coverage for each Program available to Member Entities shall be specified in a Declarations Page and/or Memorandum of Coverage which shall be issued by PARSAC to each Member Entity for each Program Year in which the Member Entity has coverage. The Board shall have the power and authority to decrease, increase, or amend the coverage provided by a Memorandum of Coverage. If any such amendment is approved by the Board during a Program Year, no Member Entity participating in that Program Year shall be entitled to withdraw by reason of any said amendment prior to the termination of that Program Year.

ARTICLE XIX
SIR MANDATORY RESERVES/PAYMENTS

A Member Entity participating in the Liability Program must establish by resolution a “Fund Balance Reserve” (“Reserve”) equal to three times (3) the designated SIR, or any underlying insurance deductible chosen, and approved for the Member Entity by PARSAC. The Reserve will be recorded and maintained in the appropriate Member Entity Fund in accordance with Generally Acceptable Accounting Principles.

PARSAC will be notified of any proposed adjustment to the Reserve prior to the Member Entity’s adoption of such a resolution.

PARSAC may request certification, by the Member Entity, of the balance in the Reserve account at any time.

Applicants establishing coverage with PARSAC shall be required to submit the “Fund Balance Reserve Resolution” prior to coverage inception.

Any Member Entity which does not desire to establish a local Fund Balance Reserve at the required three-times its SIR, or underlying insurance deductible amount, may contract for an actuarial study of its losses and reserves by a Fellow of the Casualty Actuary Society (FCAS) to ascertain and represent to PARSAC adequate SIR Reserves. Such SIR amount shall be established as the correct Reserve for that Member Entity.

Although not obligated to do so, PARSAC may elect to pay a portion of claims expenses before the Member Entity’s self-insured retention has been exhausted in order to expedite the resolution of a claim. In this event, the member will be invoiced and shall have 30 days from the date of invoice to remit reimbursement. A 10% penalty shall be applied to the balance if payment is not received by the due date.

The claims payment procedures for members participating in the Workers’

Compensation Program with a self-insured retention are as follows:

1. The Member Entity shall set up a checking account with the Third-Party Administrator (TPA). The TPA shall pay all claim expenses within the Member's Entity's self-insured retention from the checking account. The Member Entity shall be responsible for ensuring sufficient funds are available for all costs related to the checking account, including any set-up fees charged by the TPA; or
2. PARSAC shall pay all claim expenses within the Member Entity's self-insured retention, which shall be reconciled and invoiced to the Member Entity quarterly. The Member Entity shall have 30 days from the date of invoice to submit its self-insured retention payment. A 10% penalty shall be applied to the balance if payment is not received by the due date. This option is available to Member Entities with an SIR of \$100,000 or lower.

ARTICLE XX RETROSPECTIVE PREMIUM ADJUSTMENTS AND ASSESSMENTS

Retrospective Premium Adjustments (RPA) for self-funded Programs shall be calculated annually as determined by each Program's funding policy. The Board may determine and levy special assessments on Member Entities by majority vote.

The RPA is a financial reconciliation made by PARSAC to determine whether the Deposit Premium collected for that Policy Year was sufficient to cover the costs. An RPA summary is presented annually to the Board for approval. Distribution of credits or collection of assessments will follow each Program's funding policy.

If a Member Entity has timely withdrawn or been expelled from a Program, any Retrospective Premium Adjustment credit shall remain with PARSAC until all Policy Year(s) in which they participated have been closed and reconciled. Any Retrospective Premium

Adjustment deficit shall be billed to the Member Entity at the time that particular Policy Year(s) is being reconciled. If a withdrawn or expelled member's total equity for all program years in which they participated is insufficient, the member will be billed at the time the deficit is identified. A member that has untimely withdrawn from a program foregoes their right to any remaining equity and is subject to assessment for any deficits.

ARTICLE XXI NEW MEMBERS

Any California public entity as defined in Article I may apply for membership in PARSAC and participation in any of PARSAC's Programs at any time. Public Entities must participate in either the Liability or Workers' Compensation program before participating in other Program offerings.

PARSAC shall review all requests for Program membership, and the Executive Committee shall approve and the Board shall ratify, which applicants shall be accepted for membership, in which Programs they may participate, and when such participation shall begin. Public Entities shall become new Member Entities as of the effective date of coverage indicated on the Program Declarations Page and upon payment of the Deposit Premium. Public Entities which are in the process of formation shall be covered only as of the effective date of formation.

Deposit Premiums for coverage which begins during a Program Year may be prorated for the remainder of the Program Year. A Public Entity applying for membership in the Workers' Compensation or Liability Program shall complete, return and comply with all of the following:

A. An "Application for a Certificate of Consent to Self-Insure" from the Department of Industrial Relations/Division of Self-Insurance Plans (DIR/SIP) (Workers' Compensation only);

- B. Loss reports for the five (5) most recent policy years;
- C. Estimated payroll for the current year and corresponding to the 5 years of loss data
- D. Liability Exposure questionnaire from PARSAC, questionnaires from the excess carrier or reinsurer, and most recent three years' audited financial statements;
- E. Undertake a risk management audit of its facilities and activities and, based upon such audit report, provide evidence of correction, elimination and/or clarification of all noted deficiencies revealed by such inspection; and
- F. Such other information as is reasonably required by PARSAC to assure compliance with law and PARSAC policies.

ARTICLE XXII WITHDRAWAL

Any Member Entity who has been a member for at least three full fiscal years may withdraw from its status as a member and as a party to the Joint Powers Agreement by submitting notice in writing to PARSAC as follows:

- A. Timely Notice of Withdrawal. A withdrawing Member Entity must notify PARSAC of its intention to withdraw at least six (6) months prior to the end of the fiscal year in which the member intends to withdraw, unless a shorter withdrawal period is approved by the Executive Committee, in its sole discretion. Withdrawing members who submit Timely Notice shall be subject to an administrative fee equal to their pro-rata share of ongoing expenses for the three program years following withdrawal. Ongoing expenses include but are not limited to staff payroll and benefits, actuarial services, investment services, financial audits, and claims administration. Withdrawing member will be

invoiced for their portion of the administrative fee each of the three years.

Calculation and Payment of Fee. The administrative fee shall be calculated based on the member's actual payroll and self-insured retention level in the last year in which the member participated. In year one, 100% of the administrative fee will be charged to the member; 50% in year two; and 25% in year three. The withdrawing member shall be invoiced for their portion of the administrative fee and it shall not be taken from equity. Should equity be insufficient to cover any deficit, the member will be subject to assessment. The withdrawing member's equity will remain with PARSAC until all years in which the member has participated are closed. Any equity remaining after all years have closed will be returned to the withdrawn member.

- B. Untimely Notice of Withdrawal. Members submitting a notice of intent to withdraw less than six (6) months prior to the end of the fiscal year, but not later than April 1, in which the member intends to withdraw shall be considered untimely. In the event of an untimely notice of intent to withdraw, the withdrawing member shall forego their right to any remaining equity. In addition to foregoing equity, withdrawing members who submit Untimely Notice shall be subject to an administrative fee equal to their pro-rata share of ongoing expenses for the three program years following withdrawal. Ongoing expenses include but are not limited to staff payroll and benefits, actuarial services, investment services,

financial audits, and claims administration, and will remain subject to both the administrative fee and assessments for all years in which they participated. Withdrawing members will be invoiced for their portion of the administrative fee each of the three years. *Calculation and Payment of Fee.* The administrative fee shall be calculated based on the member's actual payroll and self-insured retention level in the last year in which the member participated. In year one, 100% of the administrative fee will be charged to the member; 50% in year two; and 25% in year three.

Withdrawal from the Liability or Workers Compensation Program shall terminate coverage under that Program. If withdrawal would result in the Member Entity no longer being a member of either the Liability or the Workers Compensation Program, then such withdrawal shall constitute withdrawal from this Agreement and from membership in PARSAC, subject to the ex-Member Entity's continuing obligations under Article XXV below.

A notice of intent to withdraw may be rescinded in writing with Executive Committee consent at any time earlier than ninety (90) days before the expiration of the withdrawal period, except that any withdrawal approved by the Executive Committee upon less than 6 months notice shall be final.

Any Member Entity which withdraws as a participant in any Program may renew participation in that Program by complying with all Program rules and regulations.

ARTICLE XXIII EXPULSION

Regardless of its three-year commitment under the Liability and/or Workers' Compensation Program, a Member Entity may be expelled from PARSAC or a Program either with or without cause. The General Manager shall review any lack of satisfactory performance or other problem with the Member Entity and shall attempt to resolve the matter. If the General Manager determines that the Member Entity is unwilling or unable to correct the problem, the General Manager shall present the matter to the Executive Committee. The Executive Committee may recommend to the Board that the Member Entity be expelled, either with or without cause. Written notice of the Executive Committee's recommendation for expulsion shall be delivered to the Member Entity with return receipt at least fourteen [14] days before the Board meeting at which the matter will be discussed. Action by the Board shall require the vote of a majority of the total number of directors. Expelled members are subject to the administrative fee for a timely withdrawal as described in Article XXIII, Paragraph A.

In considering the expulsion of a Member Entity, the Executive Committee shall allow the affected Member Entity a reasonable opportunity to address and remedy the reasons, if any, for the proposed expulsion. The period of time so allowed shall be within the sole discretion of the Executive Committee. If such a reasonable opportunity is allowed, PARSAC may require quarterly audits to monitor the affected Member Entity's remedial actions or any other conditions to its continued participation in PARSAC or its Programs.

A Member Entity which is the subject of a proposed expulsion shall be responsible for investigating the availability of alternate coverage. On the request of the Member Entity, the Board may permit the Member Entity a reasonable time to make arrangements for alternative coverage, but such period of time shall be at the Board's sole discretion.

**ARTICLE XXIV
EFFECT OF WITHDRAWAL OR EXPULSION
ON MEMBER ENTITY'S RESPONSIBILITIES**

The withdrawal or expulsion of any Member Entity after its participation in any Program shall not terminate its responsibility with respect to the following:

- A. Provide PARSAC with such statistical and loss experience data and other information as may be necessary for PARSAC to carry out the purposes of this Agreement;
- B. Pay to PARSAC when due any Deposit Premiums or Retrospective Premium Adjustments for each Policy Year of each Program in which it participated;
- C. Cooperate fully with PARSAC in determining the cause of losses in the settlement of claims;
- D. Cooperate with and assist PARSAC and any insurer, excess provider, claims adjuster, legal counsel or other service provider engaged or retained by PARSAC in all matters relating to this Agreement; and
- E. Comply with the Bylaws and all policies and procedures of PARSAC not inconsistent with the provisions of this Agreement and not inconsistent with its withdrawal from PARSAC.

Disposition of Equity – Timely Withdrawal or Expulsion. In addition, PARSAC shall retain all remaining equity, and the ex-Member Entity is obligated to pay any future assessments made with respect to the Policy Years of any Program in which it participated, until all such Policy Year[s] have been closed, at which time PARSAC shall refund to the ex-Member Entity, any remaining equity which was not expended in settling, paying or otherwise resolving claims against the ex-Member Entity.

Disposition of Equity – Untimely Withdrawal. PARSAC shall retain all remaining equity

and the ex-Member Entity is obligated to pay any future assessments made with respect to the Policy Years of any Program in which it participated, until all such Policy Year[s] have been closed and the administrative fee charged per Article XXII, Paragraph B.

**ARTICLE XXV
TERMINATION OF AGREEMENT AND DISTRIBUTION OF ASSETS**

This Agreement shall continue in full force and effect until terminated. Termination of this Agreement shall also constitute the termination of all Programs. This Agreement may be terminated at any time by the vote of three-fourths of the Member Entities; provided, however, that this Agreement and PARSAC shall continue to exist for the purpose of disposing of all claims and paying its obligations (to CalPERS) for employees' health and pension benefits, before the distribution of assets, and any other functions necessary to wind up the affairs of PARSAC.

Upon termination of this Agreement, all assets of each Program of PARSAC shall be distributed among the Member Entities [and ex-Member Entities which previously timely withdrew or were expelled] which participated in such Programs, in accordance with the retrospective premium adjustment process in effect during the term of this Agreement. Such distributions shall be determined within six [6] months after the disposal of the last pending claim or other liability covered by each Program.

Following the termination of this Agreement, any Member Entity which was a participant in any Program of PARSAC shall pay any additional amount of premium, determined by the Board or its designee in accordance with a retrospective premium adjustment, which may be necessary to enable final disposition of all claims arising from losses under that Program during the Member Entity's period of participation.

The Board is vested with all powers of PARSAC for the purpose of concluding and

dissolving the business affairs of PARSAC. The Board may designate legal counsel and any committee or person to carry out a plan of dissolution adopted by the Board.

ARTICLE XXVI NOTICES

Notices to Member Entities under this Agreement or the Bylaws shall be sufficient if mailed to their respective addresses on file with PARSAC. Notices to PARSAC shall be sufficient if mailed to the address of the principal executive office of PARSAC, addressed to the General Manager.

ARTICLE XXVII PROHIBITION AGAINST ASSIGNMENT

No Member Entity may assign any right, claim, or interest it may have under this Agreement, and no creditor, assignee or third-party beneficiary of any Member Entity shall have any right, claim or title to any part, share, interest, fund, premium or asset of PARSAC.

ARTICLE XXVIII AMENDMENTS

This Agreement may be amended by a two-thirds vote of the Board present and voting at any duly convened regular or special meeting; provided that, any such amendment has been submitted to the directors and the Member Entities at least thirty [30] days in advance of such meeting. Member Entities may, by resolution or ordinance, grant their director and alternate on the Board explicit authorization to approve and execute amendments to this Agreement on behalf of the Member Entity without the necessity of a resolution or ordinance of the legislative body of the Member Entity confirming or ratifying such amendment. Any such amendment shall become effective immediately, unless otherwise stated therein.

**ARTICLE XXIX
SEVERABILITY**

Should any portion, term, condition or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

**ARTICLE XXX
AGREEMENT COMPLETE**

The foregoing constitutes the full and complete agreement of the parties. There are no oral understandings or agreements not set forth in writing herein, except as noted with respect to the Bylaws and Memoranda of Coverage. If any provision of this Agreement conflicts with a provision of the Bylaws, Memoranda of Coverage or other document, such conflicting provisions shall be interpreted to avoid any such conflict, but this Agreement shall govern.

**ARTICLE XXXI
EXECUTION OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California ["PARSAC"]

Date: _____ By: _____
Name/Title

Attest: _____
Deputy Secretary, PARSAC

Member Entity: _____

Date: _____ By: _____
Name/Title

Attest: _____
City/Town Clerk

APPENDIX “A”

**PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA
[PARSAC]**

MEMBER ENTITIES

City of Amador City
City of Avalon
City of Belvedere
City of Blue Lake
City of California City
City of Calimesa
City of Calistoga
City of Citrus Heights
City of Clearlake
City of Coalinga
City of Ferndale
City of Grass Valley
City of Highland
City of Menifee
City of Nevada City
City of Pacific Grove
City of Placentia
City of Placerville
City of Plymouth
City of Point Arena
City of Rancho Cucamonga
Rancho Cucamonga Fire Protection District
City of Rancho Santa Margarita
City of San Juan Bautista
City of South Lake Tahoe
City of Tehama
City of Trinidad
Town of Truckee
City of Twentynine Palms
City of Watsonville
City of West Hollywood
City of Wheatland
City of Wildomar
Town of Yountville
City of Yucaipa
Town of Yucca Valley

Appendix "C"

Public Agency Risk Sharing Authority of California (PARSAC) Agreement for Apportionment of Retirement Obligations Dated May 25, 2017

PARSAC

**AGREEMENT FOR APPORTIONMENT OF
RETIREMENT OBLIGATIONS**

**Public Agency Risk Sharing
Authority of California**

**PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA [PARSAC]
AGREEMENT FOR APPORTIONMENT OF RETIREMENT OBLIGATIONS**

THIS AGREEMENT is made in the State of California by and among those municipalities organized and existing under the laws of the State of California, hereinafter referred to as "Member Entity[ies]," which are parties' signatory to the Joint Powers Authority Agreement (as revised effective May 25, 2017, hereafter "JPA Agreement. All such Member Entities are listed in Appendix "A," which is attached hereto and made a part hereof.

RECITALS

Whereas PARSAC is an entity formed under California Government Code § 6500 which permits two or more public agencies by agreement to jointly exercise any power common to the contracting parties.

Whereas California Government Code § 6508.2 requires that the member agencies of a joint powers agency ("AGENCY") mutually agree to a 100% apportionment of the AGENCY's retirement liability prior to either a dissolution of the AGENCY or the termination of the AGENCY's participation in a public retirement system.

Now, therefore, in consideration of the above facts and the mutual benefits, promises and agreements set forth below, the Member Entities hereby agree as follow:

AGREEMENT

ARTICLE I

DEFINITIONS

The following terms shall have the following definitions:

- A. **"Agreement"** shall mean this Revised and Restated Joint Powers Agreement creating the Public Agency Risk Sharing Authority of California [PARSAC].

- B. **“Board”** or **“Board of Directors”** shall mean the governing body of PARSAC.
- C. **“PARSAC”** shall mean the Public Agency Risk Sharing Authority of California created by this Agreement.
- D. **“Deposit Premium”** shall mean the estimated amount determined for each Member Entity necessary to fund each layer of coverage for each Policy Year of each Program of PARSAC.
- E. **“Member Entity”** shall mean any California public entity which is a party signatory to this Agreement including any other agency for which the City Council sits as the Governing board.
- F. **“Program Year”** shall mean a period of time, usually 12 months, for which each Program is to determine Deposit Premiums, Retrospective Premiums, and Retrospective Premium Adjustments.
- G. **“Program”** shall mean arrangements to cover specific types of claims which may include, but not be limited to, property, workers' compensation, and comprehensive liability claims.
- H. **“Public Entity”** shall mean a county, city, whether general law or chartered, city and county, town, district, political subdivision, joint powers authority, or any board, commission, or agency thereof providing a municipal service, excluding school districts.
- I. **“Public Retirement System”** shall mean CalPERS or any other Public Entity retirement program established or operated by a California Public Entity available to public employees as to which current or former employees of PARSAC participated.
- J. **“Retirement Liability”** shall mean the liability that PARSAC possesses to all former or current employees of PARSAC for retirement benefits owed to them pursuant to a contract between PARSAC and a Public Retirement System and arising by reason of those employees participation in the Public Retirement System.

K. **“Retrospective Premium”** shall mean, the amount determined retrospectively as each Member Entity's share of losses, reserves, expenses and interest income as may be determined periodically for any Program.

L. **“Retrospective Premium Adjustment”** shall mean the amount necessary to periodically adjust the Deposit Premium, or prior Retrospective Premiums if any, to the newly calculated Retrospective Premium amount.

ARTICLE II

PARTIES TO THE AGREEMENT

Each Member Entity is a party to this Agreement and agrees that it intends to, and does contract with, all other parties who are signatories of this Agreement and with such other parties as may later be added. Each Member Entity also agrees that the expulsion or withdrawal of any Member Entity from this Agreement shall not affect this Agreement nor the remaining parties as to the other Member Entities then remaining.

ARTICLE III

PURPOSE

This Agreement is entered into by the Member Entities in order to:

A. Provide for an apportionment among current and former PARSAC Member Entities of 100% of PARSAC's Retirement Liability consistent with the requirements of Government Code §§ 6508.1 and 6508.2 as enacted and amended effective January 1, 2019. The current Member Entities of PARSAC are set forth in Appendix A. The former Member Entities of PARSAC as of the date of this Agreement are set forth in Appendix B.

ARTICLE IV**METHOD OF APPORTIONMENT OF RETIREMENT LIABILITY**

A. In the event of a decision by the governing Board of PARSAC to dissolve and cease all operations, or in the event of a decision by the governing Board of PARSAC to terminate PARSAC's contract with a Public Retirement System, the Member Entities agree that 100% of PARSAC's Retirement Liability shall be funded by all current and former PARSAC Member Entities based on a pro rata share of the former and current Member Entities' historical Deposit Premium in the Workers' Compensation and Liability self-funded Programs. The apportionment of the Retirement Liability shall be calculated as set forth above, and the unfunded Retirement Liability then existing shall be paid as follows: The unfunded Retirement Liability then existing shall be paid prior to any distribution of assets as provided in ARTICLE XXV of the JPA Agreement and prior to the payment of any equity that may be determined as the result of the Retrospective Premium Adjustment process as set forth in ARTICLE XX. (For example, should a Member Entity have remaining equity in either the Workers' Compensation or Liability program, at the time of PARSAC's dissolution or PARSAC's termination of PARSAC's contract with a public retirement system, the Member Entity's equity shall first be applied to reduce that Member Entity's share of the apportionment of the Unfunded Retirement Liability.)

B. In the event that PARSAC disposes of the real property identified as 1525 Response Road, Sacramento, CA, 95815 (the "Property"), any unfunded Retirement Liability of PARSAC shall first be reduced by applying the proceeds from the sale of the Property as provided in Resolution 2019-03, attached hereto as Exhibit A, prior to the determination of the amounts owed by the former or current Member Entities under the apportionment provided herein.

C. The apportionment of the Retirement Liability of PARSAC among the former and current Member Entities of PARSAC and the obligation of the former and current Member Entities to pay such apportionment of the PARSAC Retirement Liability as provided herein shall be a separate and independent obligation from the obligation of the Member Entities arising upon termination, expulsion or withdrawal of a Member Entity or upon termination of the Joint Powers Agreement (as revised effective May 25, 2017) including but not limited to ARTICLES XX, XXII, XXIII, XXIV and XXV of that Agreement.

ARTICLE V

TERM OF AGREEMENT

This Agreement shall become effective as of the date hereof and shall continue in full force and effect for the purpose of paying 100% of the Retirement Liability of PARSAC pursuant to the apportionment among former and current Member Entities as provided for herein.

ARTICLE VI

SEVERABILITY

Should any portion, term, condition or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

ARTICLE VII

AGREEMENT COMPLETE

The foregoing constitutes the full and complete agreement of the parties. There are no oral understandings or agreements not set forth in writing herein, except as noted with respect to the Bylaws and Memoranda of Coverage. If any provision of this Agreement conflicts with a provision

of the Bylaws, Memoranda of Coverage or other document, such conflicting provisions shall be interpreted to avoid any such conflict, but this Agreement shall govern.

ARTICLE VIII

AMENDMENTS

This Agreement may be amended by a two-thirds vote of the Board present and voting at any duly convened regular or special meeting; provided that, any such amendment has been submitted to the directors and the Member Entities at least thirty [30] days in advance of such meeting. Member Entities may, by resolution or ordinance, grant their director and alternate on the Board explicit authorization to approve and execute amendments to this Agreement on behalf of the Member Entity without the necessity of a resolution or ordinance of the legislative body of the Member Entity confirming or ratifying such amendment. Any such amendment shall become effective immediately, unless otherwise stated therein.

ARTICLE IX

EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

Public Agency Risk Sharing Authority of California [“PARSAC”]

Date:

By: _____

Name/Title

Attest: _____

Deputy Secretary, PARSAC

Member Entity: _____

Date:

By: _____

Name/Title

Attest: _____

City/Town Clerk

APPENDIX “A”

**PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA
[PARSAC]**

MEMBER ENTITIES

City of Amador City
City of Avalon
City of Belvedere
City of Blue Lake
City of California City
City of Calimesa
City of Calistoga
City of Citrus Heights
City of Clearlake
City of Coalinga
City of Ferndale
City of Grass Valley
City of Highland
City of Menifee
City of Nevada City
City of Pacific Grove
City of Placentia
City of Placerville
City of Plymouth
City of Point Arena
City of Rancho Cucamonga
Rancho Cucamonga Fire Protection District
City of Rancho Santa Margarita
City of San Juan Bautista
City of South Lake Tahoe
City of Tehama
City of Trinidad
Town of Truckee
City of Twentynine Palms
City of Watsonville
City of Wheatland
City of Wildomar
Town of Yountville
City of Yucaipa
Town of Yucca Valley

APPENDIX “B”

**PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA
[PARSAC]**

FORMER MEMBER ENTITIES

City of Alturas
City of Canyon Lake
City of Carlsbad
City of Elk Grove
City of Hesperia
City of Rialto
City of Ridgecrest
City of Rio Dell
City of West Hollywood

**BYLAWS
of the
CALIFORNIA INTERGOVERNMENTAL RISK AUTHORITY**

**ARTICLE I.
PREAMBLE**

The California Intergovernmental Risk Authority ("CIRA" or "the Authority") is established for the purposes and under the authorities described in its Joint Exercise of Powers Agreement ("Agreement"). The Agreement specifies that Bylaws will govern many of the operations of the Authority, and defines certain terms used in these Bylaws.

**ARTICLE III.
NEW MEMBERS**

Any California public agency that provides municipal services may become a Member of the Authority by agreeing to be bound by the Governing Documents and by complying with all of the following requirements:

- A. Submit a completed application for membership 90 days before the start of the fiscal year, including any required application fee;
- B. Submit a signed resolution acknowledging participation under the terms and conditions which then prevail;
- C. Execute the Agreement then in effect and agree to be bound by any subsequent amendments to the Agreement;
- D. Agree to be a Member for at least five consecutive fiscal years after commencement of membership or, if a member of the Public Agency Risk Sharing Authority of California (PARSAC) or the Redwood Empire Municipal Insurance Fund (REMIF) as of June 30, 2021, for two fiscal years after that date;
- E. Be accepted for membership by a two-thirds vote of the Board of Directors;
- F. Appoint, in writing, a representative to act as Director on the Authority's Board and another to act as alternate Director in the absence of the Director, who shall be officers or employees of the Member; and
- G. Ensure the Director and alternate Director file with the Authority the required Fair Political Practices Commission (FPPC) forms upon assuming office, annually, and upon termination of office.

Before the Board votes on a potential Member's application, there shall be a review and interview of the applicant, in accordance with the Underwriting Guidelines, including the applicant's most recent audited financial statement and associated management letters. This review may also include a safety inspection of the facilities of the applicant. A two-thirds vote of the Board of Directors is required to approve the

application, based upon the application, and any inspections, reports, or other material pertinent to the decision.

**ARTICLE IV.
MEMBER RESPONSIBILITIES**

Each Member is responsible for the following:

1. Cooperation with the Authority, its insurers, adjusters and legal counsel in determining the cause of losses in settling claims, and supporting effective risk management and risk transfer decisions;
2. Timely payment of all contributions, assessments, interest, penalties, or other charges imposed consistent with the Governing Documents;
3. Providing the Authority with statistical and loss experience and other data as requested.
4. Execution of a membership resolution for each Program in which the Member participates.
5. Appointing a representative and alternate to represent the Member on the Authority's Board, expressly authorizing such representatives to act on behalf of the Member on all matters coming before the Board, and assuring that its representative or alternate regularly attend meetings of the Board and any committee to which a representative has been appointed.
6. Execution of amendments to this Agreement as set forth in Article XV; provided, however, the Member may, by resolution or ordinance, authorize its representative on the Board to approve and execute amendments on behalf of the Member without the necessity of a resolution or ordinance of the legislative body of the Member confirming or ratifying such amendment.
7. As required by the Authority, undertake risk management audits of its facilities and activities, conducted by a person and/or firm approved by the Authority and provide evidence of correction, elimination and/or clarification of all noted deficiencies or recommended corrections to the satisfaction of the Authority.
8. Use of an Authority-approved third-party claims administrator.
9. Payment for the costs of staffing and supporting the Authority ("general expenses") shall be funded by the Members in accordance with the Board's allocation of general expenses to the Authority's various Programs.

**ARTICLE V.
GOVERNING BOARD**

- A. The governing body of the Authority shall be the Board of Directors (Board). The Board shall be comprised of one Director from each Member. Each Director has one vote. An alternate Director may cast a vote only in the absence of the Director. Each Director and alternate Director must be an officer or employee of the Member. A Member may change any of its representatives to

the Board only by written notification to the Authority from the Member's governing body or the Member's Chief Executive Officer or equivalent.

- B. The Board shall provide policy direction for the General Manager, the Executive Committee, any other standing committees, and any administrative or legal service providers to the Authority. The Board may delegate any or all of its responsibilities, except those requiring a vote by the Board as specified in the Governing Documents.
- C. As to Program-specific agenda items, only the Directors representing Members that participate in that Program may vote, and as to such items a quorum shall be determined by reference to the number of Members participating in the Program. As to agenda items relating to all liabilities and obligations of CIRA existing prior to the Effective Date ("Preexisting Obligations"), only Directors representing Members who were members of the Authority prior to the Effective Date may vote, and as to such items, a quorum shall be determined solely by reference to the number of Members that were members of the Authority prior to the Effective Date.
- D. The Board reserves unto itself the authority to do the following (except where specifically noted, a simple majority of the Board present at a meeting may take action):
 - 1. Accept a new Member to the Authority (two-thirds vote of the Board);
 - 2. Accept indebtedness (two-thirds vote of the entire Board);
 - 3. Adopt a budget;
 - 4. Amend these Bylaws;
 - 5. Elect and remove Officers;
 - 6. Expel a Member from the Authority (two-thirds vote of the Board);
 - 7. Approve dissolution of Authority (two-thirds vote of the entire Board); and
 - 8. Approve financing costs from one Program to another (Program to Program borrowing) if such financing extends beyond a twelve-month period.
- E. The Board will meet at least once a year to review the operations of the Authority. The Board will establish a time and place to hold such regular meetings. The Board Secretary will mail notices of all Board meetings to each Member, keep minutes of the meetings, and send copies of such minutes to the Members.
- F. A special meeting may be called by the president or by a majority of the Board with twenty-four (24) hours' notice, stating the purpose, date, time, and place of the meeting, provided such notice is in writing.
- G. Every Member is expected to have its Director or alternate attend Board meetings.

- H. All meetings of the Board shall be conducted in accordance with the Ralph M. Brown Act (Government Code §54950 et seq.)
- I. A quorum shall consist of a majority of the Directors then appointed and serving, without counting vacancies. All matters within the purview of the Board may be decided by a majority vote of a quorum of the Board, except as specified otherwise in the Governing Documents.

**ARTICLE VI.
OFFICERS**

- A. The officers of the Authority shall consist of a President, a Vice President, a Treasurer, an Auditor/Controller, and a Secretary. The Board shall elect the President, Vice-President, Treasurer, and Auditor/Controller. The President, Vice-President, and Auditor/Controller must be directors on the Board. The Treasurer may be a Director, an employee of the Authority, or an employee of a Member, and if the Treasurer is an employee of a Member the employee need not be the Member's designated representative on the Board. The General Manager shall serve as Secretary.
- B. Initial officers shall serve staggered terms with the President and Treasurer serving a two-year term and Vice President and Auditor/Controller serving a one-year term. The terms of office for subsequent officer elections shall be two years. The President and Auditor/Controller will be elected in odd-numbered years and the Vice President and Treasurer will be elected in even-numbered years.
- C. Initial officers (other than the Secretary) shall be elected at the first meeting of the Board of Directors. At least 30 days before each subsequent election, the President may appoint a nominating committee as set forth in these Bylaws or propose a slate informally.
- D. The nominating committee's nomination of candidates for elected officer positions shall be made in writing, and the slate of nominees will be sent to each Member at least seven (7) days before the last regular Board meeting of the fiscal year. Additional candidates for any of the offices may be made by an open nomination and second from the floor at the time of the meeting.
- E. The election of officers will be held at the last regular Board meeting of the fiscal year in which their terms expire or at a special meeting called for that purpose. Those candidates receiving a majority of votes cast for each office will succeed to those offices. If no nominee receives a majority of the vote, the nominee with the least votes shall be deleted as a nominee and a new vote taken. This elimination process will continue until one nominee receives a majority vote. Each Director or, in the absence of that Director, the Director's alternate, shall be eligible to vote.
- F. Each elected officer will serve until the next election of officers, or termination of his or her employment with the Member, or until removal from office by a majority vote of the Board, whichever is earliest.
- G. The Board shall make the appointment to a vacancy in the office of the President. Vacancies in any other office shall be filled by appointments by the President with ratification by the Board at

the next Board meeting held after the vacancy occurs. In the event that the Board fails to ratify an appointment, the President shall make another appointment which will be subject to ratification by the Board.

- H. The President shall preside at all meetings of the Authority. The President shall, with the consent of the Board or Executive Committee, appoint representatives to the board of any joint powers authority of which the Authority is a Member, and shall make all Committee appointments with the exception of the Executive Committee. The President shall execute documents on behalf of the Authority as authorized by the Board and shall serve as the primary liaison between the Authority and any other organization. The President shall serve as a member of the Executive Committee and as a nonvoting ex-officio member of all other Committees.
- I. In the absence or temporary incapacity of the President, the Vice-President shall exercise the functions of the President. The Vice-President shall serve as member of the Executive Committee and as a nonvoting ex-officio member of all other committees when the President is unable to attend.
- J. The Auditor/Controller shall be responsible for the duties and functions prescribed by Government Code Section 6505.6, as well as any other duties as may be specified by the Board or the Executive Committee. The Auditor/Controller may appoint an assistant to serve as needed, provided such assistant shall not be an employee or public official of the same Member as the Auditor/Controller. In the absence of both the President and Vice President at any one meeting, the Auditor/Controller shall preside over that meeting only and shall have powers and duties as may be required by the Board for this purpose. If the President, Vice-President, and Auditor/Controller will be absent from any one meeting, any of them may designate a director to preside over the meeting, but the designated director shall have only the powers and duties as may be required by the Board for this purpose.
- K. The Secretary shall be responsible for preparing all minutes and agendas of the Board, the Executive Committee, and any other Committee meetings, preparing necessary correspondence, and maintaining files and records.
- L. The Treasurer shall have no vote on the Board or Executive Committee unless the Treasurer is a designated representative of a Member to the Board. The Treasurer shall have the responsibility to establish and maintain such funds and accounts as may be required by accepted accounting practices and procedures prescribed by the Government Accounting Standards Board and by the Board. Separate accounts shall be established and maintained for each Program Year of each Program. Books and records of the Authority in the hands of the Treasurer or other designated person shall be open to inspection at all reasonable times by members of the Board or authorized representatives of the Members. The Treasurer shall disburse Authority funds, accounts, and property, in accordance with the Government Code and at the direction of the Board.
- M. An Officer Emeritus is a retired or former member of the Authority's or REMIF's Executive Committee or Board of Directors, preferably an Officer, having served three terms or more on the Executive Committee or six years on the Board for each agency. The Officer Emeritus serves to maintain the institutional knowledge, culture, and practice of CIRA. The Officer Emeritus is

independent and does not represent any Member. The Officer Emeritus attends and may participate in meetings but does not vote. The Officer Emeritus may represent CIRA as directed and may serve as a mentor or advisor as needed and available. The Officer Emeritus receives a stipend as determined by the Board via resolution and reimbursement for reasonable travel expenses. The Executive Committee shall appoint up to two Officers Emeritus to be affirmed by the Board. The Officer Emeritus position will be re-evaluated by the Board after five years.

ARTICLE VII. COMMITTEES

- A. Executive Committee. There shall be an Executive Committee to conduct the day-to-day business of the Authority. The Board may create other committees, standing or temporary, as it deems necessary.
- B. All committee meetings shall be conducted in accordance with applicable law, including but not limited to the Ralph M. Brown Act (Government Code § 54950, et seq.). For all committees, a quorum shall consist of a majority of committee members then appointed and serving, without counting vacancies. All matters within the purview of a committee may be decided by a majority vote of a quorum of the committee, except as specified otherwise in the Governing Documents.
- C. The Executive Committee shall be composed of thirteen members including the President, Vice-President, Treasurer (if a Board Member), and Auditor/Controller, and nine (or ten, if necessary) other individuals, all of whom must be Directors and not alternates. Five of the nine shall be elected by the Board in even numbered years and four (or five, if necessary) shall be elected by the Board in odd numbered years. One each shall be elected by the Directors in each of three regions designated by the Board. One each shall be elected by the Directors in each of three size categories (small, medium, and large) designated by the Board. Three (or if necessary four) shall be elected at large. Executive Committee members may be re-elected without restriction. All nine shall be elected in the first election following adoption of these Bylaws, with either four or five being designated to serve an initial term of one year until the next election depending on whether the next year is odd or even. For the first two elections after these Bylaws become effective on July 1, 2021, at least five members of the Executive Committee shall be from former members of the Redwood Empire Municipal Insurance Fund. No Member shall be represented by more than one member on the Executive Committee.
- D. Members of the Executive Committee may be removed with or without cause by the Board, which shall elect replacements for the vacancies caused by such removal. Members may also be removed for failure to attend two consecutive meetings without reasonable excuses. The President may appoint replacements to fill any vacancies caused by death, disability, resignation, disqualification, or removal for unexcused absences, and such appointees shall serve until the next meeting of the Board, at which time the selection of replacement shall be ratified or another replacement elected.
- E. The Executive Committee may exercise all powers and authority of the Board, except those reserved to the Board as set forth in Article V.D. The Executive Committee may make recommendations to the Board on matters including a change in Members' retention levels, approval of the annual budget, and approval of new Members. The Executive Committee may also establish subcommittees, define their functions and responsibilities and appoint members

to them; appoint or terminate the General Manager; and exercise such other powers and perform such other duties as these Bylaws or the Board may prescribe.

- F. PARSAC Committee. The Board shall appoint a committee made up of representatives of Authority members that were members prior to the Effective Date to make recommendations to the Board regarding the administration of the Preexisting Obligations.
- G. Personnel Committee. The Officers (not including the Secretary or any Treasurer who is not a Director) and two other Directors appointed by the President (three if the Treasurer is not a Director) shall serve collectively as the Personnel Committee, with the authority to oversee, review and recommend action to be taken by the Executive Committee regarding the performance and compensation of the General Manager and any other personnel issues.

ARTICLE VIII. GENERAL MANAGER

- A. The General Manager shall be the Chief Administrative Officer and Secretary of the Authority, appointed by the Board and serving at the pleasure of the Board. The General Manager may not be an employee or an officer of a Member.
- B. The General Manager shall be responsible for administering the operations of the Authority, including giving notices of meetings, posting of agendas for meetings, preparation of minutes of meetings, maintenance of all accounting and other financial records of the Authority, filing of all financial reports of the Authority, reporting activities of the Authority to Members, and other such duties as the Board may specify.
- C. The General Manager shall appoint all staff positions of the Authority, subject to budget approval by the Board, and shall be responsible for their supervision.
- D. The General Manager shall attend all meetings of the Board and Executive Committee

ARTICLE IX. SETTLEMENT OF CLAIMS

- A. The General Manager shall have authority to settle workers compensation, property and liability claims up to the limit specified by Board policy but not to exceed the actual amount of the claim. The Executive Committee, Board, or a designated claims committee, if appointed, shall have authority to settle claims beyond the authority of the General Manager.
- B. For workers' compensation claims, staff has standing authority to pay benefits due under workers' compensation law for medical benefits, temporary disability, etc. and to resolve permanent disability claims up to statutory requirements. Any settlements for permanent disability and/or a compromise and release exceeding the statutory requirements may be settled by the General Manager, or by the Executive Committee or Board for amounts in excess of the General Manager's authority up to the Authority's limit of coverage.

**ARTICLE X.
FINANCIAL AUDIT**

- A. The Auditor/Controller shall cause an annual audit of the financial accounts and records of the Authority to be made by a qualified, independent individual or firm. The minimum requirements of the audit shall be those prescribed by law.
- B. The financial audit report shall be filed with the State Controller's Office within six months of the end of the fiscal year under examination. A copy of the audit report shall be filed as a public record with each Member.
- C. The costs of the audit shall be charged against the operating funds of the Authority.

**ARTICLE XI.
FISCAL YEAR**

- A. The fiscal year of the Authority shall be the period from July 1 of each year through June 30 of the subsequent year.

**ARTICLE XII.
BUDGET**

- A. A draft budget shall be presented to the Board at the last scheduled Board meeting prior to July 1 of the next fiscal year.
- B. The Board shall adopt the annual budget by July 1 of each year.

**ARTICLE XIII.
ESTABLISHMENT AND ADMINISTRATION OF FUNDS**

- A. The Authority is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It shall comply with every provision of law relating to the subject, particularly Section 6505 of the Government Code. The Treasurer shall receive, invest, and disburse funds only in accordance with procedures established by the Board and in conformity with applicable law.
- B. The funds received for each Program shall be accounted for separately on a full-accrual basis. The portion of each Program's annual contribution allocated for payment of claims and losses shall be held by the Authority in trust for the Program members.
- C. The Treasurer may invest funds not required for the immediate operations of the Authority, as directed by the Board or Executive Committee, in the same manner and on the same conditions as local agencies as provided by Government Code Section 53601.
- D. The General Manager shall draw warrants to pay demands against the Authority, after such demands have been approved by both the President and the Treasurer, except for employee payroll and benefits disbursements, and other unusual or urgent circumstances as determined

by the General Manager. All checks disbursing funds of the Authority shall be signed by at least two Authority officials, one of whom must be the General Manager or designee.

- E. Officers, directors and employees handling funds shall be properly bonded as determined by the Board or Executive Committee.

ARTICLE XIV. PROGRAMS

- A. The Authority shall establish Programs in such areas as the Board may select including, but not limited to, the areas of property, workers' compensation, and liability coverage.
- B. Coverage in a Program may be provided by a self-funded risk-sharing pool, participation in pooled excess self-insurance, purchased insurance, reinsurance or any combination thereof, as determined by the Board or Executive Committee.
- C. The Authority may authorize and use administrative funds to study the feasibility and development of new Programs. If a new Program is approved by the Board, the estimated contributions to fund the Program shall be developed and presented in writing to each Member. Each Member shall have sixty (60) days from the date of such notice to state in writing its intent to join or refrain from joining the new Program. Unless the Member provides written notice to the Authority of its intent to participate in the new Program, it shall be presumed that the Member declines to participate in the Program. Upon conclusion of the notice period, the final contributions will be determined and billed to the Members in the new Program. Each Member that elected to participate will be bound to the new Program for the period of time required by the Master Program Document.
- D. The Board will adopt and maintain a Memorandum of Coverage and Master Program Document, and determine the financial contributions to be required of the Members for each Program. The Memorandum of Coverage or Master Program Document shall, among other things, establish procedures for addressing claims disputes.
- E. Each Program will be financially self-contained and individually evaluated for administrative and equity allocation purposes. Each fiscal year within each Program shall be separately accounted and maintained. Program funds may be co-mingled with the funds of another Program for durations shorter than a twelve-month period, or when specifically allowed by the Board.
- F. Each Member shall cooperate fully with the Authority to provide underwriting and safety and loss control information. Additionally, each Member shall comply with the provisions of the annual Safety and Loss Prevention Program Plan as approved by the Board.
- G. Members with delinquent amounts due may be assessed a penalty which shall be set by the Authority.
- H. The condition of each Program shall be evaluated by an independent actuary. The Workers' Compensation and Liability Programs shall receive such evaluation on an annual basis. Other Programs shall be evaluated as determined by the Board. The condition of each open fiscal year within each such Program shall be evaluated to determine its actuarial soundness. If it is

determined by the actuary that any year is no longer actuarially sound, appropriate actions shall be taken. In addition, the Board reserves the right to assess all Members and/or the Members of any Program an amount determined by the Board to be necessary for the soundness of the Program and to allocate such assessment in a fair and equitable manner.

- I. The withdrawal or expulsion of a Member from any Program shall be in accordance with the provisions of the Master Program Document.
- J. The withdrawal or expulsion of any Member from any Program shall not terminate the Member's responsibility to contribute its share of contributions, or funds, to any fund or Program in which it participated, nor its responsibility to provide requested data for the periods in which it participated. All current and past Members shall be responsible for their respective share of the expenses, as determined by the Authority, until all claims, or other unpaid liabilities covering the period of the Member's participation in the Program, have been finally resolved and a determination of the final amount of payments due by, or credit to, the Member for the period of its participation has been made by the Board. Past Members shall receive any distribution of surplus based on the same methodology as current Members. The withdrawal or expulsion of any Member from any Program shall not require the repayment or return to that Member of all or any part of any contributions, payments, advances, or distributions except in conformance with the provisions as set forth herein and in the Master Program Document.
- K. The Treasurer may deposit and invest Authority funds, subject to the same requirements and restrictions that apply to deposit and investment of the general funds of a city incorporated in the State of California and in accordance with the Investment Policy adopted annually by the Board.
- L. The accounting method for each Program will be in accordance with the provisions of the Master Program Document and the principles established by the Government Accounting Standards Board.

ARTICLE XV.

WITHDRAWAL, DEFAULTS AND EXPULSION FROM THE AUTHORITY

- A. Withdrawal from a Program
 - 1. Any Member which withdraws as a participant in any Program may renew participation in that Program by complying with all Program rules and regulations.
 - 2. All Members must participate in at least one of the following two Programs: Workers' Compensation and Liability. If withdrawal from a Program would result in the Member no longer participating in either of these two Programs, then such withdrawal shall constitute withdrawal as a party to the Joint Powers Agreement, subject to the Member's continuing obligations outlined in this Agreement and any other relevant governing documents. Withdrawal from the Authority pursuant to this Section A requires one year's notice of intent to withdraw as described in Section B below.

B. Withdrawal from the Authority

1. A withdrawing Member must notify CIRA of its intention to withdraw at least one year prior to the end of the fiscal year in which the Member intends to withdraw, unless a shorter withdrawal period is approved by the Executive Committee, in its sole discretion.
2. Withdrawing Members shall forfeit any remaining equity. In addition to foregoing equity, withdrawing members shall be subject to an administrative fee equal to their pro-rata share of ongoing expenses for the three program years following withdrawal. Ongoing expenses include but are not limited to staff payroll and benefits, actuarial services, investment services, financial audits, and claims administration. The withdrawing member will be invoiced its portion of the administrative fee for each of the three years, as outlined in the Master Program Document.
3. Following withdrawal, any Member which was a participant in any Program shall be responsible for its share of any additional amount of contribution, determined by the Board in accordance with the retrospective contribution adjustment, which may be necessary to enable final disposition of all claims arising from losses under that Program during the withdrawn Member's period of participation. Any such additional contribution shall be taken first from the Member's forfeited equity, if any, and if such equity is insufficient the withdrawn Member shall be responsible to pay the difference.
4. A notice of intent to withdraw may be rescinded in writing with Executive Committee consent at any time earlier than ninety (90) days before the expiration of the withdrawal period, except that any withdrawal approved by the Executive Committee upon less than six (6) months' notice shall be final.

C. The following shall be "defaults" under the Agreement and these Bylaws:

1. Failure by a Member to observe and/or perform any covenant, condition, or agreement under the Governing Documents, including but not limited to risk management or loss reporting procedures;
2. Consistent failure to attend meetings by a Member's designated representative or alternate, submit requested documents, or cooperate in the fulfillment of the Program objectives;
3. Failure to pay any amounts, including penalties and interest, due to the Authority for more than thirty (30) days;
4. Consistent inability to sustain the financial and insurance criteria that was reviewed and considered upon application for membership. For example, excessive losses, financial distress of member, handling of legal matters, corrective actions and other areas as determined by the Board;

5. The filing of a petition applicable to the Member in any proceedings instituted under the provisions of the Federal Bankruptcy Code or under any similar act which may hereafter be enacted; or
6. Any condition of the Member which the Board believes jeopardizes the financial viability of the Authority.

C. Remedies on Default

1. Whenever any default has occurred, the Authority may exercise any and all remedies available pursuant to law or granted pursuant to the Agreement and these Bylaws including, but not limited to increasing a Member's retention, penalty, or assessment, canceling a Member's coverage, or expelling the Member. However, no remedy shall be sought for defaults until the Member has been given thirty (30) days' notice of default by the Authority.
2. Probation of a Member from a Program and/or Authority:
 - a. If deemed appropriate by the Authority a member may be put on probation for a defined period of time to remedy any stated failures or matters noted in this Article.
 - b. Notice of such probation shall be in writing and signed by both parties.
 - c. The probation remedies and timelines shall be stated clearly in the notice of probation so that the Authority's actions at the end of the probation period are understood by both parties.
3. Expulsion of a Member from the Authority:
 - a. The Board, with at least a two-thirds vote, may expel any Member that is in default from the Authority.
 - b. Such expulsion shall be effective on the date prescribed by the Board, but not earlier than thirty days after notice of expulsion has been personally served or sent by certified mail to the Member.
 - c. The expulsion of any Member from any Program, after the effective date of such Program, shall not terminate its responsibility to contribute its share of contributions, or funds, to any fund Program in which it participated, nor its responsibility to provide requested data for the period(s) in which it participated.

D. Cancellation by the Authority of Coverage under a Program:

1. Upon the occurrence of any default, the Board may temporarily cancel all rights of the defaulting Member in any Program in which such Member is in default until such time as the condition causing default is corrected.

2. Upon the occurrence of any default, the Board, with at least a two-thirds (2/3) vote, may cancel permanently all rights of the defaulting Member in any Program in which such Member is in default.
- E. No remedy contained herein is intended to be exclusive. No delay or failure to exercise any right or power accruing upon any default, shall impair any such right or shall be construed to be a waiver thereof.
- F. In the event any provision in any of the Governing Documents is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
- G. Except as stated in this Article or elsewhere in the Governing Documents, neither withdrawal nor expulsion shall extinguish the rights and obligations of the parties incurred prior to such withdrawal or expulsion.

**ARTICLE XVII.
LEGAL REPRESENTATION**

- A. Legal counsel may be retained by the Board to advise on matters relating to the operation of the Authority and interpretation of the Governing Documents, including but not limited to the Memoranda of Coverage. In matters in which the parties' interests are adverse or potentially adverse, counsel for the Board shall only represent the Board and shall not represent any individual Member without the informed written consent of both parties.
- B. The Authority shall have the right to pay such legal counsel reasonable compensation for said services.

**ARTICLE XVIII.
EXECUTION OF CONTRACTS**

- A. The Board or Executive Committee may authorize any officer or officers, or any agent or agents, to enter into any contract or execute any instrument in the name, and on behalf, of the Authority and such authorization may be general or confined to specific instances.
- B. Unless so authorized by the Board, no officer, agent, or employee shall have any power or authority to bind the Authority by any contract or to pledge its credit or to render it liable for any purpose or to any amount.

**ARTICLE XXIV.
EXPENSE REIMBURSEMENT AND INSURANCE**

- A. The Authority shall reimburse any Director who does not otherwise receive compensation for actual expenses incurred, for reasonable out of pocket expenses of the Director in the performance of his/her duty on behalf of the Authority.

- B. The Authority shall obtain insurance or provide other coverage (which may include self-insurance) indemnifying the directors, officers, and employees for personal liabilities arising out of wrongful acts in the discharge of their duties to the Authority.

**ARTICLE XIX.
NOTICES**

- A. Any notice to be given to any Member, in connection with these Bylaws, must be in writing (which may include facsimile or email) and will be deemed to have been given when deposited in the mail to the address specified by the Member to receive such notice. Any notice delivered by facsimile will be deemed to have been given when the facsimile transmission is complete. Any notice delivered by email will be deemed to have been given when the message is successfully sent. Any Member may, at any time, change the address to which such notice will be given by giving five (5) days written notice to the Authority.
- B. Any notice to or claim against the Authority shall be mailed or delivered to the mailing address of the Authority.

**ARTICLE XX.
EFFECTIVE DATE, AMENDMENTS, AND SUPREMACY**

- A. These Bylaws shall be effective immediately upon the date of adoption.
- B. Any amendments to these Bylaws shall be effective upon adoption, unless the Board in adopting them specifies otherwise, and shall supersede and cancel any prior Bylaws and/or amendments thereto.
- C. These Bylaws shall not be amended until at least 30 days after notice of the proposed amendment has been given to each Member.
- D. The adoption or amendment of these Bylaws shall not affect the Agreement or any amendments thereto. Any provision in these Bylaws which is inconsistent with the Agreement shall be superseded by the Agreement but only to the extent of the inconsistency.

**ARTICLE XXI.
POWER OF DESIGNATED PARTY**

- A. Pursuant to Government Code section 6509, the Authority is subject to the restrictions upon the manner of exercising the power of the City of Rancho Cucamonga. In the event that the City of Rancho Cucamonga ceases to be a member of the Authority, the Authority's power shall be subject to the restrictions applicable to the City of Sebastopol.

REDWOOD EMPIRE MUNICIPAL INSURANCE FUND
FOURTH AMENDED AND RESTATED
JOINT POWERS AGREEMENT
Effective as of July 1, 2021

This Fourth Amended and Restated Agreement is made by and among the following public entities: City of Arcata, City of Cloverdale, City of Cotati, City of Eureka, City of Fortuna, City of Ft. Bragg, City of Healdsburg, City of Lakeport, City of Rohnert Park, City of Sebastopol, City of Sonoma, City of St. Helena, City of Ukiah, City of Willits and Town of Windsor, hereafter referred to as Members, all of which are public entities generally organized and operating under the laws of the State of California or public entities specifically organized and operating under §6507 of the California Government Code and related provisions of law which authorize the creation and operation of governmental joint powers authorities under California law. This Fourth Amended and Restated Agreement is dated and will be effective July 1, 2021.

RECITALS

- I. The following State laws, among others, authorize the Members to enter into this agreement:
- A. Labor Code §3700(b) allowing a local public entity to fund its own workers' compensation claims;
 - B. Government Code §989 and §990, and Education Code §15802, permitting a local public entity to insure itself against liability and other losses;
 - C. Government Code §990.4, permitting a local public entity to provide insurance and self-insurance in any desired combination;
 - D. Government Code §990.8, permitting two or more local public entities to pool self-insured claims or losses and enter into an agreement to jointly fund such expenditures under the authority of Government Code §§6500 through 6515; and
 - E. Government Code §§6500 through 6515, permitting two or more local public entities to jointly exercise, under an agreement, any power which is common to each of them.
- II. The governing board of each undersigned public entity has determined that it is in its best interest and in the public interest that this FOURTH AMENDED Agreement be executed and that it shall participate as a Member of the public entity created by the original version of this Agreement.

NOW, THEREFORE, the undersigned, by, between and among themselves, for and in consideration of the mutual benefits, promises and agreements set forth below, hereby agree as follows:

AGREEMENT

ARTICLE I

CONTINUATION OF THE REDWOOD EMPIRE MUNICIPAL INSURANCE FUND

Pursuant to Article I, Chapter 5, Division 7, title I of the Government Code of the State of California (commencing with §6500), the parties previously created a public agency, separate and apart from the parties, now known as the REDWOOD EMPIRE MUNICIPAL INSURANCE FUND, hereinafter called the Authority. This Fourth Amended Agreement amends and supersedes all prior joint powers agreements of the parties.

ARTICLE II

PURPOSES

The purpose of the Authority is to develop an effective risk management program: (a) to reduce the amount and frequency of their losses; (b) pool their self-insured losses; and (c) jointly purchase excess insurance and administrative services in connection with a joint protection program for said parties.

ARTICLE III

DEFINITIONS

Unless the context otherwise requires, the following terms shall be defined as herein stated:

Alternate Director means the individual appointed by a Member or Associate Member to act in the absence of a duly appointed Director except the Alternate Director shall not exercise the powers of an officer of the Authority or serve on the Executive Committee.

Associate Member means any contracting public agency who has not been a member for over 10 years. A listing of the Associate Members and former Associate Members will be an addendum to the JPA Bylaws.

Authority means the Redwood Empire Municipal Insurance Fund created by this Agreement.

Board or Board of Directors means the governing board of the Authority.

Broker is an insurance broker used by the Board to acquire insurance coverage.

Cash Assessment means an amount determined by the Board, to be paid by each Participating Agency as necessary to meet the Authority's obligations.

Cash Contribution means the annual dollar amount determined by the Board which is payable to each Participating Agency as its established share of the funding required to cover the financial obligation of each pooled coverage program or insured program in which the Participating Agency participates.

Certificate of Coverage for Additional Covered Party means the document issued by the Authority to third parties specifying the type and amount of pooled coverage provided to the Participating Agency by the Authority and extended to the named third party for the specified purpose.

Claims means demands made against the Participating Agencies or the Authority arising out of occurrences which may be within any of the Authority's coverage agreements.

Claims Adjuster is the claims adjuster hired as an employee of the Authority and/or contracted by the Board to determine losses and make or recommend payments in the various coverage programs.

Coverage Agreement is the document issued by the Authority to Participating Agencies specifying the scope and amount of pooled protection provided to each Participating Agency by the Authority in each pooled coverage program.

Covered Loss means any loss resulting from a claim or claims against a Participating Agency or the Authority which is in excess of the respective self-funded retention, and is covered by a Coverage Agreement issued by the Authority or any purchased programs and may include loss payments, defense costs, and other charges directly attributed to the resolution of the matter including defense costs incurred by the Authority.

Deductible means the amount of a claim or lawsuit, which the Participating Agency must incur or become liable for before the Authority is obligated to pay. Deductible is synonymous with Self-Funded Retention.

Director means the individual appointed by the Member or Associate Member to serve on the Board or the Alternate Director in the absence of the individual Director.

Excess Insurance means any self-insurance, insurance, or reinsurance purchased by the Authority to cover losses in excess of the Authority's self-insured retention.

Executive Committee means that body composed of the President, Vice President and one

or more additional members of the Board appointed or elected in accordance with the Bylaws of the Authority.

General Manager is the person or firm appointed by the Board to be its Secretary and the Chief Administrative Officer of the Authority.

Incurred Loss means the sum of monies paid and reserved by the Authority that is necessary to investigate and defend a claim and to satisfy a covered loss sustained by a Participating Agency or the Authority pursuant to a coverage agreement.

Member means any Member that has been in the JPA for 10 consecutive years or more. A listing of the Members and former Members will be an addendum to the JPA Bylaws.

Participating Agency means any Associate Member agency or Member agency who is covered by this Agreement.

Pooled Coverage Programs shall consist of coverages provided or formerly provided directly by the Authority pursuant to a Coverage Agreement.

Program Year means a period of time determined by the Board, usually twelve (12) months, into which each pooled coverage program shall be segregated for purposes of account, record keeping, and coverage interpretation.

Self-Funded Retention means the amount of a claim or lawsuit, which the Participating Agency must incur or become liable for before the Authority is obligated to pay. Self Funded Retention is synonymous with Deductible.

Treasurer means an officer of the Authority appointed by a majority of the Board who shall serve at the pleasure of the Board.

ARTICLE IV

PARTIES TO AGREEMENT

Each party to this Agreement certifies that it intends to, and does, contract with all other parties who are signatories of this Agreement and, in addition, with such other parties as may later be added as parties to, and signatories of, this Agreement pursuant to Article XIX. Each party to this Agreement also certifies that the deletion of any party from this Agreement, pursuant to Article XX or XXI, shall not affect this Agreement or the remaining parties' intent to contract as described above with the other parties to the Agreement then remaining. Each Participating Agency must, at all times, participate in at least one Coverage Program of the Authority.

ARTICLE V

TERM OF AGREEMENT

This Fourth Amended and Restated Agreement shall become effective as of July 1, 2021, and shall continue full force until terminated as hereafter provided.

ARTICLE VI

POWERS OF THE AUTHORITY

The Authority is authorized, in its own name, to exercise all powers necessary and proper to carry out the terms and provisions of this Agreement or as otherwise authorized by law, including but not limited to the power to:

- A. make and enter into contracts;
- B. incur debts, liabilities and obligations; but no debt, liability or obligation of the Authority is a debt, liability or obligation of any Participating Agency, except as otherwise provided by Articles XX and XXI;
- C. acquire, hold or dispose of real and personal property;
- D. receive contributions and donations of property, funds, services and other forms of assistance from any source;
- E. sue and be sued in its own name;
- F. employ agents and employees;
- G. acquire, construct, manage and maintain buildings;
- H. lease real or personal property including that any Participating Agency; and
- I. receive, collect, invest and disburse monies.

ARTICLE VII

PARTICIPATING AGENCY RESPONSIBILITIES

Each Participating Agency shall have the following responsibilities;

- appoint a representative of the Participating Agency to be responsible for the risk management function within that Participating Agency, and to serve as a liaison between the Participating Agency and the Authority regarding risk management matters;

- provide the Authority with current, complete, and accurate information which will be used to determine the appropriate coverage cash contributions for each coverage program. This information can include but is not limited to property and building values, vehicle types and numbers, annual payrolls, miles of streets and sidewalks, and other pertinent demographic information;
- pay its coverage cash contributions, and any adjustments including cash assessments, promptly to the Authority when due. After withdrawal or termination, such agency shall pay promptly to the Authority its share of any additional coverage cash contributions or cash assessments, when and if required of it by the Board under Article XX or XXI of this Agreement;
- establish and maintain risk management programs including but not limited to loss control, risk transfer and employee safety programs;
- report to the Authority's risk manager, during the development stage, the addition of new programs or facilities, and the elimination or significant reduction or expansion of existing programs or facilities;
- comply with the Agreement, Bylaws and all policies and procedures adopted by the Board;
- promptly notify the Authority of any claim or summons and complaint which may result in a covered loss that is filed against and/or received by a Participating Agency;
- cooperate fully with and assist the Authority in determining the cause of claims and in the settlement of claims, as defined in the specific coverage agreement;
- cooperate fully with and assist the Authority, and any insurer, claims adjuster or legal counsel, of the Authority, in all matters relating to this Agreement and covered losses;
- comply with the risk management requirements established by the Authority;
- provide the Authority with such other information or assistance as may be necessary for the Authority to carry out the joint protection program under this Agreement;
- if a Member or an Associate Member, appoint a representative and alternate to the Board.

ARTICLE VIII

BOARD

Responsibility for the control, direction, and administration of the Authority shall be vested in the Board. The Board will consist of a representative of each Member and Associate Member

agency. The powers of the Board shall be all of the powers of the Authority not specifically reserved to the Participating Agency by this Agreement.

**POWERS OF THE
MEMBERS AND
ASSOCIATE MEMBERS**

The city councils of the Members and Associate Members hereby retain the following powers:

- A. the appointment of their Director and Alternate Director to the Board;
- B. approval of amendments to this Agreement as specified in Article XXVI; and
- C. termination of the Authority in accordance with Article XXIII.

BOARD OF DIRECTORS– APPOINTMENTS

The Director and Alternate Director of the Board shall be appointed by the respective Member and Associate Member which shall notify, in writing, the Authority of the appointment. The representative shall serve at the pleasure of the Member or Associate Member until written notice of the appointment of a successor is received by the Authority.

The Alternate Director shall have all the powers of the representative in their absence except that the Alternate Director shall not exercise the powers of an officer of the Authority or serve on the Executive Committee.

Each Director has one (1) vote on the Board. A board member is not entitled to compensation from the Authority. However, the Board may authorize reimbursement for expenses incurred by a Participating Agency or Director/Alternate Director in connection with his or her duties as a board member.

ARTICLE IX

COMMITTEES

The Board shall have the authority to establish committees as it deems appropriate to conduct the business of the Authority. The Board is authorized to dissolve any committee established pursuant to this Article.

ARTICLE X

MEETINGS

The Board shall hold at least one regular meeting each year.

Each meeting of the Board and Executive Committee, including, without limitation, regular, special and adjourned regular or special meetings, shall be called, noticed, held and conducted in accordance with applicable State law.

ARTICLE XI

OFFICERS AND EMPLOYEES

The officers of the Authority shall be the President, Vice President, Treasurer and General Manager. The President and Vice President shall be elected by the Board from among its own members, as individuals, not as the Participating Agencies they represent. The term of office for President and Vice President shall be one (1) fiscal year, and they shall assume the duties of their offices at the beginning of the fiscal year. The Board shall appoint as a Treasurer a person who need not be a member of the Board, whose qualifications will be set by Board policy. This person shall have the powers, duties and responsibilities specified in Government Code §6505.5. The Treasurer shall serve at the pleasure of the Board. If the President or Vice President ceases to be a member of the Board or is removed from office, the resulting vacancy shall be filled, for the unexpired term, at the next regular or special meeting of the Board held after the vacancy occurs.

The General Manager shall be the Secretary and Chief Administrative Officer of the Authority. The Board shall appoint the General Manager who shall serve at the pleasure of the Board. The responsibilities and duties of the officers of the Authority shall be as defined in the Bylaws and as assigned by the Board. The Board may appoint such other officers and employees and may contract with such persons or firms as it considers necessary to carry out the purposes of this Agreement. The Board shall also set the terms and conditions of employment for the Authority's employees by Board action or policy.

Any Participating Agency which agrees to have an employee or other representative assigned duties pursuant to this Article may be reimbursed by the Authority for that individual's time and services rendered on behalf of the Authority, at the discretion of the Board. Any such employee, while acting for or on behalf of the Authority, will be entitled to defense and indemnification by the Authority to the extent provided in California Government Code §825 et. seq. and §995 et seq.

The Board shall require the General Manager and the Treasurer to file with the Authority an individual or a blanket bond in an amount to be fixed by the Board, but not less than \$100,000. The Authority shall pay the cost of the premiums for the bond required by it.

ARTICLE XII

FISCAL YEAR/BUDGET

The Authority's fiscal year shall be from July 1 to June 30 unless otherwise indicated by Board resolution.

An annual budget shall be presented by the General Manager to the Board before and shall be

adopted by the Board no later than June 30 of each year. At the discretion of the Board, a multi-year budget may be adopted, thereby eliminating the requirements of annual presentation and adoption during the term of such multi-year budget.

ARTICLE XIII

ANNUAL AUDITS AND AUDIT REPORTS

FINANCIAL AUDIT

The Board shall cause an annual financial audit in accordance with generally accepted auditing standards to be made with respect to all receipts, disbursements, other transactions and entries into the books by a Certified Public Accountant, and a report of such financial audit shall be filed as a public record with each of the Participating Agencies and with the county auditor in the county where the Authority has its principal office as stated in the Bylaws. All costs of such financial audit shall be paid by the Authority as a general and administrative expense.

ARTICLE XIV

ESTABLISHMENT AND ADMINISTRATION OF FUNDS

The Board shall be responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with all provisions of law relating to the subject, particularly §6505 of the California Government Code.

The Treasurer or Board's designee shall receive, invest and disburse funds only in accordance with the procedures established by the Board and in conformity with applicable law. The General Manager shall have the authority to expend funds, which have been budgeted, as provided in the Bylaws.

An Investment Policy shall be adopted by the Board and reviewed annually as required by state law.

The Authority may make loss payments on behalf of a Participating Agency up to the maximum amount of the self-insured coverage provided by the Authority, but limited to the actual amount of the loss.

The Board will set the level of authority for the settlement of claims by the General Manager and Executive Committee.

ARTICLE XV

CASH CONTRIBUTION

Each Participating Agency shall make a cash contribution for each year of participation in each pooled coverage program in an amount approved by the Board. The amount of such cash contribution shall be determined in accordance with a formula and schedule of payment contained

in the Bylaws of the Authority or a policy established pursuant to the Bylaws and shall be sufficient, when combined with the cash contributions of all other participants in such pooled coverage programs, to cover the outstanding liabilities, actuarially predicted losses, loss adjustment expenses, defense costs, excess insurance premiums and administrative expenses of the Authority.

The cash contribution is payment for the various coverage agreements issued by the Authority to each Participating Agency for the risk coverage specified in the coverage agreement or insured program. The Board may, but is not required to, use standard form policies utilized in the market for any coverages authorized by the Board. The scope of any such coverages in the pool shall be determined by the Board as specified in the Authority's Bylaws, policy statements, and/or in the coverage agreement.

The cash contribution shall be billed to the Participating Agencies in accordance with the policy set by the Board. Any cash contributions not received by the Authority within thirty (30) days following the date of billing shall be in arrears and subject to interest and/or penalties in accordance with the Bylaws or any policy adopted by the Board.

ARTICLE XVI

CASH ASSESSMENT

The Board by a majority vote shall have the authority to levy a cash assessment upon a determination that it is necessary to meet the Authority's obligations.

All cash assessments shall be determined and payable in accordance with Board policy or Bylaws and shall be assessed against those Participating Agencies who participated in the program year(s) resulting in a deficit.

ARTICLE XVII

POOLED COVERAGE PROGRAMS

The pooled coverage for each program shall be as specified in the Bylaws and applicable policies and procedures. Any new Participating Agency accepted for membership in the Authority shall have an initial three-program year, non-cancelable commitment. Each Participating Agency may participate in such pooled coverage programs as are offered by the Authority on such terms, for such time periods and with such cash contributions as are determined by the Board.

ARTICLE XVIII

AUTHORITY FUNCTIONS AND RESPONSIBILITIES

The Authority shall perform the following functions in discharging its responsibilities under this Agreement:

- (a) provide coverage, as authorized by the Board, through, but not limited to, a self- insurance fund and commercial insurance, as well as excess coverage, reinsurance, and umbrella insurance, by negotiation, bid, or purchase;
- (b) provide claims management and legal services for covered risk, which may or may not exceed the Participating Agency's deductible;
- (c) provide claims recovery and subrogation services to investigate, pursue and collect for damages caused by the acts of others;
- (d) establish actuarial services to distribute costs and generate revenues;
- (e) provide loss analysis control by use of statistical analysis, data processing, record and file keeping services in order to evaluate proper levels of self-funded retention and deductibles;
- (f) select legal counsel according to policy established by the Board;
- (g) perform other functions as required by the Board for the purpose of accomplishing the goals of the Agreement.

ARTICLE XIX

NEW PARTICIPATING AGENCIES

It is the intent of the Authority to provide, to the extent permitted by law and Board policy, for the inclusion at a subsequent date of such additional public entities, organized and existing under the Constitution or laws of the State of California, as may desire to become Participating Agencies of the Authority.

The Board shall review all applications for participation in the Authority. Those public agencies seeking membership must be approved by the affirmative vote of a two-third (2/3) majority of the Board.

Public agencies applying under this Article shall be required to pay their share of organizational expenses, as determined by the Board, including those costs necessary to analyze their loss data and determine their cash contributions.

Cash contributions for Participating Agencies joining the Authority at other than the beginning of the Authority's program year, shall be prorated for the remainder of the program year.

A new Participating Agency will be considered an Associate Member, whose voting rights will be

granted in conformity with the Agreement and Bylaws.

ARTICLE XX

WITHDRAWAL

A new Participating Agency which wishes to join the Authority shall not withdraw from the Authority for a three (3) fiscal year period commencing on July 1st of the first full fiscal year that said new Participating Agency became a Participating Agency of the Authority.

After the initial three (3) fiscal year non-cancelable commitment to the Agreement, a Participating Agency may withdraw only at the end of a fiscal year of the Authority, provided it has given the Authority a six (6) month written notice of its intent to withdraw from this Agreement and the joint protection program.

Any Participating Agency which withdraws as a party to this Agreement pursuant to this Article, or is expelled pursuant to Article XXI, shall not be reconsidered for new Membership until the expiration of five (5) years from the Participating Agency's withdrawal.

ARTICLE XXI

EXPULSION

The Authority shall have the right to expel any Participating Agency from a specific coverage program or from the entire Authority upon a four-fifths (4/5) vote of the entire Board after ninety (90) days written notice to the Participating Agency; and such expulsion shall be effective at the conclusion of the program year in which the notice is given, unless a different, specific date is stated by the Board. Any Participating Agency so expelled shall, on the effective date of the expulsion, be treated the same as if the Participating Agency had voluntarily withdrawn from this program.

ARTICLE XXII

EFFECT OF WITHDRAWAL OR EXPULSION

The withdrawal or expulsion of any Participating Agency after the inception of its participation in the Authority or any pooled coverage program shall not terminate its responsibility:

- (a) to cooperate fully with the Authority in determining the cause of losses and in the settlement of claims incurred during the coverage period, as defined in the Memorandum of Coverage;
- (b) to pay any cash assessments or other amounts determined by the Board to be due and payable to each program year of each program in which it participated until all claims, or other unpaid liabilities, covering such periods have been finally resolved;

- (c) to provide the Authority with such statistical and loss experience data and other information as may be necessary for the Authority to carry out the purposes of this Agreement; and
- (d) to cooperate with and assist the Authority and any insurer, claims adjuster or legal counsel retained by the Authority, in all matters relating to this Agreement.

Coverages under all pooled coverage programs in which that Participating Agency participated will remain in effect and continue until the conclusion of their respective program years or an earlier date as determined by the Board.

Further, withdrawal or expulsion of a Participating Agency shall not be considered as a completion of the purpose of this Agreement and shall not require the repayment or return to the withdrawing Participating Agency of all or any part of any contributions, payments or advances made by the parties unless the Agreement is rescinded or terminated as to all parties; however, when funds earmarked for program years in which the Participating Agency participated are rebated or redistributed to Participating Agencies, the withdrawing Participating Agency will be entitled to its pro rata share as determined by the Board for its years of participation.

ARTICLE XXIII

TERMINATION AND DISTRIBUTION

This Agreement may be terminated any time by the written consent of a majority of the Members' city councils provided that all Participating Agencies are notified in writing at least ninety (90) days in advance; provided, however, that this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, distribution of assets and all other functions necessary to wind up the affairs of the Authority. Notification of the action of the Members' city councils in terminating this Agreement may be delivered by mail to the Authority or in person by each Member's Director or Alternate Director at a regular or special meeting of the Board. Upon termination of this Agreement, all assets of the Authority shall be distributed only among the Participating Agencies which have been participants in its pooled coverage programs, including any of those Participating Agencies which previously withdrew or were expelled pursuant to Articles XXI and XXII of this Agreement, and in accordance with the terms and conditions of the Bylaws of the Authority. The Board shall determine such distribution within six (6) months after the last pending claim or covered loss subject to this Agreement has been finally resolved.

The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority. These powers shall include the power to require the Participating Agencies, including those which were program participants at the time the claim arose or at the time the covered loss was incurred, to pay their share of any cash assessment deemed necessary by the Board for final disposition of all such claims and covered losses subject to this Agreement. The decision of the Board under this Article shall be final.

ARTICLE XXIV

NOTICES

Notices to Participating Agencies under this Agreement shall be sufficient if mailed, first class, to

their respective addresses on file with the Authority. Notices to the Authority shall be sufficient if mailed, first class, to the address of the Authority as contained in the Bylaws.

ARTICLE XXV

PROHIBITION AGAINST ASSIGNMENT

No Participating Agency may assign any right, claim, or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any Participating Agency shall have any right, claim, or title to any part, share, interest, or asset of the Authority.

ARTICLE XXVI

AMENDMENTS

This Agreement may be amended by two thirds (2/3) vote of the Members' and Associate Members' city councils provided that any amendment is compatible with the purposes of this Agreement and has been submitted to the Members at least thirty (30) days in advance. Any such amendment shall be effective immediately upon receipt by the Authority of votes sufficient for passage, unless otherwise designated. Notification of the action of the Members' city councils may be delivered by a Member's Director or Alternate Director at any regular or special meeting of the Board. Such amendments shall be binding upon all Participating Agencies of the Authority.

ARTICLE XXVII

SEVERABILITY

Should any portion, term, condition or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California or the United States, or to be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions terms conditions and provisions shall not be affected thereby.

ARTICLE XXVIII

AGREEMENT COMPLETE

The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

BYLAWS

The following Bylaws are for the regulation of Redwood Empire Municipal Insurance Fund, except as otherwise provided by Statute or the Joint Powers Agreement creating Redwood Empire Municipal Insurance Fund. These Bylaws are dated and will be effective January 1, 2021.

ARTICLE I

DEFINITIONS

The terms in these Bylaws shall be as defined herein and in the Joint Powers Agreement (hereinafter JPA Agreement) creating the Redwood Empire Municipal Insurance Fund (REMIF) unless otherwise specified herein.

Alternate Director means that individual appointed by a Member or Associate Member to act in the absence of its duly appointed representative except the Alternate Director shall not exercise the powers of an officer of the Authority or serve on the Executive Committee.

Associate Member means any contracting public agency who has been a signatory of the Authority's JPA Agreement for less than ten years.

Authority means the Redwood Empire Municipal Insurance Fund created by the JPA Agreement.

Board or Board of Directors means the governing board of the Authority.

Broker is an insurance broker used by the Board to acquire insurance coverage.

Cash Assessment means an amount determined by the Board of Directors, to be paid by each Participating Agency as necessary to meet the Authority's obligations.

Cash Contribution means the annual dollar amount determined by the Board of Directors which is payable by each Participating Agency as its established share of the funding required to cover the financial obligation of each pooled coverage program in which the Participating Agency participates.

Claims means demands made against the Participating Agencies or the Authority arising out of occurrences which may be within any of the Authority's coverage agreements.

Claims Adjuster is the person(s) hired as an employee of the Authority and/or contracted by the Board to determine losses and make or recommend payments in the various coverage programs.

Coverage Agreement is the document issued by the Authority to Participating Agencies specifying the scope and amount of pooled protection provided to each Participating Agency by the Authority in each pooled coverage program.

Covered Loss means any loss resulting from a claim or claims against a Participating Agency or the Authority which is in excess of the respective self-funded retention, and is covered by a Coverage Agreement issued by the Authority or any purchased programs and may include loss payments, defense costs, and other charges directly attributed to the resolution of the matter including defense costs incurred by the Authority.

Deductible means the amount of a claim, which the Participating Agency must incur or become liable for before the Authority is obligated to pay. Deductible is synonymous with Self-Funded Retention.

Director means the individual appointed by the Member or Associated Member to serve on the Board of Directors or the Alternate Director in the absence of the individual Director.

Entire Board shall consist of all Directors, whether or not present at a Board meeting.

Excess Insurance means any self-insurance, insurance, or reinsurance purchased by the Authority to cover losses in excess of the Authority's self-insured retention.

Executive Committee means that body composed of the President, vice President and three additional members of the Board appointed or elected in accordance with the Bylaws of the Authority.

General Manager is the person or firm appointed by the Board to be its Secretary and the Chief Administrative Officer of the Authority.

Incurred Loss means the sum of monies paid and reserved by the Authority that is necessary to investigate and defend a claim and to satisfy a covered loss sustained by a Participating Agency or the Authority pursuant to a coverage agreement.

Member means any Participating Agency that has been a signatory to the Authority's JPA Agreement for more than ten years.

Participating Agency means any Associate Member agency or Member agency that is signatory to the Authority's JPA Agreement.

Pooled Coverage Programs shall consist of coverages provided by the Authority pursuant to a Coverage Agreement. These may include, but are not limited to property, workers' compensation and liability coverages as may be determined by

the Board.

Program Year means a period of time determined by the Board, usually twelve (12) months, into which each pooled coverage program shall be segregated for purposes of account, record keeping, and coverage interpretation.

Self-Funded Retention means the amount of a claim, which the Participating Agency must incur or become liable for before the Authority is obligated to pay. Self-Funded Retention is synonymous with Deductible.

Treasurer means an officer of the Authority appointed by a majority of the Entire Board who shall serve at the pleasure of the Board.

ARTICLE II

OFFICES

The principal executive office for the transaction of business of the Authority and receipt of all notices is hereby fixed and located as described in the attached addendum hereto and incorporated herein by reference. The Board shall have the authority to change the location of the principal executive office.

Other business offices may be established by the Board at any time and at any place or places where the Authority is qualified to do business.

ARTICLE III

DIRECTORS OR OFFICERS

Appointment of Board of Directors

The Board of Directors will include one Director from each Member and a Director from each Associate Member.

The governing board or other duly designated official of each Member and Associate Member of the Authority shall appoint a representative to the Board of Directors. The appointment shall be in writing, directed to the Authority at its designated principal executive office, and shall remain in effect until the receipt of a written notice designating a replacement. Each Member and Associate Member shall also designate an Alternate Director, in the manner described above, to act in the absence of its duly appointed representative except the Alternate Director shall not exercise the powers of an officer of the Authority or serve on the Executive Committee. Each Director has one vote.

Election and Removal of Officers

The officers of the Authority shall be the President, Vice President, Treasurer and General Manager/Secretary. The President and Vice President shall be elected, as individuals, from among the members of the Board of Directors not as the Participating Agencies they represent. The term of office for President and Vice President shall be two (2) fiscal years, and they shall assume the duties of their offices at the beginning of the next fiscal year.

The Treasurer will be appointed, by a majority of the Board, and shall serve at the pleasure of the Board. The qualifications of the Treasurer will be set by Board policy and shall have the powers, duties and responsibilities specified in Government Code §6505.5. The Treasurer shall have no vote on the Board unless he/she is a Director also.

The General Manager shall be the Secretary and Chief Administrative Officer of the Authority, appointed by the Board and shall serve at the pleasure of the Board. Although the General Manager is an officer of the Authority, he/she may not vote on matters before the Board, Executive or other appointed committees. The General Manager may not be an employee or an officer of a Participating Agency. The General Manager shall be responsible for administering the operations of the Authority, cause minutes to be kept as specified by the Board, shall have the duty to maintain or cause to be maintained all accounting and other financial records of the Authority, file financial reports of the Authority, and perform other such duties as the Board may specify.

Election for President will be held first and then election for Vice President. Each Director present shall cast one vote for each office. The candidate receiving the greatest plurality of votes for the particular office will be elected and will assume the office on July 1 of the succeeding fiscal year. In the event of a tie vote, those not involved in the tie vote will be eliminated and the remaining candidates will be the subjects of a run-off election as described above. If unsuccessful after the run off, the election for that office shall start again with all the candidates eligible. Nomination of candidates and election for the Officers and the Executive Committee shall be made at the June meeting every other year for the succeeding fiscal year. Officers and the Executive Committee elections will be held on opposite years.

The President and Vice President will be elected at the Annual Board meeting in fiscal years ending in even numbered years and shall serve for their elected term of office for two (2) years, or until removal by the Participating Agency, or removal from office by the affirmative vote of the majority of the Board of Directors at any regular or special meeting of the Board of Directors. Vacancies in the offices of President or Vice President or Executive Committee will be filled by election of a replacement, at the next regular or special meeting of the Board, by a majority vote of the Board, to serve the remainder of the unexpired term.

All other Authority staff positions will be appointed by the General Manager subject to budget approval by the Board.

The Board shall require the General Manager and the Treasurer to file with the Authority

an individual or a blanket bond in the amount to be fixed by the Board, but not less than \$100,000. The Authority shall pay the cost of the premiums for the bond required by it.

ARTICLE IV

EXECUTIVE COMMITTEE

There shall be an Executive Committee composed of five members. The President and Vice President shall serve on the Executive Committee during their incumbency and three members at large will be elected every other year to serve with them.

The election of members at large to serve on the Executive Committee will be held at the annual Board meeting in fiscal years ending in odd numbered years. The at-large members shall be elected, as individuals, from among the members of the Board of Directors, not as the Participating Agencies they represent. If an Executive Committee member is not available for a committee meeting, no alternate can sit as a replacement.

One Executive Committee member shall be elected from each of the following three regions:

South Region includes: Cotati, Sebastopol Rohnert Park, Sonoma, and Windsor

Central Region includes: Cloverdale, Healdsburg, Lakeport, St. Helena, and Ukiah

North Region includes: Arcata, Eureka, Fort Bragg, Fortuna, and Willits

Each Region will elect their own Executive Committee Representative. The Board may revise the membership of the three regions from time to time as membership in the Authority changes.

Any vacancy on the Executive Committee shall be filled at the Next Board meeting by a vote from the appropriate Region as specified in Article III for elections and Removal of Officers.

Powers

The powers of the Executive Committee shall be those powers delegated to it by the Board of Directors, which may include but are not limited to:

- recommendation on the personnel matters concerning salary, benefits and working conditions of the General Manager;
- covered loss settlement authority as determined per Article X;
- approval of service contracts in excess of staff's authority of \$50,000, but within budgeted amounts;

- amendments to the annual budget within limits established in Article VIII;
- other authority as delegated by the Board.

The Board of Directors may revoke any of the powers delegated to the Executive Committee by a majority vote of the Board.

ARTICLE V **MEETINGS**

Board of Directors Meetings

There shall be at least one (1) regular meeting of the Board of Directors each year, which shall be designated as the Annual Membership Meeting. At the final Board meeting of each fiscal year, the Board shall fix the date, hour and location at which each regular meeting in the succeeding year is to be held. Special meetings may be called by the President or a majority of the Board. Notice of such special meetings shall be delivered personally, by electronic facsimile transmission or by mail, as provided by state law, to each Participating Agency at least twenty-four (24) hours before the time of such meetings.

A regular or special meeting of the Board may be cancelled or postponed by the General Manager or President by notice delivered as provided by state law, to each Participating Agency at least twenty-four (24) hours before the time of such meeting. The Annual Membership Meeting may be postponed but not cancelled.

Executive Committee Meetings

The Executive Committee shall hold meetings as the need arises. Some may coincide with meetings of the Board of Directors. The President or 2 members of the Executive Committee may request meetings, as need dictates. Notice of such special meetings shall be delivered as provided by state law, to each Participating Agency at least twenty-four (24) hours before the time of such meetings.

A regular or special meeting of the Executive Committee may be cancelled or postponed by the President by notice delivered as provided by State law, to each Participating Agency at least twenty-four (24) hours before the time of such meeting.

General Meetings

No business may be transacted by the Board, Executive Committee, or other appointed committees without a quorum of their respective members participating. A quorum of the Board shall consist of a majority of its number; a quorum of the Executive Committee shall number three (3) members. Quorums of other committees established by the Board shall be a majority of their members. A majority of the members present must vote in favor of a motion to approve it, except as otherwise provided in the JPA Agreement or Bylaws and

except for the following:

1. A two-thirds (2/3) vote of the Board is required to amend the Bylaws provided that any amendment is compatible with the purposes of the Authority, is not in conflict with the JPA Agreement and has been submitted to the Board at least thirty 30 days in advance.
2. A majority vote of the Board is required to levy a cash assessment for any pooled coverage program.
3. A majority vote of the Board is required to remove an officer of the Board or member of the Executive Committee.
4. A four-fifths (4/5) vote of the entire Board is required to expel any Participating Agency from the Authority.

The Board and the Executive Committee shall conduct their meetings in accordance with Robert's Rules of Order.

All meetings of the Board, including without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, or any other applicable State law.

The General Manager shall cause minutes of all regular, adjourned regular and special meetings to be kept. As designated by the Board a copy of the minutes will be forwarded to each Participating Agency.

ARTICLE VI

DUTIES OF DIRECTORS AND OFFICERS

The Board of Directors shall be responsible for governing the Authority either directly or by delegation to other bodies or persons unless prohibited by law or by the JPA Agreement, and shall exercise all those powers not specifically reserved to the Participating Agencies in the JPA Agreement. Each Director shall have the authority to bind their Participating Agency on all matters pertaining to the JPA Agreement as provided in the JPA Agreement. In addition, the results of all votes will have the authority to bind all Participating Agencies. Each Director shall be entitled to cast one vote in all matters requiring a vote, except in the case of an actual or potential conflict of interest.

The Board may establish committees and delegate to them functions not otherwise reserved to the Board.

The duties of the President shall be to preside at all meetings of the board and the Executive Committee and to perform such other duties as the Board may specify.

The duties of the Vice President shall be to act as the President, in the absence of the President, and to perform such other duties as the Board may specify.

The duties of the Treasurer shall be those specified in §6505.5 or 6505.6 of the California Government Code, to receive and safekeep all money coming into the treasury, to comply with all laws governing the deposit and investment of funds, and to provide a quarterly financial report to the Board summarizing receipts, disbursements, and fund balances, along with a listing of all investments and other duties as specified by the Board.

The duties of the General Manager shall be to administer the operations of the Authority, to cause minutes to be kept as specified in the JPA Agreement, to maintain or cause to be maintained all accounting and other financial records of the Authority, to file all financial reports of the Authority and to perform such other duties as the Board may specify.

ARTICLE VII

BUDGET

An annual budget shall be presented by the General Manager to the Board before and be adopted no later than June 30 of each year. At the discretion of the Board, a multi-year budget may be adopted, thereby eliminating the requirements of annual presentation and adoption during the term of such multi-year budget.

The budget shall separately show the following:

- a. general and administrative expenses;
- b. revenue section;

ARTICLE VIII

RECEIPT AND DISBURSEMENT OF FUNDS

Revenues of the Authority shall be received at its principal executive office. The Treasurer, General Manager or other designee of the Board shall safeguard and invest funds in accordance with the Authority's current Investment Policy.

The General Manager and others as designed by the Board shall be authorized signatories of the Authority's checking account. All checks disbursing funds of the Authority shall be signed by the appropriate number of individuals as established by action of the Board.

The General Manager shall be authorized to make all expenditures for goods or services without specific approval, to the extent such funds have been included and approved by adoption of the budget, or as subsequently approved by the Board.

The Executive Committee shall be authorized to permit budget modifications in amounts up to \$50,000 for expenditures in excess of previously budgeted or approved amounts.

ARTICLE IX

ACCOUNTS AND RECORDS

The Authority shall maintain such funds and accounts in accordance with acceptable accounting practices or by any provision of the law or any policy of the Board. Books and records in the possession of the Treasurer or the Board's designee that are considered public documents by state law shall be open to inspection at all reasonable times by designated representatives of the Participating Agencies.

The Treasurer or the Board's designee shall report to the Board as required by State law and Board policy.

The Board shall contract with a certified public accountant to make an annual audit of the accounts and records of the Authority at the end of each fiscal year. The audit report shall be filed within six (6) months of the end of the fiscal year under examination. The Authority shall bear the cost of the audit.

The fiscal year of the Authority is the period from the first day of July of each year to and including the last day of June of the following year.

The Authority shall maintain or cause to be maintained accurate loss records for all covered risks, for all claims paid, and for such other losses as it requires records or directs records to be maintained.

ARTICLE X

SETTLEMENT OF CLAIMS

The General Manager or the Board's designee shall have authority to settle workers compensation, property and liability claims up to the limit specified by law and Board policy but not to exceed the actual amount of the claim.

The General Manager will have authority to settle property and liability claims for up to \$40,000 per occurrence. The Executive Committee shall have authority to settle property and liability claims from \$40,000 up to \$150,000 per occurrence. The Board shall have authority to settle claims in excess of these amounts up to the Authority's limit of coverage.

For workers compensation claims, staff has standing authority to pay benefits due under workers compensation law for medical benefits, temporary disability, etc. and to resolve permanent disability claims up to statutory requirements. Any settlements for permanent disability and/or a covenant and release exceeding the statutory requirements may be settled by the General Manager for amounts not to exceed \$40,000; by the Executive Committee for amounts not to exceed \$150,000; and for any higher amount, by the Board, up to the Authority's limit of coverage.

From time to time, the Board may, by policy or resolution, raise or lower the level of settlement authority granted to the General Manager and/or Executive Committee.

ARTICLE XI

POOLED RISK COVERAGE PROGRAMS

The Authority shall provide pooled risk coverage programs as determined by the Board of Directors. All Participating Agencies must participate in at least one pooled risk coverage program in order to maintain their membership in the Authority. The terms and conditions of each pooled risk coverage program including, but not limited to, agency participation commitment, choices of self-funded retentions, cash contributions, formulas, and other relevant details will be determined by the Board through these Bylaws, addendum, policies and/or coverage agreements.

The Board is authorized to adopt and provide additional pooled risk coverage programs it deems beneficial to Members.

Coverage may be provided by a self-funded risk-sharing pool, participation in pooled excess self-insurance, purchased insurance, reinsurance or any combination thereof, as determined by the Board as described in policy, attached addendum or coverage agreement.

Each pooled risk coverage program will be funded by annual cash contributions of the Participating Agencies at a level that is determined to be sufficient to cover the predicted losses, loss adjustment expenses, defense costs, excess premiums, and proportionate share of general administrative expenses of the Authority.

The cash contributions shall be calculated by taking into consideration the above expenses as well as each Participating Agency's incurred loss experience and deductible selected. The formula for establishing the cash contributions shall be included as an addendum to these Bylaws or in Board policy and can be changed by the Board to properly fund each program.

The cash contributions will be pooled with each year's cash contributions to provide a central pool for each pooled risk coverage program. These cash contributions paid to the Authority and any investment income attributed to such fund shall be held in trust by the Authority to carry out the purposes of the Authority as set forth in these Bylaws and the Authority Agreement. Failure to pay cash contributions when due will constitute grounds for cancellation of coverage under terms and procedures established by the Board. If the participating agency doesn't pay after 30 days, an interest fee will be issued; after 60 days, a \$150.00 penalty will be issued; and after 90 days of non-payment, notification will be sent to the Executive Committee and the delinquent Member's City Manager. After 120 days, a notice of cancellation will be issued by the Executive Committee to the delinquent Member.

Refunds of excess funds to the Participating Agencies will be issued in accordance with these Bylaws or policies established by the Board. Per California Government Code section 6512.2, there is no right to refunds or return of excess funds at any time, except as approved by the Board, and withdrawal or termination of membership shall not require the refund of any contributions, payments or advances by the Member.

Excess funds in one pooled risk coverage program shall not be used to fund a different pooled risk coverage program.

Cash contribution invoices are payable upon receipt and become in arrears thirty (30) days after the invoice date. Interest and/or other penalties for all such invoices in arrears shall be calculated in accordance with the policies and procedures adopted by the Board.

ARTICLE XII

RISK COVERAGE AND DEDUCTIBLES

EFFECTIVE DATE

Pursuant to the payment of cash contributions by each Participating Agency to the Authority, the Authority shall issue to each Participating Agency a coverage agreement or policy, indicating the risk coverage provided to the Participating Agency by the Authority. The coverage provided by the coverage agreement begins and ends for each Participating Agency on such dates as set forth in the coverage agreement.

DEDUCTIBLES

For each coverage agreement provided, the Authority is responsible for the risks covered by the coverage agreement over and above the deductible but only up to the limits of the coverage agreement. Each Participating Agency shall designate the deductible for each of its coverage agreements, but in no case will it be less than the per loss amount stated by Board policy or in the Bylaws. Each Participating Agency is responsible for the deductible applicable to it under the coverage agreement. The Authority shall take the amount of the deductible into consideration in calculating the amount charged to each Participating Agency for the risks covered. The Participating Agency will be responsible for all amounts over the combination of its Deductible, the Authority's coverage amount, and any purchased and/or pooled excess coverage if the loss or settlement exceeds the combination.

SUBROGATION

The Authority shall share each subrogation recovery with the Participating Agency in accordance with any policies or procedures described in the coverage agreement from which the covered loss originated. Each subrogation action shall be brought on behalf of both the Participating Agency and the Authority.

SPECIAL COVERAGES

The Authority may negotiate special coverages with or for a Participating Agency(ies) as may be requested by the Participating Agency(ies). The special coverages may be approved by the Board and be funded in accordance with the Authority's Bylaws or policies. It is

intended that special coverages for any Participating Agency(ies) not be provided at the expense of the other Participating Agencies without Board approval.

ARTICLE XIII

ASSESSMENTS

Upon a majority vote of the Board, the Board shall have the authority to levy a cash assessment for any pooled coverage program. There must be a finding by the Board that these are insufficient funds available to the Authority to meet its obligations.

A cash assessment shall be directed only to those Participating Agencies or former Participating Agencies which participated in the pooled coverage program during the program year in which the covered loss, causing the assessment, was incurred.

The cash assessment will be due and payable thirty (30) days from the date the Board declares the assessment, unless otherwise indicated.

Any costs, including attorney fees incurred by the Authority in collecting any cash assessment, shall be reimbursed in full by the Participating Agency against which such collection action has been taken.

ARTICLE XIV

MEMBERSHIP

New Member

The Authority may allow entry into the program a new Participating Agency as an Associate Member, approved by the Board only at the beginning of the Authority's fiscal year following the Authority's fiscal year in which the request to join the Authority is submitted to the Board by the agency requesting membership. Request for membership shall only be considered by the Board if the agency requesting membership has submitted a written request to the Board at least six (6) months prior to the beginning of the Authority's fiscal year in which the agency seeks membership. Moreover, the Board shall not consider a request for membership unless it includes, but is not limited to, such information as noted below:

- a) Complete a REMIF application form, which may include, but not be limited to, the following information.
 - 1) underwriting data for the current year;
 - 2) payrolls for the prior five years;
 - 3) loss history for the prior five years;
 - 4) a copy of the most recent claims audit and actuarial reports;
 - 5) a copy for the most recent audited financial statements;
 - 6) an indication as to the pooled coverage programs in which the prospective applicant wishes to participate and the anticipated retained limit for such programs; and
- b) Provide an actuarial study in a framework that is acceptable to REMIF.
- c) Provide a current accreditation or independent consultant's report from an organization that is acceptable to REMIF.
- d) Submit to a staff analysis of their qualifications for membership and provide whatever documentation is required.
- e) Comply with any other requests or considerations made by the Board of Directors.

Agencies entering under this Article shall be required to pay their share of organizational expenses as determined by the Board, including those necessary to analyze their loss data and determine their premiums.

Upon review of a prospective Participating Agency's application and after any necessary site visits by staff, a report, containing a staff recommendation, will be presented to the Board of Directors. The prospective Participating Agency will be invited to attend a meeting of the Board of Directors to respond to questions concerning the application. The

affirmative vote of a two-third (2/3) majority of the Board is necessary for admission to the Authority.

Any agency admitted under this Article will be designated an Associate Member with all the rights and responsibilities assigned by the Agreement, these Bylaws, and Board policies to an Associate Member.

ARTICLE XV

TERMINATION AND DISTRIBUTION

Upon termination of the Authority, in accordance with Article XXII of the JPA Agreement, the Authority shall take all necessary actions to properly dispose of all claims and other liabilities of the Authority.

Cash Contributions:

All remaining cash assets shall be distributed among only the parties which have been participants in the pooled coverage program, including any of those parties which had previously withdrawn, or were expelled, pursuant to Articles XX and XXI of the JPA Agreement and in accordance with the terms and conditions of the Bylaws. Each qualifying participant's share shall be determined by policy or a resolution of the Board of Directors. The Board shall determine and make such distribution within six (6) months after the last pending claim or covered loss, subject to the JPA Agreement, has been finally resolved.

Real and Personal Property (other than cash contributions):

All real and personal property shall be liquidated. The cash from the liquidated assets will be distributed in the manner as determined by the Board of Directors. The Board shall determine and make such distribution within six (6) months after the last pending claim or covered loss, subject to the JPA Agreement, has been finally resolved.

ARTICLE XVI

AMENDMENTS

These Bylaws may be amended by a two-thirds (2/3) vote of the Board provided that any amendment is compatible with the purposes of the Authority, is not in conflict with the JPA Agreement, and has been submitted to the Board at least thirty (30) days in advance. Any such amendment shall be effective immediately, unless otherwise designated.

ARTICLE XVII

SEVERABILITY

Should any portion, term, condition or provision of these Bylaws be decided by a court of competent jurisdiction to be illegal or in conflict with any laws of the State of California or the United States, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

ADDENDUM I**MEMBER LISTING**

Original 7 Founding Members Established in 1976
 City of Cloverdale

City of Cotati

City of Healdsburg

City of Rohnert Park

City of Sebastopol

City of Sonoma

City of Ukiah

Effective July 1, 2014, the following public agencies are Current Members and Former Associate Members of the Redwood Empire Municipal Insurance Fund:

<u>Member</u>	<u>Date Joined</u>
City of Fort Bragg	12/31/78
City of Lakeport	12/31/78
City of Willits	12/31/78
City of Arcata	7/1/80
City of Fortuna	7/1/80
City of St. Helena	7/1/86
Town of Windsor	7/1/92
City of Eureka	3/1/93
City of Crescent City	3/1/78 to 6/30/93 (Former)

ADDENDUM II

OFFICES

The principal address of Redwood Empire Municipal Insurance Fund for the transaction of business and receipt of all notices shall be:

414 W. Napa Street
Sonoma, CA 95476

**REDWOOD EMPIRE MUNICIPAL INSURANCE FUND
FOURTH AMENDED AND RESTATED
JOINT POWERS AGREEMENT
Effective as of July 1, 2021
[signature pages]**

Name of Member Entity: _____

Date: _____

By: _____
Name/Title

Attest: _____
City/Town Clerk

Redwood Empire Municipal Insurance Fund

Date: _____

By: _____
Name/Title

Attest: _____
Secretary, REMIF

**CALIFORNIA INTERGOVERNMENTAL RISK AUTHORITY
AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT
Effective as of July 1, 2021
[signature pages]**

Name of Member Entity: _____

Date: _____

By: _____
Name/Title

Attest: _____
City/Town Clerk

California Intergovernmental Risk Authority

Date: _____

By: _____
Name/Title

Attest: _____
Secretary, CIRA



Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed approval of a resolution duly approving and adopting publicly available pay schedules in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5 which includes a revised salary schedule for part-time Casual Worker classification

CEQA Determination: Not a CEQA project

Prepared By: Kathy Robinson, Human Resources & IT Director

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

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 must abide by the Government Code when establishing and reporting employee compensation. The California Code of Regulations (CCR) Title 2, Section 570.5 (Section 570.5) provides that each pay schedule meet the following requirements:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws
- Identifies the position title for every employee position
- Shows the pay rate for each position
- Indicates the time base for each pay rate

CalPERS uses the City's pay schedules to determine final compensation and to calculate retirement benefits for the City's employees. Inaccurate pay schedules could negatively impact an employee's final retirement calculation or delay receipt of the appropriate retirement compensation. To ensure that the City remains compliant with its

obligation under Section 570.5 staff will, at a minimum, biannually present pay schedules to City Council to be duly authorized and approved. The biannual presentations to the City Council coincide with the start of a new fiscal year and at the beginning of each calendar year, as these times have historically coincided with the ratification of negotiated memorandum of understandings with the City's labor unions.

DISCUSSION

On January 1, 2021, the California minimum wage increases from \$13.00 per hour to \$14.00 per hour. The increase to the State minimum wage impacts the compensation schedule for the part-time Casual Worker positions. The increases to the base hourly rate have been updated and are also reflected in Exhibit A of the attached Resolution (Attachment 1) - City of St. Helena Publicly Available Salary Schedule Approved and Adopted July 14, 2020, Casual Worker Updated for Minimum Wage Increase Effective January 1, 2021.

The California Code of Regulations (CCR) Title 2, Section 570.5 (Section 570.5) provides that position title, pay rate, and time base for each employee position the City has in the CalPERS system to be included in a publicly available compensation schedule. Per the CCR, the City Council, part-time seasonal employees, and prior positions (retired and/or vacant) are included in the salary schedules and will continue to be included in all future updates.

FISCAL IMPACT

There are no financial impacts to the budget as the minimum wage increases for January 2021 were considered and budgeted in the adopted FY 2020-21 budget.

RECOMMENDED ACTION

Staff recommends City Council duly approve and adopt publicly available pay schedules in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5 which includes a revised salary schedule for the part-time Casual Worker classification, and make no other changes to the salary schedules for other classifications.

ATTACHMENTS

[Attachment 1 Resolution Adopting Pay Schedule for Casual Worker Classification](#)

**CITY OF ST. HELENA
RESOLUTION No. 2020-**

**Duly adopting and approving publicly available pay schedules
in accordance with the requirement of California Code of
Regulations, Title 2, Section 570.5 which includes revised salary
schedule for all part-time Casual Worker classifications**

RECITALS

- A. The City of St. Helena contracts with the California Public Employee' Retirement System ("CalPERS") to provide retirement benefits for its employees; and
- B. Pursuant to California Code of Regulations, Title 2, Section 570.5, CalPERS requires governing bodies of local agencies contracting with CalPERS to approve and adopt a publicly available pay schedule in accordance with public meeting laws; and
- C. The pay schedule must identify the position title for every employee position, the pay rate for each position title, and the applicable time base for the pay rate; and
- D. The City Council of the City of St. Helena desires to approve and adopt a publicly available pay schedule, showing all established employee positions and pay rates, in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5; and
- E. On January 1, 2021, California minimum wage for employers with 26 or more employees is \$14.00 per hour.

Now, therefore, the City Council of the City of St. Helena resolves as follows:

- 1. That the City of St. Helena Publicly Available Salary Schedule which includes revised salary schedule for all part-time Casual Worker classification contained in Exhibit A is hereby approved and adopted in accordance with the requirements of California Code of Regulations, Title 2, Section 570.5, and
- 2. That the revised City of St. Helena make no changes to the salary schedules for other classifications; and
- 3. That the City of St. Helena Publicly Available Salary Schedule will be posted on the City's website, and will be made available for public inspection for not less than five years.

Approved at a regular meeting of the St. Helena City Council on December 8, 2020 by the following vote:

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

Councilmember Chouteau: _____

Councilmember Knudsen: _____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopolous, City Clerk

Exhibit A

CITY OF ST. HELENA PUBLICLY AVAILABLE SALARY SCHEDULE
Fire Department (full-time and part-time), Casual Workers (part-time), and Elected Officials
 Approved and Adopted July 14, 2020, Casual Worker Updated for Minimum Wage Increase Effective January 1, 2021
 Includes a 5% Salary Reduction Effective 07/01/2020 through 06/30/2021
 FY 2020-2021

Position	Timebase*	Steps				
		A	B	C	D	E
<u>Full-time Fire Department Positions</u>						
Firefighter	Annual	52,660	55,293	58,058	60,961	64,009
	Monthly	4,388	4,608	4,838	5,080	5,334
	Bi-weekly	2,025	2,127	2,233	2,345	2,462
	Hourly	25.32	26.58	27.91	29.31	30.77
Engineer	Annual	55,294	58,058	60,961	64,009	67,210
	Monthly	4,608	4,838	5,080	5,334	5,601
	Bi-weekly	2,127	2,233	2,345	2,462	2,585
	Hourly	26.58	27.91	29.31	30.77	32.31
Captain	Annual	58,058	60,961	64,009	67,210	70,570
	Monthly	4,838	5,080	5,334	5,601	5,881
	Bi-weekly	2,233	2,345	2,462	2,585	2,714
	Hourly	27.91	29.31	30.77	32.31	33.93
Assistant Chief	Annual	60,961	64,009	67,209	70,569	74,098
	Monthly	5,080	5,334	5,601	5,881	6,175
	Bi-weekly	2,345	2,462	2,585	2,714	2,850
	Hourly	29.31	30.77	32.31	33.93	35.62

Position	Timebase*	Steps				
		A	B	C	D	E
<u>Part-time Fire Department Positions</u>						
Firefighter	Hourly	25.32	26.58	27.91	29.31	30.77
Engineer	Hourly	26.58	27.91	29.31	30.77	32.31
Captain	Hourly	27.91	29.31	30.77	32.31	33.93
Assistant Chief	Hourly	29.31	30.77	32.31	33.93	35.62
Fire Marshal ⁽¹⁾	Hourly					45.53

Position	Timebase*	Steps				
		A	B	C	D	E
<u>Part-time Positions</u>						
Casual Worker I	Hourly	14.00	14.70	15.44	16.21	17.02
Casual Worker II	Hourly	15.81	16.60	17.43	18.30	19.22
Casual Worker III	Hourly	20.18	21.19	22.25	23.36	24.53
Casual Worker IV	Hourly	25.75	27.04	28.39	29.81	31.30
Casual Worker V	Hourly	32.85	34.49	36.22	38.03	39.93

Position	Timebase*	
<u>Elected Positions</u>		
Mayor ⁽¹⁾	Annual	3,600.00
Vice Mayor ⁽¹⁾		
Council Member ⁽¹⁾		
Planning Chairperson ⁽¹⁾	Annual	1,200.00
Planning Vice Chairperson ⁽¹⁾		
Planning Commissioner ⁽¹⁾		

⁽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.



Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed adoption of a Resolution making sole source findings in support of and awarding a Construction Contract with Got Power, Inc. doing business as CD & Power for CIP Project No. C20-06 Emergency Back-up Power in the amount not-to-exceed \$285,755.25 and authorizing the Director of Public Works to approve change orders not to exceed 10% of the original contract amount.

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

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

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Following the 2017 October Wildfire Disaster, the City of St. Helena identified risks that were posed against the City during the disaster. One risk identified is that in the event of a disaster, or a PG&E Public Safety Power Shutoff (PSPS), the City does not have back-up power to several critical City facilities that provide essential services to first responders and the citizens of St. Helena. Based on this risk to the City, it was determined it was essential to provide a permanent source of back-up power generation to various facilities to minimize the impacts disasters may have on St. Helena.

The Federal 2017 October Wildfire Disaster declaration opened the opportunity to compete for Hazard Mitigation Grant Program (HMGP) funding. In July 2018, City staff submitted an application requesting a designated fixed generator for the Library and three generators to serve three utility locations: Flood Control Levee Site, Stonebridge Wells and the Madrone Knoll Pump Station.

On November 12, 2019, the City was notified the City of St. Helena was approved for HMGP funds for these generators. The total eligible costs are \$647,189, with up to \$485,391.75, or 75%, of the funding coming from HMGP funds.

On December 10, 2019, City Council accepted award of the generator grant and approved a budget for CIP Project No. C20-06 Emergency Back-up Power.

On November 24, 2020, City Council adopted a resolution awarding a equipment purchase agreement with Gonneville, Inc. to provide generators for the following locations:

1. Portable Generator - will be located at the rural Madrone Knoll Pump Station and will only be moved during times of maintenance at the facility due to site constraints.
2. Fixed-position Generator - Stonebridge Wells
3. Fixed-position Generator - Flood Control Levee Site
4. Fixed-position Generator - Library

Securing generators for the Madrone Knoll Pump Station, Stonebridge Wells and Flood Control Site will ensure fully operational utility and flood control during natural disasters and/or power outages that are otherwise out of the control of the City and its residents. Having a fixed generator at the City Library will provide a fully functional location for the community to gather for disaster related information, safety from potentially dangerous conditions, and support charging stations.

DISCUSSION

Got Power, Inc., doing business as CD & Power ("CD&P"), is the only authorized installer of Gonneville's generators and ancillary equipment and has been proven to be responsive to maintenance and installation services to municipal agencies throughout the North Bay Area for many years.

Public Contract Code section 3400(c)(3) authorizes sole source of public works projects where a necessary item is only available from one source and California case law further excuses compliance with competitive bidding requirements in exceptional circumstances such as where requests for competitive bids would be futile, unavailing, or would not produce an advantage, including when there is only one party who can complete the work (Los Angeles Dredging Co. v. Long Beach (1930) 210 Cal. 348; Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631).

On November 24, 2020, the City Council authorized the purchase of the four generators and ancillary equipment from Gonneville, Inc. through the federal General Services Administration's (GSA) award schedule and CD&P is the only authorized installer of their equipment. Further competitive bidding would be unavailing and would not produce an advantage because using a non-authorized installer would result in a potential dispute with Gonneville, Inc. and likely void the warranty for the generators.

In accordance with Public Contract Code section 3400(c)(3), staff is recommending the City award a construction contract to CD&P to install four generators for CIP Project No. C20-06 Emergency Back-up Power in an amount not-to-exceed \$285,755.25.

The City currently has until April 12, 2021, to complete the project and expend the grant funding. However, the City has inquired on a grant extension due to COVID-19 and the two wildfires that have impacted progress on the project earlier this year.

FISCAL IMPACT

The approved budget for CIP Project No. C20-06 is \$647,189, resulting in up to \$485,391.75 in FEMA HMGP grant funds to provide back-up generators to four critical City facilities. The grant will fund 75% of the total project cost leaving an estimated local match of \$161,797. The FY 2018-19 budget included, and has encumbered, \$137,600 in funding to be used towards the required 25% match. If additional funds are necessary, funds are available in the Equipment Replacement Fund which is estimated to have an FY 2020-21 ending fund balance of \$175,000.

The award of contract with CD & Power is for a not-to-exceed amount of \$285,755.25 and generally includes, design, permitting, any necessary concrete pads, conduit, the installation of four generators, and all ancillary equipment. It is recommended that the Director of Public Works is authorized to approve change orders not-to-exceed 10% of the original contract for any revisions needed on the project.

If the project is completed under budget, the remaining local funds will be dispersed back into their respective fund balance.

RECOMMENDED ACTION

Adopt a Resolution making sole source findings in support of and awarding a Construction Contract with Got Power, Inc. doing business as CD & Power for CIP Project No. C20-06 Emergency Back-up Power in an amount not-to-exceed \$285,755.25 and authorizing the Director of Public Works to approve change orders not-to-exceed 10% of the original contract amount.

ATTACHMENTS

[Attachment 1: C20-06 Resolution Award CD and Power](#)

[Attachment 2: C20-06 2021 CIP Budget](#)

[Attachment 3: Gonneville Authorized Installer Letter](#)

[Construction Contract \(082120\) CDandPower revised](#)

[Attachment 5: GSA Schedule No. GS-07F-0251L GONNEVILLE](#)

[Attachment 6: GSA Advantage Excerpts for Generators](#)

[Attachment 7: CIP C20-06 CD&Power Proposal](#)

CITY OF ST. HELENA

RESOLUTION No. 2020-

Resolution making sole source findings in support of and awarding a Construction Contract with Got Power, Inc. doing business as CD & Power for CIP Project No. C20-06 Emergency Back-up Power in the amount of \$285,755.25 and authorizing the Director of Public Works to approve change orders not to exceed 10% of the original contract amount

RECITALS

- A. City staff successfully applied for a FEMA Hazard Mitigation Grant Program ("HMGP") through Cal OES and was awarded \$485,391.75 toward the purchase and installation of four emergency back-up power generators for the Library, Madrone Knoll Pump Station, Stonebridge Wells, and Flood Control Levee Sites ("Sites"); and
- B. The HMGP grant will fund a project that includes design, inspection, generator procurement and installation with automatic transfer switches for all four Sites; and
- C. City staff researched generator companies that provide generators, ancillary equipment, and installation, and Gonneville, Inc. was the most reasonably priced, is located within California, will meet the needs of the City and was very responsive to the City's request; and
- D. Gonneville, Inc., offers its generators through the California Multiple Award Schedule and federal General Services Administration ("GSA") multiple award schedule programs – Gonneville, Inc.'s federal GSA listing will not expire until June 24, 2021; and
- E. In accordance with St. Helena Municipal Code Section 3.04.150, the bidding requirements of Section 3.04.100 shall not apply to the purchase of any equipment or supplies which the purchasing officer decides to obtain through a cooperative competitive bidding procedure prepared and processed through another public, local, state, or federal agency; and

- F. Got Power, Inc. doing business as CD & Power (“CD&P”) is the only authorized installer of Gonneville’s generators and ancillary equipment; and
- G. CD&P has provided responsive maintenance and installation services to municipal agencies throughout the North Bay Area for many years; and
- H. Public Contract Code section 3400(c)(3) authorizes sole source of public works projects where a necessary item is only available from one source; and
- I. California case law further excuses compliance with competitive bidding requirements in exceptional circumstances such as where requests for competitive bids would be futile, unavailing or would not produce an advantage, including when there is only one party who can complete the work (*Los Angeles Dredging Co. v. Long Beach* (1930) 210 Cal. 348; *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631); and
- J. The City has already purchased the generator and ancillary equipment from Gonneville, Inc. through the GSA schedule, and CD&P is the only authorized installer of their equipment; and
- K. Further competitive bidding would be unavailing and would not produce an advantage because using a non-authorized installer would result in a potential dispute with Gonneville, Inc. and likely void the warranty for the generators; and
- L. In accordance with Public Contract Code section 3400(c)(3), staff is recommending the City award a construction contract to CD&P to install four generators for CIP Project No. C20-06 Emergency Back-up Power in the amount of \$285,755.25

RESOLUTION

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

1. The Recitals set forth above are true and correct and are incorporated herein.
2. The adoption of this resolution is exempt from the requirements of CEQA pursuant to Section 15301,

Class 1, which exempts the operation, leasing, or minor alteration of existing facilities; and

3. Based on the City's above described review and Public Contract Code section 3400(c)(3), the City Council hereby approves award of a construction contract to CD&P for CIP Project No. C20-06 Emergency Back-up Power in the amount of \$285,755.25; and
4. The Director of Public Works is authorized to approve change orders not to exceed 10% of the original contract amount.
5. This Resolution shall take effect immediately upon adoption.

Approved at a Regular Meeting of the St. Helena City Council on December 8, 2020 by the following vote:

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

APPROVED: ATTEST:

Geoff Ellsworth, Mayor Cindy Tzafopoulos, City Clerk

Emergency Back-Up Power

Project No: 0110-C20-06

Category: Civic

Project Location: Library, Madrone Knoll Pump Station, Stonebridge Wells, and Flood Control Levee Site



PROJECT PURPOSE & DESCRIPTION: Provide emergency back-up power to four existing City facilities with the use of one portable generator at the Madrone Knoll Pump Station and three fixed-position generators at the following locations: Library, Stonebridge Wells, and the Flood Control Levee Site.

NOTES:

EXPENDITURE ACCOUNTS:

Fund: 733 **Dept:** 5010

EXPENDITURES								PROJECT TOTAL
	Total YTD	Rollover Funds	2020-21	2021-22	2022-23	2023-24	2024-25	
3110 - Design		64,719						64,719
3160 - Construction Contract		582,470						582,470
EXPENDITURE TOTALS		647,189						647,189
FUNDING SOURCES								
733-Civic CIP		161,797	0					161,797
733-Civic CIP HMGP Funds		485,392						485,392
FUNDING TOTALS		647,189	0					647,189



November 19, 2020

City of St. Helena
ATTN: Erica Ahmann Smithies, PE
1480 Main St
St. Helena, CA 94574

Dear Erica,

This is to certify that California Diesel and Power is the only company authorized by Gonneville Inc to install generators and ancillary equipment sold and serviced on our GSA Schedule # GS-07F-0251L.

This relationship ensures that our customers receive consistently reliable results throughout the duration of the project, including any applicable warranty service.

We are available to respond to any further requests for information, and to answer any questions you may have. Thank you for your consideration.

Best regards,

A handwritten signature in cursive script, appearing to read "Don Gonneville".

Don Gonneville
President

929 Calle Negocio, Suite D, San Clemente, CA 92673

Tel: (949) 248-7297

Fax: (949) 248-0666

www.gonneville.com

CITY OF ST. HELENA
CONSTRUCTION CONTRACT
EMERGENCY BACK-UP POWER
CIP PROJECT NO. C20-06

1. PARTIES AND DATE.

This Contract is made and entered into this _____ day of _____, 2020 by and between the City of St. Helena, a public agency of the State of California ("City") and Got Power, Inc. a corporation doing business as CD & Power with its principal place of business at 150 Nardi Lane, Martinez, CA. 94553 ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

2. RECITALS.

2.1 City. City is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Contractor. Contractor desires to perform and assume responsibility for the provision of certain construction services required by the City on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing generator procurement and installation related construction services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of City. The following license classifications are required for this Project: A and C-10.

2.3 Project. City desires to engage Contractor to render such services for the Emergency Back-up Power, CIP Project No. C20-06 ("Project") as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, a performance bond, a payment bond, and all insurance documentation, as required by the Contract.

3. TERMS

3.1 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Services/Schedule (Exhibit "A")
- Plans and Specifications (Exhibit "B")
- Special Conditions (Exhibit "C")
- Contractor's Certificate Regarding Workers' Compensation (Exhibit "D")
- Public Works Contractor Registration Certification (Exhibit "E")
- Payment and Performance Bonds (Exhibit "F")
- Federal Requirements (Exhibit "G")
- Addenda
- Change Orders executed by the City
- Edition of the Standard Specifications for Public Works Construction (The Greenbook), Excluding Sections 1-9

- Notice Inviting Bids, if any
- Instructions to Bidders, if any
- Contractor's Bid

3.2 Contractor's Basic Obligation; Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "B" attached hereto and incorporated herein by this reference. Special Conditions, if any, relating to the Work are described in Exhibit "C" attached hereto and incorporated herein by this reference.

3.2.1 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in writing by a valid change order executed by the City. Should Contractor request a change order due to unforeseen circumstances affecting the performance of the Work, such request shall be made within five (5) business days of the date such circumstances are discovered or shall waive its right to request a change order due to such circumstances. If the Parties cannot agree on any change in price required by such change in the Work, the City may direct the Contractor to proceed with the performance of the change on a time and materials basis.

3.2.2 Substitutions/"Or Equal". Pursuant to Public Contract Code Section 3400(b), the City may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in this Contract, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the City may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article shall include a signed affidavit from Contractor stating that, and describing how, the substituted "or

equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the City's costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

3.3 Period of Performance and Liquidated Damages. Contractor shall perform and reach substantial completion of all Work under this Contract by April 30, 2021, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the City. Such schedules or milestones may be included as part of Exhibits "A" or "B" attached hereto, or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages the sum of Five Hundred Dollars (\$500) per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.4 Standard of Performance; Performance of Employees. Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

3.5 Control and Payment of Subordinates; Contractual Relationship. City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and

obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

3.6 City's Basic Obligation. City agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the City shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

3.7 Compensation and Payment.

3.7.1 Amount of Compensation. As consideration for performance of the Work required herein, City agrees to pay Contractor the Total Contract Price of Two Hundred Eighty-five Thousand Seven Hundred Fifty-five Dollars and Twenty-five Cents (\$285,755.25) ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the City.

3.7.2 Payment of Compensation. If the Work is scheduled for completion in thirty (30) or less calendar days, City will arrange for payment of the Total Contract Price upon completion and approval by City of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, City will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the City an itemized application for payment in the format supplied by the City indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the City may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the City and in such detail and form as the City shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

3.7.3 Prompt Payment. City shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.7.4 Contract Retentions. From each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.7.5 Other Retentions. In addition to Contract retentions, the City may deduct from each progress payment an amount necessary to protect City from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the City in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion

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date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Contract; and (11) any other sums which the City is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.7.6 Substitutions for Contract Retentions. In accordance with California Public Contract Code Section 22300, the City will permit the substitution of securities for any monies withheld by the City to ensure performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, and thereafter the City shall then pay such monies to Contractor as they come due. Upon satisfactory completion of the Contract, the securities shall be returned to Contractor. For purposes of this Section and Section 22300 of the Public Contract Code, the term "satisfactory completion of the contract" shall mean the time the City has issued written final acceptance of the Work and filed a Notice of Completion as required by law and provisions of this Contract. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Section shall be in the form provided by the City.

3.7.7 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the City at the time of payment. To the extent that title has not previously been vested in the City by reason of payments, full title shall pass to the City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the City, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.7.8 Labor and Material Releases. Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

3.7.9 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at

Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

3.7.10 Apprenticeable Crafts. When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

3.7.11 Hours of Work. Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

3.7.12 Payroll Records. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.7.13 Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "E" prior to contract execution. Notwithstanding the foregoing, the contractor registration requirements

mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.7.14 Labor Compliance; Stop Orders. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.8 Performance of Work; Jobsite Obligations.

3.8.1 Water Quality Management and Compliance.

3.8.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.8.1.2 Compliance with the Statewide Construction General Permit. Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.8.1.3 Other Water Quality Rules Regulations and Policies. Contractor shall comply with the lawful requirements of any applicable municipality, drainage City, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.8.1.4 **Cost of Compliance.** Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

3.8.1.5 **Liability for Non-Compliance.** Failure to comply with the Permit is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the City and its officials, officers, employees, volunteers and agents for any alleged violations. In addition, City may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.8.1.6 **Reservation of Right to Defend.** City reserves the right to defend any enforcement action brought against the City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the City for the costs (including the City's attorney's fees) associated with, any settlement reached between the City and the relevant enforcement entity.

3.8.1.7 **Training.** In addition to the standard of performance requirements set forth in paragraph 3.4, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.8.1. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.8.1 as they may relate to the Work provided under this Agreement. Upon request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.8.2 **Safety.** Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.8.3 **Laws and Regulations.** Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such

laws and regulations in connection with Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the City in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.8.4 Permits and Licenses. Contractor shall be responsible for securing City permits and licenses necessary to perform the Work described herein, including, but not limited to, any required business license. While Contractor will not be charged a fee for any City permits, Contractor shall pay the City's business license fee, if any. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.8.5 Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for City's review and approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.8.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify City of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by City; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, City shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.8.7 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, City shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of City to provide for removal or relocation of such utility facilities.

3.8.8 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not

limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.8.9 State Recycling Mandates. Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

3.9 Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify City in writing and shall furnish all labor and material releases required by this Contract. City shall thereupon inspect the Work. If the Work is not acceptable to the City, the City shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a reinspection by the City. Once the Work is acceptable to City, City shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which City may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

3.10 Claims; Government Code Claim Compliance.

3.10.1 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

3.10.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by the City, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the City. A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a change order, or otherwise failed to follow any procedures contained in the Contract Documents. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than fourteen (14) days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit

or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

3.10.3 Supporting Documentation. The Contractor shall submit all claims in the following format:

3.10.3.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

3.10.3.2 List of documents relating to claim:

- (A) Specifications
- (B) Drawings
- (C) Clarifications (Requests for Information)
- (D) Schedules
- (E) Other

3.10.3.3 Chronology of events and correspondence

3.10.3.4 Analysis of claim merit

3.10.3.5 Analysis of claim cost

3.10.3.6 Time impact analysis in CPM format

3.10.3.7 If Contractor's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, Contractor shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.

3.10.3.8 Cover letter and certification of validity of the claim, including any claims from subcontractors of any tier, in accordance with Government Code section 12650 *et seq.*

3.10.4 City's Response. Upon receipt of a claim pursuant to this Section, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the public entity issues its written statement.

3.10.4.1 If City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, City shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

3.10.4.2 Within 30 days of receipt of a claim, City may request in writing additional documentation supporting the claim or relating to defenses or claims City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor.

3.10.4.3 City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

3.10.5 Meet and Confer. If the Contractor disputes City's written response, or City fails to respond within the time prescribed, the Contractor may so notify City, in writing, either within 15 days of receipt of City's response or within 15 days of City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

3.10.6 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after City issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with City and the Contractor sharing the associated costs equally. City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

3.10.6.1 If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

3.10.6.2 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

3.10.6.3 Unless otherwise agreed to by City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.10.6.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

3.10.7 Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time

within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation.

3.10.8 Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this Section:

3.10.8.1 Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

3.10.8.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

3.10.8.3 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

3.10.9 Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City. A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

3.10.10 Non-Waiver. City's failure to respond to a claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

3.11 Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or

be encountered in the prosecution of the Work until the same is fully completed and accepted by City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City may terminate this Contract pursuant to Section 3.17.3; provided, however, that the City needs to provide Contractor with only one (1) day advanced written notice.

3.12 Indemnification.

3.12.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

3.12.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

3.13 Insurance.

3.13.1 Time for Compliance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

3.13.2 Minimum Requirements. Contractor shall, at its expense, 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 Contractor, its agents, representatives, employees or subcontractors. Contractor

shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage:

3.13.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) OR Insurance Services Office Owners and Contractors Protective Liability Coverage Form (CG 00 09 11 88) (coverage for operations of designated contractor); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.

3.13.2.2 Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury and property damage; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease. Defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the parties required to be named as additional insureds pursuant to this Contract.

3.13.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions to the insurance policies:

3.13.3.1 General Liability. (1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 10 01 plus CG20 37 10 01, or endorsements providing the exact same coverage, with respect to the Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

3.13.3.2 Automobile Liability. (1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess,

shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

3.13.3.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

3.13.3.4 All Coverages. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

3.13.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

3.13.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.13.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

3.13.7 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must 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, at any time.

3.13.8 Subcontractors. All subcontractors shall meet the requirements of this Section before commencing Work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

3.13.9 Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Work under this Contract.

3.14 Bond Requirements.

3.14.1 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Payment Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.2 Performance Bond. If specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. If Contractor fails to furnish any required bond, the City may terminate the Contract for cause.

3.14.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.15 Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that

any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

3.16 Employee/Labor Certifications.

3.16.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose, which is attached to this Contract as Exhibit "D" and incorporated herein by reference, shall be executed simultaneously with this Contract.

3.16.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.16.3 Verification of Employment Eligibility. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors and sub-subcontractors to comply with the same.

3.17 General Provisions.

3.17.1 City's Representative. The City hereby designates the General Manager, or his or her designee, to act as its representative for the performance of this Contract ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.17.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the City ("Contractor's Representative"). Following approval by the City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and

for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the City, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the City's written approval.

3.17.3 Termination. This Contract may be terminated by City at any time, either with or without cause, by giving Contractor three (3) days advance written notice. In the event of termination by City for any reason other than the fault of Contractor, City shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, City may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset City's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, City may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract.

3.17.4 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City's Representative, whose decision shall be binding upon Contractor.

3.17.5 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

3.17.6 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CONTRACTOR:

Got Power, Inc. d/b/a CD & Power
150 Nardi Lane
Martinez, CA. 94553
Attn: Mike Sartario, Business Development Manager

CITY:

City of St. Helena
1480 Main Street

St. Helena, CA 94574
Attn: Erica Ahmann Smithies, Director of Public Works

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.17.7 Time of Essence. Time is of the essence in the performance of this Contract.

3.17.8 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of City. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, City may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

3.17.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.17.10 Laws, Venue, and Attorneys' Fees. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Napa, State of California.

3.17.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.17.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.17.13 [Reserved]

3.17.14 Solicitation. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

3.17.15 Conflict of Interest. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Contract, no official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Contract, or obtain any present

or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Work.

3.17.16 Certification of License.

3.17.16.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

3.17.16.2 Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

3.17.17 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.17.18 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

3.17.19 Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

3.17.20 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project or other projects.

3.17.21 Federal Provisions.]When funding for the Services is provided, in whole or in part, by an agency of the federal government, Contractor shall also fully and adequately comply with the provisions included in Exhibit "G" (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT
BETWEEN THE CITY OF ST. HELENA
AND GOT POWER, INC. DOING BUSINESS AS CD & POWER**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the 8th day of December, 2020.

CITY OF ST. HELENA

GOT POWER, INC. D/B/A/ CD & POWER

By: _____
Mark T. Prestwich
City Manager

By: _____

Its: _____

Printed Name: _____

ATTEST:

By: _____
Cindy Tzafopoulos
City Clerk

APPROVED AS TO FORM:

By: _____
Ethan Walsh
City Attorney

Project Code: CIP No. C20-06

EXHIBIT "A"
SERVICES / SCHEDULE

Item	Description	Lump Sum Cost
1	Library	\$155,886.50
2	Flood Control Site	\$52,058.05
3	Stonebridge Wells	\$56,015.30
4	Madrone Knoll/MKS	\$21,795.40
TOTAL		\$285,755.25

Anticipated payment intervals per location:
 50% - Construction Mobilization/Equipment Ordered
 25% - Upon completion of Generator delivery to site
 25% - At completion of start up

EXHIBIT “B”

PLANS AND SPECIFICATIONS

All generator equipment to be permitted, installed and tested for Items 1-4 are being procured directly by the City of St. Helena. However, the contract, shall coordinate with the manufacturer, Gonneville, Inc. to ensure warranty coverage of the generators post-installation.

Item 1: Location / Application: Library

Installation, Test
Scope of Work ➤ Prepare engineering drawings and plan for city permit ➤ Obtain construction permit ➤ Apply for air quality permit (permit fees, not included) ➤ Construct new concrete pad next to HVAC cooler enclosure ➤ Construct wall and door similar to adjacent enclosure ➤ Anchor seismic calculation ➤ Install new ATS right outside of main switchboard ➤ Deliver, set and anchor new genset on concrete pad (special anchor inspection by others) ➤ Conduits surface mounted along the wall ➤ Connect all electrical cables and wires MSB to ATS to genset ➤ Fuel tank pressure test ➤ Start up and test ➤ Load bank, two hours ➤ Fill up fuel tank to 90%



Location / Application: Library

Item 2: Location / Application: Flood Control Site

Installation, Test
Scope of Work ➤ Prepare engineering drawings and plan for city permit ➤ Obtain construction permit ➤ Apply for air quality permit (permit fees, not included) ➤ Construct new concrete pad next to HVAC cooler enclosure ➤ Construct wall and door similar to adjacent enclosure ➤ Anchor seismic calculation ➤ Install new ATS right outside of main switchboard ➤ Deliver, set and anchor new genset on concrete pad (special anchor inspection by others) ➤ Conduits surface mounted along the wall ➤ Connect all electrical cables and wires MSB to ATS to genset ➤ Fuel tank pressure test ➤ Start up and test ➤ Load bank, two hours ➤ Fill up fuel tank to 90%



Location: Flood Control Site

Item 3: Location / Application: Stone Bridge Wells

Installation, Test
Scope of Work ➤ Prepare engineering drawings and plan for city permit ➤ Obtain construction permit ➤ Apply for air quality permit (permit fees, not included) ➤ Construct new concrete pad on north side of building ➤ Anchor seismic calculation ➤ Install new ATS next to main panel ➤ Remove existing manual transfer switch and sleeve receptacle ➤ Deliver, set and anchor new genset on concrete pad (special anchor inspection by others) ➤ Install existing manual transfer switch and receptacle next to genset ➤ Trench and backfill for electrical conduits ➤ Connect all electrical cables and wires MSB to ATS to genset ➤ Fuel tank pressure test ➤ Start up and test ➤ Load bank, two hours ➤ Fill up fuel tank to 90%

Location: Stone Bridge Wells

Item 4: Location / Application: Trailer-Mounted Generator at MKS

Permit, Installation, Test
Scope of Work ➤ Prepare engineering drawings and plan for city permit ➤ Obtain city permit ➤ Remove manual transfer switch, Install new ATS inside ➤ Install new docking station outside wall



Location: Trailer-Mounted Generator at MKS

EXHIBIT "C"

SPECIAL CONDITIONS

ARTICLE 1. BONDS

Within ten (10) calendar days from the date the Contractor is notified of award of the Contract, the Contractor shall deliver to the City four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit "F" to the Contract. Failure to do so may, in the sole discretion of City, result in the forfeiture of Contractor's bid security. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

EXHIBIT "D"

**CERTIFICATION
LABOR CODE - SECTION 1861**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

GOT POWER, INC. DOING BUSINESS AS CD & POWER

By: _____
Signature

Name (Print)

Title (Print)

EXHIBIT “E”

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Contractor:_____

DIR Registration Number:_____

DIR Registration Expiration:_____

Small Project Exemption: ____ Yes or ____ No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

- Contractor shall maintain a current DIR registration for the duration of the project.
- Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
- Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor_____

Signature_____

Name and Title_____

Dated_____

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark “Yes” in response to “Small Project Exemption.”

EXHIBIT "F"
PAYMENT AND PERFORMANCE BONDS

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of St. Helena (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__).

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate) Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

☐ Partner(s) ☐ Limited
 ☐ General

☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:
Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of St. Helena (hereinafter designated as the "City"), by action taken or a resolution passed _____, 20____ has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

_____ (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any

rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

Title _____

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

☐ Partner(s) ☐ Limited
 ☐ General

☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:
Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

EXHIBIT "G"**FEDERAL REQUIREMENTS****FEDERAL CONTRACT PROVISIONS**

During the performance of this Agreement, the Contractor shall comply with all applicable federal laws and regulations including but not limited to the federal contract provisions in this Exhibit. In this Exhibit, the term "Agency" shall mean the City of St. Helena.

1. REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.326)

- (A) Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. See Agreement.
- (B) Appendix II to Part 200 (C) – Equal Employment Opportunity: Except as otherwise provided under 41 C.F.R. Part 60, if this contract meets the definition of a "federally assisted construction contract" in 41 C.F.R. § 60-1.3, then Contractor shall comply with the following equal opportunity clause, in accordance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and implementation regulations at 41 C.F.R. Chapter 60:
 - (i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - (iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such

employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(C) Appendix II to Part 200 (D) – Davis-Bacon Act:

- (i) If this contract is in excess of \$2,000 and if required by Federal program legislation, Contractor must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
- (ii) The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

(iii) If applicable, all transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

(iv) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

(D) Appendix II to Part 200 (D) – Copeland “Anti-Kickback” Act:

(i) Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 C.F.R. Part 3) as may be applicable, which are incorporated by reference into this contract. In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act. The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(ii) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(iii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(iv) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(E) Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

(i) If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to

construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (ii) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (iii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (ii) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (ii) of this section.
 - (iv) Withholding for unpaid wages and liquidated damages. The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.
 - (v) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.
- (F) Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement:

- (i) If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Federal awarding agency.
 - (ii) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
 - (iii) This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- (G) Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act: If this contract is in excess of \$150,000, Contractor shall comply with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- (i) Pursuant to the Clean Air Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
 - (ii) Pursuant to the Federal Water Pollution Control Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency

Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

- (H) Appendix II to Part 200 (H) – Debarment and Suspension: A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (i) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - (ii) Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - (iii) This certification is a material representation of fact relied upon by Agency. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - (iv) Contractor warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Contractor also agrees to verify that all subcontractors performing work under this contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Contractor further agrees to notify the Agency in writing immediately if Contractor or its subcontractors are not in compliance during the term of this contract.
- (I) Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: If this contract is in excess of \$100,000, Contractor shall have submitted and filed the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1353). If at any time during the contract term funding exceeds \$100,000.00, Contractor shall file with the Agency the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying.” Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any

lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

(J) Appendix II to Part 200 (J) – Procurement of Recovered Materials:

- (i) Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.
- (ii) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price.
- (iii) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iv) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

2. **MISCELLANEOUS PROVISIONS**

- (A) The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.
- (B) This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of this contract. The Vendor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- (C) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Agency, Contractor, any subcontractors or any other party pertaining to any matter resulting from the contract.
- (D) Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.
- (E) General and Administrative Expenses And Profit For Time And Materials Contracts/Amendments.

- (i) General and administrative expenses shall be negotiated and must conform to the Cost Principles.
- (ii) Profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (iii) Any agreement, amendment or change order for work performed on a time and materials basis shall include a ceiling price that Contractor exceeds at its own risk.



**General Services Administration
Federal Supply Service
Authorized Federal Supply Service Schedule Catalog/ Price List**

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA Advantage!
The Internet address for GSA Advantage! is:
GSAAdvantage.gov.

MULTIPLE AWARD SCHEDULE (MAS)

332999BMS Building Materials and Services
333415HVAC Heating, Ventilation, and Air Conditioning (HVAC)
333912 Air Compressors and Pressure Cleaners
33512 Energy-Efficient Lighting and Sustainable Energy Solutions
335911 Batteries
335999 Power Distribution and Solar Energy Solutions
ANCRA Ancillary Repair and Alterations
OLM Order-Level Materials

FSC CLASS: 6115, 6135, 6105, 6140, 6145, 4940, 6210, 6250, 5930, 6240

CONTRACT NUMBER: GS-07F-0251L

CONTRACT PERIOD: June 25, 2001 through June 24, 2021
Price List effective Feb 2020



CONTRACTOR:
Gonneville, Inc
211 Calle Pintoresco, Unit A
San Clemente , Ca 92673
Tel: (949) 248-7297 Fax: (949) 248-0666
Email: sales@gonneville.com
Website: www.gonneville.com

CONTRACTOR'S ADMINISTRATION SOURCE: Donald E. Gonneville

BUSINESS SIZE: Service disabled veteran owned small business

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CUSTOMER INFORMATION

1a. Table of awarded special item numbers (SINs)

SIN	Description
332999BMS	Building Materials and Services
333415HVAC	Heating, Ventilation, and Air Conditioning (HVAC)
333912	Air Compressors and Pressure Cleaners
33512	Energy-Efficient Lighting and Sustainable Energy Solutions
335911	Batteries
335999	Power Distribution and Solar Energy Solutions
ANCRA	Ancillary Repair and Alterations
OLM	Order-Level Materials

1b. Identification of the lowest-priced model-number price for each SIN.

SIN	Part Number
332999BMS	See Pricing
333415HVAC	See Pricing
333912	See Pricing
33512	See Pricing
335911	See Pricing
335999	See Pricing
ANCRA	See Pricing
OLM	See Pricing

1c. Hourly Rates**Electrical Consultant \$84.62/Hour**

Individual with vast knowledge and experience in the Electrical professional field hired to lend their expertise to clients in need of insight they do not possess. Degree requirements include: Bachelor of Science degree (or equivalent education) in an appropriate engineering discipline and Professional Engineering License.

Master Electrician \$84.62/Hour

Install and maintain all of the electrical and power systems for homes, factories and businesses, according to the U.S. Department of Labor Bureau of Labor Statistics. They handle wiring as well as electrical equipment and machines. Requirements include at least seven years of experience as an electrician or a bachelor's degree in electrical engineering or a related field.

Electrical Journeyman \$64.66/Hour

Install and repair electrical wires within homes and businesses and are often called upon to provide estimates or maintenance. Requirements include CA Journeyman's State Licensing.

Journeyman's Assistant \$44.79/Hour

Install, repair, alter and maintain electrical conductors, fittings, devices and fixtures for heating, lighting or power purposes. They must comply with the current edition of the National Electric Code. Can only perform above duties under direct supervision of a Master or Journeyman Electrician. Requirements include currently being enrolled in the Electrician Apprenticeship Program for 2+ years.

Electrical Technician \$39.79/Hour

Responsible for performing and providing maintenance, repair, installation and troubleshooting of electrical equipment. Can only perform above duties under direct supervision of a Master or Journeyman Electrician. Requirements include currently being enrolled in the Electrician Apprenticeship Program.

2. Maximum Order by SIN

332999BMS \$250,000; 333415HVAC \$250,000; 333912 \$250,000; 33512 \$250,000; 335911 \$250,000; 335999 \$250,000; ANCRA \$250,000; OLM \$250,000

3. Minimum Order

\$100 on Products.

4. Geographic Coverage (delivery area)

U.S. Domestic 50, Puerto Rico, Washington DC

5. Point(s) of Production

MQ Power Corp., Carson, CA (LA County)
Ecoquip, Virginia Beach, VA (Princess Anne County)
MMD, Swedesboro, New Jersey
Cireon, Moorpark, CA
Luxul, Santa Clara, CA

6. Basic Discount: All prices are net discount

7. Quantity Discount

SIN 33512 : 4-6% for 5,000+ units

SIN 333912 : 3% 2-9 pallets and 21% 10+ pallets

SIN 206 4 (Luxul Products): 1-14% depending on line item and quantity

8. Prompt Payment Terms Net 30 days

9a. Notification That Government Purchase Cards Are Accepted
Below the Micro-purchase Threshold

Yes

9b. Notification That Government Purchase Cards Are Accepted
Above the Micro-purchase Threshold

Yes

10. Foreign Items

None

11a. Time of Delivery Products: 60 Days ARO
Services: By arrangement

11b. Expedited Delivery Contact Contractor

11c. Overnight and 2-day Delivery Contact Contractor

11d. Urgent Delivery Contact Contractor

12. FOB Point

Origin for 332999BMS; 333415HVAC; 333912; 33512; 335999; ANCRA

Destination for SIN 335911

13a. Ordering Address Same as Contractor

13b. Ordering Procedures Ordering activities shall use the ordering procedures described in Federal Acquisitions 8.405 when placing an order or establishing a BPA for supplies or services. The ordering procedures, information on Blanket Purchase Agreement's (BPA's) and a sample BPA can also be found at the GSA/FSS Schedule Homepage (fss.gsa.gov/schedules).

14. Payment Address Same as Contractor

15. Warranty Provision

Products (installed or delivered): Manufacturer's Standard Warranty

Installation Labor/Workmanship: 90 days

16. Export Packaging Charges

Not Applicable

17. Terms and Conditions of Government Purchase Card Acceptance

Any thresholds above the micro-purchase level contact contractor.

18. Terms and Conditions of Rental, Maintenance, and Repair

Contact Contactor

19a. Terms and Conditions of Products: (SIN 33512)

1. A shipping charge will apply to all orders depending on the item and distance
2. Minimum Order increments apply as indicated on GSA-Advantage!
3. Return policy:
 - a) Returns are allowed unless explicitly stated on an item's description or advised in writing.
 - b) If the returned portion of an order reduces the total charge below the minimum order then either the entire order should be returned, or restocking fee raised to meet the minimum
 - c) The customer must obtain a "Return Authorization Number" before returning an item.
 - d) A restocking fee of 15% will apply to all returned items.
 - e) The original shipping charge is not refundable.
 - f) The customer will be responsible for the shipping charges of defective returns, but no restocking or shipping will apply to the re-shipment.
4. Automatically calculated shipping charges are NOT valid for shipments to outside of Continental US.

19b. Terms and Conditions of Installations:

Terms and conditions of installation: Service prices include the cost of materials and recycling (or legal disposal) of old hardware. All measures are assumed at height of 15ft or lower, For each 10 foot or fraction above 15ft, add \$4/measure Plus the cost of lift and it's delivery & pickup. Measures indicated are for "retrofits" of existing lighting fixtures (whole fixture installations or replacements is available on an "Open Market" basis). The Lighting retrofit measures indicated include the exchange of Lamps, Ballasts, Wirenuts, lamp sockets, Brackets, and all fasteners as needed. "Retrofit" or "Exchange" means removal and disposal of existing internals of fixtures (but not the fixture itself), and complete installation and testing of indicated new replacements. Except where the measure description includes "New Fixture" the existing fixtures are retained. If an existing fixture is found to be defective or in violation of applicable safety standards (National Electrical Code), it will be left as is, reported, and not billed. All retrofits include the wipe-cleaning of the insides of the fixtures. No light diffusers/lenses are included, existing diffusers/lenses may be cleaned and re-installed. All work areas will be cleaned of all debris and parts, and dust resulting from the work. Minimum Order is \$1000. When a distance radius of 50 miles is exceeded, shipping charges (at cost) will apply to the materials being shipped/installed. All measures are assumed at height of 15ft or lower, For each 10 foot or fraction above add \$4/measure Plus the cost of lift and it's delivery & pickup. Customer will be responsible for removal of all obstacles in the way of installation. Gonnevill reserves the right to declare any fixture as "unsafe to work on" or "reasonably inaccessible", and forgo its retrofit. Gonnevill will comply with the standard per diem rates as applicable.

20a. Terms and Conditions for Any Other Services

Not Applicable

21. List of Service and Distribution Points

Not Applicable

22. List of Participating Dealers

Not Applicable

23. Preventive Maintenance

See service manuals

24a. Special Attributes Such as Environmental Attributes

(e.g. recycled content, energy efficiency and/or reduced pollutants.): As indicated on GSA- Advantage!

24a. Section 508 Compliance for EIT

Not Applicable

25. Data Universal Number System (Duns) Number:

79-652-1755

26. Notification Regarding Registration in (SAM) Central Contractor Registration (CCR) Database: Registration valid.

No image available at this time

GEN 70KVA 3PHASE ISUZU TIER 4F

Mfr Part No.:
Contractor Part No.:
Manufacturer:
Contract No.:
MAS Schedule/SIN:
Warranty:
Country of Origin:
Weight:

DCA70SSIU4F
DCA70SSIU4F
MQ MULTIQUIP
GS-07F-0251L (ends: Jun 24, 2021)
MAS/335999
STANDARD WARRANTY
UNITED STATES OF AMERICA
0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price:

\$52,997.48 EA

sold and shipped by

GONNEVILLE, INC

Contract minimum order: \$100.00

Qty: 1

Add to cart

Product Details

0.001L X 0.001W (IN),Generator 70KVA 3Phase Isuzu Tier 4F

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
⚡ Indicates when volume discounts are offered.

Price/Unit⚡	Contractor ⚡	Socio	Deliv Days ⚡	Min Order ⚡	FOB/Shipping ⚡
\$52,997.48	EA GONNEVILLE, INC	de	60 days delivered ARO	\$100.00	O-CONUS, AK, PR, HI

1/1

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No image available at this time

GEN 125KVA 3PHASE ISUZU TIER 4F

Mfr Part No.: DCA125SSIU4F

Contractor Part No.: DCA125SSIU4F

Manufacturer: MQ - MULTIQUIP

Contract No.: GS-07F-0251L (ends: Jun 24, 2021)

MAS Schedule/SIN: MAS/335999

Warranty: STANDARD WARRANTY

Country of Origin: UNITED STATES OF AMERICA

Weight: 0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price

\$57,128.46 ^{EA}

Qty: 1

Add to cart

sold and shipped by

GONNEVILLE, INC

Contract minimum order: \$100.00

Product Details

Gen 125KVA 3Phase Isuzu Tier 4F

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
⚡ Indicates when volume discounts are offered.

Price/Unit⚡	Contractor ⚡	Socio	Deliv Days ⚡	Min Order ⚡	FOB/Shipping ⚡
\$57,128.46	^{EA} GONNEVILLE, INC	^{\$100}	60 days delivered ARO	\$100.00	<u>Q-CONUS, AK, PR, HI</u>

No image available at this time

POWER GENERATOR

Mfr Part No.: DCA220SSJU4F
Contractor Part No.: DCA220SSJU4F
Manufacturer: MQ - MULTIQUIP
Contract No.: GS-07F-0251L (ends: Jun 24, 2021)
MAS Schedule/SIN: MAS/335999
Warranty: STANDARD WARRANTY
Country of Origin: UNITED STATES OF AMERICA
Weight: 1,000 LB

 Disaster Purchasing items
 VA Verified SDVOSB

Price: \$93,853.90 EA

Qty: 1 Add to cart

sold and shipped by
GONNEVILLE, INC.
Contract minimum order: \$100.00

Product Details

Gen 220KVA 3Phase John Deere Tier4F

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
⚡ Indicates when volume discounts are offered.

Price/Unit	Contractor	Socio	Deliv Days	Min Order	FDB/Shipping
\$93,853.90	EA GONNEVILLE, INC		60 days delivered.ARD	\$100.00	Q-CONUS,AK,PR,HI

No image available at this time

300REOZJ, KOHLER DIESEL GENERATOR, WITH

Mfr Part No.:25940403

Contractor Part No.:25940403

Manufacturer:KOHLER

Contract No.:GS-07F-0251L (ends: Jun 24, 2021)

MAS Schedule/SIN:MAS/335999

Warranty:STANDARD WARRANTY

Country of Origin:UNITED STATES OF AMERICA

Weight:0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price\$58,117.49 EA

Qty: 1Add to cart

sold and shipped by

GONNEVILLE, INC.

Contract minimum order: \$100.00

Product Details

300REOZJ, Kohler Diesel Generator, with weather enclosure, Dec 3000 Controller, 24 hour tank - 555 Gal, CA Spill Kit, 80% Circuit Breaker, Battery, 6A Battery Charger

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.

Indicates when volume discounts are offered.

Price/Unit	Contractor	Socio	Deliv Days	Min Order	FOB/Shipping
\$58,117.49 EA	GONNEVILLE, INC		60 days delivered ARO	\$100.00	O-CONUS, AK, PB, HI

No image available at this time

150REOZJF, KOHLER DIESEL GENERATOR, WITH

Mfr Part No.:25940237

Contractor Part No.:25940237

Manufacturer:KOHLER

Contract No.:GS-07F-0251L (ends: Jun 24, 2021)

MAS Schedule/SIN:MAS/335999

Warranty:STANDARD WARRANTY

Country of Origin:UNITED STATES OF AMERICA

Weight:0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price\$35,385.07 EA

Qty: 1

Add to cart

sold and shipped by

GONNEVILLE, INC.

Contract minimum order: \$100.00

Product Details

150REOZJF, Kohler Diesel Generator, with weather enclosure, Dec 3000 Controller, 24 hour tank - 316 Gal, CA Spill Kit, 80% Circuit Breaker, Battery, 6A Battery Charger

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
♦ Indicates when volume discounts are offered.

Price/Unit ♦	Contractor ♦	Socio	Deliv Days ♦	Min Order ♦	FOB/Shipping ♦
\$35,385.07	EA GONNEVILLE, INC	13.67	60 days delivered ARO	\$100.00	Q-CONUS, AK, PR, HI

No image available at this time

100REOZJF, KOHLER DIESEL GENERATOR, WITH

Mfr Part No.: 25940133

Contractor Part No.: 25940133

Manufacturer: KOHLER

Contract No.: GS-07F-0251L (ends: Jun 24, 2021)

MAS Schedule/SIN: MAS/335999

Warranty: STANDARD WARRANTY

Country of Origin: UNITED STATES OF AMERICA

Weight: 0.001 LB

Disaster Purchasing items

VA Verified SDVOSB

Price

\$24,193.95 EA

sold and shipped by

GONNEVILLE, INC.

Contract minimum order: \$100.00

Qty: 1

Add to cart

Product Details

100REOZJF, Kohler Diesel Generator, with weather enclosure, Dec 3000 Controller, 24 hour tank - 215 Gal, CA Spill Kit, 80% Circuit Breaker, Battery, 6A Battery Charger

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.

Indicates when volume discounts are offered.

Price/Unit	Contractor	Socio	Deliv Days	Min Order	FOB/Shipping
\$24,193.95	EA GONNEVILLE, INC	1182	60 days delivered ARO	\$100.00	Q: CONUS, AK, PR, HI

No image available
at this time

200REOZJF, KOHLER DIESEL GENERATOR, WITH

Mfr Part No.: 25940256
 Contractor Part No.: 25940256
 Manufacturer: KOHLER
 Contract No.: GS-07F-0251L (ends: Jun 24, 2021)
 MAS Schedule/SIN: MAS/335999
 Warranty: STANDARD WARRANTY
 Country of Origin: UNITED STATES OF AMERICA
 Weight: 0.001 LB

 Disaster Purchasing Items
 VA Verified SDVOSB

Price \$44,003.21 EA

Qty: 1 Add to cart

sold and shipped by
GONNEVILLE, INC.
 Contract minimum order: \$100.00

Product Details

200REOZJF, Kohler Diesel Generator, with weather enclosure, Dec 3000 Controller, 24 hour tank - 416 Gal, CA Spill Kit, 80% Circuit Breaker, Battery, 6A Battery Charger

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
 ♦ Indicates when volume discounts are offered.

Price/Unit	Contractor	Socio	Deliv Days	Min Order	FOB/Shipping
\$44,003.21	EA GONNEVILLE, INC		60 days delivered ARO	\$100.00	O-CONUS, AK, PR, HI

Powering Your Success



GOTPOWER.COM

November 25, 2020

QUOTE # QSTHEL103020JK-Lib200.Rev

City of St. Helena
 Attention: Erica Ahmann Smithies, PE
 1480 Main Street
 St. Helena, CA 94574
 E-Mail: ESmithies@cityofstheleena.org
 Phone: (707)968-2629, cel : 707-312-1471

RE: C20-06 : New 200kw Standby Generator System at Library

Thank you for the opportunity to provide pricing for the generator set and system accessories on the above referenced project. We are pleased to quote as follows:

- **Equipment: Kohler 200REOZJF and ASCO 800 amp ATS proposed separately**

Installation, Test

Scope of Work (Prevailing wage applied)

- o Prepare Engineering drawings and plan for city permit
- o Obtain construction permit
- o Apply Air Quality Permit(permit fees not included)
- o Construct new concrete pad next to HVAC cooler enclosure
- o Construct wall and door similar to adjacent enclosure
- o Anchor seismic calculation
- o Install new ATS right outside of main switch board
- o Deliver, set and anchor new genset on concrete pad
 - *special anchor inspection by others
- o Conduits surface mounted along the wall
- o Connect all electrical cables and wires MSB to ATS to Genset
- o Fuel tank pressure test
- o Start Up and Test
- o Load bank, 2 hrs
- o Fill up fuel tank up to 90%

Installation, Permit, Engineering, Delivery, Test Subtotal - - - - - \$155,886.50

****Prevailing wage applied****

Quotation Notes:

- o Estimate lead time, equipment only: 14– 16wks ARO & signed submittal is returned
- o Delivery time is an estimate and subject to change
- o Submittals can be provided in 2 weeks from receipt of order
- o Any other work except stated above not included
- o City permit cost waived
- o **Upon engineering and city review, due to limited space and noncompliance of electrical room, the project scope might be redesigned and requested**
- o Further permitting cost Excluded
- o No special inspection cost, if required

Corporate Headquarters:
 150 Nardi Lane
 Martinez, California 94553
 Phone 925.229.2700
 Fax 925.229.2702
 Contractor License #757162

Sacramento Branch:
 4372 Pinell Street
 Sacramento, California 95838
 Phone 916.564.2622
 Fax 916.564.1083

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Clarifications:

1. Upon review, additional charges may be required and thus requoted, if engineering or city inspectors require changes to the initial design we've proposed.
2. Air quality permit fees and compliance are excluded. Local air quality authorities may require a health risk study or environmental quality assessment. The cost for a health risk study is excluded.
3. **All permits must be obtained prior to installation of the equipment.**
4. For Diesel Engine Generators. **Do not fuel until pressurized Tank Testing is complete** and signed off by local Hazmat authority.
5. "Engines located on or near school grounds: New Stationary emergency standby diesel-fueled engines (>50 bhp) located on school grounds or 100m or less from a school which exists at the date the application for Permit to Construct or Permit to Operate is deemed complete, whichever is earlier shall emit diesel PM at a rate less than or equal to 0.01 g/bhp-hr" which means that a PM Filter will be necessary. If the generator is within 100 meters of a Kindergarten-12th grade school and there is not a price for a PM Filter on this quote please contact us immediately.

Optional Adder:

Pricing: Valid 30-Days from date on quote. Pricing may be adjusted after submittals and air quality acceptance.

Restocking: A restocking fee of 15% will apply for cancellation after receipt of purchase order and up to 60 days prior to scheduled order shipment date. Cancellation 60 days or less before scheduled shipment date will result in full PO charges.

Storage: CD & Power will not be held responsible for damage, burglary or vandalism that may occur while equipment is stored at our facility. Storage for more than one month will result in a \$100.00/week storage fee. A secondary shipping and/or crane charge to jobsite may also apply.

Please do not hesitate giving us a call with questions or concerns.

Sincerely,

James Kim
925-229-2700 X128

QSTHEL1030200JK-LIB200REV2

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CONDITIONS OF SALE

The Terms and Conditions of Sale below constitute an Agreement between CD & Power and Customer. The provisions of this agreement supersede all prior agreements, negotiations, representations and warranties whether written, oral or otherwise, and no waiver, alteration, or modification of this agreement shall be binding unless agreed to in writing and signed by both CD & Power and customer.

QUOTATIONS are valid for thirty (30) days from the date of quotation unless agreed to in writing by CD & Power. A Quotation is not a valid acceptance of an offer to sell unless (1), a Purchase Order signed by an authorized representative of the Customer is received by CD & Power or (2), approved by CD & Power Credit Department. Equipment in stock is subject to prior sale.

A recent California Air Resources Board rule requires that a particulate trap be added to generators for jobs located at or within 100 meters of a school grades K through 12 or day care centers. If your jobsite is within these requirements we will be glad to provide you price adders for the installation of a particulate filter.

SPECIAL ORDERS - A nonrefundable deposit is required for all special order equipment and accessories. The deposit will be applied against the balance of the equipment invoice and cancellation charges, if any.

CHANGES AND MODIFICATIONS - Customer agrees to pay for any changes in scope, design or work plan from that ordered. CD & Power shall have the right to subcontract any or all work covered by the sale. Sale is non-assignable by the Customer without prior written approval of CD & Power.

TERMS - All billings are net thirty (30) days from the date of invoice upon credit approval. Retention is not acceptable. Customers not adhering to payment terms agree to pay delinquency charges of 1.5% per month or the maximum allowable by law, whichever is greater, on the unpaid balance. If CD & Power commences an action to collect amount due the Customer agrees to reimburse CD & Power all collection costs, attorney fees and court costs.

FINAL ACCEPTANCE - Final acceptance shall occur at time of delivery. Offloading is the Customer's responsibility unless otherwise provided for. Storage and interest charges will result when equipment and accessories ready for shipment to the Customer are held in CD & Power inventory due to Customer's inability to accept delivery.

WARRANTY - All implied warranties including without limitation merchantability and fitness for a particular purpose are excluded from this Agreement. CD & Power disclaims all liability for special, incidental, and consequential damages. The only warranty for equipment sold to the Customer shall be the Manufacturer's warranty. CD & Power obligation is limited to rework or replacement of materials necessary to correct any condition of the equipment resulting from defects in material.

Manufacturer's warranty is not effective until Start Test is performed by CD & Power. Start and Test must be paid in advance.

RETURNED MERCHANDISE - Equipment, accessories and parts cannot be returned without CD & Power written approval. Equipment, accessories and parts must be in salable condition. Customer must pay transportation costs and restocking charge of twenty-five percent (25%) of invoice amount.

SECURITY INTEREST - CD & Power retains and Customer hereby grants CD & Power a Security Interest in equipment sold, including all accessions to and replacements of the equipment, until the Customer has made payment in full in accordance with the provisions herein. Customer shall cooperate fully with CD & Power in executing such documents as CD & Power may deem necessary for the protection of such Security Interest.

TAXES, LICENSES, PERMITS AND INSURANCE - Customer shall pay to CD & Power the amount of any sales, use, excise, duty or similar tax attributable to the sale covered hereby, whether or not included in the purchase or quotation price. CD & Power will assume no responsibility for obtaining permits or licenses other than those specifically provided for. Customer shall reimburse CD & Power for the cost of providing any insurance related rights or waivers associated with CD & Power existing insurance policies. Where taxes do not apply upon sale or resale, Customer shall provide CD & Power with appropriate exemption certificates.

Customer acknowledges that he has not relied on CD & Power skill or judgment in the selection of equipment and that any technical advice or specifications solicited regarding the equipment shall be used at Customer's own risk. Any noncertified drawings provided are descriptive in nature and not warranties of performance.

Except as expressly provided herein, the Agreement shall be governed, construed, and interpreted by the laws of the State of California. The United Nations Convention on Contracts for the International Sales of Goods (CISG) shall not apply. CD & Power elects to opt out of the CISG. Waiver by CD & Power of any breach of the Terms and Conditions of Sale included herein or on any attachment shall not be construed as a waiver of any other breach. Waiver by CD & Power of any breach must be in writing.

CUSTOMER'S REMEDIES - CD & Power shall not be in default and shall not be liable for delays by equipment manufacturers or suppliers or any other circumstances beyond CD & Power reasonable control. Customer's exclusive and sole remedy on account or in respect of any breach, or to any express or implied warranty, shall be to secure replacement. Correction of any

QSTHEL1030200JK-LIB200REV2

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nonconformity shall constitute complete fulfillment of all liabilities of CD & Power. CD & Power aggregate liability in any customer claim shall not, under any circumstances, exceed the payment received by CD & Power for the equipment and services furnished. CD & Power liability shall be limited to those claims arising solely from the acts of the CD & Power. CD & Power shall not be liable whether in contract or in tort or under any other legal theory for loss of revenue, use, or profit or for the cost of any labor expended. Customer agrees to indemnify, save and hold CD & Power harmless for any special, direct, indirect, incidental, accidental or consequential damages to anyone by reason of any breach of contract or of any express or implied warranty.

Payment Intervals Upon Acceptance of Proposal:

50% - Mobilization/Equipment Ordered

25% - Upon Delivery at Site

25% - At Start Up

The authorized purchaser identified below accepts this proposal and agrees, upon acceptance by CD & Power, to purchase and pay for this equipment, accessories and service in accordance with the CD & Power Conditions of Sale and Standard Terms & Conditions.

Company Name: _____

Contact Name: _____

Purchaser Authorized Signature: _____

Contact Title: _____

Date: _____

Purchase Order: _____

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GOTPOWER.COM

November 25, 2020

QUOTE # QSTHEL103020JK-FldPrj100Rev2

City of St. Helena
 Attention: Erica Ahmann Smithies, PE
 1480 Main Street
 St. Helena, CA 94574
 E-Mail: ESmithies@cityofsthelelena.org
 Phone: (707)968-2629, cel : 707-312-1471

RE: C20-06 : New 100kw Standby Generator System at Flood Control Pump

Thank you for the opportunity to provide pricing for the generator set and system accessories on the above referenced project. We are pleased to quote as follows:

- **Equipment: Kohler 100REOZJF and ASCO 400 amp ATS proposed separately**

Installation, Test**Scope of Work (Prevailing wage applied)**

- o Prepare Engineering drawings and plan for city permit
- o Obtain construction permit
- o Apply Air Quality Permit(permit fees not included)
- o Construct new concrete pad next to west side wall
- o Anchor seismic calculation
- o Move existing manual transfer switch to MCC direction
- o Install new ATS on current MTS place
- o Deliver, set and anchor new genset on concrete pad
 - *special anchor inspection by others
- o Conduits surface mounted along the wall
- o Connect all electrical cables and wires ATS to MTS to Genset
- o Fuel tank pressure test
- o
- o Start Up and Test
- o Load bank, 2 hrs
- o Fill up fuel tank up to 90%

Installation, Permit, Engineering, Delivery, Test Subtotal - - - - - \$52,058.05

****Prevailing wage applied****

Quotation Notes:

- o Estimate lead time, equipment only: 14– 16wks ARO & signed submittal is returned
- o Delivery time is an estimate and subject to change
- o Submittals can be provided in 2 weeks from receipt of order
- o Any other work except stated above not included
- o City permit cost waived
- o Further permitting cost Excluded
- o No special inspection cost, if required

Corporate Headquarters:

150 Nardi Lane
 Martinez, California 94553
 Phone 925.229.2700
 Fax 925.229.2702
 Contractor License #757162

Sacramento Branch:

4372 Pinell Street
 Sacramento, California 95838
 Phone 916.564.2622
 Fax 916.564.1083

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Clarifications:

1. Upon review, additional charges may be required and thus requoted, if engineering or city inspectors require changes to the initial design we've proposed.
2. Air quality permit fees and compliance are excluded. Local air quality authorities may require a health risk study or environmental quality assessment. The cost for a health risk study is excluded.
3. **All permits must be obtained prior to installation of the equipment.**
4. For Diesel Engine Generators. **Do not fuel until pressurized Tank Testing is complete** and signed off by local Hazmat authority.
5. "Engines located on or near school grounds: New Stationary emergency standby diesel-fueled engines (>50 bhp) located on school grounds or 100m or less from a school which exists at the date the application for Permit to Construct or Permit to Operate is deemed complete, whichever is earlier shall emit diesel PM at a rate less than or equal to 0.01 g/bhp-hr" which means that a PM Filter will be necessary. If the generator is within 100 meters of a Kindergarten-12th grade school and there is not a price for a PM Filter on this quote please contact us immediately.

Optional Adder:

Pricing: Valid 30-Days from date on quote. Pricing may be adjusted after submittals and air quality acceptance.

Restocking: A restocking fee of 15% will apply for cancellation after receipt of purchase order and up to 60 days prior to scheduled order shipment date. Cancellation 60 days or less before scheduled shipment date will result in full PO charges.

Storage: CD & Power will not be held responsible for damage, burglary or vandalism that may occur while equipment is stored at our facility. Storage for more than one month will result in a \$100.00/week storage fee. A secondary shipping and/or crane charge to jobsite may also apply.

Please do not hesitate giving us a call with questions or concerns.

Sincerely,

James Kim
925-229-2700 X128

Powering Your Success



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CONDITIONS OF SALE

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A recent California Air Resources Board rule requires that a particulate trap be added to generators for jobs located at or within 100 meters of a school grades K through 12 or day care centers. If your jobsite is within these requirements we will be glad to provide you price adders for the installation of a particulate filter.

SPECIAL ORDERS - A nonrefundable deposit is required for all special order equipment and accessories. The deposit will be applied against the balance of the equipment invoice and cancellation charges, if any.

CHANGES AND MODIFICATIONS - Customer agrees to pay for any changes in scope, design or work plan from that ordered. CD & Power shall have the right to subcontract any or all work covered by the sale. Sale is non-assignable by the Customer without prior written approval of CD & Power.

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WARRANTY - All implied warranties including without limitation merchantability and fitness for a particular purpose are excluded from this Agreement. CD & Power disclaims all liability for special, incidental, and consequential damages. The only warranty for equipment sold to the Customer shall be the Manufacturer's warranty. CD & Power obligation is limited to rework or replacement of materials necessary to correct any condition of the equipment resulting from defects in material.

Manufacturer's warranty is not effective until Start Test is performed by CD & Power. Start and Test must be paid in advance.

RETURNED MERCHANDISE - Equipment, accessories and parts cannot be returned without CD & Power written approval. Equipment, accessories and parts must be in salable condition. Customer must pay transportation costs and restocking charge of twenty-five percent (25%) of invoice amount.

SECURITY INTEREST - CD & Power retains and Customer hereby grants CD & Power a Security Interest in equipment sold, including all accessions to and replacements of the equipment, until the Customer has made payment in full in accordance with the provisions herein. Customer shall cooperate fully with CD & Power in executing such documents as CD & Power may deem necessary for the protection of such Security Interest.

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Except as expressly provided herein, the Agreement shall be governed, construed, and interpreted by the laws of the State of California. The United Nations Convention on Contracts for the International Sales of Goods (CISG) shall not apply. CD & Power elects to opt out of the CISG. Waiver by CD & Power of any breach of the Terms and Conditions of Sale included herein or on any attachment shall not be construed as a waiver of any other breach. Waiver by CD & Power of any breach must be in writing.

CUSTOMER'S REMEDIES - CD & Power shall not be in default and shall not be liable for delays by equipment manufacturers or suppliers or any other circumstances beyond CD & Power reasonable control. Customer's exclusive and sole remedy on account or in respect of any breach, or to any express or implied warranty, shall be to secure replacement. Correction of any

QSTHEL1030200JK-FLDPRJ100REV2

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nonconformity shall constitute complete fulfillment of all liabilities of CD & Power. CD & Power aggregate liability in any customer claim shall not, under any circumstances, exceed the payment received by CD & Power for the equipment and services furnished. CD & Power liability shall be limited to those claims arising solely from the acts of the CD & Power. CD & Power shall not be liable whether in contract or in tort or under any other legal theory for loss of revenue, use, or profit or for the cost of any labor expended. Customer agrees to indemnify, save and hold CD & Power harmless for any special, direct, indirect, incidental, accidental or consequential damages to anyone by reason of any breach of contract or of any express or implied warranty.

Payment Intervals Upon Acceptance of Proposal:

- 50% - Mobilization/Equipment Ordered**
- 25% - Upon Delivery at Site**
- 25% - At Start Up**

The authorized purchaser identified below accepts this proposal and agrees, upon acceptance by CD & Power, to purchase and pay for this equipment, accessories and service in accordance with the CD & Power Conditions of Sale and Standard Terms & Conditions.

Company Name: _____

Contact Name: _____

Purchaser Authorized Signature: _____

Contact Title: _____

Date: _____

Purchase Order: _____

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November 25, 2020

QUOTE # QSTHEL103020JK-StoneBr150Rev2

City of St. Helena
 Attention: Erica Ahmann Smithies, PE
 1480 Main Street
 St. Helena, CA 94574
 E-Mail: ESmithies@cityofsthelelena.org
 Phone: (707)968-2629, cel : 707-312-1471

RE: C20-06 : New 150kw Standby Generator System at Stone Bridge Wells

Thank you for the opportunity to provide pricing for the generator set and system accessories on the above referenced project. We are pleased to quote as follows:

- **Equipment : Kohler 150REOZJF and ASCO 200 amp ATS proposed separately**

Installation, Test**Scope of Work (Prevailing wage applied)**

- o Prepare Engineering drawings and plan for city permit
- o Obtain construction permit
- o Apply Air Quality Permit(permit fees not included)
- o Construct new concrete pad on north side of building
- o Anchor seismic calculation
- o Remove existing manual transfer switch and sleeve receptacle
- o Install new ATS next to main panel
- o Deliver, set and anchor new genset on concrete pad
 - *special anchor inspection by others
- o Install existing manual transfer switch and receptacle next to genset
- o Trench and backfill for electrical conduits
- o Connect all electrical cables and wires ATS to MTS to Genset
- o Fuel tank pressure test
- o Start Up and Test
- o Load bank, 2 hrs
- o Fill up fuel tank up to 90%

Installation, Permit, Engineering, Delivery, Test Subtotal - - - - - \$56,015.30

****Prevailing wage applied****

Quotation Notes:

- o Estimate lead time, equipment only: 14– 16wks ARO & signed submittal is returned
- o Delivery time is an estimate and subject to change
- o Submittals can be provided in 2 weeks from receipt of order
- o Any other work except stated above not included
- o City permit cost waived
- o Further permitting cost Excluded
- o No special inspection cost, if required

Corporate Headquarters:

150 Nardi Lane
 Martinez, California 94553
 Phone 925.229.2700
 Fax 925.229.2702
 Contractor License #757162

Sacramento Branch:

4372 Pinell Street
 Sacramento, California 95838
 Phone 916.564.2622
 Fax 916.564.1083

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Clarifications:

1. Upon review, additional charges may be required and thus requoted, if engineering or city inspectors require changes to the initial design we've proposed.
2. Air quality permit fees and compliance are excluded. Local air quality authorities may require a health risk study or environmental quality assessment. The cost for a health risk study is excluded.
3. **All permits must be obtained prior to installation of the equipment.**
4. For Diesel Engine Generators. **Do not fuel until pressurized Tank Testing is complete** and signed off by local Hazmat authority.
5. "Engines located on or near school grounds: New Stationary emergency standby diesel-fueled engines (>50 bhp) located on school grounds or 100m or less from a school which exists at the date the application for Permit to Construct or Permit to Operate is deemed complete, whichever is earlier shall emit diesel PM at a rate less than or equal to 0.01 g/bhp-hr" which means that a PM Filter will be necessary. If the generator is within 100 meters of a Kindergarten-12th grade school and there is not a price for a PM Filter on this quote please contact us immediately.

Optional Adder:

Pricing: Valid 30-Days from date on quote. Pricing may be adjusted after submittals and air quality acceptance.

Restocking: A restocking fee of 15% will apply for cancellation after receipt of purchase order and up to 60 days prior to scheduled order shipment date. Cancellation 60 days or less before scheduled shipment date will result in full PO charges.

Storage: CD & Power will not be held responsible for damage, burglary or vandalism that may occur while equipment is stored at our facility. Storage for more than one month will result in a \$100.00/week storage fee. A secondary shipping and/or crane charge to jobsite may also apply.

Please do not hesitate giving us a call with questions or concerns.

Sincerely,

James Kim
925-229-2700 X128

Powering Your Success



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A recent California Air Resources Board rule requires that a particulate trap be added to generators for jobs located at or within 100 meters of a school grades K through 12 or day care centers. If your jobsite is within these requirements we will be glad to provide you price adders for the installation of a particulate filter.

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TERMS - All billings are net thirty (30) days from the date of invoice upon credit approval. Retention is not acceptable. Customers not adhering to payment terms agree to pay delinquency charges of 1.5% per month or the maximum allowable by law, whichever is greater, on the unpaid balance. If CD & Power commences an action to collect amount due the Customer agrees to reimburse CD & Power all collection costs, attorney fees and court costs.

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CUSTOMER'S REMEDIES - CD & Power shall not be in default and shall not be liable for delays by equipment manufacturers or suppliers or any other circumstances beyond CD & Power reasonable control. Customer's exclusive and sole remedy on account or in respect of any breach, or to any express or implied warranty, shall be to secure replacement. Correction of any

QSTHEL1030200JK-STONEBRIDGE150REV2

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nonconformity shall constitute complete fulfillment of all liabilities of CD & Power. CD & Power aggregate liability in any customer claim shall not, under any circumstances, exceed the payment received by CD & Power for the equipment and services furnished. CD & Power liability shall be limited to those claims arising solely from the acts of the CD & Power. CD & Power shall not be liable whether in contract or in tort or under any other legal theory for loss of revenue, use, or profit or for the cost of any labor expended. Customer agrees to indemnify, save and hold CD & Power harmless for any special, direct, indirect, incidental, accidental or consequential damages to anyone by reason of any breach of contract or of any express or implied warranty.

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50% - Mobilization/Equipment Ordered

25% - Upon Delivery at Site

25% - At Start Up

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Company Name: _____

Contact Name: _____

Purchaser Authorized Signature: _____

Contact Title: _____

Date: _____

Purchase Order: _____

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November 25, 2020

QUOTE # QSTHEL103020JK-MKSRev2

City of St. Helena
 Attention: Erica Ahmann Smithies, PE
 1480 Main Street
 St. Helena, CA 94574
 E-Mail: ESmithies@cityofstheleena.org
 Phone: (707)968-2629, Cel : 707-312-1471

RE: C20-06 : New 125KVA MQ Trailer Mounted Generator at MKS

Thank you for the opportunity to provide pricing for the generator set and system accessories on the above referenced project. We are pleased to quote as follows:

- ***Equipment : MQ DCA125SSIU4F and ASCO 200 amp ATS and Trystar GDS-023W-LM-AC proposed separately***

Permit, Installation, Test

Scope of Work (Prevailing wage applied)

- o Prepare Engineering drawings and plan for city permit
- o Obtain city permit
- o Remove manual transfer switch and Install new ATS inside
- o Install Docking Station outside wall

Installation, Permit, Engineering, Delivery, Test Subtotal - - - - - \$21,795.40
****Prevailing wage applied****

Quotation Notes:

- o Estimate lead time, equipment only: 2 – 4 wks ARO & signed submittal is returned
- o Delivery time is an estimate and subject to change
- o Submittals can be provided in 2 weeks from receipt of order
- o Any other work except stated above not included
- o City permit cost waived
- o Further permitting cost Excluded
- o No special inspection cost, if required

Corporate Headquarters:
 150 Nardi Lane
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 Phone 925.229.2700
 Fax 925.229.2702
 Contractor License #757162

Sacramento Branch:
 4372 Pinell Street
 Sacramento, California 95838
 Phone 916.564.2622
 Fax 916.564.1083

Powering Your Success



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Clarifications:

- 1. Upon review, additional charges may be required and thus requoted, if engineering or city inspectors require changes to the initial design we've proposed.
- 2. Air quality permit fees and compliance are excluded. Local air quality authorities may require a health risk study or environmental quality assessment. The cost for a health risk study is excluded.
- 3. **All permits must be obtained prior to installation of the equipment.**
- 4. For Diesel Engine Generators. **Do not fuel until pressurized Tank Testing is complete** and signed off by local Hazmat authority.
- 5. "Engines located on or near school grounds: New Stationary emergency standby diesel-fueled engines (>50 bhp) located on school grounds or 100m or less from a school which exists at the date the application for Permit to Construct or Permit to Operate is deemed complete, whichever is earlier shall emit diesel PM at a rate less than or equal to 0.01 g/bhp-hr" which means that a PM Filter will be necessary. If the generator is within 100 meters of a Kindergarden-12th grade school and there is not a price for a PM Filter on this quote please contact us immediately.

<u>Optional Adder:</u>	1. Cable set, 5 x 25 ft 4/0 cable with Camlock connector - - - - -	\$1,250.00
	2. Cable set, 5 x 50 ft 4/0 cable with Camlock connector - - - - -	\$1,860.00
	3. Power Balance - - - - -	\$5,500.00

- Pricing: Valid 30-Days from date on quote. Pricing may be adjusted after submittals and air quality acceptance.
- Restocking: A restocking fee of 15% will apply for cancellation after receipt of purchase order and up to 60 days prior to scheduled order shipment date. Cancellation 60 days or less before scheduled shipment date will result in full PO charges.
- Storage: CD & Power will not be held responsible for damage, burglary or vandalism that may occur while equipment is stored at our facility. Storage for more than one month will result in a \$100.00/week storage fee. A secondary shipping and/or crane charge to jobsite may also apply.

Please do not hesitate giving us a call with questions or concerns.

Sincerely,

James Kim
925-229-2700 X128

Powering Your Success



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CONDITIONS OF SALE

The Terms and Conditions of Sale below constitute an Agreement between CD & Power and Customer. The provisions of this agreement supersede all prior agreements, negotiations, representations and warranties whether written, oral or otherwise, and no waiver, alteration, or modification of this agreement shall be binding unless agreed to in writing and signed by both CD & Power and customer.

QUOTATIONS are valid for thirty (30) days from the date of quotation unless agreed to in writing by CD & Power. A Quotation is not a valid acceptance of an offer to sell unless (1), a Purchase Order signed by an authorized representative of the Customer is received by CD & Power or (2), approved by CD & Power Credit Department. Equipment in stock is subject to prior sale.

A recent California Air Resources Board rule requires that a particulate trap be added to generators for jobs located at or within 100 meters of a school grades K through 12 or day care centers. If your jobsite is within these requirements we will be glad to provide you price adders for the installation of a particulate filter.

SPECIAL ORDERS - A nonrefundable deposit is required for all special order equipment and accessories. The deposit will be applied against the balance of the equipment invoice and cancellation charges, if any.

CHANGES AND MODIFICATIONS - Customer agrees to pay for any changes in scope, design or work plan from that ordered. CD & Power shall have the right to subcontract any or all work covered by the sale. Sale is non-assignable by the Customer without prior written approval of CD & Power.

TERMS - All billings are net thirty (30) days from the date of invoice upon credit approval. Retention is not acceptable. Customers not adhering to payment terms agree to pay delinquency charges of 1.5% per month or the maximum allowable by law, whichever is greater, on the unpaid balance. If CD & Power commences an action to collect amount due the Customer agrees to reimburse CD & Power all collection costs, attorney fees and court costs.

FINAL ACCEPTANCE - Final acceptance shall occur at time of delivery. Offloading is the Customer's responsibility unless otherwise provided for. Storage and interest charges will result when equipment and accessories ready for shipment to the Customer are held in CD & Power inventory due to Customer's inability to accept delivery.

WARRANTY - All implied warranties including without limitation merchantability and fitness for a particular purpose are excluded from this Agreement. CD & Power disclaims all liability for special, incidental, and consequential damages. The only warranty for equipment sold to the Customer shall be the Manufacturer's warranty. CD & Power obligation is limited to rework or replacement of materials necessary to correct any condition of the equipment resulting from defects in material. Manufacturer's warranty is not effective until Start Test is performed by CD & Power. Start and Test must be paid in advance.

RETURNED MERCHANDISE - Equipment, accessories and parts cannot be returned without CD & Power written approval. Equipment, accessories and parts must be in salable condition. Customer must pay transportation costs and restocking charge of twenty-five percent (25%) of invoice amount.

SECURITY INTEREST - CD & Power retains and Customer hereby grants CD & Power a Security Interest in equipment sold, including all accessions to and replacements of the equipment, until the Customer has made payment in full in accordance with the provisions herein. Customer shall cooperate fully with CD & Power in executing such documents as CD & Power may deem necessary for the protection of such Security Interest.

TAXES, LICENSES, PERMITS AND INSURANCE - Customer shall pay to CD & Power the amount of any sales, use, excise, duty or similar tax attributable to the sale covered hereby, whether or not included in the purchase or quotation price. CD & Power will assume no responsibility for obtaining permits or licenses other than those specifically provided for. Customer shall reimburse CD & Power for the cost of providing any insurance related rights or waivers associated with CD & Power existing insurance policies. Where taxes do not apply upon sale or resale, Customer shall provide CD & Power with appropriate exemption certificates.

Customer acknowledges that he has not relied on CD & Power skill or judgment in the selection of equipment and that any technical advice or specifications solicited regarding the equipment shall be used at Customer's own risk. Any noncertified drawings provided are descriptive in nature and not warranties of performance.

Except as expressly provided herein, the Agreement shall be governed, construed, and interpreted by the laws of the State of California. The United Nations Convention on Contracts for the International Sales of Goods (CISG) shall not apply. CD & Power elects to opt out of the CISG. Waiver by CD & Power of any breach of the Terms and Conditions of Sale included herein or on any attachment shall not be construed as a waiver of any other breach. Waiver by CD & Power of any breach must be in writing.

CUSTOMER'S REMEDIES - CD & Power shall not be in default and shall not be liable for delays by equipment manufacturers or suppliers or any other circumstances beyond CD & Power reasonable control. Customer's exclusive and sole remedy on account or in respect of any breach, or to any express or implied warranty, shall be to secure replacement. Correction of any

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nonconformity shall constitute complete fulfillment of all liabilities of CD & Power. CD & Power aggregate liability in any customer claim shall not, under any circumstances, exceed the payment received by CD & Power for the equipment and services furnished. CD & Power liability shall be limited to those claims arising solely from the acts of the CD & Power. CD & Power shall not be liable whether in contract or in tort or under any other legal theory for loss of revenue, use, or profit or for the cost of any labor expended. Customer agrees to indemnify, save and hold CD & Power harmless for any special, direct, indirect, incidental, accidental or consequential damages to anyone by reason of any breach of contract or of any express or implied warranty.

Payment Intervals Upon Acceptance of Proposal:

50% - Mobilization/Equipment Ordered

25% - Upon Delivery at Site

25% - At Start Up

The authorized purchaser identified below accepts this proposal and agrees, upon acceptance by CD & Power, to purchase and pay for this equipment, accessories and service in accordance with the CD & Power Conditions of Sale and Standard Terms & Conditions.

Company Name: _____

Contact Name: _____

Purchaser Authorized Signature: _____

Contact Title: _____

Date: _____

Purchase Order: _____



Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed adoption of a Resolution (1) amending the Fiscal Year 2020-2021 adopted Capital Improvement Program Budget to include CIP Project No. C21-01 PSPS Emergency Back-up Power and authorizing a budget of \$350,000; (2) authorizing a budget decrease of \$50,000 from CIP Project W-106 Pump Station Upgrades with water funds being reallocated to C21-01; (3) authorizing a fund balance transfer of up to \$50,000 from Fund 763 Water CIP to Fund 733 Civic CIP upon completion of CIP Project No. C21-01 to be used towards the purchase and installation of the fixed generator at the Louis Stralla Water Treatment Plant; and (4) approving an Equipment Purchase Agreement with Gonneville, Inc. for CIP Project No. C21-01 PSPS Emergency Back-up Power for an amount not-to-exceed \$272,158.07.

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

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

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Following the 2020 Public Safety Power Shutoff (PSPS) the State of California Governor's Office of Emergency Services offered a funding allocation to local agencies demonstrating a need for power to critical facilities during planned shutoffs. On October 30, 2019, the City submitted an application requesting funding for three generators in the amount of \$471,000. Funds were anticipated to include the replacements of aging generators at the City's critical Water and Wastewater Treatment Plants with reliable

EPA certified generators that increase fuel economy and produce substantially lower emissions.

The three generators included in the grant application were for the following locations:

- Wastewater Treatment Plant (WWTP) - the existing WWTP is 45 years old and currently does not have the ability to provide power to all critical onsite plant facilities during a power shut down.
- Louis Stralla Water Treatment Plant (LSWTP) - the LSWTP has a generator that is 35 years old and recently failed a week after the Glass Fire had burnt through the area.
- Portable Generator - the third generator requested in the grant application was for a 175 KW portable generator that could be used at all critical City facilities which do not have back-up power.

All three generators would provide the City with greater reliability of utility services through PSPS and disaster events because many assets are in a Tier 3 PG&E high risk zone.

In spring 2020, the State informed the City of St. Helena that \$300,000 had been awarded through the PSPS grant allocation for the purchase of generators. Due to a grant shortfall amount of \$171,000 from the original grant request, City staff had to determine which generators were going to be purchased. Since the WWTP is currently under design and any redundancies in power will need to consider the new package plant power needs, a replacement generator in that location is not as straightforward as a generator at the LSWTP. In addition, the WWTP timeline for completion does not meet the requirements for the grant completion deadline. Based on this information staff determined replacement of the LSWTP generator and purchasing a portable generator that could be used at most City facilities and serve as a back-up should an existing generator fail would be in the best interests of the City for this particular grant award.

DISCUSSION

This project will procure two generators; (1) replace the current generator located at the LSWTP that failed in October 2020 during the tail end of the Glass Fire and (2) purchase a portable generator that will be able to be deployed to any City facility currently lacking back-up power and/or be used when an existing generator has failed.

The bidding requirements of St. Helena Municipal Code (SHMC) Section 3.04.100 shall not apply to the purchasing of any equipment or supplies which the purchasing officer decides to obtain through a cooperative competitive bidding procedure prepared by and processed through another public, local, state, or federal governmental agency. If it is determined to be in the best interest of the City, the purchasing officer is authorized to "piggy-back" onto or join into an existing written purchase contract, which contract was obtained within the last 12months through a competitive bidding process prepared by

and awarded by another public, local, state or federal government agency. However, City Council approval is required prior to and for the joining of a “piggy-back” purchase or cooperative purchase for a purchase greater than \$25,000.00.

On September 30, 2020, Gonneville, Inc. of San Clemente and their authorized installer, CD and Power of Martinez, visited all City locations in need of back-up power during power outages. Gonneville, Inc. has had a multiple award schedule contract that includes the purchase and installation of generators with the federal General Services Administration (GSA) since June 25, 2001 with a current expiration date of June 24, 2021. The current GSA award pricing schedule, GS-07F-0251L, was updated on February 2020. Gonneville has also provided a sole source letter stating that CD and Power is the only authorized installer for their equipment under their GSA contract and bidding the project separately would potentially compromise the equipment warranty.

Based on the contract award with GSA, and in accordance with SHMC 3.04.150 (Cooperative purchasing with other agencies), staff recommends the City award an agreement with Gonneville, Inc. to purchase the two generators. The current lead time for fixed generator manufacture can take 14-16 weeks while permitting and onsite construction can take place within that timeframe in order to be ready for the delivery and installation. A portable generator lead time is considerably shorter and currently 4-6 weeks. In addition, staff is recommending that City Council support the sole source finding and award the construction contract to CD and Power in order to install the generators and ancillary equipment at the four locations. The construction contract will be brought to City Council at a later date for recommended approval.

The City currently has until October 2022, to complete the project and expend the grant funding. It is also important to note that the City currently has a rental generator on standby at LSWTP until a permanent replacement generator can be deployed.

Additionally, staff recommends establishment of Civic CIP Project C21-01 *PSPS Emergency Back-up Power* with a project budget of \$350,000.

FISCAL IMPACT

The proposed budget for CIP Project No. C21-01 is \$350,000 with \$300,000 being funded by the State of California Governor's Office of Emergency Services through PSPS grant funds. The remaining \$50,000 can be funded utilizing excess funds from CIP Project No. W-106 *Pump Station Upgrades*. CIP Project No. W-106 currently has \$255,000 allocated and the total estimated costs for this project will not exceed \$200,000; therefore, it is recommended reallocation of \$50,000 towards the C21-01 project which will be designated towards the fixed generator at the LSWTP.

The proposal from Gonneville, Inc. is for an amount of \$257,158.07 and includes the purchase of two generators and ancillary equipment detailed in the proposal and includes delivery and sales tax on equipment. In the event that revisions to taxes, permitting, delivery, and/or additional ancillary equipment is needed, it is recommended an additional \$15,000 for contingency is added to the contract amount for a total not-to-

exceed agreement of \$272,158.07. The additional contingency funds would need to be substantiated and agreed upon, in writing, by the Director of Public Works prior to invoicing.

If the project is completed under budget, the remaining local funds will be dispersed back into their respective fund balance.

RECOMMENDED ACTION

Consideration and proposed adoption of a Resolution (1) amending the Fiscal Year 2020-2021 adopted Capital Improvement Program Budget to include CIP Project No. C21-01 PSPS Emergency Back-up Power and authorizing a budget of \$350,000; (2) authorizing a budget decrease of \$50,000 from CIP Project W-106 Pump Station Upgrades with water funds being reallocated to C21-01; (3) authorizing a fund balance transfer of up to \$50,000 from Fund 763 Water CIP to Fund 733 Civic CIP upon completion of CIP Project No. C21-01 to be used towards the purchase and installation of the fixed generator at the LSWTP; and (4) approving an Equipment Purchase Agreement with Gonneville, Inc. for CIP Project No. C21-01 PSPS Emergency Back-up Power for an amount not-to-exceed \$272,158.07.

ATTACHMENTS

[Attachment 1: C21-01 Resolution Gonneville](#)

[Attachment 2: 2019-20 Public Safety Power Shutoff \(PSPS\) Resiliency Grant Application](#)

[Attachment 3: GSA Schedule No. GS-07F-0251L GONNEVILLE](#)

[Attachment 4: GSA Advantage Excerpts for Generators](#)

[Attachment 5: CIP C21-01_Gonneville Quotes w_out sales tax](#)

[Attachment 6: Gonneville Authorized Installer Letter](#)

[Attachment 7: Equipment Purchase Agreement Gonneville C21-01 DRAFT](#)

[Attachment 8: C21-01 PSPS Emergency Back-up Power](#)

[Attachment 9: W-106 Pump Station Upgrades - Revised](#)

CITY OF ST. HELENA

RESOLUTION No. 2020-

Adoption of a Resolution (1) amending the Fiscal Year 2020-2021 adopted Capital Improvement Program Budget to include CIP Project No. C21-01 PSPS Emergency Back-up Power and authorizing a budget of \$350,000; (2) authorizing a budget decrease of \$50,000 from CIP Project W-106 Pump Station Upgrades with water funds being reallocated to C21-01; (3) authorizing a fund balance transfer of up to \$50,000 from Fund 763 Water CIP to Fund 733 Civic CIP upon completion of CIP Project No. C21-01 to be used towards the purchase and installation of the fixed generator at the Louis Stralla Water Treatment Plant; and (4) approving an Equipment Purchase Agreement with Gonneville, Inc. for the CIP Project No. C21-01 PSPS Emergency Back-up Power for an amount not-to-exceed \$272,158.07.

RECITALS

- A. City staff successfully applied for a California Office of Emergency Services Public Safety Power Shutoff (PSPS) grant and was awarded \$300,000 towards the purchase and installation of two emergency back-up power generators for the Louis Stralla Water Treatment Plant (LSWTP) and a portable generator to be deployed as needed to multiple City facilities ("Sites"); and
- B. The PSPS grant will fund a project that includes design, inspection, generator procurement, and installation with automatic transfer switches; and
- C. City staff researched generator companies that provide generators and ancillary equipment and Gonneville, Inc. was the most reasonably priced, is located within California, will meet the needs of the City, and was very responsive to the City's request; and
- D. Gonneville, Inc., offers its generators through the California Multiple Award Schedule and federal General Services Administration ("GSA") multiple award schedule programs – Gonneville, Inc.'s federal GSA listing will not expire until June 24, 2021; and
- E. In accordance with St. Helena Municipal Code Section 3.04.150, the bidding requirements of Section 3.04.100 shall not apply to the purchase of any equipment or supplies which the purchasing officer decides to obtain through a cooperative competitive bidding procedure prepared and processed through another public, local, state, or federal agency; and
- F. The current GSA award pricing schedule, GS-07F-0251L, was updated on February 2020; and
- G. In accordance with St. Helena Municipal Code Section 3.04.150, staff is recommending the City award an equipment purchase agreement to Gonneville, Inc.

in reliance on GSA schedule GS-07F-0251L to purchase two generators for CIP Project No. C21-01 PSPS Emergency Back-up Power in the amount not-to-exceed \$272,158.07; and

- H. It is necessary to establish Civic CIP Project C21-01 PSPS Emergency Back-up Power with a project budget of \$350,000 with \$300,000 being funded by the State of California Governor's Office of Emergency Services through PSPS grant funds and the remaining \$50,000 from funds not being utilized in Water CIP Project No. W-106 for the purchase and installation of the fixed generator at the LSWTP.

RESOLUTION

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

1. The Recitals set forth above are true and correct and are incorporated herein; and
2. The adoption of this resolution is exempt from the requirements of CEQA pursuant to Section 15301, Class 1, which exempts the operation, leasing, or minor alteration of existing facilities; and
3. Amends the Fiscal Year 2020-2021 adopted Capital Improvement Program Budget to include CIP Project No. C21-01 PSPS Emergency Back-up Power and authorizes a budget of \$350,000; and
4. Authorizes a budget decrease of \$50,000 from CIP Project W-106 Pump Station Upgrades with water funds being reallocated to C21-01; and
5. Authorizes a fund balance transfer of up to \$50,000 from Fund 763 Water CIP to Fund 733 Civic CIP upon completion of CIP Project No. C21-01 to be used towards the purchase and installation of the fixed generator at the LSWTP; and
6. Based on the City's above described review and St. Helena Municipal Code Section 3.04.150, the City Council hereby approves award of an Equipment Purchase Agreement to Gonneville, Inc. for the CIP Project No. C21-01 PSPS Emergency Back-up Power for an amount not-to-exceed \$272,158.07; and
7. This Resolution shall take effect immediately upon adoption.

Approved at a Regular Meeting of the St. Helena City Council on December 8, 2020 by the following vote:

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

Councilmember Knudsen: _____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafopoulos, City Clerk



**Public Safety Power Shutoff (PSPS)
Resiliency Allocation to Cities Application Form**

Applicant Name:	Contact Information:
City of St. Helena	Name: Mandy Kellogg
Applicant Address:	Phone Number:
1480 Main Street St. Helena, CA 94574	(707) 968-2649
	E-mail Address: mkellogg@cityofstheleena.org
Population of the incorporated city applying for these funds:	The amount of disaster reserve funds, compared to the total incorporated city budget:
6,196	\$ 0

Briefly explain the number of hours spent year to date in PSPS:

October 9 - October 11 Event: 65 PSPS hours
 October 23 - October 24 Event: 20 PSPS hours
 October 25 - October 30 Event: 122.5 PSPS hours

A total of 207.5 PSPS hours have been spent at the City of St. Helena year to date.

Briefly explain how the Applicant will use the funds to prepare for and respond to PSPS events:

Funds will replace vulnerable generators at the City's critical Water and Wastewater Treatment Plants with reliable EPA certified generators that increase fuel economy and substantially lower emissions. The 45-year-old Wastewater Plant generator does not have the capacity to provide power to the effluent pump station. The existing Water Plant generator is 35 years old. Additionally, funds will be used to purchase a roving 175 KW generator that was needed for essential City facilities during PSPS events and to provide greater reliability to the City because some assets are in a Tier 3 PG&E high risk zone. The City is requesting \$471,000 for 750 KW Wastewater Plant generator, 285 KW Water Plant generator, and 175 KW roving generator.

Please submit by e-mail to: PSPS@caloes.ca.gov



**General Services Administration
Federal Supply Service
Authorized Federal Supply Service Schedule Catalog/ Price List**

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA Advantage!

The Internet address for GSA Advantage! is:

GSAAdvantage.gov.

MULTIPLE AWARD SCHEDULE (MAS)

332999BMS Building Materials and Services
333415HVAC Heating, Ventilation, and Air Conditioning (HVAC)
333912 Air Compressors and Pressure Cleaners
33512 Energy-Efficient Lighting and Sustainable Energy Solutions
335911 Batteries
335999 Power Distribution and Solar Energy Solutions
ANCRA Ancillary Repair and Alterations
OLM Order-Level Materials

FSC CLASS: 6115, 6135, 6105, 6140, 6145, 4940, 6210, 6250, 5930, 6240

CONTRACT NUMBER: GS-07F-0251L

CONTRACT PERIOD: June 25, 2001 through June 24, 2021
Price List effective Feb 2020



CONTRACTOR:
Gonneville, Inc
211 Calle Pintoresco, Unit A
San Clemente , Ca 92673
Tel: (949) 248-7297 Fax: (949) 248-0666
Email: sales@gonneville.com
Website: www.gonneville.com

CONTRACTOR'S ADMINISTRATION SOURCE: Donald E. Gonneville

BUSINESS SIZE: Service disabled veteran owned small business

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1b. Identification of the lowest-priced model-number price for each SIN. [4](#)

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2. Maximum Order by SIN [5](#)

3. Minimum Order [5](#)

4. Geographic Coverage (delivery area) [5](#)

5. Point(s) of Production [5](#)

6. Basic Discount [6](#)

7. Quantity Discount [6](#)

8. Prompt Payment Terms [6](#)

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Below the Micro-purchase Threshold [6](#)

9b. Notification That Government Purchase Cards Are Accepted
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10. Foreign Items [6](#)

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11c. Overnight and 2-day Delivery [6](#)

11d. Urgent Delivery [6](#)

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CUSTOMER INFORMATION

1a. Table of awarded special item numbers (SINs)

SIN	Description
332999BMS	Building Materials and Services
333415HVAC	Heating, Ventilation, and Air Conditioning (HVAC)
333912	Air Compressors and Pressure Cleaners
33512	Energy-Efficient Lighting and Sustainable Energy Solutions
335911	Batteries
335999	Power Distribution and Solar Energy Solutions
ANCRA	Ancillary Repair and Alterations
OLM	Order-Level Materials

1b. Identification of the lowest-priced model-number price for each SIN.

SIN	Part Number
332999BMS	See Pricing
333415HVAC	See Pricing
333912	See Pricing
33512	See Pricing
335911	See Pricing
335999	See Pricing
ANCRA	See Pricing
OLM	See Pricing

1c. Hourly Rates**Electrical Consultant \$84.62/Hour**

Individual with vast knowledge and experience in the Electrical professional field hired to lend their expertise to clients in need of insight they do not possess. Degree requirements include: Bachelor of Science degree (or equivalent education) in an appropriate engineering discipline and Professional Engineering License.

Master Electrician \$84.62/Hour

Install and maintain all of the electrical and power systems for homes, factories and businesses, according to the U.S. Department of Labor Bureau of Labor Statistics. They handle wiring as well as electrical equipment and machines. Requirements include at least seven years of experience as an electrician or a bachelor's degree in electrical engineering or a related field.

Electrical Journeyman \$64.66/Hour

Install and repair electrical wires within homes and businesses and are often called upon to provide estimates or maintenance. Requirements include CA Journeyman's State Licensing.

Journeyman's Assistant \$44.79/Hour

Install, repair, alter and maintain electrical conductors, fittings, devices and fixtures for heating, lighting or power purposes. They must comply with the current edition of the National Electric Code. Can only perform above duties under direct supervision of a Master or Journeyman Electrician. Requirements include currently being enrolled in the Electrician Apprenticeship Program for 2+ years.

Electrical Technician \$39.79/Hour

Responsible for performing and providing maintenance, repair, installation and troubleshooting of electrical equipment. Can only perform above duties under direct supervision of a Master or Journeyman Electrician. Requirements include currently being enrolled in the Electrician Apprenticeship Program.

2. Maximum Order by SIN

332999BMS \$250,000; 333415HVAC \$250,000; 333912 \$250,000; 33512 \$250,000; 335911 \$250,000; 335999 \$250,000; ANCRA \$250,000; OLM \$250,000

3. Minimum Order

\$100 on Products.

4. Geographic Coverage (delivery area)

U.S. Domestic 50, Puerto Rico, Washington DC

5. Point(s) of Production

MQ Power Corp., Carson, CA (LA County)
Ecoquip, Virginia Beach, VA (Princess Anne County)
MMD, Swedesboro, New Jersey
Cireon, Moorpark, CA
Luxul, Santa Clara, CA

6. Basic Discount: All prices are net discount

7. Quantity Discount

SIN 33512 : 4-6% for 5,000+ units

SIN 333912 : 3% 2-9 pallets and 21% 10+ pallets

SIN 206 4 (Luxul Products): 1-14% depending on line item and quantity

8. Prompt Payment Terms Net 30 days

9a. Notification That Government Purchase Cards Are Accepted
Below the Micro-purchase Threshold

Yes

9b. Notification That Government Purchase Cards Are Accepted
Above the Micro-purchase Threshold

Yes

10. Foreign Items

None

11a. Time of Delivery Products: 60 Days ARO
Services: By arrangement

11b. Expedited Delivery Contact Contractor

11c. Overnight and 2-day Delivery Contact Contractor

11d. Urgent Delivery Contact Contractor

12. FOB Point

Origin for 332999BMS; 333415HVAC; 333912; 33512; 335999; ANCRA

Destination for SIN 335911

13a. Ordering Address Same as Contractor

13b. Ordering Procedures Ordering activities shall use the ordering procedures described in Federal Acquisitions 8.405 when placing an order or establishing a BPA for supplies or services. The ordering procedures, information on Blanket Purchase Agreement's (BPA's) and a sample BPA can also be found at the GSA/FSS Schedule Homepage (fss.gsa.gov/schedules).

14. Payment Address Same as Contractor

15. Warranty Provision

Products (installed or delivered): Manufacturer's Standard Warranty

Installation Labor/Workmanship: 90 days

16. Export Packaging Charges

Not Applicable

17. Terms and Conditions of Government Purchase Card Acceptance

Any thresholds above the micro-purchase level contact contractor.

18. Terms and Conditions of Rental, Maintenance, and Repair

Contact Contactor

19a. Terms and Conditions of Products: (SIN 33512)

1. A shipping charge will apply to all orders depending on the item and distance
2. Minimum Order increments apply as indicated on GSA-Advantage!
3. Return policy:
 - a) Returns are allowed unless explicitly stated on an item's description or advised in writing.
 - b) If the returned portion of an order reduces the total charge below the minimum order then either the entire order should be returned, or restocking fee raised to meet the minimum
 - c) The customer must obtain a "Return Authorization Number" before returning an item.
 - d) A restocking fee of 15% will apply to all returned items.
 - e) The original shipping charge is not refundable.
 - f) The customer will be responsible for the shipping charges of defective returns, but no restocking or shipping will apply to the re-shipment.
4. Automatically calculated shipping charges are NOT valid for shipments to outside of Continental US.

19b. Terms and Conditions of Installations:

Terms and conditions of installation: Service prices include the cost of materials and recycling (or legal disposal) of old hardware. All measures are assumed at height of 15ft or lower, For each 10 foot or fraction above 15ft, add \$4/measure Plus the cost of lift and it's delivery & pickup. Measures indicated are for "retrofits" of existing lighting fixtures (whole fixture installations or replacements is available on an "Open Market" basis). The Lighting retrofit measures indicated include the exchange of Lamps, Ballasts, Wirenuts, lamp sockets, Brackets, and all fasteners as needed. "Retrofit" or "Exchange" means removal and disposal of existing internals of fixtures (but not the fixture itself), and complete installation and testing of indicated new replacements. Except where the measure description includes "New Fixture" the existing fixtures are retained. If an existing fixture is found to be defective or in violation of applicable safety standards (National Electrical Code), it will be left as is, reported, and not billed. All retrofits include the wipe-cleaning of the insides of the fixtures. No light diffusers/lenses are included, existing diffusers/lenses may be cleaned and re-installed. All work areas will be cleaned of all debris and parts, and dust resulting from the work. Minimum Order is \$1000. When a distance radius of 50 miles is exceeded, shipping charges (at cost) will apply to the materials being shipped/installed. All measures are assumed at height of 15ft or lower, For each 10 foot or fraction above add \$4/measure Plus the cost of lift and it's delivery & pickup. Customer will be responsible for removal of all obstacles in the way of installation. Gonnevill reserves the right to declare any fixture as "unsafe to work on" or "reasonably inaccessible", and forgo its retrofit. Gonnevill will comply with the standard per diem rates as applicable.

20a. Terms and Conditions for Any Other Services

Not Applicable

21. List of Service and Distribution Points

Not Applicable

22. List of Participating Dealers

Not Applicable

23. Preventive Maintenance

See service manuals

24a. Special Attributes Such as Environmental Attributes

(e.g. recycled content, energy efficiency and/or reduced pollutants.): As indicated on GSA- Advantage!

24a. Section 508 Compliance for EIT

Not Applicable

25. Data Universal Number System (Duns) Number:

79-652-1755

26. Notification Regarding Registration in (SAM) Central Contractor Registration (CCR) Database: Registration valid.

No image available at this time

GEN 70KVA 3PHASE ISUZU TIER 4F

Mfr Part No.:
Contractor Part No.:
Manufacturer:
Contract No.:
MAS Schedule/SIN:
Warranty:
Country of Origin:
Weight:

DCA70SSIU4F
DCA70SSIU4F
MQ MULTIQUIP
GS-07F-0251L (ends: Jun 24, 2021)
MAS/335999
STANDARD WARRANTY
UNITED STATES OF AMERICA
0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price:

\$52,997.48 EA

sold and shipped by

GONNEVILLE, INC

Contract minimum order: \$100.00

Qty: 1

Add to cart

Product Details

0.001L X 0.001W (IN),Generator 70KVA 3Phase Isuzu Tier 4F

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
⚡ Indicates when volume discounts are offered.

Price/Unit⚡	Contractor ⚡	Socio	Deliv Days ⚡	Min Order ⚡	FOB/Shipping ⚡
\$52,997.48	EA GONNEVILLE, INC	de	60 days delivered ARO	\$100.00	O-CONUS, AK, PR, HI

1/1

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No image available at this time

GEN 125KVA 3PHASE ISUZU TIER 4F

Mfr Part No.: DCA125SSIU4F

Contractor Part No.: DCA125SSIU4F

Manufacturer: MQ - MULTIQUIP

Contract No.: GS-07F-0251L [ends: Jun 24, 2021]

MAS Schedule/SIN: MAS/335999

Warranty: STANDARD WARRANTY

Country of Origin: UNITED STATES OF AMERICA

Weight: 0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price

\$57,128.46 ^{EA}

Qty: 1

Add to cart

sold and shipped by

GONNEVILLE, INC

Contract minimum order: \$100.00

Product Details

Gen 125KVA 3Phase Isuzu Tier 4F

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
⚡ Indicates when volume discounts are offered.

Price/Unit⚡	Contractor ⚡	Socio	Deliv Days ⚡	Min Order ⚡	FOB/Shipping ⚡
\$57,128.46	^{EA} GONNEVILLE, INC	¹⁰⁰	60 days delivered ARO	\$100.00	O-CONUS, AK, PR, HI

No image available at this time

POWER GENERATOR

Mfr Part No.: DCA220SSJU4F
Contractor Part No.: DCA220SSJU4F
Manufacturer: MQ - MULTIQUIP
Contract No.: GS-07F-0251L (ends: Jun 24, 2021)
MAS Schedule/SIN: MAS/335999
Warranty: STANDARD WARRANTY
Country of Origin: UNITED STATES OF AMERICA
Weight: 1,000 LB

 Disaster Purchasing items
 VA Verified SDVOSB

Price: \$93,853.90 EA

Qty: 1 Add to cart

sold and shipped by
GONNEVILLE, INC.
Contract minimum order: \$100.00

Product Details

Gen 220KVA 3Phase John Deere Tier4F

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
⚡ Indicates when volume discounts are offered.

Price/Unit	Contractor	Socio	Deliv Days	Min Order	FDB/Shipping
\$93,853.90	EA GONNEVILLE, INC		60 days delivered.ARD	\$100.00	Q-CONUS,AK,PR,HI

No image available at this time

300REOZJ, KOHLER DIESEL GENERATOR, WITH

Mfr Part No.:25940403

Contractor Part No.:25940403

Manufacturer:KOHLER

Contract No.:GS-07F-0251L (ends: Jun 24, 2021)

MAS Schedule/SIN:MAS/335999

Warranty:STANDARD WARRANTY

Country of Origin:UNITED STATES OF AMERICA

Weight:0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price\$58,117.49 EA

Qty: 1Add to cart

sold and shipped by

GONNEVILLE, INC.

Contract minimum order: \$100.00

Product Details

300REOZJ, Kohler Diesel Generator, with weather enclosure, Dec 3000 Controller, 24 hour tank - 555 Gal, CA Spill Kit, 80% Circuit Breaker, Battery, 6A Battery Charger

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
⌘ Indicates when volume discounts are offered.

Price/Unit⌘	Contractor ⌘	Socio	Deliv Days ⌘	Min Order ⌘	FOB/Shipping ⌘
\$58,117.49 EA	GONNEVILLE, INC		60 days delivered ARO	\$100.00	O-CONUS,AK,PB,HJ

No image available at this time

150REOZJF, KOHLER DIESEL GENERATOR, WITH

Mfr Part No.:25940237

Contractor Part No.:25940237

Manufacturer:KOHLER

Contract No.:GS-07F-0251L (ends: Jun 24, 2021)

MAS Schedule/SIN:MAS/335999

Warranty:STANDARD WARRANTY

Country of Origin:UNITED STATES OF AMERICA

Weight:0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price\$35,385.07 EA

Qty: 1Add to cart

sold and shipped by

GONNEVILLE, INC.

Contract minimum order: \$100.00

Product Details

150REOZJF, Kohler Diesel Generator, with weather enclosure, Dec 3000 Controller, 24 hour tank - 316 Gal, CA Spill Kit, 80% Circuit Breaker, Battery, 6A Battery Charger

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.

Indicates when volume discounts are offered.

Price/Unit	Contractor	Socio	Deliv Days	Min Order	FOB/Shipping
\$35,385.07	EA GONNEVILLE, INC	13.67	60 days delivered ARO	\$100.00	Q-CONUS, AK, PR, HI

No image available at this time

100REOZJF, KOHLER DIESEL GENERATOR, WITH

Mfr Part No.:25940133

Contractor Part No.:25940133

Manufacturer:KOHLER

Contract No.:GS-07F-0251L (ends: Jun 24, 2021)

MAS Schedule/SIN:MAS/335999

Warranty:STANDARD WARRANTY

Country of Origin:UNITED STATES OF AMERICA

Weight:0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price\$24,193.95 EA

Qty: 1Add to cart

sold and shipped by

GONNEVILLE, INC.

Contract minimum order: \$100.00

Product Details

100REOZJF, Kohler Diesel Generator, with weather enclosure, Dec 3000 Controller, 24 hour tank - 215 Gal, CA Spill Kit, 80% Circuit Breaker, Battery, 6A Battery Charger

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
⚙ Indicates when volume discounts are offered.

Price/Unit	Contractor	Socio	Deliv Days	Min Order	FOB/Shipping
\$24,193.95	EA GONNEVILLE, INC	1182	60 days delivered ARO	\$100.00	Q:CONUS,AK,PR,HI

No image available at this time

200REOZJF, KOHLER DIESEL GENERATOR, WITH

Mfr Part No.: 2594025G
Contractor Part No.: 2594025G
Manufacturer: KOHLER
Contract No.: GS-07F-0251L (ends: Jun 24, 2021)
MAS Schedule/SIN: MAS/335999
Warranty: STANDARD WARRANTY
Country of Origin: UNITED STATES OF AMERICA
Weight: 0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price

\$44,003.21 EA

sold and shipped by

GONNEVILLE, INC.

Contract minimum order: \$100.00

Qty: 1

Add to cart

Product Details

200REOZJF, Kohler Diesel Generator, with weather enclosure, Dec 3000 Controller, 24 hour tank - 416 Gal, CA Spill Kit, 80% Circuit Breaker, Battery, 6A Battery Charger

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
◆ Indicates when volume discounts are offered.

Price/Unit	Contractor	Socio	Deliv Days	Min Order	FOB/Shipping
\$44,003.21	EA GONNEVILLE, INC	107	60 days delivered ARO	\$100.00	O-CONUS, AK, PR, HI



November 10, 2020

City of St. Helena
ATTN: Erica Ahmann Smithies, PE
1480 Main St.
St. Helena, CA 94574

RE: Quote #204963 – **Gonneville GSA Schedule GS-07F-0251L**

Location / Application: Water Treatment Plant

Item 1 – GSA Equipment – 1 Ea Kohler 300REOZJ Generator	\$58,117.49
Includes: ➤ John Deere 6090HFG86 diesel engine ➤ Water cooled, 1800 RPM ➤ 300 kW / 375 kVA Standby Rating ➤ 277/480V, 3 phase, 60 Hz ➤ Sound-attenuated enclosure, 75 dba @23 ft ➤ Main line circuit breaker 500 Amp, 100%	
Item 1A - Ancillary Equipment	\$25,846.33
Generator Options Package Includes: ➤ APM402 Controller ➤ Battery charger, 12/24V-10A ➤ Block heater, 2500W, 120V ➤ Generator heater 120/240V, 200W 1 Ea ASCO Automatic Transfer Switch ➤ Series 300 ➤ 277/480V, 3 phase, 60 Hz ➤ 800 Amp, 3 pole, 4W solid neutral ➤ Delayed transition ➤ Programmable exercise ➤ Nema 1 enclosure	
Equipment Sub-total Price	\$83,963.82

Tel: (949) 248-7297 929 Calle Negocio, Suite D, San Clemente, CA 92673
Fax: (949) 248-0666

www.gonneville.com



Item 2 – Installation, Test	
Scope of Work ➤ Prepare engineering drawings and plan for city permit ➤ Apply for air quality permit (fees by others) ➤ Disconnect electrical wires, fuel pipes ➤ Remove existing genset ➤ Demo old genset pad ➤ Construct new genset pad ➤ Deliver, set and anchor new genset on concrete pad (special anchor inspection by others) ➤ Anchor Calculation ➤ Replace old ATS with new one ➤ Connect all electrical cables and wires (reuse existing ones) ➤ Reconnect fuel lines ➤ Start up and test ➤ Load bank, two hours	
Installation, Permit, Engineering, Delivery, Test – Sub-Total	\$64,897.64
Total Project Price (turnkey), job site	\$148,861.46

Quotation Notes:

- Sales tax is not included in quote prices
- Estimate lead time, equipment only: 14 to 16 weeks ARO and signed submittal is returned
- Delivery time is an estimate and subject to change
- Submittals can be provided in two weeks from receipt of order
- Any work not stated above is not included
- City permit cost waived
- Further permitting cost excluded
- No special inspection cost, if required



Clarifications:

1. Upon review, additional charges may be required and thus requoted, if engineering or city inspectors require changes to the initial design we've proposed.
2. Air quality permit fees and compliance are excluded. Local air quality authorities may require a health risk study or environmental quality assessment. The cost for a health risk study is excluded.
3. **All permits must be obtained prior to installation of the equipment.**
4. For diesel engine generators, **do not fuel** until pressurized tank testing is complete and signed off by local Hazmat authority.
5. Engines located on or near school grounds: new stationary emergency standby diesel fueled engines (greater than 50 bhp) located on school grounds or 100 m or less from a school which exists at the date of the application from permit to construct or permit to operate is deemed complete, whichever is earlier shall emit diesel PM at a rate less than or equal to 0.01 g/bhp-hr, which means that a PM filter will be necessary. If the generator is within 100 m of a kindergarten – 12th grade school and there is not a price for a PM filter on this quote, please contact us immediately.
6. Pricing is valid for 30 days from date of quote. Pricing may be adjusted after submittals and air-quality acceptance.
7. Restocking: a restocking fee of 15% will apply for cancellation after receipt of purchase order and up to 60 days prior to scheduled order shipment date. Cancellation 60 days or less before scheduled shipment date will result in full PO charges
8. Storage: Gonneville Inc and CD & Power will not be held responsible for damage, burglary or vandalism that may occur while equipment is stored at CD & Power's facility. Storage for more than one month will result in a \$100 per week storage fee. A secondary shipping and/or crane charge to jobsite may also apply.

Please do not hesitate to call us with any questions or concerns. We look forward to being of service to you.

Sincerely,

Don Gonneville

Tel: (949) 248-7297

929 Calle Negocio, Suite D, San Clemente, CA 92673
Fax: (949) 248-0666

www.gonneville.com



November 10, 2020

City of St. Helena
ATTN: Erica Ahmann Smithies, PE
1480 Main St.
St. Helena, CA 94574

RE: Quote #204963 – **Gonneville GSA Schedule GS-07F-0251L**

Location / Application: 220kVA Trailer-Mounted Generator - Floater

Item 1 – GSA Equipment – 1 Ea Multiquip DCA220SSJU4F Generator	\$93,853.90
Includes: ➤ John Deere 6068 HFG09 Diesel Engine ➤ EPA Tier 4 Final Certified ➤ Water Cooled, 1800 RPM ➤ 176kW Standby Rating, 194 kW Prime Rating ➤ Multiple Voltage Selector, 60 Hz ➤ Sound-attenuated enclosure, 74 dba @23 ft ➤ Main line circuit breaker 600 Amp	
Item 1A - Ancillary Equipment	\$59,741.70
Generator Options Package Includes: ➤ Battery Charger ➤ Sub-base fuel tank, 369 gallon, 30 hr run@ full load ➤ Camlock connector ➤ Power Balance Kit- 61.6kW, roof-mounted ➤ 4 X Cable, 4/0 50ft (ship loose) Trailer Package Includes: ➤ Tandem-Axle trailer, GVWR 13,500 lbs ➤ Hydraulic or Electric Brakes ➤ Coupler, 3" pintle eye or 2 5/16" ball ➤ Tongue-mounted swivel jack ➤ Spare tire w/mounting bracket	
Total Project Price (turnkey), job site	\$153,595.60

Tel: (949) 248-7297

929 Calle Negocio, Suite D, San Clemente, CA 92673
Fax: (949) 248-0666

www.gonneville.com



Quotation Notes:

- Sales tax is not included in quote prices
- Estimate leadtime, equipment only: 2 to 4 weeks ARO and signed submittal is returned
- Delivery time is an estimate and subject to change
- Submittals can be provided in two weeks from receipt of order
- Any work not stated above is not included

Clarifications:

1. Upon review, additional charges may be required and thus requoted, if engineering or city inspectors require changes to the initial design we've proposed.
2. Air quality permit fees and compliance are excluded. Local air quality authorities may require a health risk study or environmental quality assessment. The cost for a health risk study is excluded.
3. **All permits must be obtained prior to installation of the equipment.**
4. For diesel engine generators, **do not fuel** until pressurized tank testing is complete and signed off by local Hazmat authority.
5. Engines located on or near school grounds: new stationary emergency standby diesel fueled engines (greater than 50 bhp) located on school grounds or 100 m or less from a school which exists at the date of the application from permit to construct or permit to operate is deemed complete, whichever is earlier shall emit diesel PM at a rate less than or equal to 0.01 g/bhp-hr, which means that a PM filter will be necessary. If the generator is within 100 m of a kindergarten – 12th grade school and there is not a price for a PM filter on this quote, please contact us immediately.
6. Pricing is valid for 30 days from date of quote. Pricing may be adjusted after submittals and air-quality acceptance.
7. Restocking: a restocking fee of 15% will apply for cancellation after receipt of purchase order and up to 60 days prior to scheduled order shipment date. Cancellation 60 days or less before scheduled shipment date will result in full PO charges
8. Storage: Gonneville Inc and CD & Power will not be held responsible for damage, burglary or vandalism that may occur while equipment is stored at CD & Power's facility. Storage for more than one month will result in a \$100 per week storage fee. A secondary shipping and/or crane charge to jobsite may also apply.



Please do not hesitate to call us with any questions or concerns. We look forward to being of service to you.

Sincerely,

Don Gonneville

Tel: (949) 248-7297

929 Calle Negocio, Suite D, San Clemente, CA 92673
Fax: (949) 248-0666

www.gonneville.com



November 19, 2020

City of St. Helena
ATTN: Erica Ahmann Smithies, PE
1480 Main St
St. Helena, CA 94574

Dear Erica,

This is to certify that California Diesel and Power is the only company authorized by Gonneville Inc to install generators and ancillary equipment sold and serviced on our GSA Schedule # GS-07F-0251L.

This relationship ensures that our customers receive consistently reliable results throughout the duration of the project, including any applicable warranty service.

We are available to respond to any further requests for information, and to answer any questions you may have. Thank you for your consideration.

Best regards,

A handwritten signature in cursive script, appearing to read "Don Gonneville".

Don Gonneville
President

929 Calle Negocio, Suite D, San Clemente, CA 92673

Tel: (949) 248-7297

Fax: (949) 248-0666

www.gonneville.com

**CITY OF ST. HELENA
EQUIPMENT PURCHASE AGREEMENT**

**PSPS EMERGENCY BACK-UP POWER
CIP PROJECT NO. C21-01**

This Equipment Purchase Agreement (“Agreement”) is entered into this [REDACTED] day of [REDACTED], 2020, by and between the City of St. Helena, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at a municipal corporation organized under the laws of the State of California with its principal place of business at 1572 Railroad Avenue, St. Helena, CA 94574 (“City”), and Gonneville, Inc., a California corporation with its principal place of business at 211 Calle Pintesco, Unit A, San Clemente, CA. 92673 (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

Section 1. DEFINITIONS.

A. “Equipment” means all machinery, equipment, items, parts, materials, labor or other services, including design, engineering and installation services, provided by Contractor as specified in Exhibit “A,” attached hereto and incorporated herein by reference.

B. “Delivery Date(s)” means that date or dates upon which the Equipment is to be delivered to City, ready for approval, testing and/or use as specified in Exhibit “B.”

Section 2. MATERIALS AND WORKMANSHIP.

When Exhibit “A” specifies machinery, equipment or material by manufacturer, model or trade name, no substitution will be made without City’s written approval. Machinery, equipment or material installed in the Equipment without the approval required by this Section 2 will be deemed to be defective material for purposes of Section 4. Where machinery, equipment or materials are referred to in Exhibit “A” as equal to any particular standard, City will decide the question of equality. When requested by City, Contractor will furnish City with the name of the manufacturer, the performance capabilities and other pertinent information necessary to properly determine the quality and suitability of any machines, equipment and material to be incorporated in the Equipment. Material samples will be submitted at City’s request.

If the Contractor is responsible for providing installation services, the site of any installation work shall be kept clean and free of hazards at all times during performance of such installation services. After installation is completed at the site, as applicable, Contractor shall clean the surrounding area to the condition prior to delivery and installation.

Section 3. INSPECTIONS AND TESTS.

City shall have the right to inspect and/or test the Equipment prior to acceptance. If upon inspection or testing the Equipment or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any requirements or

specifications contained in Exhibit “A,” then without prejudice to any other rights or remedies, City may reject the Equipment or exercise any of its rights under Section 4.C. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair City’s right to reject nonconforming goods, irrespective of City’s failure to notify Contractor of a rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof.

If the Contractor is responsible for providing installation services, finished installation work and/or equipment shall be subject to final inspection and acceptance or rejection by the City.

Section 4. WARRANTY.

A. Contractor warrants that the Equipment will be of merchantable quality and free from defects in design, engineering, material and workmanship for a period of two (2) years, or such longer period as provided by a manufacturer’s warranty or as agreed to by Contractor and City, from the date of final written acceptance of the Equipment by City as required for final payment under Section 7. Contractor further warrants that any services provided in connection with the Equipment will be performed in a professional and workmanlike manner and in accordance with the highest industry standards.

B. Contractor further warrants that all machinery, equipment or process included in the Equipment will meet the performance requirements and specifications specified in Exhibit “A” and shall be fit for the purpose intended. City’s inspection, testing, approval or acceptance of any such machinery, equipment or process will not relieve Contractor of its obligations under this Section 4.B.

C. For any breach of the warranties contained in Section 4.A and Section 4.B, Contractor will, immediately after receiving notice from City, at the option of City, and at Contractor’s own expense and without cost to City:

1. Repair the defective Equipment;
2. Replace the defective Equipment with conforming Equipment, F.O.B. City’s plant, office or other location of City where the Equipment was originally performed or delivered; or
3. Repay to City the purchase price of the defective Equipment.

If City selects repair or replacement, any defects will be remedied without cost to City, including but not limited to, the costs of removal, repair and replacement of the defective Equipment, and reinstallation of new Equipment. All such defective Equipment that is so remedied will be similarly warranted as stated above. In addition, Contractor will repair or replace other items of the Equipment which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to City.

D. Contractor also warrants that the Equipment is free and clear of all liens and encumbrances whatsoever, that Contractor has a good and marketable title to same, and that Contractor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Equipment. Contractor agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

E. In the event of a breach by Contractor of its obligations under this Section 4, City will not be limited to the remedies set forth in this Section 4, but will have all the rights and remedies permitted by applicable law, including without limitation, all of the rights and remedies afforded to City under the California Commercial Code.

Section 5. PRICES.

Unless expressly provided otherwise, all prices and fees specified in Exhibit "C," attached hereto and incorporated herein by reference, are firm and shall not be subject to change without the written approval of City. No extra charges of any kind will be allowed unless specifically agreed to in writing by City's authorized representative. The total price shall include (i) all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Equipment furnished to City hereunder; and (ii) all charges for packing, freight and transportation to destination.

Section 6. CHANGES.

City, at any time, by a written order, and without notice to any surety, may make changes in the Equipment, including but not limited to, City's requirements and specifications. If such changes affect the cost of the Equipment or time required for its performance, an equitable adjustment will be made in the price or time for performance or both. Any change in the price necessitated by such change will be agreed upon between City and Contractor and such change will be authorized by a change order document signed by City and accepted by Contractor.

Section 7. PAYMENTS.

A. Terms of payment, are net thirty (30) days, less any applicable retention, after receipt of invoice, or completion of applicable Progress Milestones. Final payment shall be made by City after Contractor has satisfied all contractual requirements. Payment of invoices shall not constitute acceptance of Equipment.

B. If Progress Milestones have been specified Exhibit "B," then payments for the Equipment will be made as the requirements of such Progress Milestones are met. Progress payments for the Equipment will be made by City upon proper application by Contractor during the progress of the Equipment and according to the terms of payment as specified in Exhibit "B." Contractor's progress billing invoice will include progress payments due for the original scope of work and changes. Each "Item for Payment" shown in Exhibit "B" and each change order will be itemized on the invoice. Invoices for cost plus work, whether part of Exhibit "B" or a change order, must have subcontractor and/or supplier invoices attached to Contractor's invoice. Other

Page 3 of 26

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format and support documents for invoices will be determined by City in advance of the first invoice cycle.

C. Payments otherwise due may be withheld by City on account of defective Equipment not remedied, liens or other claims filed, reasonable evidence indicating probable filing of liens or other claims, failure of Contractor to make payments properly to its subcontractors or for material or labor, the failure of Contractor to perform any of its other obligations under the Agreement, or to protect City against any liability arising out of Contractor's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, City may remove them at Contractor's expense.

D. Payment of the final Progress Milestone payment or any retention will be made by City upon:

1. Submission of an invoice for satisfactory completion of the requirements of a Progress Milestone as defined in Exhibit "B" and in the amount associated with the Progress Milestone;
2. Written acceptance of the Equipment by City;
3. Delivery of all drawings and specifications, if required by City;
4. Delivery of executed full releases of any and all liens arising out of this Agreement; and
5. Delivery of an affidavit listing all persons who might otherwise be entitled to file, claim or maintain a lien of any kind or character, and containing an averment that all of the said persons have been paid in full.

If any person refuses to furnish an actual release or receipt in full, Contractor may furnish a bond satisfactory to City to indemnify City against any claim or lien at no cost to City.

E. Acceptance by Contractor of payment of the final Progress Milestone payment pursuant to Section 7.D will constitute a waiver, release and discharge of any and all claims and demands of any kind or character which Contractor then has, or can subsequently acquire against City, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement. However, payment for the final Progress Milestone by City will not constitute a waiver, release or discharge of any claims or demands which City then has, or can subsequently acquire, against Contractor, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement.

Section 8. SCHEDULE FOR DELIVERY.

A. The time of Contractor's performance is of the essence for this Agreement. The Equipment will be delivered in accordance with the schedule set forth in Exhibit "B." Contractor must immediately notify City in writing any time delivery is behind schedule or may not be completed on schedule. In addition to any other rights City may have under this Agreement or at law, Contractor shall pay City the sum of \$500 per item of Equipment for each calendar day for which the item of Equipment is unavailable beyond the scheduled delivery date(s) specified in Exhibit "B."

B. In the event that the Equipment is part of a larger project or projects that require the coordination of multiple contractors or suppliers, then Contractor will fully cooperate in scheduling the delivery so that City can maximize the efficient completion of such project(s).

Section 9. TAXES.

A. Contractor agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state or local taxing authority on the ultimate purchase price of the Equipment provided under this Agreement.

B. Contractor will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of any federal, state or local taxing authority which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors. Contractor will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

C. All other taxes, however denominated or measured, imposed upon the price of the Equipment provided hereunder, will be the responsibility of Contractor. In addition, all taxes assessed by any taxing jurisdiction based on Contractor property used or consumed in the provision of the Equipment such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Contractor.

D. Contractor will, upon written request, submit to City written evidence of any filings or payments of all taxes required to be paid by Contractor hereunder.

Section 10. INDEPENDENT CONTRACTOR.

Contractor enters into this Agreement as an independent contractor and not as an employee of City. Contractor shall have no power or authority by this Agreement to bind City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Contractor are employees, agents, contractors or subcontractors of the Contractor and not of City. City shall not be obligated in any way to pay any wage claims or other claims made against Contractor by any such employees, agents, contractors or subcontractors or any other person resulting from performance of this Agreement.

Section 11. SUBCONTRACTS.

Unless otherwise specified, Contractor must obtain City's written permission before subcontracting any portion of the Equipment. Except for the insurance requirements in Section 13.A, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Equipment, will require that the subcontractor be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve Contractor from its obligations to City, including, but not limited to Contractor's insurance and indemnification obligations. No subcontract or order will bind City.

Section 12. TITLE AND RISK OF LOSS.

Unless otherwise agreed, City will have title to, and risk of loss of, all completed and partially completed portions of the Equipment upon delivery, as well as materials delivered to and stored on City property which are intended to become a part of the Equipment. However, Contractor will be liable for any loss or damage to the Equipment and/or the materials caused by Contractor or its subcontractors, their agents or employees, and Contractor will replace or repair said Equipment or materials at its own cost to the complete satisfaction of City. Notwithstanding the foregoing, in the event that the City has paid Contractor for all or a portion of the Equipment which remains in the possession of Contractor, then City shall have title to, and the right to take possession of, such Equipment at any time following payment therefor. Risk of loss for any Equipment which remains in the possession of Contractor shall remain with Contractor until such Equipment has been delivered or City has taken possession thereof. Contractor will have risk of loss or damage to Contractor's property used in the construction of the Equipment but which does not become a part of the Equipment.

Section 13. INDEMNIFICATION.

A. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the Equipment or the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

B. Contractor's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, employees, agents or volunteers shall be at Contractor's own cost, expense and risk. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its officials, officers, employees,

agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

C. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

Section 14. INSURANCE.

A. General. Contractor shall take out and maintain:

1. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01;

2. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto);

3. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and

4. Pollution Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate shall be provided by the Contractor if transporting hazardous materials.

5. If Contractor is also the manufacturer of any equipment included in the Equipment, Contractor shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than \$1,000,000.

B. Additional Insured; Primary; Waiver of Subrogation; No Limitation on Coverage. The policies required under this Section shall give City, its officials, officers, employees, agents or volunteers additional insured status. Such policies shall contain a provision stating that Contractor's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any additional insureds shall not be called upon to contribute to any loss, and shall contain or be endorsed with a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement.

C. Insurance Carrier. All insurance required under this Section is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City.

D. Evidence of Insurance. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by the Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before delivery commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

E. Subcontractors. All subcontractors shall meet the requirements of this Section before commencing work. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

F. Freight. Contractor shall ensure that third party shippers contracted by Contractor have adequate insurance coverage for the shipped Equipment.

Section 15. LIENS.

A. Contractor, subcontractors and suppliers will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Equipment, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims"); and Contractor, subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Contractor, subcontractor and suppliers agree that this provision waiving the right of Claims will be an independent covenant.

B. Contractor will save and hold City harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and Contractor will, at its own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims.

Section 16. TERMINATION OF AGREEMENT BY CITY.

A. Should Contractor at any time refuse or fail to deliver the Equipment with promptness and diligence, or to perform any of its other obligations under the Agreement, City may terminate Contractor's right to proceed with the delivery of the Equipment by written notice to Contractor. In such event City may obtain the Equipment by whatever method it may deem expedient, including the hiring of another contractor or other contractors and, for that purpose, may take possession of all materials, machinery, equipment, tools and appliances and exercise all rights, options and privileges of Contractor. In such case Contractor will not be entitled to receive any further payments until the Equipment is delivered. If City's cost of obtaining the Equipment, including compensation for additional managerial and administrative services, will

exceed the unpaid balance of the Agreement, Contractor will be liable for and will pay the difference to City.

B. City may, for its own convenience, terminate Contractor's right to proceed with the delivery of any portion or all of the Equipment by written notice to Contractor. Such termination will be effective in the manner specified in such notice, will be without prejudice to any claims which City may have against Contractor, and will not affect the obligations and duties of Contractor under the Agreement with respect to portions of the Equipment not terminated.

C. On receipt of notice under Section 16.B, Contractor will, with respect to the portion of the Equipment terminated, unless the notice states otherwise,

1. Immediately discontinue such portion of the Equipment and the placing of orders for materials, facilities, and supplies in connection with the Equipment,
2. Unless otherwise directed by City, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to City; and
3. Deliver only such portions of the Equipment which City deems necessary to preserve and protect those portions of the Equipment already in progress and to protect material, plant and equipment at the Equipment site or in transit to the Equipment site.

D. Upon termination pursuant to Section 16.B, Contractor will be paid a pro rata portion of the compensation in the Agreement for any portion of the terminated Equipment already delivered, including material and services for which it has made firm contracts which are not canceled, it being understood that City will be entitled to such material and services. Upon determination of the amount of said pro rata compensation, City will promptly pay such amount to Contractor upon delivery by Contractor of the releases of liens and affidavit, pursuant to Section 7.C.

Section 17. SERVICES

If Contractor is required to perform any services under this Agreement, Contractor shall be duly licensed and possess the necessary qualifications to provide such services. The services, if any, shall be described in Exhibit "A", which is attached hereto and incorporated herein by this reference. Contractor's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. In the event the services to be performed by Contractor under this Agreement are a prerequisite to commencing manufacturing and delivery of the Equipment, City shall have no obligation to proceed beyond performance of the services until it issues a "Notice to Proceed with Fabrication" to Contractor.

Section 18. MISCELLANEOUS PROVISIONS.

A. Delivery of Notices. 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:

CITY:	CONTRACTOR:
City of St. Helena	Gonneville, Inc.
1572 Railroad Avenue	211 Calle Pinteroesco, Unit A
St. Helena, CA 94574	San Clemente, CA. 92673
Attn: Erica Ahmann Smithies, Public Works	Attn: Don Gonneville, President

Such notice 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.

B. Assignment or Transfer. Contractor shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due Contractor from the City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to the City. If the Equipment will be incorporated into a larger project as owner provided equipment, City may in its sole discretion assign and Contractor agrees to the assignment of any and all rights, duties and obligations of City under this Agreement, including any warranty rights, to the City's independent contractor.

C. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

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

E. 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.

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

G. Interpretation. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.

H. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

I. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

J. 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.

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

L. City's Right to Employ Other Contractors. City reserves its right to employ other contractors in connection with the Equipment.

M. Compliance with Law. Contractor shall comply with all applicable laws and regulations of the federal, state and local government and shall be responsible for obtaining any required licenses, permits or certifications necessary to perform this Agreement. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of its performance of this Agreement. Contractor is aware of the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the work being performed under this Agreement is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of work under this Agreement, including any delay, shall be Contractor's sole responsibility and Contractor shall indemnify City from liability arising out of the same. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815), contractor registration (Labor

Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 and to be registered with the Department of Industrial Relations shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1771.4, 1725.5 and 1771.1.

N. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Equipment specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

O. Federal Provisions. When funding for the Agreement is provided, in whole or in part, by an agency of the federal government, Contractor shall also fully and adequately comply with the federal requirements including, but not limited to, 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is expressly incorporated herein by reference, and the Federal Contract Provisions included in Exhibit “D” attached hereto and incorporated herein by reference (“Federal Requirements”). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR EQUIPMENT PURCHASE AGREEMENT
BETWEEN THE CITY OF ST. HELENA
AND GONNEVILLE , INC.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF ST. HELENA

Approved By:

Mark T. Prestwich
City Manager

Date

Attested By:

Cindy Tzafopoulos
City Clerk

Approved As To Form:

Ethan Walsh
City Attorney

GONNEVILLE , INC.

Signature

Name

Title

Date

EXHIBIT "A"
EQUIPMENT SPECIFICATIONS

Item 1: Location / Application: Water Treatment Plant

GSA Equipment – 1 Ea Kohler 300REOZJ Generator
Includes: ➤ John Deere 6090HFG86 diesel engine ➤ Water cooled, 1800 RPM ➤ 300 kW / 375 kVA Standby Rating ➤ 277/480V, 3 phase, 60 Hz ➤ Sound-attenuated enclosure, 75 dba @23 ft ➤ Main line circuit breaker 500 Amp, 100%
Ancillary Equipment
Generator Options Package Includes: ➤ APM402 Controller ➤ Battery charger, 12/24V-10A ➤ Block heater, 2500W, 120V ➤ Generator heater 120/240V, 200W 1 Ea ASCO Automatic Transfer Switch ➤ Series 300 ➤ 277/480V, 3 phase, 60 Hz ➤ 800 Amp, 3 pole, 4W solid neutral ➤ Delayed transition ➤ Programmable exercise ➤ Nema 1 enclosure

Item 2: Location / Application: 220kVATrailer-Mounted Generator – Floater

GSA Equipment – 1 Ea Multiquip DCA220SSJU4F Generator
Includes: ➤ John Deere 6068 HFG09 Diesel Engine ➤ EPA Tier 4 Final Certified ➤ Water Cooled, 1800 RPM ➤ 176kW Standby Rating, 194 kW Prime Rating ➤ Multiple Voltage Selector, 60 Hz ➤ Sound-attenuated enclosure, 74 dba @23 ft ➤ Main line circuit breaker 600 Amp
Ancillary Equipment
Generator Options Package Includes: ➤ Battery Charger ➤ Sub-base fuel tank, 369 gallon, 30 hr run@ full load ➤ Camlock connector ➤ Power Balance Kit- 61.6kW, roof-mounted ➤ 4 X Cable, 4/0 50ft (ship loose) Trailer Package Includes: ➤ Tandem-Axle trailer, GVWR 13,500 lbs ➤ Hydraulic or Electric Brakes ➤ Coupler, 3” pintle eye or 2 5/16” ball ➤ Tongue-mounted swivel jack ➤ Spare tire w/mounting bracket

EXHIBIT “B”
DELIVERY SCHEDULE

- Estimate lead time of Fixed Generator: 14 to 16 weeks upon City approved and signed submittal is returned
- Estimate lead time of Portable Generator: 2 to 4 weeks upon City approved and signed submittal is returned
- Submittals can be provided within two weeks from receipt of an executed agreement with the City
- Delivery time is an estimate and subject to change

EXHIBIT "C"
FEE SCHEDULE

<u>Item</u>	<u>Description</u>	<u>Cost</u>
1	Water Treatment Plant	\$83,963.82
2	220kVATrailer-Mounted Generator – Floater	\$153,595.60
	SUBTOTAL	\$237,559.42
5	Anticipated Sales Tax on Items 1-2 (8.25%)	\$19,598.65
6	*Contingency	\$15,000.00
	TOTAL	\$272,158.07

*Any contingency items not outlined in Exhibit A are required to be approved in writing by the Public Works Director prior to proceeding.

EXHIBIT “D”
FEDERAL CONTRACT REQUIREMENTS

During the performance of this Agreement, the Contractor shall comply with all applicable federal laws and regulations including but not limited to the federal contract provisions in this Exhibit. In this Exhibit, the term “Agency” shall mean the City of St. Helena.

1. REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.326)

- (A) Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. See Agreement.
- (B) Appendix II to Part 200 (C) – Equal Employment Opportunity: Except as otherwise provided under 41 C.F.R. Part 60, if this contract meets the definition of a “federally assisted construction contract” in 41 C.F.R. § 60-1.3, then Contractor shall comply with the following equal opportunity clause, in accordance with Executive Order 11246 of September 24, 1965 entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967 and implementation regulations at 41 C.F.R. Chapter 60:
 - (i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - (iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action,

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including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the

applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(C) Appendix II to Part 200 (D) – Davis-Bacon Act:

- (i) If this contract is in excess of \$2,000 and if required by Federal program legislation, Contractor must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
- (ii) The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.
- (iii) If applicable, all transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor

shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

- (iv) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

(D) Appendix II to Part 200 (D) – Copeland “Anti-Kickback” Act:

- (i) Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 C.F.R. Part 3) as may be applicable, which are incorporated by reference into this contract. In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback Act. The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (ii) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (iii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (iv) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(E) Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

- (i) If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases

of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (ii) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (iii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (ii) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (ii) of this section.
 - (iv) Withholding for unpaid wages and liquidated damages. The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Agreement Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.
 - (v) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.
- (F) Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement:
- (i) If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract

with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Federal awarding agency.

- (ii) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
- (iii) This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

(G) Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act: If this contract is in excess of \$150,000, Contractor shall comply with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

- (i) Pursuant to the Clean Air Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
- (ii) Pursuant to the Federal Water Pollution Control Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

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- (H) Appendix II to Part 200 (H) – Debarment and Suspension: A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (i) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - (ii) Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - (iii) This certification is a material representation of fact relied upon by Agency. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - (iv) Contractor warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Contractor also agrees to verify that all subcontractors performing work under this contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Contractor further agrees to notify the Agency in writing immediately if Contractor or its subcontractors are not in compliance during the term of this contract.
- (I) Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: If this contract is in excess of \$100,000, Contractor shall have submitted and filed the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1353). If at any time during the contract term funding exceeds \$100,000.00, Contractor shall file with the Agency the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying.” Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to

tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

(J) Appendix II to Part 200 (J) – Procurement of Recovered Materials:

- (i) Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.
- (ii) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price.
- (iii) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iv) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

2. **MISCELLANEOUS PROVISIONS**

- (A) The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.
- (B) This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of this contract. The Vendor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- (C) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Agency, Contractor, any subcontractors or any other party pertaining to any matter resulting from the contract.
- (D) Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.
- (E) General and Administrative Expenses And Profit For Time And Materials Contracts/Amendments.

- (i) General and administrative expenses shall be negotiated and must conform to the Cost Principles.
- (ii) Profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (iii) Any agreement, amendment or change order for work performed on a time and materials basis shall include a ceiling price that Contractor exceeds at its own risk.

PSPS Emergency Back-Up Power

Project No: C21-01

Category: Civic

Project Location: LSWTP and Mobile Generator

Responsible Department:



PROJECT PURPOSE & DESCRIPTION: To replace the 35 year old generator at the Louis Stralla Water Treatment Plant (LSWTP) and to purchase one 175 KW portable generator that can be used at all critical City facilities which do not have back-up power.

EXPENDITURE ACCOUNTS: Fund: 733 Dept: 5010

EXPENDITURES								PROJECT TOTAL
	Total YTD	Rollover Funds	2020-21	2021-22	2022-23	2023-24	2024-25	
3160 - Construction Contract			350,000					350,000
EXPENDITURE TOTALS			350,000					350,000
FUNDING SOURCES								
733-Civic CIP			50,000					50,000
733-Civic State of CA OES PSPS Grant			300,000					300,000
FUNDING TOTALS			350,000					350,000

Pump Station Upgrades

Project No: W-106

Category: Water

Project Location: Crystal Springs Booster

Responsible Department:



PROJECT PURPOSE & DESCRIPTION: Upgrade existing pump stations with back-up power in the event of a power outage as required by the State Department of Health

EXPENDITURE ACCOUNTS:

Fund: 763 **Dept:** 5030

EXPENDITURES								PROJECT TOTAL
	Total YTD	Rollover Funds	2020-21	2021-22	2022-23	2023-24	2024-25	
3110 - Design	46,704	6,147						52,851
3150 - Construction Management		20,000						20,000
3160 - Construction Contract		127,149						127,149
3170 - Contingency			5,000					5,000
EXPENDITURE TOTALS	46,704	153,296	5,000					205,000
FUNDING SOURCES								
763-Water Capital Improvement	46,704	153,296	5,000					205,000
FUNDING TOTALS	46,704	153,296	5,000					205,000



Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed approval of a Resolution approving an Equipment Purchase Agreement for a portable generator with Gonnevill, Inc. for CIP Project No. W-106 Pump Station Upgrades for an amount not-to-exceed \$87,318.76.

**CEQA Exempt
Determination:**

Prepared By: Martin Beltran, Management Analyst

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

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Back-up power at multiple City utility facilities have been identified within the capital improvement program for several years and, fortunately, many have recently been funded through federal and state grant opportunities. The Crystal Spring Booster Station is one of three utility facilities that currently does not have back-up power and, while it does not have grant funding, it is in the adopted Fiscal Year 2020-21 CIP budget. The other two locations needing back-up and significant site upgrades are the Spring Mountain Road Booster Station (including Holmes Tank) and the Rutherford Pump Station.

Following the 2020 Glass Fire, it was determined it was essential to provide a source of back-up power generation to the Crystal Springs facility to minimize the impact of a future wildfire or a Public Safety Power Shut-off event. Not having back-up power at Crystal Springs could limit the City of St. Helena's ability to serve water with adequate pressure citywide should there be a facility loss due to a disaster somewhere else in the system and/or if a facility needs to be shut down for maintenance.

DISCUSSION

In light of the 2020 Glass Fire, and the location of the Crystal Springs Booster Station being in a high risk fire area, it was determined the generator should be portable in lieu of fixed. If a fire threat occurs within the area and the pump station is not in use, the generator can easily be mobilized and/or stored at another City facility.

In accordance with City of St. Helena Municipal Code Section 3.04.150, (Cooperative purchasing with other agencies). The bidding requirements of Section 3.04.100 shall not apply to the purchasing of any equipment or supplies which the purchasing officer decides to obtain through a cooperative competitive bidding procedure prepared by and processed through another public, local, state, or federal governmental agency. If it is determined to be in the best interest of the city, the purchasing officer is authorized to “piggy-back” onto or join into an existing written purchase contract, which contract was obtained within the last twelve (12) months through a competitive bidding process prepared by and awarded by another public, local, state or federal government agency. However, City Council approval is required prior to and for the joining of a “piggy-back” purchase or cooperative purchase for a purchase greater than twenty-five thousand dollars (\$25,000.00).

On September 30, 2020, Gonneville, Inc. of San Clemente visited all City locations still needing back-up power during power outages. Gonneville, Inc. has had a multiple award schedule contract that includes the purchase and installation of generators with the federal General Services Administration (GSA) since June 25, 2001 with a current expiration date of June 24, 2021. The current GSA award pricing schedule, GS-07F-0251L, was updated on February 2020. Gonneville has provided a cost for a portable generator and ancillary equipment that will meet the needs of the City as well as falling well within the City budget.

Based on the contract award with GSA, and in accordance with SHMC 3.04.150, staff is recommending the City award an agreement with Gonneville, Inc. to purchase and install the generator at Crystal Springs Booster Pump. The lead time for generator manufacture can take 2-4 weeks while permitting and onsite construction can take place within that timeframe in order to be ready for the delivery and installation.

FISCAL IMPACT

The current authorized project budget for the W-106 Pump Station Upgrade Project is \$255,000. The proposal from Gonneville, Inc. is for an amount not-to-exceed \$77,326.76 and generally includes the purchase of one portable generator, ancillary equipment, delivery, and sales tax on equipment. In the event that revisions to taxes, permitting, delivery and/or additional ancillary equipment are needed, it is recommended an additional \$10,000 for contingency is added to the total contract amount. The additional funds would need to be substantiated and agreed upon in writing by the Director of Public Works prior to invoicing.

If the project is completed under budget, the remaining water enterprise funds will be dispersed back into the fund balance.

RECOMMENDED ACTION

Adopt a Resolution approving an Equipment Purchase Agreement for a portable generator with Gonneville, Inc. for the CIP Project No. W-106 Pump Station Upgrades for an amount not-to-exceed \$87,318.76.

ATTACHMENTS

[Attachment 1: W-106 Reso Award Gonneville](#)

[Attachment 2: W-106 CIP Budget Sheet](#)

[Attachment 3: Gonneville quote for the Crystal Booster Generator](#)

[Attachment 4: W-106 Equipment Purchase Agreement_Gonneville_DRAFT](#)

CITY OF ST. HELENA

RESOLUTION No. 2020-

Resolution approving an Equipment Purchase Agreement for a Portable Generator with Gonneville, Inc. for the CIP Project No. W-106 Pump Station Upgrades for an amount not-to-exceed \$87,318.76.

RECITALS

- A. Back-up power at multiple City utility facilities have been identified within the capital improvement program for several years; and
- B. Capital Improvement Program (CIP) Project No. W-106 Pump Station Upgrades is included in the fiscal year 2020/2021 CIP budget and will provide back-up power at the Crystal Springs Booster Station; and
- C. City staff researched generator companies that provide generators and ancillary equipment and Gonneville, Inc. was the most reasonably priced, is located within California, will meet the needs of the City, and was very responsive to the City's request; and
- D. Gonneville, Inc., offers its generators through the California Multiple Award Schedule and federal General Services Administration ("GSA") multiple award schedule programs – Gonneville, Inc.'s federal GSA listing will not expire until June 24, 2021; and
- E. In accordance with St. Helena Municipal Code Section 3.04.150, the bidding requirements of Section 3.04.100 shall not apply to the purchase of any equipment or supplies which the purchasing officer decides to obtain through a cooperative competitive bidding procedure prepared and processed through another public, local, state, or federal agency; and
- F. The current GSA award pricing schedule, GS-07F-0251L, was updated on February 2020; and
- G. In accordance with St. Helena Municipal Code Section 3.04.150, staff is recommending the City award an equipment purchase agreement to Gonneville, Inc. in reliance on GSA schedule GS-07F-0251L to purchase one generator for CIP Project No. W-106 Pump Station Upgrades in the amount not-to-exceed \$87,318.76.

RESOLUTION

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

1. The Recitals set forth above are true and correct and are incorporated herein.

2. The adoption of this resolution is exempt from the requirements of CEQA pursuant to Section 15301, Class 1, which exempts the operation, leasing, or minor alteration of existing facilities; and
3. Based on the City's above described review and St. Helena Municipal Code Section 3.04.150, the City Council hereby approves award of an Equipment Purchase Agreement to Gonneville, Inc. for the CIP Project No. W-106 Pump Station Upgrades in the amount not-to-exceed \$87,318.76; and
4. This Resolution shall take effect immediately upon adoption.

Approved at a Regular Meeting of the St. Helena City Council on December 8, 2020 by the following vote:

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

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafoopoulos, City Clerk

Pump Station Upgrades

Project No: 0310-W-106

Category: Water

Project Location: Crystal Springs Booster



PROJECT PURPOSE & DESCRIPTION: Upgrade existing pump stations with back-up power in the event of a power outage as required by the State Department of Health

EXPENDITURE ACCOUNTS:

Fund: 763 **Dept:** 5030

EXPENDITURES								PROJECT TOTAL
	Total YTD	Rollover Funds	2020-21	2021-22	2022-23	2023-24	2024-25	
3110 - Design	46,704	6,147	40,000					92,851
3150 - Construction Management		20,000						20,000
3160 - Construction Contract		127,149						127,149
3170 - Contingency			15,000					15,000
EXPENDITURE TOTALS	46,704	153,296	55,000					255,000
FUNDING SOURCES								
763-Water Capital Improvement	46,704	153,296	55,000					255,000
FUNDING TOTALS	46,704	153,296	55,000					255,000



November 10, 2020

City of St. Helena
ATTN: Erica Ahmann Smithies, PE
1480 Main St.
St. Helena, CA 94574

RE: Quote #204963 – **Gonneville GSA Schedule GS-07F-0251L**

Location / Application: Crystal Booster Pump

Item 1 – GSA Equipment – 1 Ea Multiquip DCA70SSIU4F Generator	\$52,997.48
Includes: ➤ Isuzu BR-4JJ1XDiesel Engine ➤ EPA Tier 4 Final Certified ➤ Water Cooled, 1800 RPM ➤ 62kW Standby Rating, 56 kW Prime Rating ➤ Multiple Voltage Selector, 60 Hz ➤ Sound-attenuated enclosure, 65 dba @23 ft ➤ Main line circuit breaker 175 Amp	
Item 1A - Ancillary Equipment	\$10,982.90
Generator Options Package Includes: ➤ Battery Charger ➤ Sub-base fuel tank, 103 gallon, 24 hr run@ full load Trailer Package Includes: ➤ Tandem-Axle trailer, GVWR 7,000 lbs ➤ Hydraulic or Electric Brakes ➤ Coupler, 3" pintle eye or 2 5/16" ball ➤ Tongue-mounted swivel jack	
Total Project Price (turnkey), job site	\$63,980.38
Optional Adders:	
1. Cable set, 5 X 25 ft, 4/0 cable w/camlock connector	\$1,250.00
2. Cable set, 5 X 50 ft, 4/0 cable w/camlock connector	\$1,860.00
3. Power balance for DCA70	\$4,950.00

Tel: (949) 248-7297

929 Calle Negocio, Suite D, San Clemente, CA 92673
Fax: (949) 248-0666

www.gonneville.com



Quotation Notes:

- Sales tax is not included in quote prices
- Estimate leadtime, equipment only: 2 to 4 weeks ARO and signed submittal is returned
- Delivery time is an estimate and subject to change
- Submittals can be provided in two weeks from receipt of order
- Any work not stated above is not included

Clarifications:

1. Upon review, additional charges may be required and thus requoted, if engineering or city inspectors require changes to the initial design we've proposed.
2. Air quality permit fees and compliance are excluded. Local air quality authorities may require a health risk study or environmental quality assessment. The cost for a health risk study is excluded.
3. **All permits must be obtained prior to installation of the equipment.**
4. For diesel engine generators, **do not fuel** until pressurized tank testing is complete and signed off by local Hazmat authority.
5. Engines located on or near school grounds: new stationary emergency standby diesel fueled engines (greater than 50 bhp) located on school grounds or 100 m or less from a school which exists at the date of the application from permit to construct or permit to operate is deemed complete, whichever is earlier shall emit diesel PM at a rate less than or equal to 0.01 g/bhp-hr, which means that a PM filter will be necessary. If the generator is within 100 m of a kindergarten – 12th grade school and there is not a price for a PM filter on this quote, please contact us immediately.
6. Pricing is valid for 30 days from date of quote. Pricing may be adjusted after submittals and air-quality acceptance.
7. Restocking: a restocking fee of 15% will apply for cancellation after receipt of purchase order and up to 60 days prior to scheduled order shipment date. Cancellation 60 days or less before scheduled shipment date will result in full PO charges
8. Storage: Gonneville Inc and CD & Power will not be held responsible for damage, burglary or vandalism that may occur while equipment is stored at CD & Power's facility. Storage for more than one month will result in a \$100 per week storage fee. A secondary shipping and/or crane charge to jobsite may also apply.



Please do not hesitate to call us with any questions or concerns. We look forward to being of service to you.

Sincerely,

Don Gonneville

Tel: (949) 248-7297

929 Calle Negocio, Suite D, San Clemente, CA 92673
Fax: (949) 248-0666

www.gonneville.com

**CITY OF ST. HELENA
EQUIPMENT PURCHASE AGREEMENT**

**PUMP STATION UPGRADES
CIP PROJECT NO. W-106**

This Equipment Purchase Agreement (“Agreement”) is entered into this [REDACTED] day of [REDACTED], 2020, by and between the City of St. Helena, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at a municipal corporation organized under the laws of the State of California with its principal place of business at 1572 Railroad Avenue, St. Helena, CA 94574 (“City”), and Gonneville, Inc., a California corporation with its principal place of business at 211 Calle Pintesresco, Unit A, San Clemente, CA. 92673 (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

Section 1. DEFINITIONS.

A. “Equipment” means all machinery, equipment, items, parts, materials, labor or other services, including design, engineering and installation services, provided by Contractor as specified in Exhibit “A,” attached hereto and incorporated herein by reference.

B. “Delivery Date(s)” means that date or dates upon which the Equipment is to be delivered to City, ready for approval, testing and/or use as specified in Exhibit “B.”

Section 2. MATERIALS AND WORKMANSHIP.

When Exhibit “A” specifies machinery, equipment or material by manufacturer, model or trade name, no substitution will be made without City’s written approval. Machinery, equipment or material installed in the Equipment without the approval required by this Section 2 will be deemed to be defective material for purposes of Section 4. Where machinery, equipment or materials are referred to in Exhibit “A” as equal to any particular standard, City will decide the question of equality. When requested by City, Contractor will furnish City with the name of the manufacturer, the performance capabilities and other pertinent information necessary to properly determine the quality and suitability of any machines, equipment and material to be incorporated in the Equipment. Material samples will be submitted at City’s request.

If the Contractor is responsible for providing installation services, the site of any installation work shall be kept clean and free of hazards at all times during performance of such installation services. After installation is completed at the site, as applicable, Contractor shall clean the surrounding area to the condition prior to delivery and installation.

Section 3. INSPECTIONS AND TESTS.

City shall have the right to inspect and/or test the Equipment prior to acceptance. If upon inspection or testing the Equipment or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any requirements or specifications contained in Exhibit “A,” then without prejudice to any other rights or remedies,

City may reject the Equipment or exercise any of its rights under Section 4.C. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair City's right to reject nonconforming goods, irrespective of City's failure to notify Contractor of a rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof.

If the Contractor is responsible for providing installation services, finished installation work and/or equipment shall be subject to final inspection and acceptance or rejection by the City.

Section 4. WARRANTY.

A. Contractor warrants that the Equipment will be of merchantable quality and free from defects in design, engineering, material and workmanship for a period of two (2) years, or such longer period as provided by a manufacturer's warranty or as agreed to by Contractor and City, from the date of final written acceptance of the Equipment by City as required for final payment under Section 7. Contractor further warrants that any services provided in connection with the Equipment will be performed in a professional and workmanlike manner and in accordance with the highest industry standards.

B. Contractor further warrants that all machinery, equipment or process included in the Equipment will meet the performance requirements and specifications specified in Exhibit "A" and shall be fit for the purpose intended. City's inspection, testing, approval or acceptance of any such machinery, equipment or process will not relieve Contractor of its obligations under this Section 4.B.

C. For any breach of the warranties contained in Section 4.A and Section 4.B, Contractor will, immediately after receiving notice from City, at the option of City, and at Contractor's own expense and without cost to City:

1. Repair the defective Equipment;
2. Replace the defective Equipment with conforming Equipment, F.O.B. City's plant, office or other location of City where the Equipment was originally performed or delivered; or
3. Repay to City the purchase price of the defective Equipment.

If City selects repair or replacement, any defects will be remedied without cost to City, including but not limited to, the costs of removal, repair and replacement of the defective Equipment, and reinstallation of new Equipment. All such defective Equipment that is so remedied will be similarly warranted as stated above. In addition, Contractor will repair or replace other items of the Equipment which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to City.

D. Contractor also warrants that the Equipment is free and clear of all liens and encumbrances whatsoever, that Contractor has a good and marketable title to same, and that Contractor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Equipment. Contractor agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

E. In the event of a breach by Contractor of its obligations under this Section 4, City will not be limited to the remedies set forth in this Section 4, but will have all the rights and remedies permitted by applicable law, including without limitation, all of the rights and remedies afforded to City under the California Commercial Code.

Section 5. PRICES.

Unless expressly provided otherwise, all prices and fees specified in Exhibit "C," attached hereto and incorporated herein by reference, are firm and shall not be subject to change without the written approval of City. No extra charges of any kind will be allowed unless specifically agreed to in writing by City's authorized representative. The total price shall include (i) all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Equipment furnished to City hereunder; and (ii) all charges for packing, freight and transportation to destination.

Section 6. CHANGES.

City, at any time, by a written order, and without notice to any surety, may make changes in the Equipment, including but not limited to, City's requirements and specifications. If such changes affect the cost of the Equipment or time required for its performance, an equitable adjustment will be made in the price or time for performance or both. Any change in the price necessitated by such change will be agreed upon between City and Contractor and such change will be authorized by a change order document signed by City and accepted by Contractor.

Section 7. PAYMENTS.

A. Terms of payment, are net thirty (30) days, less any applicable retention, after receipt of invoice, or completion of applicable Progress Milestones. Final payment shall be made by City after Contractor has satisfied all contractual requirements. Payment of invoices shall not constitute acceptance of Equipment.

B. If Progress Milestones have been specified Exhibit "B," then payments for the Equipment will be made as the requirements of such Progress Milestones are met. Progress payments for the Equipment will be made by City upon proper application by Contractor during the progress of the Equipment and according to the terms of payment as specified in Exhibit "B." Contractor's progress billing invoice will include progress payments due for the original scope of work and changes. Each "Item for Payment" shown in Exhibit "B" and each change order will be itemized on the invoice. Invoices for cost plus work, whether part of Exhibit "B" or a change order, must have subcontractor and/or supplier invoices attached to Contractor's invoice. Other

format and support documents for invoices will be determined by City in advance of the first invoice cycle.

C. Payments otherwise due may be withheld by City on account of defective Equipment not remedied, liens or other claims filed, reasonable evidence indicating probable filing of liens or other claims, failure of Contractor to make payments properly to its subcontractors or for material or labor, the failure of Contractor to perform any of its other obligations under the Agreement, or to protect City against any liability arising out of Contractor's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, City may remove them at Contractor's expense.

D. Payment of the final Progress Milestone payment or any retention will be made by City upon:

1. Submission of an invoice for satisfactory completion of the requirements of a Progress Milestone as defined in Exhibit "B" and in the amount associated with the Progress Milestone;
2. Written acceptance of the Equipment by City;
3. Delivery of all drawings and specifications, if required by City;
4. Delivery of executed full releases of any and all liens arising out of this Agreement; and
5. Delivery of an affidavit listing all persons who might otherwise be entitled to file, claim or maintain a lien of any kind or character, and containing an averment that all of the said persons have been paid in full.

If any person refuses to furnish an actual release or receipt in full, Contractor may furnish a bond satisfactory to City to indemnify City against any claim or lien at no cost to City.

E. Acceptance by Contractor of payment of the final Progress Milestone payment pursuant to Section 7.D will constitute a waiver, release and discharge of any and all claims and demands of any kind or character which Contractor then has, or can subsequently acquire against City, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement. However, payment for the final Progress Milestone by City will not constitute a waiver, release or discharge of any claims or demands which City then has, or can subsequently acquire, against Contractor, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement.

Section 8. SCHEDULE FOR DELIVERY.

A. The time of Contractor's performance is of the essence for this Agreement. The Equipment will be delivered in accordance with the schedule set forth in Exhibit "B." Contractor must immediately notify City in writing any time delivery is behind schedule or may not be completed on schedule. In addition to any other rights City may have under this Agreement or at law, Contractor shall pay City the sum of \$500 per item of Equipment for each calendar day for which the item of Equipment is unavailable beyond the scheduled delivery date(s) specified in Exhibit "B."

B. In the event that the Equipment is part of a larger project or projects that require the coordination of multiple contractors or suppliers, then Contractor will fully cooperate in scheduling the delivery so that City can maximize the efficient completion of such project(s).

Section 9. TAXES.

A. Contractor agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state or local taxing authority on the ultimate purchase price of the Equipment provided under this Agreement.

B. Contractor will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of any federal, state or local taxing authority which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors. Contractor will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

C. All other taxes, however denominated or measured, imposed upon the price of the Equipment provided hereunder, will be the responsibility of Contractor. In addition, all taxes assessed by any taxing jurisdiction based on Contractor property used or consumed in the provision of the Equipment such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Contractor.

D. Contractor will, upon written request, submit to City written evidence of any filings or payments of all taxes required to be paid by Contractor hereunder.

Section 10. INDEPENDENT CONTRACTOR.

Contractor enters into this Agreement as an independent contractor and not as an employee of City. Contractor shall have no power or authority by this Agreement to bind City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Contractor are employees, agents, contractors or subcontractors of the Contractor and not of City. City shall not be obligated in any way to pay any wage claims or other claims made against Contractor by any such employees, agents, contractors or subcontractors or any other person resulting from performance of this Agreement.

Section 11. SUBCONTRACTS.

Unless otherwise specified, Contractor must obtain City's written permission before subcontracting any portion of the Equipment. Except for the insurance requirements in Section 13.A, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Equipment, will require that the subcontractor be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve Contractor from its obligations to City, including, but not limited to Contractor's insurance and indemnification obligations. No subcontract or order will bind City.

Section 12. TITLE AND RISK OF LOSS.

Unless otherwise agreed, City will have title to, and risk of loss of, all completed and partially completed portions of the Equipment upon delivery, as well as materials delivered to and stored on City property which are intended to become a part of the Equipment. However, Contractor will be liable for any loss or damage to the Equipment and/or the materials caused by Contractor or its subcontractors, their agents or employees, and Contractor will replace or repair said Equipment or materials at its own cost to the complete satisfaction of City. Notwithstanding the foregoing, in the event that the City has paid Contractor for all or a portion of the Equipment which remains in the possession of Contractor, then City shall have title to, and the right to take possession of, such Equipment at any time following payment therefor. Risk of loss for any Equipment which remains in the possession of Contractor shall remain with Contractor until such Equipment has been delivered or City has taken possession thereof. Contractor will have risk of loss or damage to Contractor's property used in the construction of the Equipment but which does not become a part of the Equipment.

Section 13. INDEMNIFICATION.

A. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the Equipment or the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

B. Contractor's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, employees, agents or volunteers shall be at Contractor's own cost, expense and risk. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

C. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

Section 14. INSURANCE.

A. General. Contractor shall take out and maintain:

1. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01;
2. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto);
3. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and
4. Pollution Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate shall be provided by the Contractor if transporting hazardous materials.
5. If Contractor is also the manufacturer of any equipment included in the Equipment, Contractor shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than \$1,000,000.

B. Additional Insured; Primary; Waiver of Subrogation; No Limitation on Coverage. The policies required under this Section shall give City, its officials, officers, employees, agents or volunteers additional insured status. Such policies shall contain a provision stating that Contractor's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any additional insureds shall not be called upon to contribute to any loss, and shall contain or be endorsed with a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement.

C. Insurance Carrier. All insurance required under this Section is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City.

D. Evidence of Insurance. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by the Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to

bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before delivery commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

E. Subcontractors. All subcontractors shall meet the requirements of this Section before commencing work. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

F. Freight. Contractor shall ensure that third party shippers contracted by Contractor have adequate insurance coverage for the shipped Equipment.

Section 15. LIENS.

A. Contractor, subcontractors and suppliers will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Equipment, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims"); and Contractor, subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Contractor, subcontractor and suppliers agree that this provision waiving the right of Claims will be an independent covenant.

B. Contractor will save and hold City harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and Contractor will, at its own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims.

Section 16. TERMINATION OF AGREEMENT BY CITY.

A. Should Contractor at any time refuse or fail to deliver the Equipment with promptness and diligence, or to perform any of its other obligations under the Agreement, City may terminate Contractor's right to proceed with the delivery of the Equipment by written notice to Contractor. In such event City may obtain the Equipment by whatever method it may deem expedient, including the hiring of another contractor or other contractors and, for that purpose, may take possession of all materials, machinery, equipment, tools and appliances and exercise all rights, options and privileges of Contractor. In such case Contractor will not be entitled to receive any further payments until the Equipment is delivered. If City's cost of obtaining the Equipment, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the Agreement, Contractor will be liable for and will pay the difference to City.

B. City may, for its own convenience, terminate Contractor's right to proceed with the delivery of any portion or all of the Equipment by written notice to Contractor. Such termination will be effective in the manner specified in such notice, will be without prejudice to

any claims which City may have against Contractor, and will not affect the obligations and duties of Contractor under the Agreement with respect to portions of the Equipment not terminated.

C. On receipt of notice under Section 16.B, Contractor will, with respect to the portion of the Equipment terminated, unless the notice states otherwise,

1. Immediately discontinue such portion of the Equipment and the placing of orders for materials, facilities, and supplies in connection with the Equipment,
2. Unless otherwise directed by City, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to City; and
3. Deliver only such portions of the Equipment which City deems necessary to preserve and protect those portions of the Equipment already in progress and to protect material, plant and equipment at the Equipment site or in transit to the Equipment site.

D. Upon termination pursuant to Section 16.B, Contractor will be paid a pro rata portion of the compensation in the Agreement for any portion of the terminated Equipment already delivered, including material and services for which it has made firm contracts which are not canceled, it being understood that City will be entitled to such material and services. Upon determination of the amount of said pro rata compensation, City will promptly pay such amount to Contractor upon delivery by Contractor of the releases of liens and affidavit, pursuant to Section 7.C.

Section 17. SERVICES

If Contractor is required to perform any services under this Agreement, Contractor shall be duly licensed and possess the necessary qualifications to provide such services. The services, if any, shall be described in Exhibit "A", which is attached hereto and incorporated herein by this reference. Contractor's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. In the event the services to be performed by Contractor under this Agreement are a prerequisite to commencing manufacturing and delivery of the Equipment, City shall have no obligation to proceed beyond performance of the services until it issues a "Notice to Proceed with Fabrication" to Contractor.

Section 18. MISCELLANEOUS PROVISIONS.

A. Delivery of Notices. 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:

CITY:

City of St. Helena

CONTRACTOR:

Gonneville, Inc.

1572 Railroad Avenue

211 Calle Pinteroesco, Unit A

St. Helena, CA 94574

San Clemente, CA. 92673

Attn: Erica Ahmann Smithies, Public Works

Attn: Don Gonneville, President

Such notice 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.

B. Assignment or Transfer. Contractor shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due Contractor from the City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to the City. If the Equipment will be incorporated into a larger project as owner provided equipment, City may in its sole discretion assign and Contractor agrees to the assignment of any and all rights, duties and obligations of City under this Agreement, including any warranty rights, to the City's independent contractor.

C. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

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

E. 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.

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

G. Interpretation. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.

H. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

I. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

J. 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.

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

L. City's Right to Employ Other Contractors. City reserves its right to employ other contractors in connection with the Equipment.

M. Compliance with Law. Contractor shall comply with all applicable laws and regulations of the federal, state and local government and shall be responsible for obtaining any required licenses, permits or certifications necessary to perform this Agreement. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of its performance of this Agreement. Contractor is aware of the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the work being performed under this Agreement is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of work under this Agreement, including any delay, shall be Contractor's sole responsibility and Contractor shall indemnify City from liability arising out of the same. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815), contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 and to be registered with the Department of Industrial Relations shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1771.4, 1725.5 and 1771.1.

N. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Equipment specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

O. Federal Provisions. When funding for the Agreement is provided, in whole or in part, by an agency of the federal government, Contractor shall also fully and adequately comply with the federal requirements including, but not limited to, 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is expressly incorporated herein by reference, and the Federal Contract Provisions included in Exhibit “D” attached hereto and incorporated herein by reference (“Federal Requirements”). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR EQUIPMENT PURCHASE AGREEMENT

BETWEEN THE CITY OF ST. HELENA

AND GONNEVILLE , INC.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF ST. HELENA

Approved By:

Mark T. Prestwich
City Manager

Date

Attested By:

Cindy Tzafopoulos
City Clerk

Approved As To Form:

Ethan Walsh
City Attorney

GONNEVILLE , INC.

Signature

Name

Title

Date

EXHIBIT "A"
EQUIPMENT SPECIFICATIONS

Location / Application: Crystal Springs Booster Pump

Item 1 – GSA Equipment – 1 Ea Multiquip DCA70SSIU4F Generator
Includes: ➤ Isuzu BR-4JJ1XDiesel Engine ➤ EPA Tier 4 Final Certified ➤ Water Cooled, 1800 RPM ➤ 62kW Standby Rating, 56 kW Prime Rating ➤ Multiple Voltage Selector, 60 Hz ➤ Sound-attenuated enclosure, 65 dba @23 ft ➤ Main line circuit breaker 175 Amp
Item 1A - Ancillary Equipment
Generator Options Package Includes: ➤ Battery Charger ➤ Sub-base fuel tank, 103 gallon, 24 hr run@ full load Trailer Package Includes: ➤ Tandem-Axle trailer, GVWR 7,000 lbs ➤ Hydraulic or Electric Brakes ➤ Coupler, 3" pintle eye or 2 5/16" ball ➤ Tongue-mounted swivel jack Connection includes: ➤ Cable set, 5 X 25 ft, 4/0 cable w/camlock connector ➤ Cable set, 5 X 50 ft, 4/0 cable w/camlock connector ➤ Power balance for DCA70

EXHIBIT "B"
DELIVERY SCHEDULE

- Estimate lead time of Generator: 2 to 4 weeks upon City approved and signed submittal is returned
- Submittals can be provided within two weeks from receipt of an executed agreement with the City
- Delivery time is an estimate and subject to change

EXHIBIT "C"
FEE SCHEDULE

<u>Item</u>	<u>Description</u>	<u>Cost</u>
1	Crystal Springs Booster Pump	\$72,048.38
	SUBTOTAL	\$72,048.38
5	Anticipated Sales Tax (8.25%)	\$5,278.38
6	*Contingency	\$10,000.00
	TOTAL	\$87,318.76

*Any contingency items not outlined in Exhibit A are required to be approved in writing by the Public Works Director prior to proceeding.

EXHIBIT "D"
FEDERAL CONTRACT REQUIREMENTS

During the performance of this Agreement, the Contractor shall comply with all applicable federal laws and regulations including but not limited to the federal contract provisions in this Exhibit. In this Exhibit, the term "Agency" shall mean the City of St. Helena.

1. REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.326)

- (A) Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. See Agreement.
- (B) Appendix II to Part 200 (C) – Equal Employment Opportunity: Except as otherwise provided under 41 C.F.R. Part 60, if this contract meets the definition of a "federally assisted construction contract" in 41 C.F.R. § 60-1.3, then Contractor shall comply with the following equal opportunity clause, in accordance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and implementation regulations at 41 C.F.R. Chapter 60:
 - (i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - (iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action,

including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal

opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(C) Appendix II to Part 200 (D) – Davis-Bacon Act:

- (i) If this contract is in excess of \$2,000 and if required by Federal program legislation, Contractor must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
- (ii) The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.
- (iii) If applicable, all transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

- (iv) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

(D) Appendix II to Part 200 (D) – Copeland “Anti-Kickback” Act:

- (i) Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 C.F.R. Part 3) as may be applicable, which are incorporated by reference into this contract. In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act. The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (ii) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (iii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (iv) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(E) Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

- (i) If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (ii) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (iii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (ii) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (ii) of this section.
 - (iv) Withholding for unpaid wages and liquidated damages. The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Agreement Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.
 - (v) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.
- (F) Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement:
- (i) If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions

Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Federal awarding agency.

- (ii) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
 - (iii) This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- (G) Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act: If this contract is in excess of \$150,000, Contractor shall comply with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- (i) Pursuant to the Clean Air Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
 - (ii) Pursuant to the Federal Water Pollution Control Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
- (H) Appendix II to Part 200 (H) – Debarment and Suspension: A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R.

part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- (i) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - (ii) Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - (iii) This certification is a material representation of fact relied upon by Agency. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - (iv) Contractor warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Contractor also agrees to verify that all subcontractors performing work under this contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Contractor further agrees to notify the Agency in writing immediately if Contractor or its subcontractors are not in compliance during the term of this contract.
- (I) Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: If this contract is in excess of \$100,000, Contractor shall have submitted and filed the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1353). If at any time during the contract term funding exceeds \$100,000.00, Contractor shall file with the Agency the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying." Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
- (J) Appendix II to Part 200 (J) – Procurement of Recovered Materials:

- (i) Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.
- (ii) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price.
- (iii) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iv) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

2. MISCELLANEOUS PROVISIONS

- (A) The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.
- (B) This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of this contract. The Vendor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- (C) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Agency, Contractor, any subcontractors or any other party pertaining to any matter resulting from the contract.
- (D) Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.
- (E) General and Administrative Expenses And Profit For Time And Materials Contracts/Amendments.
 - (i) General and administrative expenses shall be negotiated and must conform to the Cost Principles.
 - (ii) Profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of

the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- (iii) Any agreement, amendment or change order for work performed on a time and materials basis shall include a ceiling price that Contractor exceeds at its own risk.



Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed approval of a resolution (1) ratifying an emergency public project without public bidding relating to the Glass Fire, and (2) ratifying a Commercial Service Agreement STH Contract: FY2021-039 with Restoration Management Company in an estimated amount of \$500,000 based on time and materials for smoke mitigation at 10 City facilities.

CEQA Determination: Exempt from CEQA pursuant to Sections 21080(b)(3) and (4)

Prepared By: April Mitts, Finance Director

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On September 27, 2020, the City of St. Helena ("City") proclaimed the existence of a local emergency due to the rapid and continuing progression of the Glass Fire which was affected both Napa and Sonoma Counties.

As a result of the Glass Fire, the City of St. Helena had an urgent need for emergency work due to the impacts of this fire to critical City structures. In order to provide for a safe work environment it was necessary to conduct testing for impacts from fire and smoke exposure to determine necessary remediation. Additionally, it was necessary to conduct Phase 2 engineering, management, sampling, oversight, and required reporting for the fire debris removal planned to occur for each claim wherein a structure was destroyed by the 2020 Glass Fire. This plan will be performed according to the Napa County Department of Planning, Building, and Environmental Services (PBES) requirements.

As such, the City had to take immediate action and the City Manager took such action by procuring a Professional Services Agreement STH Contract: FY 2021-030 with Envirocheck, Inc. on October 12, 2020, which was ratified by the City Council on October 27, 2020.

On October 27, 2020, Amendment #1 was executed adding Pre and Post Combustion By-Product Survey Testing for the Robert Louis Stevenson Museum located at 1428 Library Lane for an additional \$7,150.

On October 29, 2020, Amendment #2 was executed adding Pre and Post Combustion Air Quality Survey for 10 City-owned facilities (including the Robert Louis Stevenson Museum as part of the Library) for an additional \$3,895 bringing the total not-to-exceed amount to \$104,340.

While the details of the smoke damage were yet to be known, the City executed a Commercial Service Agreement STH Contract: FY2021-033 with Restoration Management, Inc. for \$19,095.35 to install air scrubbers at various City locations. This work began on October 27, 2020. Restoration Management, Inc. is the approved vendor of the City's insurance carrier, REMIF. Since this time, the City received the smoke damage reports from Envirocheck, Inc. which included the recommended remediation. The City had the immediate need to move forward with smoke remediation in each of the City's facilities and the additional remediation work started on November 18, 2020.

DISCUSSION

Public Contract Code section 1102 defines an emergency as "a sudden unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services."

Public Contract Code section 22035 authorizes the City Council, in cases of emergency when repair or replacements are necessary, to proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts, and if notice for bids to let contracts will not be given, the City shall comply with Public Contract Code section 22050. Public Contract Code section 22050(a) authorizes the City to proceed with awarding a public works contract to perform emergency work without giving notice for bids to let contracts upon adoption by the City Council by a four-fifths vote of a resolution finding that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the action is necessary to respond to the emergency.

Pursuant to Section 3.04.290 and Section 3.04.170 of the City's Municipal Code and Public Contract Code section 22050(b), the City Council delegated authority to make an emergency determination and award a contract to perform emergency work to the City Manager.

The City Manager determined the Glass Fire constituted an emergency that did not permit undergoing the formal competitive bidding process because there is an imminent need to take immediate action to provide smoke mitigation on ten City facilities.

With that in mind, the City Manager executed STH Contract: FY2021-039 with Restoration Management, Inc. for an approximate cost of \$500,000 based off of time and materials. These cost, less the \$100,000 deductible, will be covered by the City's insurance provider, REMIF.

Now, pursuant to Public Contract Code section 22050(b)(3), the City Manager must report to the City Council the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency. In turn, pursuant to Public Contract Code section 22050(c)(2), the City Council must review the emergency action by the City Manager and determine, by a four-fifths vote, there is a need the continue the action.

Pursuant to Section 3.04.170 and 3.04.175 of the St. Helena Municipal Code, the City Manager's authority is subject to confirmation by the City Council at its next meeting for any purchase in excess of \$25,000.

FISCAL IMPACT

The fiscal impact STH Contract: FY2021-039 is a total estimated amount of \$500,000 based off of time and materials. Including ratification of STH Contract: FY2021-039 with Restoration Management, Inc., the City has executed \$1,794,714.30 in contracts/agreements related to damages and remediation due to the Glass Fire. The City is working with FEMA, CalOES, and REMIF for reimbursement of these expenses. The deductible for REMIF is \$100,000.

RECOMMENDED ACTION

Approval of a resolution: (1) ratifying an emergency public project without public bidding relating to the Glass Fire and (2) ratifying a Commercial Service Agreement STH Contract: FY2021-039 with Restoration Management Company in an estimated amount of \$500,000 based on time and materials for smoke mitigation at 10 City facilities.

ATTACHMENTS

[Attachment 1: STH Contract FY2021-039 Restoration Management Smoke Remediation](#)

[Attachment 2: St. Helena Resolution Ratification of Emergency Action Restoration Management](#)

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STH Contract: FY2021-039



4142 Point Eden Way, Hayward, CA 94545
 (800) 400-5058 • Fax: (510) 324-8016
 CA License No. 765595
 www.rmc.com

COMMERCIAL SERVICE AGREEMENT

City of St. Helena

Customer Name(s)

1572 Railroad Avenue St. Helena, CA 94574

Property Address

9/27-10/7/2020

Date of Loss

11/18/2020

Contract Date

AIG

Insurance Co.

002053743.MI

Claim No#

Type of damage (check all that apply): ☐ Water; ☐ Mold; ☒ Smoke; ☐ Asbestos; ☐ Other _____.

1. **PARTIES:** This Agreement is by and between Restoration Management Company (hereafter "Contractor") and the Customer identified above. Customer is responsible for payment to Contractor for service performed at the property identified above (hereafter the "Property").

2. **SCOPE:** Customer hereby authorizes and directs Contractor to proceed with its recommended procedures to preserve and protect the Property from further damage resulting of the loss identified above. Customer agrees to provide free and unobstructed access to the Property. **Affected Areas:** the damage observable upon initial visual inspection is generally described as: Smoke Mitigation on 10 buildings per estimates (approximately \$500,000.00) based on T&M

3. **CONTRACT PRICE:** Customer understands that water damage is a progressive condition and that for some losses, it may be impossible to render a meaningful estimate. Customer agrees to pay Contractor: ☒ on a time-and-materials basis, according to Contractor's Price List; or ☐ the lump sum of \$_____, as itemized on the Estimate dated _____ which is incorporated herein. Customer will be responsible for water, electrical and utility charges.

4. **PAYMENT:** The Customer represents that Property is insured by the carrier identified above. Regardless of the existence of insurance, Customer understands and agrees that Customer is directly liable and responsible to pay Contractor for all services, including any insurance deductible. Payment terms shall be Net 30 unless checked: ☐ Other _____.

5. **FINANCE CHARGE AND COLLECTION COSTS:** Interest shall accrue at the rate of 10% per year for all invoices not paid within 30 days. In addition, Customer shall pay an administration service charge of 5% on all past due invoices. Contractor shall be entitled to recover reasonable attorneys' fees, collection costs, expert fees, litigation and arbitration costs incurred to collect a past due balance from Customer, regardless of whether litigation or arbitration is commenced.

6. **EXTRA WORK AND CHANGE ORDERS:** Extra Work and Change Orders become part of the contract once the order is prepared in writing and signed by the parties. The order must describe the scope of the extra work or change, the cost to be added or subtracted from the contract, and the effect the order will have on the schedule of progress payments.

7. **LIST OF DOCUMENTS INCORPORATED INTO THE CONTRACT:** The undersigned acknowledges having received and read the following which are attached and made a part of this Agreement: ☒ Terms and Conditions; ☒ Price List; ☒ Estimate; ☐ Other _____.

8. **BOND:** Customer has the right to request a performance and payment bond but has declined this right.

Respiratory problems: ☐ Yes; ☐ No. **Pre-existing mold:** ☐ Yes; ☐ No.

You affirm having read and understood this contract.

"CUSTOMER(S)" Mark T. Prestwich Digitally signed by Mark T. Prestwich Date: 2020.11.22 10:33:43 -08'00' Signature – check one: ☐ Customer; ☒ Authorized Agent Mark Prestwich City Manager Print Name and Title, if applicable 11/22/20 Date	RESTORATION MANAGEMENT COMPANY Signature Aaron Armstrong Project Director Print Name and Title Date
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Revised 1/1/18

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FIRST PARTY TERMS AND CONDITIONS [Commercial] Date: 11/18/2020

Customer: City of St. Helena **Property Address:** 1572 Railroad Avenue St. Helena, CA 94574

These Terms and Conditions are incorporated into the Commercial Service Agreement:

1. APPROXIMATE START DATE: 11/18/2020 **APPROXIMATE COMPLETION DATE:** _____. Based on presently available information, Contractor has approximated the completion date in good faith, but Contractor has not been afforded the opportunity to investigate the true extent of the damage, so the completion date is subject to change. Customer understands that water damage is a progressive condition, that water can continue to wick through building materials and that it is not feasible in many cases to accurately predict drying time or completion dates.

2. DELAY: Contractor shall be excused for any delay, damage or injury caused by acts of God, natural disasters, inclement weather, other contractors, labor shortages, strikes, terrorism, the delay of an insurance carrier to authorize work, concealed or latent defects, city inspections and approvals, and for all other conditions beyond Contractor's reasonable control.

3. EXCLUSIONS: Customer acknowledges and agrees that Contractor is not responsible for addressing damage, conditions or areas outside Contractor's scope of work. Contractor is not responsible for pre-existing conditions, construction defects, design defects, deferred maintenance or housekeeping issues, including the following: **Description of Pre-Existing Conditions:** _____.

4. ACCESS: Customer shall provide free and unrestricted access to the Property to Contractor. Customer will keep driveways clear during working hours, and will provide areas for storage of equipment and debris. At no expense to Contractor, Customer will provide all water, electricity and other utilities necessary for performance of the work. Customer will secure entrances to the Property and prevent unauthorized persons from gaining access to the Property and the work area.

5. RESPONSIBILITY FOR EQUIPMENT: Customer is responsible for Contractor's tools and equipment when Contractor's employees are not on site. Customer agrees not to turn off, unplug or move equipment, including air movers.

6. RELEASE FOR THIRD PARTY PROFESSIONALS; INDEMNITY: If the property has sustained significant water damage, Customer is advised to retain the services of independent environmental consultant to inspect, and if appropriate, prepare remedial protocols. Customer shall indemnify and hold Contractor harmless for injury or damage arising from or related to: (a) Customer's failure to hire environmental consultants or design professionals; or (b) the errors or omissions of any such third party professional.

7. LIMIT OF LIABILITY: To the maximum extent permitted by law, Contractor shall not be liable for damages or injuries of more than two times the amount billed by Contractor to perform the job. Customer has been advised to remove, protect and safeguard small valuables, fragile items, drugs, weapons and cash, and Contractor shall not be liable for Customer's failure to do so. Contractor does not warrant or represent that the Property will be free of mold. Customer understands the work area is hazardous. Customer hereby agrees to release, defend and indemnify Contractor from claims, costs or expenses that arise from: a) Damage to property or injuries to persons sustained when Customer or unauthorized persons enter the work area; b) Conditions that pre-existed or are unrelated to the specific loss Contractor was hired to address; c) The premature removal of equipment or termination of work against Contractor's recommendations; d) Any refusal to allow Contractor to perform any procedure it recommends; and e) Mysterious disappearance of personal property. Problems that may occur for which Contractor will be released, indemnified and defended may include defects in the original construction, mold, bacteria, structural damage, indoor air quality contamination, and environmental illnesses (including allergies). Contractor carries commercial general liability insurance written by Arch Specialty Insurance Co. You may call Arch Specialty Insurance Co. at 877-688-2724 to check the Contractor's insurance coverage. Contractor carries workers compensation insurance for all employees. **By initialing in the space provided, Customer acknowledges having read and understood this paragraph and agrees to the limits set forth herein. Initials:** _____

8. INFORMATION NEEDED: Customer agrees to cooperate with Contractor's inspections and promises to provide Contractor with complete available information regarding any potentially relevant conditions at the Property, including any pertinent history, such as prior damage, remodeling, retrofits, leaks, water damage, mold, prior sewage backflows, etc. Customer shall be responsible for advising Contractor of the existence of hazardous substances, lead, asbestos and areas of possible danger.

"CUSTOMER(S)" Mark T. Prestwich Digitally signed by Mark T. Prestwich Date: 2020.11.22 10:34:11 -08'00'	RESTORATION MANAGEMENT COMPANY
Signature – check one: ☐ Customer; ☐ Authorized Agent	Signature
Mark Prestwich, City Manager	Aaron Armstrong, Project Director
Print Name and Title, if applicable	Print Name and Title
Date	Date

Revised 1/1/18

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Schedule of Fees - 2019 California Prevailing Wage

Management Labor Type	Unit	RT	OT	DT
Project Director	Per Hour	\$ 120.00	\$ 180.00	\$ 240.00
Project Manager	Per Hour	\$ 100.00	\$ 150.00	\$ 200.00
Operations Manager	Per Hour	\$ 95.00	\$ 142.50	\$ 190.00
Health/Safety Officer	Per Hour	\$ 85.00	\$ 127.50	\$ 170.00
Project Auditor	Per Hour	\$ 48.00	\$ 72.00	\$ 96.00
Northern California Labor Type	Unit	RT	OT	DT
Restoration Technician	Per Hour	\$ 97.00	\$ 132.00	\$ 168.50
Restoration Supervisor	Per Hour	\$ 99.00	\$ 136.50	\$ 174.50
Environmental Technician (Asbestos)	Per Hour	\$ 92.50	\$ 129.50	\$ 165.50
Environmental Supervisor (Asbestos)	Per Hour	\$ 94.50	\$ 133.00	\$ 171.50
Environmental Technician (Mold/Lead)	Per Hour	\$ 97.00	\$ 132.00	\$ 168.50
Environmental Supervisor (Mold/Lead)	Per Hour	\$ 101.00	\$ 138.50	\$ 176.50
General Labor - Restoration	Per Hour	\$ 92.00	\$ 122.50	\$ 152.00
General Labor - Smoke/Soot Cleaning Only	Per Hour	\$ 83.50	\$ 108.50	\$ 133.50
Southern California Labor Type	Unit	RT	OT	DT
Restoration Technician	Per Hour	\$ 97.50	\$ 132.50	\$ 169.00
Restoration Supervisor	Per Hour	\$ 99.50	\$ 137.00	\$ 175.00
Environmental Technician	Per Hour	\$ 95.00	\$ 129.00	\$ 165.00
Environmental Supervisor	Per Hour	\$ 99.00	\$ 135.50	\$ 173.00
General Labor	Per Hour	\$ 92.00	\$ 122.50	\$ 152.00

Labor Notes:

The labor rates above are based on an 8 hour workday, Monday through Friday (7:30 AM - 4:00 PM). All hours worked outside of these timeframes will be subject to after hours rates. Business hours may be adjusted by RMC to meet specific project needs.

The following holidays will be billed at Double Time rates: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day.

Hourly Scheduled Labor Rates will be charged Portal to Portal.

A small tool charge of 3% will be applied to all labor (non-management) on the project

Emergency service calls outside of normal business hours will be subject to an emergency service fee of \$250.

Normal business hours are Monday through Friday 7:30 AM to 4:00 PM.

A minimum stand-by charge of 4 hours per employee will be charged when circumstances beyond RMC control require RMC personnel to stand-by at the job site.

Per Diem Rates are \$40 per employee. In major metropolitan markets an additional \$10 per day will be added.

Travel, lodging and per diem will be billed at cost plus 20%.

General Notes:

Subcontractors, vendors, unscheduled materials, unscheduled equipment and other project related costs will be billed at cost plus 20%.

For all Catastrophe projects, a 5% fee will be added to the total of each invoice. This fee will assist in covering the increased indirect costs associated with Catastrophic events. Examples of these costs would be corporate support and oversight, increased labor costs, warehousing, etc.

This Schedule of Fees reflects the most commonly used labor categories, equipment and materials on typical projects. Due to the unique nature of our work, to meet project specific needs RMC may add additional labor categories, equipment or materials to this schedule of fees at rates to be determined by RMC.

Rates do not include the costs of taxes, licensing or permit fees, if applicable.

This Schedule of Fees is subject to change without notice. For customers under an annual agreement, prior written notice will be provided.

rev. 1/2/2019

1 OF 3

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Equipment List

Item	UOM	Price
Air Mover	DA	\$ 30.00
Airless Sprayer	DA	\$ 80.00
Axial Air Mover	DA	\$ 32.50
Cart, High Tech	DA	\$ 12.50
Cart, Debris	DA	\$ 40.00
Compressor	DA	\$ 38.55
Dehumidifier - Large (1200 / Evo / R175)	DA	\$ 110.00
Dehumidifier - Ex Large (2000 / R200 / R250)	DA	\$ 150.00
Dehumidifier - Desiccant 150	DA	\$ 125.00
Dehumidifier - Desiccant 385	DA	\$ 275.00
Dehumidifier - Desiccant 600	DA	\$ 375.00
Dehumidifier - Desiccant 2000	DA	\$ 950.00
Dehumidifier - Desiccant 5000	DA	\$1,550.00
Dolly	DA	\$ 9.00
Drill - Cordless / Electric	DA	\$ 12.00
Dry Ice Machine	DA	\$ 485.00
Electrical - Cord	DA	\$ 3.00
Electrical - Light String - 100'	DA	\$ 10.00
Electronic Oven (Large)	DA	\$ 325.00
Extraction unit - Portable	DA	\$ 150.00
Extraction unit - Truck Mount	DA	\$ 540.00
Fan - 36 Inch	DA	\$ 42.00
Flex Duct 8"-12" X 25'	DA	\$ 35.00
Flex Duct 14"-20" X 25'	DA	\$ 62.00
Floor Buffer	DA	\$ 89.00
Fogger - Wet	DA	\$ 15.00
Generator - Portable	DA	\$ 79.00
Generator 56KW	DA	\$ 386.00
Hand Grinder	DA	\$ 12.50
HVAC Collector - 5000	DA	\$ 225.00
Hydroxyl Generator - 3 optic	DA	\$ 230.00
Injecti-Dry / Dry Force	DA	\$ 140.00
Ladder - A Frame	DA	\$ 6.00
Ladder - Extension	DA	\$ 10.00
Manometer - Recording	DA	\$ 50.00
Mobile Containment Cube	DA	\$ 95.00
Moisture Meter	DA	\$ 28.00
Negative Air / Air Scrubber - 2000	DA	\$ 145.00
Negative Air / Air Scrubber - 500	DA	\$ 90.00
Ozone Generator	DA	\$ 150.00
Personal Air Sampling Pump	DA	\$ 20.00
Personal Fall Protection	DA	\$ 15.00
Pallet Jack	DA	\$ 20.00
Power Cable - 50'	DA	\$ 13.00

Item	UOM	Price
Power Cable - Tail	DA	\$ 4.00
Power Distribution Box	DA	\$ 28.00
Pressure Washer	DA	\$ 130.00
Pressurized Steam Cleaner	DA	\$ 375.00
Pump Sprayer	DA	\$ 5.00
Radio - 2 way	DA	\$ 6.00
Respirator - 1/2 Face	DA	\$ 9.00
Respirator - Full Face	DA	\$ 12.00
Sander - 4 1/2" w/HEPA attachment	DA	\$ 6.00
Saw - Circular (Skilsaw)	DA	\$ 12.50
Saw - Reciprocating (Sawzall)	DA	\$ 15.00
Saw - Specialty Drywall (Kett)	DA	\$ 32.00
Scaffold - Rolling	DA	\$ 90.00
Soda Blasting Machine	DA	\$ 485.00
Submersible Pump 2"	DA	\$ 181.42
Submersible Pump 3/4"	DA	\$ 35.00
Terminator (Floor Stripper)	DA	\$ 250.00
Thermal Fogger	DA	\$ 100.00
Thermal Imaging Camera	DA	\$ 225.00
Tool Box	DA	\$ 15.00
Tool Box - Technical	DA	\$ 55.00
Turbo Vent (48")	DA	\$ 10.00
Ultra Sonic	DA	\$ 350.00
Unger Pole 18-24ft	DA	\$ 12.50
Unger Pole 8-12ft	DA	\$ 9.50
Vacuum	DA	\$ 9.00
Vacuum - HEPA	DA	\$ 75.00
Water Collector	DA	\$ 3.50
Work Light	DA	\$ 6.00
Work Light - Dbl	DA	\$ 20.00
Zip Walls	DA	\$ 12.00
Vehicles	Unit	Price
Command Center	DA	\$ 275.00
Dump Truck	DA	\$ 250.00
Forklift - 8000 lb	DA	\$ 225.00
Box Truck (14'-16')	DA	\$ 160.00
Box Truck (24')	DA	\$ 245.00
Passenger Van	DA	\$ 160.00
Service Van	DA	\$ 95.00
Tractor (Semi)	DA	\$ 325.00
Trailer (14')	DA	\$ 30.00
Trailer (Flatbed)	DA	\$ 355.00
Trailer (53' Restoration)	DA	\$ 525.00
Utility Vehicle	DA	\$ 105.00

2 OF 3

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Supply List

Item	UOM	Price
9-D-9	GL	\$119.58
Adhesive Mat	EA	\$ 31.42
Air Neutralizer	GL	\$ 58.00
Anti-Microbial / Disinfectant	GL	\$ 69.50
Anti-Static Cleaner	EA	\$ 11.48
Bags, Poly 2 Mil	RL	\$ 79.80
Bags, Poly 6 Mil	RL	\$145.05
Bags, Trash	BX	\$ 49.86
Bags, HEPA Vacuum	EA	\$ 5.46
Blade, Utility Knife (100)	BX	\$ 18.63
Blade, Floor Scraper 3.5" HD	EA	\$ 13.09
Blade, Floor Scraper 4"	EA	\$ 0.50
Blade, Floor Scraper 8"	EA	\$ 1.61
Blade, Specialty Saw (Drywall)	EA	\$ 16.84
Blade, Specialty Saw (Plaster)	EA	\$ 63.59
Blade, Sawzall	EA	\$ 3.49
Blade, Terminator	EA	\$ 20.00
Bleach	GL	\$ 5.30
Board Up Hardware	EA	\$ 25.00
Box - Lamp	EA	\$ 6.51
Box - Large	EA	\$ 5.19
Box - Medium	EA	\$ 4.05
Box - Mirror	EA	\$ 9.00
Box - Small	EA	\$ 2.89
Box - Wardrobe	EA	\$ 23.67
Brush - 2" Paint	EA	\$ 1.45
Brush - Nylon	EA	\$ 1.95
Brush - Wire	EA	\$ 4.93
Brush - Nylon Cup	EA	\$ 35.09
Brush - Wire Cup	EA	\$ 48.56
Bubble Wrap 12" (750 lf)	RL	\$279.51
Bubble Wrap 24" (250 lf)	RL	\$197.84
Carpet / Upholstery Cleaner	GL	\$ 50.00
Chain	LF	\$ 8.14
Chem Sponge	EA	\$ 4.68
COC Crystals	GL	\$ 56.10
Coil Cleaner	GL	\$ 24.09
Coroplast - 4' X 8'	EA	\$ 19.49
Coroplast FR - 4' X 8'	EA	\$ 64.90
Cotton Tip Cleaning Swabs	BX	\$ 4.36
Decon Chamber	EA	\$223.43
Defoamer, Crystal	GL	\$ 38.00
Degreaser	GL	\$ 28.00
Degreaser, Citrus	GL	\$ 32.00
Disinfectant - Botanical	GL	\$ 65.89
Doodle Bug Pad	EA	\$ 5.93
Double O	GL	\$145.58
Dry Ice	BX	\$ 50.00
Drywall - 1/2" 4' X 8'	EA	\$ 32.12

Item	UOM	Price
Drywall - 5/8" 4' X 8'	EA	\$ 35.26
Duct (Mylar) 12" x 25'	EA	\$ 21.63
Dust Mask	BX	\$ 24.97
Dust Mask (N95)	EA	\$ 2.90
Encapsulant, Antimicrobial	GL	\$105.60
Encapsulant, Asbestos	GL	\$ 16.62
Encapsulant, Lead	GL	\$ 77.80
Encapsulant, Smoke/Odor	GL	\$ 70.37
Eye Protection	EA	\$ 5.58
Filter, Dehumidifier	EA	\$ 7.50
Filter, HEPA - 500	EA	\$278.00
Filter, HEPA - 2000	EA	\$201.00
Filter, HEPA Vacuum	EA	\$337.24
Filter, Primary	EA	\$ 1.85
Filter, Secondary	EA	\$ 10.75
Filter, Secondary (Charcoal)	EA	\$ 34.00
Filter, Carbon Activated - 500	EA	\$ 77.50
Filter, Carbon Activated - 2000	EA	\$111.00
Floor Buffer Pads	EA	\$ 21.95
Floor Protection, Carpet Mask	RL	\$190.00
Floor Protection, Rosin Paper	RL	\$ 24.95
Floor Protection, Masonite	EA	\$ 25.96
Floor Protection, Ram Board	RL	\$118.80
Furniture Blocks	BX	\$ 79.93
Furniture Polish	EA	\$ 7.94
Glass Cleaner	GL	\$ 26.56
Glove Bag	EA	\$ 10.40
Gloves, Nitrile	BX	\$ 22.48
Gloves, Rubber	PR	\$ 1.40
Gloves, Leather	PR	\$ 2.50
Hard Hats	EA	\$ 27.35
Isopropyl Alcohol	GL	\$ 8.65
Knee Pads	PR	\$ 26.50
Lay Flat Ducting, 10" - 12"	RL	\$120.00
Lay Flat Ducting, 18" - 20"	RL	\$180.00
Leather Cleaner	QT	\$ 36.68
Liqui-Zone	GL	\$ 60.00
Lock Box	EA	\$ 65.93
LPS 1	GL	\$107.06
LPS 2	GL	\$117.45
LPS 3	GL	\$140.60
Lumber - Plywood	EA	\$ 31.00
Lumber - 1" X 2" X 8'	EA	\$ 2.11
Lumber - 2" X 4' X 8'	EA	\$ 5.50
Mastic Remover	GL	\$ 34.50
Mop Heads	EA	\$ 8.00
Moving Blanket	EA	\$ 15.84
Oil Soap	GL	\$ 27.68
Odor Blocks	EA	\$ 6.62

Item	UOM	Price
Packing Paper	RL	\$ 27.00
Paper Pad	EA	\$ 2.36
Personal Air Sampling Casette	EA	\$ 1.80
Pine Sol	GL	\$ 10.11
Poly Sheeting 2 mil FR 10'-12'	RL	\$ 46.00
Poly Sheeting 2 mil FR 20'	RL	\$ 95.00
Poly Sheeting 4 mil FR 10'-12'	RL	\$ 72.00
Poly Sheeting 4 mil FR 20'	RL	\$134.00
Poly Sheeting 6 mil FR 10'-12'	RL	\$ 98.00
Poly Sheeting 6 mil FR 20'	RL	\$196.00
Respirator Filter (HEPA)	PR	\$ 13.30
Respirator Filter (OVAGH)	PR	\$ 30.00
Respirator Wipes	BX	\$ 16.95
Roof Tar	GL	\$ 38.15
Sanding Disc 5"	BX	\$ 38.50
Scouring Pad	EA	\$ 2.22
Shoe Cover	BX	\$ 68.27
Shrink Wrap	RL	\$ 28.34
Soda (Soda blasting)	BX	\$ 80.00
Soil, Virgin	BG	\$ 7.14
Soot Sealer	GL	\$ 92.30
Spray adhesive	EA	\$ 5.39
Spray bottle w/trigger	EA	\$ 3.65
Steel Stud - 3'5/8" X 10'	EA	\$ 15.27
Steel Wool - 0000	EA	\$ 0.80
Surfactant	GL	\$ 20.32
Tackless Strip Guard	BX	\$132.76
Tape - Blue/Green	RL	\$ 13.47
Tape - Caution	RL	\$ 17.00
Tape - Packing	RL	\$ 4.12
Tape - Double Sided	RL	\$ 12.08
Tape - Duct/Vinyl	RL	\$ 11.88
Tarp, 9 x 12	EA	\$ 40.94
Tarp, 12 x 16	EA	\$ 54.04
Tarp, 20 x 30	EA	\$109.77
Towel, Blue Shop	RL	\$ 2.34
Towel, Microfiber Yellow	BX	\$ 36.72
Towel, Surgical Blue	LB	\$ 6.97
Towel, Terry Cleaning	LB	\$ 3.92
Thermal Fog Liquid	GL	\$132.00
Tyvek (Polyethylene)	EA	\$ 22.45
Tyvek (White)	EA	\$ 7.90
Utility Knife	EA	\$ 5.78
View Window	EA	\$ 5.50
Waterproof Boots	EA	\$ 6.84
Wood Cream Cleaner	EA	\$ 76.00
Zipper, Peel & Seal	EA	\$ 14.26

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA: (1) RATIFYING EMERGENCY PUBLIC PROJECT WITHOUT PUBLIC BIDDING RELATING TO THE GLASS FIRE AND (2) RATIFYING A COMMERCIAL SERVICE AGREEMENT STH CONTRACT: FY2021-039 WITH RESTORATION MANAGEMENT, INC. IN AN ESTIMATED AMOUNT OF \$500,000 BASED OFF OF TIME AND MATERIALS FOR SMOKE MITIGATION AT TEN CITY FACILITIES

WHEREAS, Public Contract Code section 1102 defines an emergency as “a sudden unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services”; and

WHEREAS, Public Contract Code section 22035 authorizes the City Council of the City of St. Helena (“City”), in cases of emergency when repair or replacements are necessary, to proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts, and if notice for bids to let contracts will not be given, the City shall comply with Public Contract Code section 22050; and

WHEREAS, Public Contract Code section 22050(a) authorizes the City to proceed with awarding a public works contract to perform emergency work without giving notice for bids to let contracts upon adoption by the City Council by a four-fifths vote of a resolution finding that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the action is necessary to respond to the emergency; and

WHEREAS, pursuant to Section 3.04.290 and 3.04.170 of the City’s Municipal Code and Public Contract Code section 22050(b), the City Council delegated authority to make an emergency determination and award a contract to perform emergency work to the City Manager; and

WHEREAS, on September 27, 2020, the City proclaimed the existence of a local emergency due to the rapid and continuing progression of the Glass Fire which affected both Napa and Sonoma Counties; and

WHEREAS, as a result of the Glass Fire, the City of St. Helena has an urgent need for emergency work due to the impacts of this fire to critical City structures and the necessary to remediate smoke to provide a safe working environment; and

WHEREAS, the City Manager determined the Glass Fire constituted an emergency that did not permit undergoing the formal competitive bidding process because there is an imminent need to take immediate action for smoke mitigation; and

WHEREAS, the City Manager procured a Commercial Service Agreement with Restoration Management, Inc. in an estimated amount of \$500,000 for such work based on time and materials; and

WHEREAS, pursuant to Public Contract Code section 22050(b)(3), the City Manager must report to the City Council the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency; and

WHEREAS, pursuant to Public Contract Code section 22050(c)(2), the City Council must review the emergency action by the City Manager and determine, by a four-fifths vote, there is a need the continue the action; and

WHEREAS, pursuant to St. Helena Municipal Code Section 3.04.170 and 3.04.175, the City Manager's authority is subject to confirmation by the City Council at its next meeting for any purchase in excess of \$25,000.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. HELENA AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. That the public interest and necessity demand the immediate expenditure of public funds for emergency work related to the Glass Fire in order to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

SECTION 3. That the emergency would not permit a delay that would have resulted from a competitive solicitation for bids and that action was necessary to respond to the emergency related to the Glass Fire.

SECTION 4. That the City Manager's emergency determination and STH Contract FY2021-039 emergency agreement with Restoration Management, Inc. is hereby ratified.

SECTION 5. That the City Manager, or his or her designee, is hereby authorized to continue taking any directly related and immediate action required by the emergency condition related to the Glass Fire and directed to report back to the City Council regarding the status of the emergency condition and need to continue the emergency action at every regularly scheduled meeting until the emergency action is terminated.

SECTION 6. That the approvals herein authorized are necessary to protect the public health, safety, and welfare.

SECTION 7. This Resolution shall become effective immediately.

Approved at a Regular Meeting of the St. Helena City Council on December 8, 2020, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Council Member Chouteau:

Council Member Knudsen:

Council Member Koberstein:

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafopoulos, City Clerk



Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed approval of a Resolution accepting the certification of the vote for the November 3, 2020 St. Helena General Municipal Election

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 Resolution 2020-80 on July 14, 2020 calling and giving notice of a General Municipal Election to be held on November 3, 2020.

DISCUSSION

A General Municipal Election was held and conducted in the City of St. Helena, on Tuesday, November 3, 2020, as required by law. Three Mayoral candidates included incumbent Geoff Ellsworth, Mary Koberstein and Peter White; five Council Member candidates included incumbent David Knudsen, Eric Hall, Lester Hardy, Leslie Stanton and Rosaura Segura; and Advisory Measure G related to City owned property on Adams Street.

On November 25, 2020, the Napa County Registrar of Voters canvassed the vote and certified the final count, the results are attached as "Exhibit A". Eric Hall and Lester Hardy were successful in their bids for four-year term Council seats; Geoff Ellsworth was successful in his bid for Mayor for a two year-term; and a majority voted "yes" on Advisory Measure G.

Elections Code 10263 provides that upon completion of the canvass and before installing the new officers, the governing body shall adopt a resolution reciting the fact of the election of other matters that are enumerated in Election Code 10264 as follows:

As soon as the result of the election is declared, the elections official of the governing body shall enter on its records a statement of the result:

The statement shall show:

- a. The whole number of votes cast in the city.
- b. The names of the persons voted for.
- c. The measures voted upon.
- d. For what office each person was voted for.
- e. The number of votes given at each precinct to each person and for and against each measure.
- f. The number of votes given in the city to each person and for and against each measure.

FISCAL IMPACT

The FY 2020/21 Adopted Budget includes \$65,000 for Election Expenses. The actual costs for the consolidation of the election are not known at this time.

RECOMMENDED ACTION

Adopt the resolution accepting the certification of the vote for Mayor, Council Members, and Advisory Measure G.

ATTACHMENTS

[Resolution for General Municipal Election
November 3, 2020 Certification Exhibit A](#)

RESOLUTION NO. 2020-

A Resolution of the City Council of the City of St. Helena
California, Reciting the Fact of the General Municipal
Election Held on November 3, 2020 Declaring the Results
and Such Other Matters as Provided by Law

WHEREAS, a General Municipal Election was held and
conducted in the City of St. Helena, California, on Tuesday,
November 3, 2020, as required by law; and

WHEREAS, notice of the election was given in time, form
and manner as provided by law; that voting precincts were
properly established; that election officers were appointed
and that in all respects the election was held and conducted
and the votes were cast, received and canvassed and the
returns made and declared in time, form and manner as
required by the provisions of the Elections Code of the State
of California for the holding of elections in general law cities;
and

WHEREAS, the County Election Department canvassed the
returns of the election and has certified the results to this
City Council, the results are received, attached and made a
part hereof as "Exhibit A".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY
OF ST. HELENA, CALIFORNIA, DOES RESOLVE,
DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That the whole number of ballots cast in the
precincts in the City was a total of 3258 ballots cast in the
City.

SECTION 2. That the names of persons voted for at the
election for Mayor are as follows:

- Geoff Ellsworth
- Mary Koberstein
- Peter White

That the names of persons voted for at the election for
Member of the City Council are as follows:

- Eric Hall
- Lester Hardy

- David Knudsen
- Rosaura Segura
- Leslie Stanton

That the advisory measure voted upon at the election is as follows:

- ADVISORY MEASURE G

SECTION 3. That the number of votes given at each precinct and the number of votes given in the City to each of the persons above named for the respective offices for which the persons were candidates and for and against the advisory measure were as listed in Exhibit "A" attached.

SECTION 4. The City Council does declare and determine that: Geoff Ellsworth was elected as Mayor for the full term of two years; Eric Hall was elected as Member of the City Council for the full term of four years and Lester Hardy was elected as Member of the City Council for the full term of four years.

That as a result of the election, a majority of the voters voting on the Advisory Measure G relating to

"Shall the City of St. Helena prohibit hotel/motel (as defined in Section 17. 04. 160 of the Municipal Code, as it may be amended) development on the 5.6 acres of public land at the corner of Library Lane and Adams Street (Napa County Assessor's Parcel Number 009- 150-006, adjacent to the library and commonly referred to as the Adams Street property) for at least 20 years?"

did vote in favor of it, and that the advisory measure was carried, and shall be deemed an informed result.

SECTION 5. The City Clerk shall enter on the records of the City Council of the City, a statement of the result of the election, showing: (1) The whole number of ballots cast in the City; (2) The names of the persons voted for; (3) The advisory measure voted upon; (4) For what office each person was voted for; (5) The number of votes given at each precinct to each person, and for and against each measure; (6) The total number of votes given to each person, and for and against each measure.

SECTION 6. That the City Clerk shall administer to each person elected the Oath of Office prescribed in the Constitution of the State of California and shall have them subscribe to it and file it in the office of the City Clerk. Each and all of the persons so elected shall then be inducted into the respective office to which they have been elected.

SECTION 7. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

Approved at a Regular Meeting of the St. Helena City Council on December 8, 2020, by the following vote:

Mayor Geoff Ellsworth: _____

Vice Mayor Paul Dohring: _____

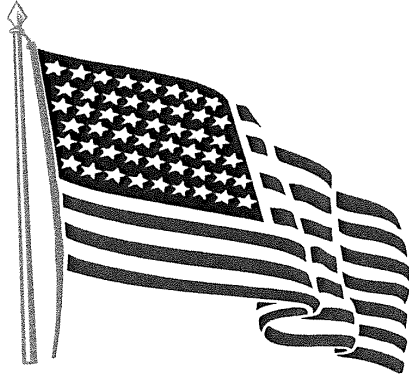
Councilmember Koberstein: _____

Councilmember Anna Chouteau: _____

Councilmember David Knudsen: _____

APPROVED: ATTEST:

Geoff Ellsworth, Mayor Cindy Tzafopoulos, City
Clerk



STATEMENT OF VOTES CAST

NOVEMBER 3, 2020 PRESIDENTIAL GENERAL ELECTION

CANVASS AND STATEMENT OF VOTE

CITY OF ST. HELENA – MAYOR AND COUNCIL

I HEREBY CERTIFY THAT ON NOVEMBER 25, 2020 THE OFFICIAL CANVASS WAS COMPLETED FOR THE PRESIDENTIAL GENERAL ELECTION HELD ON NOVEMBER 3, 2020 IN THE COUNTY OF NAPA. THE TOTAL NUMBER OF VOTES CAST IN THE RESPECTIVE PRECINCTS IS ATTACHED AND THE TOTALS AS SHOWN ARE TRUE AND CORRECT.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY SEAL THIS 25TH DAY OF NOVEMBER, 2020.

JOHN TUTEUR
REGISTRAR OF VOTERS

A handwritten signature in cursive script, appearing to read 'John Tuteur', written over a solid horizontal line.

Page 1 of 1

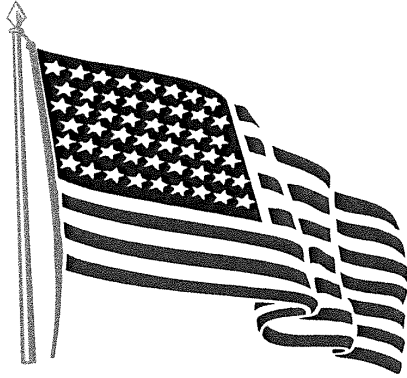
**NAPA COUNTY STATEMENT OF VOTE
November 3, 2020**

Mayor City of St Helena (Vote for 1)

Precinct	Registered Voters	Total Ballots Cast	Turnout	GEOFF ELLSWORTH	MARY KOBERSTEIN	PETER WHITE	Total Votes
332601	820	741	90.37%	327	205	169	701
332602	535	495	92.52%	162	173	143	478
332603	729	679	93.14%	222	234	202	658
332604	694	628	90.49%	270	195	130	595
332605	484	430	88.84%	172	105	115	392
332606	297	285	95.96%	87	104	77	268
Countywide Total	3,559	3,258	91.54%	1,240	1,016	836	3,092
5th Congressional District	3,559	3,258	91.54%	1,240	1,016	836	3,092
4th Assembly District	3,559	3,258	91.54%	1,240	1,016	836	3,092
3rd Senate District	3,559	3,258	91.54%	1,240	1,016	836	3,092
2nd District Board of Equalization	3,559	3,258	91.54%	1,240	1,016	836	3,092
3rd Supervisor District	3,559	3,258	91.54%	1,240	1,016	836	3,092
City of St Helena	3,559	3,258	91.54%	1,240	1,016	836	3,092

City Council City of St Helena (Vote for 2)

Precinct	Registered Voters	Total Ballots Cast	Turnout	ERIC HALL	LESTER HARDY	ROSAURA SEGURA	LESLIE STANTON	DAVID KNUDSEN	Total Votes
332601	820	741	90.37%	253	243	215	301	131	1,143
332602	535	495	92.52%	210	237	120	123	106	796
332603	729	679	93.14%	295	282	173	216	149	1,115
332604	694	628	90.49%	206	215	240	261	93	1,015
332605	484	430	88.84%	140	117	140	142	58	597
332606	297	285	95.96%	111	96	89	89	57	442
Countywide Total	3,559	3,258	91.54%	1,215	1,190	977	1,132	594	5,108
5th Congressional District	3,559	3,258	91.54%	1,215	1,190	977	1,132	594	5,108
4th Assembly District	3,559	3,258	91.54%	1,215	1,190	977	1,132	594	5,108
3rd Senate District	3,559	3,258	91.54%	1,215	1,190	977	1,132	594	5,108
2nd District Board of Equalization	3,559	3,258	91.54%	1,215	1,190	977	1,132	594	5,108
3rd Supervisor District	3,559	3,258	91.54%	1,215	1,190	977	1,132	594	5,108
City of St Helena	3,559	3,258	91.54%	1,215	1,190	977	1,132	594	5,108



STATEMENT OF VOTES CAST

NOVEMBER 3, 2020 PRESIDENTIAL GENERAL ELECTION

CANVASS AND STATEMENT OF VOTE

CITY OF ST. HELENA - MEASURE G

I HEREBY CERTIFY THAT ON NOVEMBER 25, 2020 THE OFFICIAL CANVASS WAS COMPLETED FOR THE PRESIDENTIAL GENERAL ELECTION HELD ON NOVEMBER 3, 2020 IN NAPA COUNTY. THE TOTAL NUMBER OF VOTES CAST IN THE RESPECTIVE PRECINCTS IS ATTACHED AND THE TOTALS AS SHOWN ARE TRUE AND CORRECT.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY SEAL THIS 25TH DAY OF NOVEMBER, 2020.

JOHN TUTEUR
REGISTRAR OF VOTERS

A handwritten signature in cursive script, appearing to read "John Tuteur", written over a solid horizontal line.

**NAPA COUNTY STATEMENT OF VOTE
November 3, 2020**

City of St Helena - Measure G (Vote for 1)

Precinct	Registered Voters	Total Ballots Cast	Turnout	Yes	No	Total Votes
332601	820	741	90.37%	415	287	702
332602	535	495	92.52%	190	278	468
332603	729	679	93.14%	290	349	639
332604	694	628	90.49%	313	287	600
332605	484	430	88.84%	213	178	391
332606	297	285	95.96%	137	121	258
Countywide Total	3,559	3,258	91.54%	1,558	1,500	3,058
5th Congressional District	3,559	3,258	91.54%	1,558	1,500	3,058
4th Assembly District	3,559	3,258	91.54%	1,558	1,500	3,058
3rd Senate District	3,559	3,258	91.54%	1,558	1,500	3,058
2nd Dist, Board of Equalization	3,559	3,258	91.54%	1,558	1,500	3,058
3rd Supervisor District	3,559	3,258	91.54%	1,558	1,500	3,058
City of St Helena	3,559	3,258	91.54%	1,558	1,500	3,058



Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and Proposed Approval of a Resolution Approving Napa Valley Transportation Authority Joint Powers Agreement Amendment No. 12

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

Since last summer, NVTA has been in discussions with Federal Transit Administration (FTA) Region IX, and the Build America Bureau (BAB) for a Transportation Innovation Finance and Innovation Act (TIFIA) federal loan. The new Vine Transit Maintenance Facility, which is fully designed and ready for construction bidding, qualifies for the BAB's Rural Project Initiative (RPI) which is aimed at helping improve transportation infrastructure in America's rural communities. Rates and terms are extremely attractive, currently at 0.80%, and NVTA can ask for many of the underwriting fees to be waived. The RPI has so far granted one project, which is a new maintenance yard for the Monterrey-Salinas Transit District. The BAB is also consider financing another maintenance facility in San Luis Obispo for. If successful, NVTA will be the third project awarded through the RPI.

FTA Region IX has expressed its eagerness on this project and NVTA staff are currently working on financial and legal due diligence. The BAB, FTA Region IX, and NVTA have contracted with separate financial and oversight advisors as well as acquired special legal counsel specific for this project, demonstrating that all parties are supportive of providing the funding needed to complete the project. As part of the due diligence period, and in response to the BAB, NVTA's bond counsel and general counsel have

recommended strengthening the JPA's language in the sections related to debt obligations.

Amendment No. 12 seeks is responding to BAB's concerns by clarifying the language in the JPA relating to federal debt obligations. The refinements will ensure that the JPA satisfies all federal underwriting requirements prior to funding the TIFIA loan.

The agreement to reinstate membership contributions are not reflected in the current JPA. In 2018, the City/Town Managers and County Executive Officer approved the membership contributions to NVTA from their respective jurisdictions.

There are also a few minor "clean up" changes to the JPA in Amendment No. 12, including eliminating the Abandoned Vehicle Abatement Authority (AVAA) in Section 2.3. Funding for the AVAA program expired in 2016, and its renewal would require a two-thirds countywide vote to approve a new fee program. Amendment No. 12 will eliminate this section in the JPA.

DISCUSSION

The Napa Valley Transportation Authority (NVTA) Board explored alternative financing mechanisms to fund the new Vine Transit Maintenance Facility and other large capital projects at the November 18, 2020 NVTA Board meeting. The agency's Joint Powers Agreement allows NVTA "to incur debts, liabilities and obligations" but does not satisfy lending agents' requirements associated with JPA membership. The recommended modifications are necessary to satisfy conditions of financing from financial institutions to underwrite debt obligations and receive proceeds from federal financial institutions.

The NVTA Board of Director's approved the circulation to member agencies of the proposed modifications.

The November 18, 2020 NVTA Board meeting staff report, summary memo and redlined JPA amendment are attached for review.

FISCAL IMPACT

None.

RECOMMENDED ACTION

Staff recommends adopting the resolution approving the Napa Valley Transportation Authority Joint Powers Agreement Amendment No. 12.

ATTACHMENTS

[11-18-20 NVTA Staff Report](#)

[JPA Amendment 12 Revision Summary Memo](#)

[JPA Amendment 12 \(Redlined Draft 11.12.20\) DMG_FINAL](#)

[JPA Amendment 12 DMG_FINAL-CLEAN COPY](#)

[NVTA JPA Amendment No. 12 Reso](#)



November 18, 2020
NVTA Agenda Item 11.6
Continued From: New
Action Requested: APPROVE

NAPA VALLEY TRANSPORTATION AUTHORITY COVER MEMO

SUBJECT

Amendment No. 12 to the Napa Valley Transportation Authority Joint Powers Authority (JPA)

STAFF RECOMMENDATION

That the Napa Valley Transportation Authority (NVTA) Board accept the proposed revisions to the NVTA JPA and direct staff to circulate the revisions to its member jurisdictions for approval by their respective city/town councils and the Napa County Board of Supervisors.

EXECUTIVE SUMMARY

NVTA has been exploring the use of alternative financing mechanisms to fund the new Vine Transit Maintenance Facility and other large scale capital projects. Although the agency's Joint Powers Agreement allows NVTA to incur debts, liabilities and obligations, the language is vague and legal counsel has determined that revisions are necessary to satisfy federal lending institutions' requirements associated with JPA membership.

Additionally, the monetary member contributions previously approved by the member agencies in 2018 have been memorialized in these proposed revisions as well as a few other minor changes. The proposed revisions in Attachment 1 are necessary to satisfy financing conditions to underwrite debt obligations and receive proceeds from federal financial institutions.

FISCAL IMPACT

There is no specific impact for this item. However, approval of Amendment No. 12 will satisfy requirements to obtain loans for the maintenance facility and potentially other large scale projects as well as memorialize the member contribution agreement.



November 18, 2020
NVTA Agenda Item 11.6
Continued From: New
Action Requested: APPROVE

NAPA VALLEY TRANSPORTATION AUTHORITY

Board Agenda Memo

TO: NVTA Board of Directors
FROM: Kate Miller, Executive Director
REPORT BY: Antonio Onorato, Director - Administration, Finance and Policy
(707) 259-8779 / Email: aonorato@nvta.ca.gov
SUBJECT: Amendment No. 12 to the Napa Valley Transportation Authority Joint Powers Authority (JPA)

RECOMMENDATION

That the Napa Valley Transportation Authority (NVTA) Board consider the proposed revisions to the NVTA Joint Power Agreement (JPA) (Attachment 1) and direct staff to circulate these revisions to its member jurisdictions for approval by their respective city/town councils and the Napa County Board of Supervisors

COMMITTEE RECOMMENDATION

None

BACKGROUND

Since last summer, NVTA has been in discussions with Federal Transit Administration (FTA) Region IX, and the Build America Bureau (BAB) for a Transportation Innovation Finance and Innovation Act (TIFIA) federal loan. The new Vine Transit Maintenance Facility, which is fully designed and ready for construction bidding, qualifies for the BAB's Rural Project Initiative (RPI) which is aimed at helping improve transportation infrastructure in America's rural communities. Rates and terms are extremely attractive, currently at 0.80%, and NVTA can ask for many of the underwriting fees to be waived. The RPI has so far granted one project, which is a new maintenance yard for the Monterrey-Salinas Transit District. The BAB is also consider financing another maintenance facility in San Luis Obispo for. If successful, NVTA will be the third project awarded through the RPI.

FTA Region IX has expressed its eagerness on this project and NVTA staff are currently working on financial and legal due diligence. The BAB, FTA Region IX, and NVTA have

contracted with separate financial and oversight advisors as well as acquired special legal counsel specific for this project, demonstrating that all parties are supportive of providing the funding needed to complete the project. As part of the due diligence period, and in response to the BAB, NVTA's bond counsel and general counsel have recommended strengthening the JPA's language in the sections related to debt obligations.

Amendment No. 12 seeks is responding to BAB's concerns by clarifying the language in the JPA relating to federal debt obligations. The refinements will ensure that the JPA satisfies all federal underwriting requirements prior to funding the TIFIA loan.

The agreement to reinstate membership contributions are not reflected in the current JPA. In 2018, the City/Town Managers and County Executive Officer approved the membership contributions to NVTA from their respective jurisdictions.

There are also a few minor "clean up" changes to the JPA in Amendment No. 12, including eliminating the Abandoned Vehicle Abatement Authority (AVAA) in Section 2.3. Funding for the AVAA program expired in 2016, and its renewal would require a two-thirds county-wide vote to approve a new fee program. Amendment No. 12 will eliminate this section in the JPA.

Attachment 2 provides the recommended changes to the NVTA Joint Powers Agreement in connection with the TIFIA Loan from NVTA's legal counsel.

ALTERNATIVES

If the revisions are not approved, NVTA would need to defer, delay, or cancel large projects if financing options are restricted, including the Vine Transit Maintenance Facility.

STRATEGIC GOALS MET BY THIS PROPOSAL

Goal 3: Use taxpayer dollars efficiently.

Refinements to the JPA will provide assurances to financial institutions that the agency's structure is sound and assets are adequate to meet its debt obligations.

ATTACHMENT

- (1) Proposed Draft Amendment 12 to Joint Powers Agreement for the Napa Valley Transportation Authority
- (2) Legal Counsel Memorandum- Recommended Changes to NVTA Joint Exercise of Powers Agreement in Connection with TIFIA Loan

ATTACHMENT 1
NVTa Agenda Item 11.6
November 18, 2020

**AMENDMENT NO. ~~11~~ 12
TO THE JOINT POWERS AGREEMENT
FOR THE
NAPA VALLEY TRANSPORTATION AUTHORITY**

(ALSO KNOWN AS NAPA COUNTY AGREEMENT NO. 3061; CITY OF NAPA AGREEMENT NO. 6147; CITY OF AMERICAN CANYON RESOLUTION NO. 92-33/AGREEMENT NO. 95-15; TOWN OF YOUNTVILLE RESOLUTION. NO. 868; CITY OF ST. HELENA RESOLUTION NO. 91-32; CITY OF CALISTOGA RESOLUTION NO. 91-19)

THIS AMENDMENT NO. ~~11~~ 12 TO THE JOINT POWERS AGREEMENT OF THE NAPA VALLEY TRANSPORTATION AUTHORITY (the "Agreement") is entered into as of the effective date determined under ~~(4)~~ Section 3, below, by and between the COUNTY OF NAPA, CITY OF AMERICAN CANYON, CITY OF NAPA, TOWN OF YOUNTVILLE, CITY OF ST. HELENA, and CITY OF CALISTOGA ("Member Jurisdictions");

RECITALS

WHEREAS, the Napa Valley Transportation Authority ("NVTa") is a joint powers agency created by the Member Jurisdictions to provide coordinated transportation planning and transportation services, among other duties, within the County of Napa; and

WHEREAS, the Member Jurisdictions desire to amend the Agreement to update its provisions, including but not limited to ~~changing the provisions regarding withdrawal of Member Jurisdictions and termination of the Joint Powers Agreement in order to reflect requirements for clarifying certain provisions concerning bonding, debt, and other types of debt financing, updating the powers to be exercised by the NVTa, and to better reflect the duties and purpose of the agency providing for Member Jurisdiction membership fees and making other minor corrections:~~

TERMS

NOW, THEREFORE, THE MEMBER JURISDICTIONS agree as follows:

1. The foregoing Recitals are true and correct.
2. The terms of the Agreement are hereby amended to read in full as set forth in Attachment "A", attached hereto and incorporated by reference herein.
3. ~~By approving Amendment No. 11 and authorizing execution thereof, each Member Jurisdiction hereby reconfirms its prior election to exempt Napa County from the~~

~~congestion management requirements of Chapter 2.6 of Division 1 of Title 7 of the California Government Code as permitted by Government Code section 65088.3.~~

~~4. The provisions of the Joint Powers Agreement related to withdrawal of a Member Jurisdiction or termination of the Joint Powers Agreement are hereby amended as reflected in Exhibit A attached hereto.~~

~~5. This~~ Amendment No. ~~11~~ 12 and the attached provisions of Attachment "A" shall become effective on the date the documents have been ratified by all of the Member Jurisdictions. This Amendment may be signed in counterparts by the parties hereto and shall be valid and binding as if fully executed all on one copy.

IN WITNESS WHEREOF, this Amendment No. ~~11~~ 12 to the Joint Powers Agreement creating the Napa Valley Transportation Authority was executed by the Member Jurisdictions through their duly-authorized representatives as noted below:

COUNTY OF NAPA

By: _____
ALFREDO PEDROZA, Chair
Napa County Board of Supervisors

Date: _____

ATTEST:
JOSE LOUIE VALDEZ
Clerk of the Board of Supervisors

APPROVED AS TO FORM:
JEFFREY BRAX
Acting Napa County Counsel

By: _____

By: _____

CITY OF AMERICAN CANYON

By: _____
LEON GARCIA, Mayor

Date: _____

ATTEST:
~~SUELLEN JOHNSTON~~ CHERRI WALTON
American Canyon Interim City Clerk

APPROVED AS TO FORM:
WILLIAM D. ROSS
American Canyon City Attorney

By: _____

By: _____

CITY OF NAPA

By: _____
~~JILL TECHE~~SCOTT SEDGLEY, Mayor

Date: _____

ATTEST:
~~TIFFANY CARRANZA~~DOROTHY ROBERTS
BARRETT
Napa City Clerk

APPROVED AS TO FORM:
MICHAEL W.
Napa City Attorney

By: _____

By: _____

TOWN OF YOUNTVILLE

By: _____
JOHN F. DUNBAR, Mayor

Date: _____

ATTEST:
MICHELLE DAHME
Yountville Town Clerk

APPROVED AS TO FORM:
~~MICHAEL COBDEN~~GREGORY BELL
Yountville Town Attorney

By: _____

By: _____

CITY OF ST. HELENA

By: _____
~~ALAN GALBRAITH~~GEOFF ELLSWORTH, Mayor

Date: _____

ATTEST:
CINDY TZAFPOULOS
St. Helena City Clerk

APPROVED AS TO FORM:
~~THOMAS B. BROWN~~ETHAN WALSH
St. Helena City Attorney

By: _____

By: _____

CITY OF CALISTOGA

By: _____
CHRIS CANNING, Mayor

Date: _____

ATTEST:
~~KATHY FLAMSON~~KENDALL GRANUCCI
KENYON
Calistoga City Clerk

APPROVED AS TO FORM:
MICHELLE
Calistoga City Attorney

By: _____

By: _____

ATTACHMENT “A”

NAPA VALLEY TRANSPORTATION AUTHORITY, A JOINT POWERS AGENCY JOINT EXERCISE OF POWERS AGREEMENT

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NAPA VALLEY TRANSPORTATION AUTHORITY, A JOINT POWERS AGENCY
JOINT EXERCISE OF POWERS AGREEMENT

SECTION 1. FORMATION

- 1.1 Creation and Name.** The County of Napa, the Cities of Napa, St. Helena, Calistoga, American Canyon, and the Town of Yountville (hereinafter referred to as "Member Jurisdictions"), pursuant to Article 2 of Chapter 5 of Division 7 of Title 1 (commencing with section 6500) of the California Government Code, do hereby form, establish and create a joint powers agency to be known as "Napa Valley Transportation Authority," hereinafter referred to as "NVTa" which shall constitute a public entity separate and distinct from the Member Jurisdictions, and the new name of which shall supersede and replace the prior name of the agency, the Napa County Transportation and Planning Agency ("NCTPA") and any other prior name by which the agency was known in the past, including Congestion Management Agency ("CMA").

SECTION 2. PURPOSE

- 2.1 General.** NVTa is formed to serve as the countywide transportation planning body for the incorporated and unincorporated areas within Napa County, and as an advisory body for countywide deliberations on land-use, demographics, economic development, community development, and environmental issues, which purposes shall include conducting in a coordinated and more simplified way countywide:
- (a) Transportation policy development and planning activities, including those relating to transit on both a short-term and long-term basis and within an intermodal policy framework; improving transit services; providing coordinated and more competitive input to the region's transportation planning and funding programs; and performing such other transportation related duties and responsibilities as the Member Jurisdictions may delegate to NVTa by this Agreement or amendment thereto; and
 - (b) Advisory deliberations on land-use, demographics, economic development, community development, and environmental issues. Any such deliberations may result in advisory recommendations only, and such recommendations shall not be binding on any Member Jurisdiction.
- 2.2 Chapter 2.6 Compliance Not Included in Purpose.** It is the intention of the Member Jurisdictions in executing the Agreement to exempt Napa County and the Member Jurisdictions from the requirements of Chapter 2.6 of Division 1 of Title 7 (commencing with Government Code section 65088) pertaining to congestion management planning, as permitted by Government Code section 65088.3. For

this reason, compliance with Chapter 2.6 shall not be deemed to be a purpose of NVTA.

- 2.3 Intentionally omitted. Abandoned Vehicle Abatement Authority.** ~~The name of NVTA shall supersede and replace CMA and NCTPA as the service authority for the abatement of abandoned vehicles (AVAA) for Napa County and the Member Jurisdictions pursuant to Vehicle Code section 9250 et seq. and 22710 seq. All resolutions, authorizations, funds, imposition of service fees, and responsibilities of the CMA or NCTPA in its capacity as the service authority shall be deemed to be ratified and assumed by and remain thereafter as the resolutions, authorizations, funds, imposition of service fees, and responsibilities of NVTA as AVAA on and after the effective date of Amendment No. 4 of the Agreement until such time as modified or terminated by the NVTA Board.~~
- 2.4 Preparation of County Transportation Plan.** The purposes of NVTA shall include delegation by the County of Napa to NVTA of the County's authority under Government Code section 66531 to prepare and submit to the Metropolitan Transportation Commission (MTC) a county transportation plan for the incorporated and unincorporated territory of Napa County which shall include consideration of the planning factors included in Section 134 of the federal Intermodal Surface Transportation Efficiency Act of 1991, as such may be amended from time to time.
- 2.5 Exercise of Common and Additional Powers.** The purposes of NVTA shall include establishment of NVTA as an independent joint powers entity to enable the Member Jurisdictions not only to exercise jointly the common powers of the Member Jurisdictions set forth in Section 2.1 but also to exercise such additional powers as are conferred by Section 5 of this Agreement or by the Government Code upon all joint powers agencies.

SECTION 3. ASSUMPTION OF CMA AND NCTPA CONTRACTS

- 3.1 Assumption of CMA and NCTPA Contracts.** All contracts entered into by the agency in the name of CMA or in the name of NCTPA, which ~~are were~~ in effect as of ~~the effective date of Amendment No. 10 of this Agreement~~, February 17, 2016 shall be assigned to and assumed in the name of NVTA on and after that date and all references therein to "CMA," "Congestion Management Agency," "Napa County Congestion Management Agency," "NCTPA," or "Napa County Transportation and Planning Authority" shall be deemed to refer to NVTA.
- 3.2 Delegation of Contract Responsibilities of CMA Manager or NCTPA Manager.** All references in any CMA or NCTPA contracts assumed by NVTA under Section 3.1 delegating contract responsibilities to the CMA Manager or to the NCTPA Manager shall be deemed to refer, on and after February 17, 2016 ~~the effective~~

~~dates respectively of Amendment No. 4 of the Agreement and Amendment No. 10 of the Agreement~~, to the Executive Director of NVTA.

SECTION 4. ORGANIZATION

4.1 Composition. NVTA shall be composed of the Member Jurisdictions, to-wit: the County of Napa, the Cities of American Canyon, Napa, St. Helena, and Calistoga, and the Town of Yountville.

4.2 Principal Office. The principal office of NVTA shall be established by resolution of the NVTA Board.

4.3 Governing Board. The powers of NVTA shall be vested in its governing board (hereinafter referred to as "NVTA Board").

4.3.1 Appointment, Replacement and Voting Power of NVTA Board Members ("Members").

(a) Voting Members. Each voting Member of the NVTA Board shall be an elected official of the governing board of the appointing Member Jurisdiction. One voting Member from each appointing Member Jurisdiction which is a city or town shall be that Member Jurisdiction's mayor. Any elected official serving as the Napa County representative to the Metropolitan Transportation Commission shall be one of the voting ~~Member's~~ Members appointed by that Member Jurisdiction. Members shall continue to serve as such until they cease to hold their elected positions, are removed in the sole discretion of their respective Member Jurisdiction, resign or are otherwise removed from or disqualified from holding their elected positions as a matter of law or by judgment of a court of competent jurisdiction.

(b) Non-Voting Member Representing the PCC. The non-voting Member appointed by NVTA Board upon nomination by the Paratransit Coordinating Council (PCC) shall also be a member or alternate member of the PCC, selected by and serving at the pleasure of the PCC.

(c) Vacancies. Except for a vacancy in the non-voting position appointed by the NVTA Board under subsection ~~(e)~~(b), vacancies on the NVTA Board shall be filled, to the extent practicable, by the respective Member Jurisdictions within sixty (60) days of the occurrence thereof. NVTA and the NVTA Board shall be entitled to rely upon written notice from the clerk of the governing board of the Member Jurisdiction as conclusive evidence of the appointment and removal of all Members and their alternates.

(d) **Composition of Members.** The composition of the Members of the NVTB Board shall be as follows:

<u>Appointing Entity</u>	<u>Number of Members</u>
City of American Canyon	2
City of Calistoga	2
City of Napa	2
City of St. Helena	2
Town of Yountville	2
County of Napa	2
NVTB Board (nominated by Paratransit Coordinating Council)	1

(e) **Voting Power of Members.** The voting power of the Members of the NVTB Board shall be as follows:

(1) On all matters concerning powers under Section 5.2 subsections (a) through (q), inclusive:

<u>Appointing Entity</u>	<u>Voting Power</u>
City of American Canyon	4 (each Member has two votes)
City of Calistoga	2 (each Member has one vote)
City of Napa	10 (each Member has five votes)
City of St. Helena	2 (each Member has one vote)
Town of Yountville	2 (each Member has one vote)
County of Napa	4 (each Member has 2 votes)
NVTB Board (nominated by Paratransit Coordinating Council)	0 (non-voting)

(2) On all matters concerning powers under Section 5.2 subsection (r), each voting Member shall have one vote.

(f) **Alternate Members.** Each Member Jurisdiction may, in its discretion, appoint alternate(s) for its Members of the NVTB Board. An alternate shall be an elected official of the governing board of the appointing Member Jurisdiction. Any appointed alternate Members may attend in place of that jurisdiction's Member and participate in discussions of the NVTB Board in the same manner as the Members, but an alternate of a voting Member shall vote only when the Member for whom he or she is an alternate is physically absent or cannot vote due to a conflict of interest.

4.3.2 Compensation. No compensation shall be received by any Member of the NVTB Board unless expressly authorized by unanimous resolution of all of the voting Members of the NVTB Board.

4.4 Advisory Committees.

4.4.1 Technical Advisory Committee (TAC). A single Technical Advisory Committee (TAC) shall be appointed by the NVTB Board to advise the NVTB Board regarding transit and roadway issues, including planning, project, and policy aspects. The TAC members shall include the Executive Director of NVTB, serving ex-officio; a member nominated by the PCC and appointed by the NVTB Board; and two members and two alternate members from the technical staffs of each of the Member Jurisdictions, serving ex-officio as designated by the chief administrative officers of the respective Member Jurisdictions.

4.4.2 Active Transportation Advisory Committee. The Active Transportation Advisory Committee (ATAC) shall be appointed by and serve in an advisory capacity to the NVTB Board on matters of bicycling and pedestrian issues. By-laws and amendments thereto for the ATAC shall be approved by the NVTB Board.

4.4.3 Paratransit Coordinating Council (PCC). The Paratransit Coordinating Council (PCC) shall be an advisory committee to the NVTB Board and serve as the social services transportation advisory council for Napa County provided for under Public Utilities Code section 99238. The PCC shall serve as the primary means of advice to the NVTB Board regarding, and representation of, the special transportation interests of the disabled and elderly, in order to carry out the intent of the State Legislature expressed in Public Utilities Code section 99238(d) to avoid duplicative transit advisory councils whenever possible. By-laws and amendments thereto for the PCC shall be approved by the NVTB Board.

- 4.4.4 Other Advisory Committees.** The NVTB Board may create such other advisory committees, both ad-hoc and standing, as it sees fit.
- 4.4.5 Compliance with Maddy Act.** When appointing members to the committees the NVTB Board shall comply with the provisions of the Maddy Local Appointive List Act of 1975, Government Code section 54970 et seq., as such has been and may be amended from time to time.
- 4.4.6 Compliance with Brown Act.** Except for ad hoc committees, all advisory committees created pursuant to this Section 4.4 shall be subject to the requirements of the Ralph M. Brown Act, Government Code section 54950 et seq.

SECTION 5. POWERS

- 5.1 General.** NVTB shall have all powers necessary to carry out the purpose of this Agreement. Such powers shall be subject only to the limitations set forth in this Agreement, applicable laws and regulations, and such restrictions upon the manner of exercising such powers as are imposed by law upon the County of Napa in the exercise of similar powers except where specifically authorized otherwise by the Joint Exercise of Powers Act, Government Code section 6500 et seq.
- 5.2 Approved Powers.** The powers of NVTB specifically include but are not limited to the following:
- (a) To sue and be sued in its own name;
 - (b) To incur debts, liabilities and obligations;
 - (c) To employ agents, employees and to contract with third parties for goods and services, including but not limited to the services of engineers, planners, attorneys, accountants, fiscal agents (including auditors, controllers, and treasurers), and providers of transit services;
 - (d) To acquire, improve, hold, lease and dispose of real and personal property of all types;
 - (e) To undertake the acquisition of real property through the exercise of eminent domain in furtherance of transportation and transit related projects in accordance with State and Federal laws;
 - (f) To enact an ordinance for the purpose of adopting the California Uniform Construction Cost Accounting Act procedures and establishing an alternative method of procuring small construction contracts pursuant to California Public Contracts Code sections 22000, *et seq.*, as amended from time to time.

- (g) To make and enter into any contracts with any of the Member Jurisdictions for goods, services, equipment, or real property;
- (h) To assume contracts made by any Member Jurisdiction or made pursuant to joint powers agreement between any of the Member Jurisdictions;
- (i) To apply for and accept grants, donations, advances and contributions;
- (j) To make plans and conduct studies;
- (k) To coordinate efforts with local, regional, state and federal agencies having jurisdiction over matters pertaining to transportation (including roads) and transit;
- (l) To engage in all activities necessary for NVTa to act as the Abandoned Vehicle Abatement Authority for Napa County;
- (m) To operate, directly or by contract with any person or entity including any Member Jurisdiction, any transit and paratransit services within Napa County in whole or in part and, if so, to submit any corresponding claims for funds or reimbursement under the Transportation Development Act (TDA), Section 29530 et seq. of the Government Code, as such may be amended from time to time;
- (n) To act as the overall program manager within Napa County for the purpose of receiving and reallocating the county's proportionate share of vehicle registration fees collected by the Bay Area Air Quality Management District (BAAQMD) under AB 434 (Chapter 807, Statutes of 1991, set forth in Health and Safety Code section 44241 et seq.);
- (o) To act as, exercise the powers conferred upon, and fulfill the responsibilities of the Consolidated Transportation Service Agency (CTSA) for Napa County as that term is defined in Public Utilities Code section 99204.5 as amended from time to time, if and when appointed as CTSA by the MTC, such appointment being deemed to supersede the appointment of the County of Napa as CTSA;
- (p) To invest any funds in the treasury of NVTa that are not required for the immediate necessities of NVTa in such manner as the NVTa Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601, except where otherwise restricted for particular funds by conditions imposed by the person or agency which is the source of those funds;
- (q) To apply for, expend and allocate all funds related to Transportation Development Act Article Three purposes, as set forth in Public Utilities Code section 99234, et seq., as amended from time to time.

(r) To act as a countywide advisory deliberative body on issues of land-use, demographics, economic development, community development, and environmental issues. Any such deliberations may result in advisory recommendations only, and such recommendations shall not be binding on any Member Jurisdiction.

(s) To design, construct and operate buildings and facilities of any kind, including, without limitation, transit facilities.

SECTION 6. PERSONNEL AND ADMINISTRATION

6.1 Employees. NVTA may appoint, retain and compensate as a charge against the funds of NVTA, employees, whether temporary, probationary, limited term or permanent and/or may contract with any person or entity, including a Member Jurisdiction, for the furnishing of any services, including but not limited to legal, financial, accounting, data processing, secretarial, purchasing, and personnel services, which are necessary to fulfill the powers, duties and responsibilities of NVTA under this Agreement or as necessary to comply with the laws applicable to joint powers agencies within the State of California, including but not limited to the services described in Sections 6.2 through 6.4, below. Where such services are provided by employees of a Member Jurisdiction by contract between such Member Jurisdiction and NVTA or pursuant to Section 6.3 or 6.4 of this Agreement, NVTA and the employing Member Jurisdiction hereby expressly waive any conflict of interest or incompatibility of employment created thereby.

6.2 Executive Director.

6.2.1 General. NVTA shall hire or contract for the provision of the services of an Executive Director to serve as the chief administrative officer of NVTA, performing management and other duties which shall be described in a job description/scope of services approved by resolution of the NVTA Board.

6.2.2 Filings with Secretary of State. In addition to any other duties assigned to the Executive Director or otherwise required by law, the Executive Director is hereby authorized to and shall be responsible for filing on behalf of NVTA and the NVTA Board all notices required by Government Code sections 6503.5 and 53051.

6.3 Treasurer.

6.3.1 General. The Napa County Treasurer-Tax Collector shall serve as the NVTA Treasurer and in that capacity shall be the depository and have custody of the funds of NVTA, from whatever source, and shall perform the functions described in Government Code section 6505.5 (a) through (e). Notwithstanding the foregoing, the NVTA Board may retain a certified public

accountant to serve as NVTA Treasurer in lieu of the Napa County Treasurer-Tax Collector.

6.3.2 Bond. The NVTA Treasurer shall post an official bond in an amount to be fixed by the NVTA Board. The cost of such bond shall be a charge against NVTA funds, except that if the NVTA Treasurer is the Napa County Treasurer-Tax Collector, the cost of the bond to be borne by NVTA shall be that amount which is in excess of the cost of the official bond posted by the Napa County Treasurer-Tax Collector for functions unrelated to NVTA.

6.3.3 Compensation. Pursuant to ~~Section~~ Government Code section 6505.5, the Napa County Board of Supervisors shall determine the charges to be made against NVTA for the services performed by the Napa County Treasurer-Tax Collector for NVTA which shall be a charge against NVTA funds. If the NVTA Board retains a certified public accountant to be NVTA Treasurer, the compensation of the NVTA Treasurer shall be determined by the NVTA Board and shall be a charge against NVTA funds.

6.4 Auditor-Controller.

6.4.1 General. The Napa County Auditor-Controller shall serve as the auditor-controller of NVTA and shall be responsible for drawing warrants to pay demands against NVTA when the demands have been approved by the NVTA Board or, upon delegation by the NVTA Board, by the Executive Director, or designee when acting as purchasing agent for NVTA.

6.4.2 Custodian of Property; Bond. With the exception of NVTA funds which shall be in the custody of the NVTA Treasurer, the Napa County Auditor-Controller shall, acting as NVTA Auditor-Controller, be the public officer designated pursuant to Government Code section 6505.1 to have charge of, handle, have access to, and maintain inventory any property of NVTA and shall post an official bond in an amount to be fixed by the NVTA Board. The cost of such bond, to the extent in excess of the cost of the official bond posted by the Napa County Auditor-Controller in connection with functions unrelated to NVTA, shall be a charge against NVTA funds.

6.4.3 Compensation. Pursuant to Government Code section 6505.5, the Napa County Board of Supervisors shall determine the charges to be made against the NVTA for the services performed by the Napa County Auditor-Controller for NVTA, which shall constitute a charge against the funds of NVTA.

SECTION 7. DUTIES AND RESPONSIBILITIES

- 7.1 ~~Limitations. The authority of NVTa shall be limited to those powers enumerated in Section 5 or as otherwise provided for herein. Intentionally omitted.~~
- 7.2 **Coordination of Transportation Systems.** NVTa shall facilitate the coordination of transportation systems operated by or on behalf of the Member Jurisdictions with Napa County and adjacent counties.
- 7.3 **Coordination of Transportation and Land Use Management.** NVTa shall develop and implement programs and policies for the coordination of transportation and related land use management by the Member Jurisdictions. Such programs may include, but shall not be limited to, providing analysis of the impacts of land use decisions by the Member Jurisdictions on regional transportation systems and the costs associated with mitigating those impacts. In carrying out this responsibility, NVTa shall review and comment on all discretionary projects related to transportation under consideration by any of the Member Jurisdictions and may review and comment on such discretionary projects under consideration by any other public entity which are submitted to NVTa for review and comment.
- 7.4 **Countywide Transportation Plans.** NVTa shall develop, adopt, implement, update as necessary, and submit to MTC a county transportation plan under Government Code section 66531 for the incorporated and unincorporated territory of Napa County which shall include consideration of the planning factors included in Section 134 of the federal Intermodal Surface Transportation Efficiency Act of 1991, as such may be amended from time to time.
- 7.5 **Submission of Funding Applications and Claims.** NVTa may submit applications and funding claims for transportation related purposes to local government, MTC, the State of California, the Federal Government and other entities supporting transportation.
- 7.6 **Intermodal Policies and Programs.** NVTa may consider and adopt policies and programs for all modes of transportation including but not limited to, transit, paratransit, streets and roads, bicycle and pedestrian facilities, airports, marinas, harbors, and railroads.
- 7.7 **Transportation Development Act (TDA) Claims for Transit and Paratransit Services.** If NVTa operates directly or by contract with any person or entity including any Member Jurisdiction the operation of any transit and paratransit services within Napa County in whole or in part, NVTa shall be deemed authorized by this Agreement to submit any corresponding claims for funds or reimbursement under the Transportation Development Act (TDA), Section 29530 et seq. of the Government Code, as such may be amended from time to time.

- 7.8 Consolidated Transit Services Agency.** If, in the future and with the consent of all of the Member Jurisdictions and MTC, NVTA is appointed in place of the Napa County Board of Supervisors as the consolidated transportation service agency (CTSA) for Napa County as that term is defined in Public Utilities Code section 99204.5, as such may be amended from time to time, then and only then may NVTA make claims pursuant to the procedure set forth in Article 7 of Chapter 3 of Title 21 of the California Code of Regulations, commencing with 6680.
- 7.9 Overall Program Manager (AB 434).** NVTA shall act as the overall program manager within Napa County for the purpose of receiving and reallocating the county's proportionate share of vehicle registration fees collected by the Bay Area Air Quality Management District (BAAQMD) under AB 434 (Chapter 807, Statutes of 1991, set forth in Health and Safety Code section 44241 et seq.).
- 7.10 Deliberative Body.** NVTA shall act as the countywide deliberative body for discussions of inter-jurisdictional issues relating to land use, infrastructure, the economy and economic development, community development, and environmental issues. No subject may be deliberated unless a majority of votes, as determined by Section 4.3.1 ~~(f)~~ (e) (2) of this Agreement, of the Board has approved such deliberations. The NVTA may adopt decisions on such matters, but its decisions shall constitute recommendations to the Member Jurisdictions only, and shall have no binding effect. Final decision making on all matters affecting Member Jurisdictions shall remain with the governing body of each Member, except as provided by Sections 5.2 (a) through (p) inclusive, of this Joint Powers Agreement, state or federal law, and applicable regulations.
- 7.11 Other Duties and Responsibilities.** NVTA shall carry out such other duties and responsibilities as the Member Jurisdictions, by unanimous approval expressed through amendment of this Agreement or resolutions of their respective governing boards, may delegate to NVTA.

SECTION 8. FINANCE

- 8.1 Fiscal Year.** The fiscal year for NVTA shall begin on July 1 and end on June 30.
- 8.2 Budget.** A budget for NVTA shall be adopted by the NVTA Board for each fiscal year prior to June 30 of the preceding fiscal year. The budget shall include sufficient detail to constitute an operating guideline. It shall also include the anticipated sources of funds and the anticipated expenditures to be made for the operations of NVTA. Approval of the budget by the NVTA Board shall constitute authority for the Executive Director to expend funds for the purposes outlined in the approved budget, subject to the availability of funds on hand as determined by the NVTA Auditor-Controller and subject to the constraints imposed upon general law counties pertaining to execution of contracts by purchasing agents. Nothing

in this Section 8.2 shall be construed to limit the power of the NVTB Board to modify the budget in whatever manner it deems appropriate and to instruct the Executive Director accordingly.

8.3 Revenues.

- 8.3.1 General Membership Fees.** – The Member Jurisdictions shall pay to NVTB an annual membership fee (the “Membership Fee”) based on (a) the relative populations of the Member Jurisdictions and (b) the relative number of road miles served by NVTB in each Member Jurisdiction. The Membership Fee shall be due and payable on or before **June 30 of the current in each** fiscal year. The fees for fiscal year 2021-2022 are shown in the chart below. NVTB shall adjust the Membership Fees based on changes to the Bay Area Consumer Price Index every two years concurrently with NVTB’s biennial budget cycle, provided that the total Membership Fees assessed to the Member Jurisdictions shall not be reduced below \$250,000 until all bonds or other instruments of indebtedness issued or entered into by NVTB, if any, have been paid in full.

<u>Member Jurisdiction</u>	<u>Membership Fee (FY 2021-2022)</u>	<u>Weighted Average</u>
City of Napa	\$109,480	43.79%
Napa County	\$91,841	36.74%
City of American Canyon	\$27,820	11.13%
Town of Yountville	\$3,905	1.56%
City of St. Helena	\$9,666	3.87%
City of Calistoga	\$7,288	2.92%
Total	\$250,000	100%

Unless otherwise agreed by the Member Jurisdictions by amendment of this Agreement, the total expenditures in the annual planning budget shall be paid for with revenues derived from funds paid directly to NVTB by persons or entities, public or private, other than the Member Jurisdictions and from contributions from the Member Jurisdictions (in money or, upon approval by the NVTB Board, in kind) based on the relative populations of the Member Jurisdictions. In determining said population ratios the latest population statistics by the State Department of Finance shall be used.

- 8.3.2 Approval Required for Changes to Membership Fee Apportionment** ~~Member Jurisdiction Contributions.~~ No change shall be made to the apportionment of Membership Fees among the Member Jurisdictions (as set forth in the “Weighted Average” column of the Membership Fee chart shown in Section 8.3.1, above) ~~Notwithstanding the foregoing, no Member Jurisdiction shall be required to expend any of its~~

~~general fund monies to support the operations of NVTA in any fiscal year unless such expenditure change in apportionment has been first approved by the legislative body/bodies of all of the Member Jurisdictions.~~

8.3.3 Transportation Funds. In order to carry out the transportation duties and responsibilities of this Agreement, NVTA shall be empowered to claim all TDA funds under Articles 4, 4.5 and/or 8 of Chapter 4 of the Public Utilities Code apportioned within Napa County by the Metropolitan Transportation Commission. All TDA funds will be used for purposes allowed under TDA regulations with the exception of those funds for streets and roads, Section 99400(a) of the Public Utilities Code. All TDA funds claimed by NVTA shall be used at the sole discretion of the NVTA Board of Directors only for transportation, transit, paratransit services, ~~and related~~ capital improvements and payment of related debt obligations. TDA funds apportioned or allocated under Section 99233.3 are not subject to this agreement. Member Jurisdictions endorse a single apportionment by MTC under Sections 99233.8 and 99233.9 of the Public Utilities Code to the NVTA on behalf of the jurisdictions of Napa County. If apportionment under Sections 99233.8 and 99233.9 of the Public Utilities Code are made to any Member Jurisdiction, the NVTA is authorized to claim all such apportionments for transit purposes without further action by the Member Jurisdiction. Funds available pursuant to Section 99313.6, excluding funds apportioned or allocated under Section 99314.3, shall be claimed solely by the NVTA for transit purposes. No Member Jurisdiction shall claim funds apportioned or allocated under Section 99313.6, excluding funds apportioned or allocated under Section 99314.3.

8.3.4 Standards For Use of TDA Funds. Every two years, the NVTA will prepare and adopt a Short Range Transit Plan ("SRTP"). As warranted, at the discretion of the NVTA Board, the SRTP may be updated annually. The NVTA Board will adopt the SRTP and any updated SRTP. The SRTP shall provide the basis for evaluating what services are necessary and where services will be provided.

8.4 Accountability.

8.4.1 Accountable to Member Jurisdictions. NVTA shall be strictly accountable to the Member Jurisdictions for all receipts and disbursements of NVTA.

8.4.2 ~~Limitation on Expenditures.~~ ~~NVTA may not obligate itself beyond the monies due to NVTA under this Agreement plus any monies on hand or irrevocably pledged to its support from other sources.~~

8.4.3 Annual Financial Audit. The NVTA Board shall cause an annual financial audit to be prepared and filed to the extent required by Government Code section 6505.

8.5 Debts, Liabilities and Obligations.

8.5.1 General.

(a) Obligation and Assignment of Debt. The debts, liabilities, and obligations of NVTA shall be solely the obligation of NVTA and not the debts, liabilities, and obligations of the Member Jurisdictions or their respective officers or employees. However, nothing in this Agreement shall prevent any Member Jurisdiction from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of NVTA, provided that both the NVTA Board and that Member Jurisdiction give prior approval of such contract or assumption.

(b) Advance Notice of Debts. NVTA will provide notice to the NVTA Board of Directors at their next regular or special meeting prior to submission of a formal application for long term debt where debt payments are expected to exceed one year. This notice provision shall not apply to applications for or extensions to lines of credit.

8.5.2 Liability.

(a) Primary Liability. If liability is imposed upon NVTA by a court of competent jurisdiction by reason of negligent or willful acts or omissions of NVTA or any of its officers, employees, agents, volunteers, or contractors, any resulting monetary judgment against NVTA shall be paid first from the discretionary funds of NVTA or, if the liability arose from the actions of a contractor, contribution shall be sought from the contractor.

(b) Insurance. To comply with subsection (a), above, NVTA shall obtain and maintain in force during the life of this Agreement insurance for errors and omissions, general liability, and vehicle liability in amounts deemed by the NVTA Board to be sufficient to fully cover NVTA, its officers, employees, board members, and agents, and the Member Jurisdictions for any reasonably foreseeable losses. Where services are provided by contract to NVTA, the contract shall require the contractor to obtain insurance sufficient to hold NVTA and the Member Jurisdictions harmless and indemnify them against any claims for liability arising from the provision of the services. The cost of such coverage, whether obtained directly by NVTA or as any increased in the contract price for services obtained under contract, shall be a charge against NVTA funds.

~~(c) **Contribution by Member Jurisdictions.** If NVTA funds or insurance coverage are insufficient, or if any Member Jurisdiction is sued and found liable for a negligent or willful act or omission of NVTA or any of its officers, employees, agents, volunteers, or contractors and NVTA funds or contractor contribution are insufficient to pay the judgment or to reimburse the sued Member Jurisdiction for paying the judgment, the Member Jurisdictions shall be responsible for the liability for purposes of contribution under Government Code section 895.4 in proportion to the voting power of each Member Jurisdiction on the NVTA Board.~~

SECTION 9. RULES OF CONDUCT

- 9.1 **Bylaws.** The NVTA Board may from time to time adopt bylaws for the conduct of the affairs of NVTA and the NVTA Board, provided such Rules of Conduct are not inconsistent with this Agreement.
- 9.2 **Quorum.** A majority of the voting power and seven (7) of the twelve (12) voting members (or their alternates) of the NVTA Board shall constitute a quorum for the transaction of business at any meeting of the NVTA Board. Notwithstanding the foregoing, if a quorum is present at the commencement of the meeting, the affirmative vote of a majority of the voting power of the NVTA Board shall constitute the act of the NVTA Board even if, at the time of such vote, less than seven voting members (or their alternates) are present.
- 9.3 **Adjournment of Meetings.** Any meeting of the NVTA Board, whether or not a quorum is present, may be adjourned \by a vote of the majority of the voting members (or their alternates) present or, if no voting members or their alternates are present, may be adjourned by the person appointed to serve as Clerk or Secretary of the NVTA Board.
- 9.4 **Brown Act.** All meetings of the NVTA Board shall comply with the requirements of the Ralph M. Brown Act (Government Code section 54950 et seq.).

SECTION 10. NOTICES

- 10.1 **Method.** All notices which any Member Jurisdiction or NVTA may wish to give in connection with this Agreement shall be in writing and served by personal delivery during business hours at the principal office of the Member Jurisdiction or NVTA to an officer or person apparently in charge of that office, or by deposit in the United States mail, postage prepaid, and addressed to the Member Jurisdiction or NVTA at its principal office or to such other address as the Member Jurisdiction or NVTA may designate from time to time by written notice to NVTA and each of the parties. Service of notice shall be deemed complete on the day of personal delivery (or 24 hours after such delivery for notice of special meetings) or three (3) days after mailing if deposited in the United States mail.

10.2 Addresses for Notice. Until changed by written notice to NVTa and the Member Jurisdictions, notices under this Agreement shall be delivered to the following addresses:

NVTa:	Executive Director Napa Valley Transportation Authority 625 Burnell Street Napa, California 94559-3420
COUNTY OF NAPA:	Clerk of the Board of Supervisors County Administration Building 1195 Third Street, Room 310 Napa, California 94559
CITY OF AMERICAN CANYON:	American Canyon City Clerk 4381 Broadway Street, Suite 201 American Canyon, California 94503
CITY OF NAPA:	Napa City Clerk 955 School Street Napa, California 94559
TOWN OF YOUNTVILLE:	Yountville Town Clerk 6550 Yount Street Yountville, California 94599
CITY OF ST. HELENA:	St. Helena City Clerk 1480 Main Street St. Helena, California 94574
CITY OF CALISTOGA:	Calistoga City Clerk 1232 Washington Street Calistoga, California 94515

SECTION 11. ASSIGNMENT, WITHDRAWAL AND TERMINATION

11.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Member Jurisdictions, except that no Member Jurisdiction shall assign any of its rights under this Agreement except to a duly-formed public entity organized and existing under the laws of the State of California and then only when approved by amendment of this Agreement.

11.2 Withdrawal. A Member Jurisdiction may withdraw from NVTa without the consent of the other Member Jurisdictions by giving no less than ninety (90) days prior

written notice to the NVTA Board. A Member Jurisdiction may withdraw from NVTA at any time with the written consent of all of the other Member Jurisdictions contained in an amendment of this Agreement. A Member Jurisdiction electing to withdraw prior to termination of the Agreement pursuant to Section 11.3 shall not be entitled to share in the distribution of assets provided for in Section 11.3. This provision shall not be effective and no Member Jurisdiction may withdraw from NVTA until all bonds or other instruments of indebtedness issued or entered into by NVTA, if any, have been paid in full.

11.3 Termination. The Agreement shall continue in effect until terminated. The Agreement may be terminated at any time and NVTA dissolved with the written consent of the majority of the then-existing Member Jurisdictions representing a majority of the votes on the NVTA Board. Such consent shall be expressed in duly-authorized resolutions of the Member Jurisdictions. This provision shall not be effective so long as any bonds or other indebtedness of NVTA are outstanding and unpaid, or funds are not otherwise set aside for the payment or redemption thereof in accordance with the terms of the bonds or other indebtedness and the documentation relating thereto.

11.4 Disposition of Assets. In the event of termination of the Agreement and dissolution of NVTA, any remaining assets of NVTA shall be sold or, if sale is prohibited under the terms of original acquisition, returned to or otherwise disposed of at the direction of the party or persons from whom they were obtained. After all liabilities, encumbrances and liens have been paid, the proceeds of such sales shall be allocated proportionately to the Member Jurisdictions based upon their respective populations as determined by the latest California State Department of Finance population figures. Notwithstanding the foregoing, in accordance with Government Code section 6512, any funds remaining at the time of termination which were contributed by the Member Jurisdictions shall be returned to the Member Jurisdictions in proportion to the contributions made.

SECTION 12. AMENDMENTS

12.1 Method of Amendment. Amendments to this Agreement shall be made only with the written consent of all then-existing Member Jurisdictions without regard to voting power on the NVTA Board. So long as any bonds or other indebtedness of NVTA are outstanding and unpaid, or funds are not otherwise set aside for the payment or redemption thereof in accordance with the terms of the bonds or other indebtedness and the documentation relating thereto, this Joint Powers Agreement shall not be amended, modified or otherwise revised, changed or rescinded, unless the NVTA and Member Jurisdictions have first complied with (i) the procedures required to amend any indenture for existing Bonds, or (ii) the terms of other indebtedness, as applicable.

SECTION 13. WAIVER

- 13.1 Limitation.** Waiver by any Member Jurisdiction of breach of any provision of this Agreement shall not constitute a waiver of any other breach of such provision or of any other provision of this Agreement, nor shall failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

SECTION 14. SEVERABILITY

- 14.1 General.** Should any part, term or provision of this Agreement be decided by a final judgment of a court of competent jurisdiction to be illegal or in conflict with any State or federal law or regulation or any applicable local ordinance or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms and provisions shall not be affected.

SECTION 15. SECTION HEADINGS

- 15.1 Effect.** All section numbers and headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

SECTION 16. APPLICABLE LAW AND VENUE

- 16.1 Applicable Law.** The rights, obligations, duties and liabilities of NVTa and of the Member Jurisdictions under this Agreement shall be interpreted in accordance with and governed by the law of the State of California.
- 16.2 Venue for Disputes.** Venue for any action filed by any Member Jurisdiction under state law to enforce this Agreement or any provision thereof shall be in the courts of Napa County. Venue for any action filed by any Member Jurisdiction under federal law or as a federal action shall be in the federal courts for the Northern District of California.

SECTION 17. NO RIGHTS CREATED IN THIRD PARTIES

- 17.1 No Rights for Third Parties.** The parties to this Agreement hereby expressly agree that it is not the intent of the parties to create, and this Agreement shall not be deemed or construed to create any third party beneficiaries or otherwise inure to the benefit of any third parties.

SECTION 18. ENTIRE AGREEMENT

- 18.1 Integrated Agreement.** The terms and provisions of this Agreement constitute the full and entire agreement between the Member Jurisdictions with respect to the matters covered herein. This Agreement supersedes any and all other

communications, representations, proposals, understandings or agreements, either written or oral, between the Member Jurisdictions with respect to such subject matter, including any prior agreement or amendment thereto relating to the CMA.

DRAFT



ATTACHMENT 2
NVTA Agenda Item 11.6
November 18, 2020

Memorandum

To: Board of Directors, Napa Valley Transportation Authority

From: DeeAnne Gillick and Paul Chrisman – Sloan Sakai Yeung & Wong

Date: November 11, 2020

Re: *Recommended Changes to NVTA Joint Exercise of Powers Agreement in connection with TIFIA Loan*

The draft 12th Amendment of the NVTA Joint Exercise of Powers Agreement presented to the Board at this meeting includes several changes necessary for the proposed TIFIA loan, as well as certain other recommended changes and corrections. The following is a discussion of the proposed changes and corrections to the NVTA Joint Exercise of Powers Agreement:

Section 2.3 (Abandoned Vehicle Abatement Authority): Section 2.3 states that one of the purposes of NVTA is to act as the Abandoned Vehicle Abatement Authority for Napa County. The source of revenues, a \$1 DMV fee assessed for every vehicle in Napa County, expired and the jurisdictions collectively agreed to not to seek approval for its renewal from Napa County voters. Since the funds have expired, there is no longer a need for an Abandoned Vehicle Abatement Authority. Therefore, we recommend the deletion of this section as an update to the JPA Agreement although it is not necessary for the TIFIA loan.

Section 5.2(s): Section 5.2 sets forth the approved powers of NVTA. It is recommended that section (m) is added to specifically authorize NVTA to design, construct and operate buildings and facilities, including transit facilities. This type of power is inferred from the specified powers in the existing Agreement; however, as other edits are requested for purposes of the TIFIA loan it is recommended that this language is added to clearly set forth NVTA's power to construction the facilities which would be the subject of the TIFIA loan.

Section 7.1 (Limitations): The current language of Section 7.1 states that, "the authority of NVTA shall be limited to those powers enumerated in Section 5 or as otherwise provided for herein." We recommend that this section be deleted in its entirety since it contradicts the language of Sections 5.1 and 5.2 which state that the powers specifically enumerated in the JPA Agreement are not intended as a limitation on NVTA's powers. Moreover, the language of Section 7.1 could be interpreted as a limitation on NVTA's power to issue bonds and incur other debt under the Marks-Roos Local Bond Pooling Act of 1985 (Government code Section 6584 *et seq.*). We recommend the deletion of this section in order to clarify an ambiguity in the current



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November 11, 2020
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language of the JPA Agreement. In addition, we view this change as necessary for the TIFIA loan.

Sections 8.3.1 and 8.3.2 (Membership Fees): These sections have been modified to reflect the structure of membership fees currently paid by the NVTa Member Jurisdictions on an informal basis. Since membership fees may be part of the security for the proposed TIFIA loan, we believe it is advisable to have a formal agreement on the amount of current and future membership fees to be paid by NVTa Member Jurisdictions.

Section 8.3.3 Transportation Funds: The current language of Section 8.3.3 describes NVTa's receipt, use and distribution of TDA funds and specifies that TDA funds may be used "only for transportation, transit and paratransit services and capital improvements." It is recommended that the repayment of debt obligations is included as a proper use of TDA funds to clearly authorize the repayment of the TIFIA loan. We recommend adding to this provision the specific authorization to use TDA funds for "payment of related debt obligations." We recommend this change as a clarification as other amendments are necessary for the TIFIA loan.

Section 8.4.2 (Limitation on Expenditures): The current language of Section 8.4.2 reads as follows:

"8.4.2 Limitation on Expenditures. NVTa may not obligate itself beyond the monies due to NVTa under this Agreement plus any monies on hand or irrevocably pledged to its support from other sources."

The proposed TIFIA loan will be secured by various revenue streams receivable by NVTa, including local transportation funds and membership fees. However, the TIFIA loan will not be a limited obligation loan payable solely from those revenue streams. While NVTa Staff fully expect the secured revenue streams to be more than enough to pay debt service on the TIFIA loan, NVTa's general fund could also be used to pay debt service in the unlikely event that the secured revenue streams are insufficient. Since the current language of 8.4.2 arguably prohibits such general obligation debt, we view its deletion as necessary for the TIFIA loan.

Section 8.5.2(c) (Contribution by Member Jurisdictions): The current language of this section states that NVTa Member Jurisdictions may be held responsible for NVTa liabilities in proportion to their respective voting power on the NVTa Board. This seems to contradict the language of Section 8.5.1(a), which states that: "The debts, liabilities, and obligations of NVTa shall be solely the obligation of NVTa and not the debts, liabilities, and obligations of the Member Jurisdictions or their respective officers or employees." We recommend that this



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section be deleted since it creates a troubling ambiguity in the agreement. However, this change is not necessary for the TIFIA loan.

Other Miscellaneous Changes: Other minor changes and corrections to the agreement may be found in Sections 3.1, 3.2, 4.3.1(a) & (c), 6.1, 6.3.3, 7.10 and 8.3.3. These changes are not substantive and, while we view them as advisable, they are not necessary for the TIFIA loan.



November 19th, 2020

MEMORANDUM

To City/Town Managers, County Executive Officer, Attorney's and Clerks,

RE: Napa Valley Transportation Authority Joint Powers Agreement Amendment No. 12

The NVRTA Board of Director's approved the circulation to member agencies of proposed modifications at their November 18th, 2020 meeting. The table below provides a summary of revisions to the Joint Powers Agreement (JPA). Attached is a "redlined" and "clean" version. NVRTA staff request you place the item at your next council or Board meeting for adoption. NVRTA is looking to have the approvals of JPA #12 by December 31st, 2020 so that the NVRTA Board of Director's can ratify the amendment at their January 20th, 2021 meeting. There are also a few clerical/ typographical edits in the redlined copy, but which are non-substantive and not listed below. Thank you for your partnership and please forward any questions you may have to Antonio Onorato at aonorato@nvta.ca.gov or 707-259-8779.

Page	Section	Disposition	Revision	Reason
2	2.3	Deletion	Abandoned Vehicle Abatement Authority. The name of NVRTA shall supersede and replace CMA and NCTPA as the service authority for the abatement of abandoned vehicles (AVAA) for Napa County and the Member Jurisdictions pursuant to Vehicle Code section 9250 et seq. and 22710 seq. All resolutions, authorizations, funds, imposition of service fees, and responsibilities of the CMA or NCTPA in its capacity as the service authority shall be deemed to be ratified and assumed by and remain thereafter as the resolutions, authorizations, funds, imposition of service fees, and responsibilities of NVRTA as AVAA on and after the effective date of Amendment No. 4 of the Agreement until such time as modified or terminated by the NVRTA Board.	NVRTA is no longer the Abandoned Vehicle Abatement Authority
7	5.2(s)	Addition	(s) To design, construct and operate buildings and facilities of any kind, including, without limitation, transit facilities.	Clarify and strengthen language
9	7.1	Deletion	Limitations. The authority of NVRTA shall be limited to those powers enumerated in Section 5 or as otherwise provided for herein	Contradicts the language of Sections 5.1 and 5.2 which state that the powers



				specifically enumerated in the JPA Agreement are not intended as a limitation on NVRTA's powers
11	8.3.1	Addition, Deletion	<u>Membership Fees.</u> The Member Jurisdictions shall pay to NVRTA an annual membership fee (the "Membership Fee") based on (a) the relative populations of the Member Jurisdictions and (b) the relative number of road miles served by NVRTA in each Member Jurisdiction. The Membership Fee shall be due and payable on or before June 30 of the current fiscal year. The fees for fiscal year 2021-2022 are shown in the chart below. NVRTA shall adjust the Membership Fees based on changes to the Bay Area Consumer Price Index every two years concurrently with NVRTA's biennial budget cycle, provided that the total Membership Fees assessed to the Member Jurisdictions shall not be reduced below \$250,000 until all bonds or other instruments of indebtedness issued or entered into by NVRTA, if any, have been paid in full. <u>General.</u> Unless otherwise agreed by the Member Jurisdictions by amendment of this Agreement, the total expenditures in the annual planning budget shall be paid for with revenues derived from funds paid directly to NVRTA by persons or entities, public or private, other than the Member Jurisdictions and from contributions from the Member Jurisdictions (in money or, upon approval by the NVRTA Board, in kind) based on the relative populations of the Member Jurisdictions. In determining said population ratios the latest population statistics by the State Department of Finance shall be used.	Memorializes membership contribution in the JPA.
12	8.3.2	Addition	<u>Approval Required for Changes to Membership Fee Apportionment.</u> No change shall be made to the apportionment of Membership Fees among the Member Jurisdictions (as set forth in the "Weighted Average" column of the Membership Fee chart shown in Section 8.3.1, above) unless such change in apportionment has been first approved by the legislative bodies of all of the Member Jurisdictions.	Same as 8.3.1
12	8.3.3	Addition	...All TDA funds claimed by NVRTA shall be used at the sole discretion of the NVRTA Board of Directors only for transportation, transit, paratransit services, related capital improvements and payment of related debt obligations. ...	Debt underwriters requirement



13	8.4.2	Deletion	Limitation on Expenditures. NMTA may not obligate itself beyond the monies due to NMTA under this Agreement plus any monies on hand or irrevocably pledged to its support from other sources.	Debt underwriters requirement
14	8.5.2 (c)	Deletion	(c) Contribution by Member Jurisdictions. If NMTA funds or insurance coverage are insufficient, or if any Member Jurisdiction is sued and found liable for a negligent or willful act or omission of NMTA or any of its officers, employees, agents, volunteers, or contractors and NMTA funds or contractor contribution are insufficient to pay the judgment or to reimburse the sued Member Jurisdiction for paying the judgment, the Member Jurisdictions shall be responsible for the liability for purposes of contribution under Government Code section 895.4 in proportion to the voting power of each Member Jurisdiction on the NMTA Board.	Clarification. Contradicts the language of Sections 8.5.1(a)

ATTACHMENT 1
NVTA Agenda Item 11.6
November 18, 2020

AMENDMENT NO. ~~11~~ 12
TO THE JOINT POWERS AGREEMENT
FOR THE
NAPA VALLEY TRANSPORTATION AUTHORITY

(ALSO KNOWN AS NAPA COUNTY AGREEMENT NO. 3061; CITY OF NAPA AGREEMENT NO. 6147; CITY OF AMERICAN CANYON RESOLUTION NO. 92-33/AGREEMENT NO. 95-15; TOWN OF YOUNTVILLE RESOLUTION. NO. 868; CITY OF ST. HELENA RESOLUTION NO. 91-32; CITY OF CALISTOGA RESOLUTION NO. 91-19)

THIS AMENDMENT NO. ~~11~~ 12 TO THE JOINT POWERS AGREEMENT OF THE NAPA VALLEY TRANSPORTATION AUTHORITY(the “Agreement”) is entered into as of the effective date determined under ~~(4)~~ Section 3, below, by and between the COUNTY OF NAPA, CITY OF AMERICAN CANYON, CITY OF NAPA, TOWN OF YOUNTVILLE, CITY OF ST. HELENA, and CITY OF CALISTOGA (“Member Jurisdictions”);

RECITALS

WHEREAS, the Napa Valley Transportation Authority (“NVTA”) is a joint powers agency created by the Member Jurisdictions to provide coordinated transportation planning and transportation services, among other duties, within the County of Napa; and

WHEREAS, the Member Jurisdictions desire to amend the Agreement to update its provisions, including but not limited to ~~changing the provisions regarding withdrawal of Member Jurisdictions and termination of the Joint Powers Agreement in order to reflect requirements for clarifying certain provisions concerning bonding, debt, and other types of debt financing, updating the powers to be exercised by the NVTA, and to better reflect the duties and purpose of the agency providing for Member Jurisdiction membership fees and making other minor corrections:~~

TERMS

NOW, THEREFORE, THE MEMBER JURISDICTIONS agree as follows:

1. The foregoing Recitals are true and correct.
2. The terms of the Agreement are hereby amended to read in full as set forth in Attachment “A”, attached hereto and incorporated by reference herein.
3. ~~By approving Amendment No. 11 and authorizing execution thereof, each Member Jurisdiction hereby reconfirms its prior election to exempt Napa County from~~

~~the congestion management requirements of Chapter 2.6 of Division 1 of Title 7 of the California Government Code as permitted by Government Code section 65088.3.~~

~~4. The provisions of the Joint Powers Agreement related to withdrawal of a Member Jurisdiction or termination of the Joint Powers Agreement are hereby amended as reflected in Exhibit A attached hereto.~~

~~5. This~~ Amendment No. ~~11~~ 12 and the attached provisions of Attachment "A" shall become effective on the date the documents have been ratified by all of the Member Jurisdictions. This Amendment may be signed in counterparts by the parties hereto and shall be valid and binding as if fully executed all on one copy.

IN WITNESS WHEREOF, this Amendment No. ~~11~~ 12 to the Joint Powers Agreement creating the Napa Valley Transportation Authority was executed by the Member Jurisdictions through their duly-authorized representatives as noted below:

COUNTY OF NAPA

By: _____
ALFREDO PEDROZA, Chair
Napa County Board of Supervisors

Date: _____

ATTEST:
JOSE LOUIE VALDEZ
Clerk of the Board of Supervisors

APPROVED AS TO FORM:
JEFFREY BRAX
Acting Napa County Counsel

By: _____

By: _____

CITY OF AMERICAN CANYON

By: _____
LEON GARCIA, Mayor

Date: _____

ATTEST:
~~SUELLEN JOHNSTON~~ CHERRI WALTON
American Canyon Interim City Clerk

APPROVED AS TO FORM:
WILLIAM D. ROSS
American Canyon City Attorney

By: _____

By: _____

CITY OF NAPA

By: _____
~~JILL TEGHEL~~SCOTT SEDGLEY, Mayor

Date: _____

ATTEST:
~~TIFFANY CARRANZA~~DOROTHY ROBERTS
BARRETT
Napa City Clerk

APPROVED AS TO FORM:
MICHAEL W.
Napa City Attorney

By: _____

By: _____

TOWN OF YOUNTVILLE

By: _____
JOHN F. DUNBAR, Mayor

Date: _____

ATTEST:
MICHELLE DAHME
Yountville Town Clerk

APPROVED AS TO FORM:
~~MICHAEL COBDEN~~GREGORY BELL
Yountville Town Attorney

By: _____

By: _____

CITY OF ST. HELENA

By: _____
~~ALAN GALBRAITH~~GEOFF ELLSWORTH, Mayor

Date: _____

ATTEST:
CINDY TZAFPOULOS
St. Helena City Clerk

APPROVED AS TO FORM:
~~THOMAS B. BROWN~~ETHAN WALSH
St. Helena City Attorney

By: _____

By: _____

CITY OF CALISTOGA

By: _____
CHRIS CANNING, Mayor

Date: _____

ATTEST:
KATHY FLAMSON KENDALL GRANUCCI
KENYON
Calistoga City Clerk

APPROVED AS TO FORM:
MICHELLE
Calistoga City Attorney

By: _____

By: _____

ATTACHMENT “A”

NAPA VALLEY TRANSPORTATION AUTHORITY, A JOINT POWERS AGENCY JOINT EXERCISE OF POWERS AGREEMENT

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NAPA VALLEY TRANSPORTATION AUTHORITY, A JOINT POWERS AGENCY
JOINT EXERCISE OF POWERS AGREEMENT

SECTION 1. FORMATION

- 1.1 Creation and Name.** The County of Napa, the Cities of Napa, St. Helena, Calistoga, American Canyon, and the Town of Yountville (hereinafter referred to as "Member Jurisdictions"), pursuant to Article 2 of Chapter 5 of Division 7 of Title 1 (commencing with section 6500) of the California Government Code, do hereby form, establish and create a joint powers agency to be known as "Napa Valley Transportation Authority," hereinafter referred to as "NVTa" which shall constitute a public entity separate and distinct from the Member Jurisdictions, and the new name of which shall supersede and replace the prior name of the agency, the Napa County Transportation and Planning Agency ("NCTPA") and any other prior name by which the agency was known in the past, including Congestion Management Agency ("CMA").

SECTION 2. PURPOSE

- 2.1 General.** NVTa is formed to serve as the countywide transportation planning body for the incorporated and unincorporated areas within Napa County, and as an advisory body for countywide deliberations on land-use, demographics, economic development, community development, and environmental issues, which purposes shall include conducting in a coordinated and more simplified way countywide:
- (a) Transportation policy development and planning activities, including those relating to transit on both a short-term and long-term basis and within an intermodal policy framework; improving transit services; providing coordinated and more competitive input to the region's transportation planning and funding programs; and performing such other transportation related duties and responsibilities as the Member Jurisdictions may delegate to NVTa by this Agreement or amendment thereto; and
 - (b) Advisory deliberations on land-use, demographics, economic development, community development, and environmental issues. Any such deliberations may result in advisory recommendations only, and such recommendations shall not be binding on any Member Jurisdiction.
- 2.2 Chapter 2.6 Compliance Not Included in Purpose.** It is the intention of the Member Jurisdictions in executing the Agreement to exempt Napa County and the Member Jurisdictions from the requirements of Chapter 2.6 of Division 1 of Title 7 (commencing with Government Code section 65088) pertaining to congestion management planning, as permitted by Government Code section

65088.3. For this reason, compliance with Chapter 2.6 shall not be deemed to be a purpose of NVTA.

- 2.3** Intentionally omitted. Abandoned Vehicle Abatement Authority. The name of NVTA shall supersede and replace CMA and NCTPA as the service authority for the abatement of abandoned vehicles (AVAA) for Napa County and the Member Jurisdictions pursuant to Vehicle Code section 9250 et seq. and 22710 seq. All resolutions, authorizations, funds, imposition of service fees, and responsibilities of the CMA or NCTPA in its capacity as the service authority shall be deemed to be ratified and assumed by and remain thereafter as the resolutions, authorizations, funds, imposition of service fees, and responsibilities of NVTA as AVAA on and after the effective date of Amendment No. 4 of the Agreement until such time as modified or terminated by the NVTA Board.
- 2.4** Preparation of County Transportation Plan. The purposes of NVTA shall include delegation by the County of Napa to NVTA of the County's authority under Government Code section 66531 to prepare and submit to the Metropolitan Transportation Commission (MTC) a county transportation plan for the incorporated and unincorporated territory of Napa County which shall include consideration of the planning factors included in Section 134 of the federal Intermodal Surface Transportation Efficiency Act of 1991, as such may be amended from time to time.
- 2.5** Exercise of Common and Additional Powers. The purposes of NVTA shall include establishment of NVTA as an independent joint powers entity to enable the Member Jurisdictions not only to exercise jointly the common powers of the Member Jurisdictions set forth in Section 2.1 but also to exercise such additional powers as are conferred by Section 5 of this Agreement or by the Government Code upon all joint powers agencies.

SECTION 3. ASSUMPTION OF CMA AND NCTPA CONTRACTS

- 3.1** Assumption of CMA and NCTPA Contracts. All contracts entered into by the agency in the name of CMA or in the name of NCTPA, which ~~are~~ were in effect as of ~~the effective date of Amendment No. 10 of this Agreement~~, February 17, 2016 shall be assigned to and assumed in the name of NVTA on and after that date and all references therein to "CMA," "Congestion Management Agency," "Napa County Congestion Management Agency," "NCTPA," or "Napa County Transportation and Planning Authority" shall be deemed to refer to NVTA.
- 3.2** Delegation of Contract Responsibilities of CMA Manager or NCTPA Manager. All references in any CMA or NCTPA contracts assumed by NVTA under Section 3.1 delegating contract responsibilities to the CMA Manager or to the NCTPA Manager shall be deemed to refer, on and after February 17,

~~2016 the effective dates respectively of Amendment No. 4 of the Agreement and Amendment No. 10 of the Agreement,~~ to the Executive Director of NVTa.

SECTION 4. ORGANIZATION

4.1 Composition. NVTa shall be composed of the Member Jurisdictions, to-wit: the County of Napa, the Cities of American Canyon, Napa, St. Helena, and Calistoga, and the Town of Yountville.

4.2 Principal Office. The principal office of NVTa shall be established by resolution of the NVTa Board.

4.3 Governing Board. The powers of NVTa shall be vested in its governing board (hereinafter referred to as "NVTa Board").

4.3.1 Appointment, Replacement and Voting Power of NVTa Board Members ("Members").

(a) Voting Members. Each voting Member of the NVTa Board shall be an elected official of the governing board of the appointing Member Jurisdiction. One voting Member from each appointing Member Jurisdiction which is a city or town shall be that Member Jurisdiction's mayor. Any elected official serving as the Napa County representative to the Metropolitan Transportation Commission shall be one of the voting ~~Member's~~ Members appointed by that Member Jurisdiction. Members shall continue to serve as such until they cease to hold their elected positions, are removed in the sole discretion of their respective Member Jurisdiction, resign or are otherwise removed from or disqualified from holding their elected positions as a matter of law or by judgment of a court of competent jurisdiction.

(b) Non-Voting Member Representing the PCC. The non-voting Member appointed by NVTa Board upon nomination by the Paratransit Coordinating Council (PCC) shall also be a member or alternate member of the PCC, selected by and serving at the pleasure of the PCC.

(c) Vacancies. Except for a vacancy in the non-voting position appointed by the NVTa Board under subsection ~~(e)~~(b), vacancies on the NVTa Board shall be filled, to the extent practicable, by the respective Member Jurisdictions within sixty (60) days of the occurrence thereof. NVTa and the NVTa Board shall be entitled to rely upon written notice from the clerk of the governing board of the Member Jurisdiction as conclusive evidence of the appointment and removal of all Members and their alternates.

(d) **Composition of Members.** The composition of the Members of the NVTB Board shall be as follows:

<u>Appointing Entity</u>	<u>Number of Members</u>
City of American Canyon	2
City of Calistoga	2
City of Napa	2
City of St. Helena	2
Town of Yountville	2
County of Napa	2
NVTB Board (nominated by Paratransit Coordinating Council)	1

(e) **Voting Power of Members.** The voting power of the Members of the NVTB Board shall be as follows:

(1) On all matters concerning powers under Section 5.2 subsections (a) through (q), inclusive:

<u>Appointing Entity</u>	<u>Voting Power</u>
City of American Canyon	4 (each Member has two votes)
City of Calistoga	2 (each Member has one vote)
City of Napa	10 (each Member has five votes)
City of St. Helena	2 (each Member has one vote)
Town of Yountville	2 (each Member has one vote)
County of Napa	4 (each Member has 2 votes)
NVTB Board (nominated by Paratransit Coordinating Council)	0 (non-voting)

(2) On all matters concerning powers under Section 5.2 subsection (r), each voting Member shall have one vote.

(f) **Alternate Members.** Each Member Jurisdiction may, in its discretion, appoint alternate(s) for its Members of the NVTB Board. An alternate shall be an elected official of the governing board of the appointing Member Jurisdiction. Any appointed alternate Members may attend in place of that jurisdiction's Member and participate in discussions of the NVTB Board in the same manner as the Members, but an alternate of a voting Member shall vote only when the Member for whom he or she is an alternate is physically absent or cannot vote due to a conflict of interest.

4.3.2 Compensation. No compensation shall be received by any Member of the NVTB Board unless expressly authorized by unanimous resolution of all of the voting Members of the NVTB Board.

4.4 Advisory Committees.

4.4.1 Technical Advisory Committee (TAC). A single Technical Advisory Committee (TAC) shall be appointed by the NVTB Board to advise the NVTB Board regarding transit and roadway issues, including planning, project, and policy aspects. The TAC members shall include the Executive Director of NVTB, serving ex-officio; a member nominated by the PCC and appointed by the NVTB Board; and two members and two alternate members from the technical staffs of each of the Member Jurisdictions, serving ex-officio as designated by the chief administrative officers of the respective Member Jurisdictions.

4.4.2 Active Transportation Advisory Committee. The Active Transportation Advisory Committee (ATAC) shall be appointed by and serve in an advisory capacity to the NVTB Board on matters of bicycling and pedestrian issues. By-laws and amendments thereto for the ATAC shall be approved by the NVTB Board.

4.4.3 Paratransit Coordinating Council (PCC). The Paratransit Coordinating Council (PCC) shall be an advisory committee to the NVTB Board and serve as the social services transportation advisory council for Napa County provided for under Public Utilities Code section 99238. The PCC shall serve as the primary means of advice to the NVTB Board regarding, and representation of, the special transportation interests of the disabled and elderly, in order to carry out the intent of the State Legislature expressed in Public Utilities Code section 99238(d) to avoid duplicative transit advisory councils whenever possible. By-laws and amendments thereto for the PCC shall be approved by the NVTB Board.

4.4.4 Other Advisory Committees. The NVTA Board may create such other advisory committees, both ad-hoc and standing, as it sees fit.

4.4.5 Compliance with Maddy Act. When appointing members to the committees the NVTA Board shall comply with the provisions of the Maddy Local Appointive List Act of 1975, Government Code section 54970 et seq., as such has been and may be amended from time to time.

4.4.6 Compliance with Brown Act. Except for ad hoc committees, all advisory committees created pursuant to this Section 4.4 shall be subject to the requirements of the Ralph M. Brown Act, Government Code section 54950 et seq.

SECTION 5. POWERS

5.1 General. NVTA shall have all powers necessary to carry out the purpose of this Agreement. Such powers shall be subject only to the limitations set forth in this Agreement, applicable laws and regulations, and such restrictions upon the manner of exercising such powers as are imposed by law upon the County of Napa in the exercise of similar powers except where specifically authorized otherwise by the Joint Exercise of Powers Act, Government Code section 6500 et seq.

5.2 Approved Powers. The powers of NVTA specifically include but are not limited to the following:

- (a) To sue and be sued in its own name;
- (b) To incur debts, liabilities and obligations;
- (c) To employ agents, employees and to contract with third parties for goods and services, including but not limited to the services of engineers, planners, attorneys, accountants, fiscal agents (including auditors, controllers, and treasurers), and providers of transit services;
- (d) To acquire, improve, hold, lease and dispose of real and personal property of all types;
- (e) To undertake the acquisition of real property through the exercise of eminent domain in furtherance of transportation and transit related projects in accordance with State and Federal laws;
- (f) To enact an ordinance for the purpose of adopting the California Uniform Construction Cost Accounting Act procedures and establishing an alternative

method of procuring small construction contracts pursuant to California Public Contracts Code sections 22000, *et seq*, as amended from time to time.

(g) To make and enter into any contracts with any of the Member Jurisdictions for goods, services, equipment, or real property;

(h) To assume contracts made by any Member Jurisdiction or made pursuant to joint powers agreement between any of the Member Jurisdictions;

(i) To apply for and accept grants, donations, advances and contributions;

(j) To make plans and conduct studies;

(k) To coordinate efforts with local, regional, state and federal agencies having jurisdiction over matters pertaining to transportation (including roads) and transit;

(l) To engage in all activities necessary for NVTa to act as the Abandoned Vehicle Abatement Authority for Napa County;

(m) To operate, directly or by contract with any person or entity including any Member Jurisdiction, any transit and paratransit services within Napa County in whole or in part and, if so, to submit any corresponding claims for funds or reimbursement under the Transportation Development Act (TDA), Section 29530 *et seq.* of the Government Code, as such may be amended from time to time;

(n) To act as the overall program manager within Napa County for the purpose of receiving and reallocating the county's proportionate share of vehicle registration fees collected by the Bay Area Air Quality Management District (BAAQMD) under AB 434 (Chapter 807, Statutes of 1991, set forth in Health and Safety Code section 44241 *et seq.*);

(o) To act as, exercise the powers conferred upon, and fulfill the responsibilities of the Consolidated Transportation Service Agency (CTSA) for Napa County as that term is defined in Public Utilities Code section 99204.5 as amended from time to time, if and when appointed as CTSA by the MTC, such appointment being deemed to supersede the appointment of the County of Napa as CTSA;

(p) To invest any funds in the treasury of NVTa that are not required for the immediate necessities of NVTa in such manner as the NVTa Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601, except where otherwise restricted for particular funds by conditions imposed by the person or agency which is the source of those funds;

(q) To apply for, expend and allocate all funds related to Transportation Development Act Article Three purposes, as set forth in Public Utilities Code section 99234, *et seq.*, as amended from time to time.

(r) To act as a countywide advisory deliberative body on issues of land-use, demographics, economic development, community development, and environmental issues. Any such deliberations may result in advisory recommendations only, and such recommendations shall not be binding on any Member Jurisdiction.

(s) To design, construct and operate buildings and facilities of any kind, including, without limitation, transit facilities.

SECTION 6. PERSONNEL AND ADMINISTRATION

6.1 Employees. NVTa may appoint, retain and compensate as a charge against the funds of NVTa, employees, whether temporary, probationary, limited term or permanent and/or may contract with any person or entity, including a Member Jurisdiction, for the furnishing of any services, including but not limited to legal, financial, accounting, data processing, secretarial, purchasing, and personnel services, which are necessary to fulfill the powers, duties and responsibilities of NVTa under this Agreement or as necessary to comply with the laws applicable to joint powers agencies within the State of California, including but not limited to the services described in Sections 6.2 through 6.4, below. Where such services are provided by employees of a Member Jurisdiction by contract between such Member Jurisdiction and NVTa or pursuant to Section 6.3 or 6.4 of this Agreement, NVTa and the employing Member Jurisdiction hereby expressly waive any conflict of interest or incompatibility of employment created thereby.

6.2 Executive Director.

6.2.1 General. NVTa shall hire or contract for the provision of the services of an Executive Director to serve as the chief administrative officer of NVTa, performing management and other duties which shall be described in a job description/scope of services approved by resolution of the NVTa Board.

6.2.2 Filings with Secretary of State. In addition to any other duties assigned to the Executive Director or otherwise required by law, the Executive Director is hereby authorized to and shall be responsible for filing on behalf of NVTa and the NVTa Board all notices required by Government Code sections 6503.5 and 53051.

6.3 Treasurer.

- 6.3.1 General.** The Napa County Treasurer-Tax Collector shall serve as the NVTA Treasurer and in that capacity shall be the depository and have custody of the funds of NVTA, from whatever source, and shall perform the functions described in Government Code section 6505.5 (a) through (e). Notwithstanding the foregoing, the NVTA Board may retain a certified public accountant to serve as NVTA Treasurer in lieu of the Napa County Treasurer-Tax Collector.
- 6.3.2 Bond.** The NVTA Treasurer shall post an official bond in an amount to be fixed by the NVTA Board. The cost of such bond shall be a charge against NVTA funds, except that if the NVTA Treasurer is the Napa County Treasurer-Tax Collector, the cost of the bond to be borne by NVTA shall be that amount which is in excess of the cost of the official bond posted by the Napa County Treasurer-Tax Collector for functions unrelated to NVTA.
- 6.3.3 Compensation.** Pursuant to ~~Section~~ Government Code section 6505.5, the Napa County Board of Supervisors shall determine the charges to be made against NVTA for the services performed by the Napa County Treasurer-Tax Collector for NVTA which shall be a charge against NVTA funds. If the NVTA Board retains a certified public accountant to be NVTA Treasurer, the compensation of the NVTA Treasurer shall be determined by the NVTA Board and shall be a charge against NVTA funds.

6.4 Auditor-Controller.

- 6.4.1 General.** The Napa County Auditor-Controller shall serve as the auditor-controller of NVTA and shall be responsible for drawing warrants to pay demands against NVTA when the demands have been approved by the NVTA Board or, upon delegation by the NVTA Board, by the Executive Director, or designee when acting as purchasing agent for NVTA.
- 6.4.2 Custodian of Property; Bond.** With the exception of NVTA funds which shall be in the custody of the NVTA Treasurer, the Napa County Auditor-Controller shall, acting as NVTA Auditor-Controller, be the public officer designated pursuant to Government Code section 6505.1 to have charge of, handle, have access to, and maintain inventory any property of NVTA and shall post an official bond in an amount to be fixed by the NVTA Board. The cost of such bond, to the extent in excess of the cost of the official bond posted by the Napa County Auditor-Controller in connection with functions unrelated to NVTA, shall be a charge against NVTA funds.

- 6.4.3 Compensation.** Pursuant to Government Code section 6505.5, the Napa County Board of Supervisors shall determine the charges to be made against the NVTa for the services performed by the Napa County Auditor-Controller for NVTa, which shall constitute a charge against the funds of NVTa.

SECTION 7. DUTIES AND RESPONSIBILITIES

- 7.1 Limitations.** ~~The authority of NVTa shall be limited to those powers enumerated in Section 5 or as otherwise provided for herein. Intentionally omitted.~~
- 7.2 Coordination of Transportation Systems.** NVTa shall facilitate the coordination of transportation systems operated by or on behalf of the Member Jurisdictions with Napa County and adjacent counties.
- 7.3 Coordination of Transportation and Land Use Management.** NVTa shall develop and implement programs and policies for the coordination of transportation and related land use management by the Member Jurisdictions. Such programs may include, but shall not be limited to, providing analysis of the impacts of land use decisions by the Member Jurisdictions on regional transportation systems and the costs associated with mitigating those impacts. In carrying out this responsibility, NVTa shall review and comment on all discretionary projects related to transportation under consideration by any of the Member Jurisdictions and may review and comment on such discretionary projects under consideration by any other public entity which are submitted to NVTa for review and comment.
- 7.4 Countywide Transportation Plans.** NVTa shall develop, adopt, implement, update as necessary, and submit to MTC a county transportation plan under Government Code section 66531 for the incorporated and unincorporated territory of Napa County which shall include consideration of the planning factors included in Section 134 of the federal Intermodal Surface Transportation Efficiency Act of 1991, as such may be amended from time to time.
- 7.5 Submission of Funding Applications and Claims.** NVTa may submit applications and funding claims for transportation related purposes to local government, MTC, the State of California, the Federal Government and other entities supporting transportation.
- 7.6 Intermodal Policies and Programs.** NVTa may consider and adopt policies and programs for all modes of transportation including but not limited to, transit, paratransit, streets and roads, bicycle and pedestrian facilities, airports, marinas, harbors, and railroads.

- 7.7 Transportation Development Act (TDA) Claims for Transit and Paratransit Services.** If NVTA operates directly or by contract with any person or entity including any Member Jurisdiction the operation of any transit and paratransit services within Napa County in whole or in part, NVTA shall be deemed authorized by this Agreement to submit any corresponding claims for funds or reimbursement under the Transportation Development Act (TDA), Section 29530 et seq. of the Government Code, as such may be amended from time to time.
- 7.8 Consolidated Transit Services Agency.** If, in the future and with the consent of all of the Member Jurisdictions and MTC, NVTA is appointed in place of the Napa County Board of Supervisors as the consolidated transportation service agency (CTSA) for Napa County as that term is defined in Public Utilities Code section 99204.5, as such may be amended from time to time, then and only then may NVTA make claims pursuant to the procedure set forth in Article 7 of Chapter 3 of Title 21 of the California Code of Regulations, commencing with 6680.
- 7.9 Overall Program Manager (AB 434).** NVTA shall act as the overall program manager within Napa County for the purpose of receiving and reallocating the county's proportionate share of vehicle registration fees collected by the Bay Area Air Quality Management District (BAAQMD) under AB 434 (Chapter 807, Statutes of 1991, set forth in Health and Safety Code section 44241 et seq.).
- 7.10 Deliberative Body.** NVTA shall act as the countywide deliberative body for discussions of inter-jurisdictional issues relating to land use, infrastructure, the economy and economic development, community development, and environmental issues. No subject may be deliberated unless a majority of votes, as determined by Section 4.3.1 ~~(f)~~ (e) (2) of this Agreement, of the Board has approved such deliberations. The NVTA may adopt decisions on such matters, but its decisions shall constitute recommendations to the Member Jurisdictions only, and shall have no binding effect. Final decision making on all matters affecting Member Jurisdictions shall remain with the governing body of each Member, except as provided by Sections 5.2 (a) through (p) inclusive, of this Joint Powers Agreement, state or federal law, and applicable regulations.
- 7.11 Other Duties and Responsibilities.** NVTA shall carry out such other duties and responsibilities as the Member Jurisdictions, by unanimous approval expressed through amendment of this Agreement or resolutions of their respective governing boards, may delegate to NVTA.

SECTION 8. FINANCE

- 8.1 Fiscal Year.** The fiscal year for NVTA shall begin on July 1 and end on June 30.

8.2 Budget. A budget for NVTa shall be adopted by the NVTa Board for each fiscal year prior to June 30 of the preceding fiscal year. The budget shall include sufficient detail to constitute an operating guideline. It shall also include the anticipated sources of funds and the anticipated expenditures to be made for the operations of NVTa. Approval of the budget by the NVTa Board shall constitute authority for the Executive Director to expend funds for the purposes outlined in the approved budget, subject to the availability of funds on hand as determined by the NVTa Auditor-Controller and subject to the constraints imposed upon general law counties pertaining to execution of contracts by purchasing agents. Nothing in this Section 8.2 shall be construed to limit the power of the NVTa Board to modify the budget in whatever manner it deems appropriate and to instruct the Executive Director accordingly.

8.3 Revenues.

8.3.1 General Membership Fees. ~~The Member Jurisdictions shall pay to NVTa an annual membership fee (the "Membership Fee") based on (a) the relative populations of the Member Jurisdictions and (b) the relative number of road miles served by NVTa in each Member Jurisdiction. The Membership Fee shall be due and payable on or before June 30 of the current in each fiscal year. The fees for fiscal year 2021-2022 are shown in the chart below. NVTa shall adjust the Membership Fees based on changes to the Bay Area Consumer Price Index every two years concurrently with NVTa's biennial budget cycle, provided that the total Membership Fees assessed to the Member Jurisdictions shall not be reduced below \$250,000 until all bonds or other instruments of indebtedness issued or entered into by NVTa, if any, have been paid in full.~~

<u>Member Jurisdiction</u>	<u>Membership Fee (FY 2021-2022)</u>	<u>Weighted Average</u>
<u>City of Napa</u>	<u>\$109,480</u>	<u>43.79%</u>
<u>Napa County</u>	<u>\$91,841</u>	<u>36.74%</u>
<u>City of American Canyon</u>	<u>\$27,820</u>	<u>11.13%</u>
<u>Town of Yountville</u>	<u>\$3,905</u>	<u>1.56%</u>
<u>City of St. Helena</u>	<u>\$9,666</u>	<u>3.87%</u>
<u>City of Calistoga</u>	<u>\$7,288</u>	<u>2.92%</u>
<u>Total</u>	<u>\$250,000</u>	<u>100%</u>

~~Unless otherwise agreed by the Member Jurisdictions by amendment of this Agreement, the total expenditures in the annual planning budget shall be paid for with revenues derived from funds paid directly to NVTa by persons or entities, public or private, other than the Member Jurisdictions and from contributions from the Member Jurisdictions (in money or, upon approval by the NVTa Board, in kind) based on the relative populations of~~

~~the Member Jurisdictions. In determining said population ratios the latest population statistics by the State Department of Finance shall be used.~~

8.3.2 Approval Required for Changes to Membership Fee Apportionment~~Member Jurisdiction Contributions.~~ No change shall be made to the apportionment of Membership Fees among the Member Jurisdictions (as set forth in the "Weighted Average" column of the Membership Fee chart shown in Section 8.3.1, above) Notwithstanding the foregoing, no Member Jurisdiction shall be required to expend any of its general fund monies to support the operations of NVTa in any fiscal year unless such expenditure change in apportionment has been first approved by the legislative body bodies of all of the Member Jurisdictions.

8.3.3 Transportation Funds. In order to carry out the transportation duties and responsibilities of this Agreement, NVTa shall be empowered to claim all TDA funds under Articles 4, 4.5 and/or 8 of Chapter 4 of the Public Utilities Code apportioned within Napa County by the Metropolitan Transportation Commission. All TDA funds will be used for purposes allowed under TDA regulations with the exception of those funds for streets and roads, Section 99400(a) of the Public Utilities Code. All TDA funds claimed by NVTa shall be used at the sole discretion of the NVTa Board of Directors only for transportation, transit, paratransit services, and related capital improvements and payment of related debt obligations. TDA funds apportioned or allocated under Section 99233.3 are not subject to this agreement. Member Jurisdictions endorse a single apportionment by MTC under Sections 99233.8 and 99233.9 of the Public Utilities Code to the NVTa on behalf of the jurisdictions of Napa County. If apportionment under Sections 99233.8 and 99233.9 of the Public Utilities Code are made to any Member Jurisdiction, the NVTa is authorized to claim all such apportionments for transit purposes without further action by the Member Jurisdiction. Funds available pursuant to Section 99313.6, excluding funds apportioned or allocated under Section 99314.3, shall be claimed solely by the NVTa for transit purposes. No Member Jurisdiction shall claim funds apportioned or allocated under Section 99313.6, excluding funds apportioned or allocated under Section 99314.3.

8.3.4 Standards For Use of TDA Funds. Every two years, the NVTa will prepare and adopt a Short Range Transit Plan ("SRTP"). As warranted, at the discretion of the NVTa Board, the SRTP may be updated annually. The NVTa Board will adopt the SRTP and any updated SRTP. The SRTP shall provide the basis for evaluating what services are necessary and where services will be provided.

8.4 Accountability.

8.4.1 Accountable to Member Jurisdictions. NVTA shall be strictly accountable to the Member Jurisdictions for all receipts and disbursements of NVTA.

8.4.2 Limitation on Expenditures. ~~NVTA may not obligate itself beyond the monies due to NVTA under this Agreement plus any monies on hand or irrevocably pledged to its support from other sources.~~

8.4.3 Annual Financial Audit. The NVTA Board shall cause an annual financial audit to be prepared and filed to the extent required by Government Code section 6505.

8.5 Debts, Liabilities and Obligations.

8.5.1 General.

(a) Obligation and Assignment of Debt. The debts, liabilities, and obligations of NVTA shall be solely the obligation of NVTA and not the debts, liabilities, and obligations of the Member Jurisdictions or their respective officers or employees. However, nothing in this Agreement shall prevent any Member Jurisdiction from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of NVTA, provided that both the NVTA Board and that Member Jurisdiction give prior approval of such contract or assumption.

(b) Advance Notice of Debts. NVTA will provide notice to the NVTA Board of Directors at their next regular or special meeting prior to submission of a formal application for long term debt where debt payments are expected to exceed one year. This notice provision shall not apply to applications for or extensions to lines of credit.

8.5.2 Liability.

(a) Primary Liability. If liability is imposed upon NVTA by a court of competent jurisdiction by reason of negligent or willful acts or omissions of NVTA or any of its officers, employees, agents, volunteers, or contractors, any resulting monetary judgment against NVTA shall be paid first from the discretionary funds of NVTA or, if the liability arose from the actions of a contractor, contribution shall be sought from the contractor.

(b) Insurance. To comply with subsection (a), above, NVTA shall obtain and maintain in force during the life of this Agreement insurance for errors and omissions, general liability, and vehicle liability in amounts

deemed by the NVTA Board to be sufficient to fully cover NVTA, its officers, employees, board members, and agents, and the Member Jurisdictions for any reasonably foreseeable losses. Where services are provided by contract to NVTA, the contract shall require the contractor to obtain insurance sufficient to hold NVTA and the Member Jurisdictions harmless and indemnify them against any claims for liability arising from the provision of the services. The cost of such coverage, whether obtained directly by NVTA or as any increased in the contract price for services obtained under contract, shall be a charge against NVTA funds.

~~(c) **Contribution by Member Jurisdictions.** If NVTA funds or insurance coverage are insufficient, or if any Member Jurisdiction is sued and found liable for a negligent or willful act or omission of NVTA or any of its officers, employees, agents, volunteers, or contractors and NVTA funds or contractor contribution are insufficient to pay the judgment or to reimburse the sued Member Jurisdiction for paying the judgment, the Member Jurisdictions shall be responsible for the liability for purposes of contribution under Government Code section 895.4 in proportion to the voting power of each Member Jurisdiction on the NVTA Board.~~

SECTION 9. RULES OF CONDUCT

- 9.1 **Bylaws.** The NVTA Board may from time to time adopt bylaws for the conduct of the affairs of NVTA and the NVTA Board, provided such Rules of Conduct are not inconsistent with this Agreement.
- 9.2 **Quorum.** A majority of the voting power and seven (7) of the twelve (12) voting members (or their alternates) of the NVTA Board shall constitute a quorum for the transaction of business at any meeting of the NVTA Board. Notwithstanding the foregoing, if a quorum is present at the commencement of the meeting, the affirmative vote of a majority of the voting power of the NVTA Board shall constitute the act of the NVTA Board even if, at the time of such vote, less than seven voting members (or their alternates) are present.
- 9.3 **Adjournment of Meetings.** Any meeting of the NVTA Board, whether or not a quorum is present, may be adjourned by a vote of the majority of the voting members (or their alternates) present or, if no voting members or their alternates are present, may be adjourned by the person appointed to serve as Clerk or Secretary of the NVTA Board.
- 9.4 **Brown Act.** All meetings of the NVTA Board shall comply with the requirements of the Ralph M. Brown Act (Government Code section 54950 et seq.).

SECTION 10. NOTICES

10.1 Method. All notices which any Member Jurisdiction or NVTa may wish to give in connection with this Agreement shall be in writing and served by personal delivery during business hours at the principal office of the Member Jurisdiction or NVTa to an officer or person apparently in charge of that office, or by deposit in the United States mail, postage prepaid, and addressed to the Member Jurisdiction or NVTa at its principal office or to such other address as the Member Jurisdiction or NVTa may designate from time to time by written notice to NVTa and each of the parties. Service of notice shall be deemed complete on the day of personal delivery (or 24 hours after such delivery for notice of special meetings) or three (3) days after mailing if deposited in the United States mail.

10.2 Addresses for Notice. Until changed by written notice to NVTa and the Member Jurisdictions, notices under this Agreement shall be delivered to the following addresses:

NVTa:	Executive Director Napa Valley Transportation Authority 625 Burnell Street Napa, California 94559-3420
COUNTY OF NAPA:	Clerk of the Board of Supervisors County Administration Building 1195 Third Street, Room 310 Napa, California 94559
CITY OF AMERICAN CANYON:	American Canyon City Clerk 4381 Broadway Street, Suite 201 American Canyon, California 94503
CITY OF NAPA:	Napa City Clerk 955 School Street Napa, California 94559
TOWN OF YOUNTVILLE:	Yountville Town Clerk 6550 Yount Street Yountville, California 94599
CITY OF ST. HELENA:	St. Helena City Clerk 1480 Main Street St. Helena, California 94574
CITY OF CALISTOGA:	Calistoga City Clerk 1232 Washington Street

Calistoga, California 94515

SECTION 11. ASSIGNMENT, WITHDRAWAL AND TERMINATION

- 11.1 Assignment.** This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Member Jurisdictions, except that no Member Jurisdiction shall assign any of its rights under this Agreement except to a duly-formed public entity organized and existing under the laws of the State of California and then only when approved by amendment of this Agreement.
- 11.2 Withdrawal.** A Member Jurisdiction may withdraw from NVTa without the consent of the other Member Jurisdictions by giving no less than ninety (90) days prior written notice to the NVTa Board. A Member Jurisdiction may withdraw from NVTa at any time with the written consent of all of the other Member Jurisdictions contained in an amendment of this Agreement. A Member Jurisdiction electing to withdraw prior to termination of the Agreement pursuant to Section 11.3 shall not be entitled to share in the distribution of assets provided for in Section 11.3. This provision shall not be effective and no Member Jurisdiction may withdraw from NVTa until all bonds or other instruments of indebtedness issued or entered into by NVTa, if any, have been paid in full.
- 11.3 Termination.** The Agreement shall continue in effect until terminated. The Agreement may be terminated at any time and NVTa dissolved with the written consent of the majority of the then-existing Member Jurisdictions representing a majority of the votes on the NVTa Board. Such consent shall be expressed in duly-authorized resolutions of the Member Jurisdictions. This provision shall not be effective so long as any bonds or other indebtedness of NVTa are outstanding and unpaid, or funds are not otherwise set aside for the payment or redemption thereof in accordance with the terms of the bonds or other indebtedness and the documentation relating thereto.
- 11.4 Disposition of Assets.** In the event of termination of the Agreement and dissolution of NVTa, any remaining assets of NVTa shall be sold or, if sale is prohibited under the terms of original acquisition, returned to or otherwise disposed of at the direction of the party or persons from whom they were obtained. After all liabilities, encumbrances and liens have been paid, the proceeds of such sales shall be allocated proportionately to the Member Jurisdictions based upon their respective populations as determined by the latest California State Department of Finance population figures. Notwithstanding the foregoing, in accordance with Government Code section 6512, any funds remaining at the time of termination which were contributed by the Member Jurisdictions shall be returned to the Member Jurisdictions in proportion to the contributions made.

SECTION 12. AMENDMENTS

- 12.1 Method of Amendment.** Amendments to this Agreement shall be made only with the written consent of all then-existing Member Jurisdictions without regard to voting power on the NVTB Board. So long as any bonds or other indebtedness of NVTB are outstanding and unpaid, or funds are not otherwise set aside for the payment or redemption thereof in accordance with the terms of the bonds or other indebtedness and the documentation relating thereto, this Joint Powers Agreement shall not be amended, modified or otherwise revised, changed or rescinded, unless the NVTB and Member Jurisdictions have first complied with (i) the procedures required to amend any indenture for existing Bonds, or (ii) the terms of other indebtedness, as applicable.

SECTION 13. WAIVER

- 13.1 Limitation.** Waiver by any Member Jurisdiction of breach of any provision of this Agreement shall not constitute a waiver of any other breach of such provision or of any other provision of this Agreement, nor shall failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

SECTION 14. SEVERABILITY

- 14.1 General.** Should any part, term or provision of this Agreement be decided by a final judgment of a court of competent jurisdiction to be illegal or in conflict with any State or federal law or regulation or any applicable local ordinance or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms and provisions shall not be affected.

SECTION 15. SECTION HEADINGS

- 15.1 Effect.** All section numbers and headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

SECTION 16. APPLICABLE LAW AND VENUE

- 16.1 Applicable Law.** The rights, obligations, duties and liabilities of NVTB and of the Member Jurisdictions under this Agreement shall be interpreted in accordance with and governed by the law of the State of California.
- 16.2 Venue for Disputes.** Venue for any action filed by any Member Jurisdiction under state law to enforce this Agreement or any provision thereof shall be in the courts of Napa County. Venue for any action filed by any Member Jurisdiction under federal law or as a federal action shall be in the federal courts for the Northern District of California.

SECTION 17. NO RIGHTS CREATED IN THIRD PARTIES

17.1 No Rights for Third Parties. The parties to this Agreement hereby expressly agree that it is not the intent of the parties to create, and this Agreement shall not be deemed or construed to create any third party beneficiaries or otherwise inure to the benefit of any third parties.

SECTION 18. ENTIRE AGREEMENT

18.1 Integrated Agreement. The terms and provisions of this Agreement constitute the full and entire agreement between the Member Jurisdictions with respect to the matters covered herein. This Agreement supersedes any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the Member Jurisdictions with respect to such subject matter, including any prior agreement or amendment thereto relating to the CMA.

**ATTACHMENT 1
NVRTA Agenda Item 11.6
November 18, 2020**

**AMENDMENT NO. 12
TO THE JOINT POWERS AGREEMENT
FOR THE
NAPA VALLEY TRANSPORTATION AUTHORITY**

(ALSO KNOWN AS NAPA COUNTY AGREEMENT NO. 3061; CITY OF NAPA AGREEMENT NO. 6147; CITY OF AMERICAN CANYON RESOLUTION NO. 92-33/AGREEMENT NO. 95-15; TOWN OF YOUNTVILLE RESOLUTION. NO. 868; CITY OF ST. HELENA RESOLUTION NO. 91-32; CITY OF CALISTOGA RESOLUTION NO. 91-19)

THIS AMENDMENT NO. 12 TO THE JOINT POWERS AGREEMENT OF THE NAPA VALLEY TRANSPORTATION AUTHORITY (the "Agreement") is entered into as of the effective date determined under Section 3, below, by and between the COUNTY OF NAPA, CITY OF AMERICAN CANYON, CITY OF NAPA, TOWN OF YOUNTVILLE, CITY OF ST. HELENA, and CITY OF CALISTOGA ("Member Jurisdictions");

RECITALS

WHEREAS, the Napa Valley Transportation Authority ("NVRTA") is a joint powers agency created by the Member Jurisdictions to provide coordinated transportation planning and transportation services, among other duties, within the County of Napa; and

WHEREAS, the Member Jurisdictions desire to amend the Agreement to update its provisions, including but not limited to clarifying certain provisions concerning bonding and other types of debt financing, updating the powers to be exercised by the NVRTA, providing for Member Jurisdiction membership fees and making other minor corrections:

TERMS

NOW, THEREFORE, THE MEMBER JURISDICTIONS agree as follows:

1. The foregoing Recitals are true and correct.
2. The terms of the Agreement are hereby amended to read in full as set forth in Attachment "A", attached hereto and incorporated by reference herein.
3. This Amendment No. 12 and the attached provisions of Attachment "A" shall become effective on the date the documents have been ratified by all of the Member Jurisdictions. This Amendment may be signed in counterparts by the parties hereto and shall be valid and binding as if fully executed all on one copy.

IN WITNESS WHEREOF, this Amendment No. 12 to the Joint Powers Agreement creating the Napa Valley Transportation Authority was executed by the Member Jurisdictions through their duly-authorized representatives as noted below:

COUNTY OF NAPA

By: _____
ALFREDO PEDROZA, Chair
Napa County Board of Supervisors

Date: _____

ATTEST:
JOSE LOUIE VALDEZ
Clerk of the Board of Supervisors

APPROVED AS TO FORM:
JEFFREY BRAX
Acting Napa County Counsel

By: _____

By: _____

CITY OF AMERICAN CANYON

By: _____
LEON GARCIA, Mayor

Date: _____

ATTEST:
CHERRI WALTON
American Canyon Interim City Clerk

APPROVED AS TO FORM:
WILLIAM D. ROSS
American Canyon City Attorney

By: _____

By: _____

CITY OF NAPA

By: _____
SCOTT SEDGLEY, Mayor

Date: _____

ATTEST:
TIFFANY CARRANZA
Napa City Clerk

APPROVED AS TO FORM:
MICHAEL W. BARRETT
Napa City Attorney

By: _____

By: _____

TOWN OF YOUNTVILLE

By: _____
JOHN F. DUNBAR, Mayor

Date: _____

ATTEST:
MICHELLE DAHME
Yountville Town Clerk

APPROVED AS TO FORM:
GREGORY BELL
Yountville Town Attorney

By: _____

By: _____

CITY OF ST. HELENA

By: _____
GEOFF ELLSWORTH, Mayor

Date: _____

ATTEST:
CINDY TZAFPOULOS
St. Helena City Clerk

APPROVED AS TO FORM:
ETHAN WALSH
St. Helena City Attorney

By: _____

By: _____

CITY OF CALISTOGA

By: _____
CHRIS CANNING, Mayor

Date: _____

ATTEST:
KENDALL GRANUCCI
Calistoga City Clerk

APPROVED AS TO FORM:
MICHELLE KENYON
Calistoga City Attorney

By: _____

By: _____

ATTACHMENT “A”

**NAPA VALLEY TRANSPORTATION AUTHORITY, A JOINT POWERS AGENCY
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NAPA VALLEY TRANSPORTATION AUTHORITY, A JOINT POWERS AGENCY
JOINT EXERCISE OF POWERS AGREEMENT

SECTION 1. FORMATION

- 1.1 Creation and Name.** The County of Napa, the Cities of Napa, St. Helena, Calistoga, American Canyon, and the Town of Yountville (hereinafter referred to as "Member Jurisdictions"), pursuant to Article 2 of Chapter 5 of Division 7 of Title 1 (commencing with section 6500) of the California Government Code, do hereby form, establish and create a joint powers agency to be known as "Napa Valley Transportation Authority," hereinafter referred to as "NVTa" which shall constitute a public entity separate and distinct from the Member Jurisdictions, and the new name of which shall supersede and replace the prior name of the agency, the Napa County Transportation and Planning Agency ("NCTPA") and any other prior name by which the agency was known in the past, including Congestion Management Agency ("CMA").

SECTION 2. PURPOSE

- 2.1 General.** NVTa is formed to serve as the countywide transportation planning body for the incorporated and unincorporated areas within Napa County, and as an advisory body for countywide deliberations on land-use, demographics, economic development, community development, and environmental issues, which purposes shall include conducting in a coordinated and more simplified way countywide:
- (a) Transportation policy development and planning activities, including those relating to transit on both a short-term and long-term basis and within an intermodal policy framework; improving transit services; providing coordinated and more competitive input to the region's transportation planning and funding programs; and performing such other transportation related duties and responsibilities as the Member Jurisdictions may delegate to NVTa by this Agreement or amendment thereto; and
 - (b) Advisory deliberations on land-use, demographics, economic development, community development, and environmental issues. Any such deliberations may result in advisory recommendations only, and such recommendations shall not be binding on any Member Jurisdiction.
- 2.2 Chapter 2.6 Compliance Not Included in Purpose.** It is the intention of the Member Jurisdictions in executing the Agreement to exempt Napa County and the Member Jurisdictions from the requirements of Chapter 2.6 of Division 1 of Title 7 (commencing with Government Code section 65088) pertaining to congestion management planning, as permitted by Government Code section

65088.3. For this reason, compliance with Chapter 2.6 shall not be deemed to be a purpose of NVTA.

2.3 Intentionally omitted.

2.4 Preparation of County Transportation Plan. The purposes of NVTA shall include delegation by the County of Napa to NVTA of the County's authority under Government Code section 66531 to prepare and submit to the Metropolitan Transportation Commission (MTC) a county transportation plan for the incorporated and unincorporated territory of Napa County which shall include consideration of the planning factors included in Section 134 of the federal Intermodal Surface Transportation Efficiency Act of 1991, as such may be amended from time to time.

2.5 Exercise of Common and Additional Powers. The purposes of NVTA shall include establishment of NVTA as an independent joint powers entity to enable the Member Jurisdictions not only to exercise jointly the common powers of the Member Jurisdictions set forth in Section 2.1 but also to exercise such additional powers as are conferred by Section 5 of this Agreement or by the Government Code upon all joint powers agencies.

SECTION 3. ASSUMPTION OF CMA AND NCTPA CONTRACTS

3.1 Assumption of CMA and NCTPA Contracts. All contracts entered into by the agency in the name of CMA or in the name of NCTPA, which were in effect as of [February 17, 2016 shall be assigned to and assumed in the name of NVTA on and after that date and all references therein to "CMA," "Congestion Management Agency," "Napa County Congestion Management Agency," "NCTPA," or "Napa County Transportation and Planning Authority" shall be deemed to refer to NVTA.

3.2 Delegation of Contract Responsibilities of CMA Manager or NCTPA Manager. All references in any CMA or NCTPA contracts assumed by NVTA under Section 3.1 delegating contract responsibilities to the CMA Manager or to the NCTPA Manager shall be deemed to refer, on and after February 17, 2016, to the Executive Director of NVTA.

SECTION 4. ORGANIZATION

4.1 Composition. NVTA shall be composed of the Member Jurisdictions, to-wit: the County of Napa, the Cities of American Canyon, Napa, St. Helena, and Calistoga, and the Town of Yountville.

4.2 Principal Office. The principal office of NVTA shall be established by resolution of the NVTA Board.

4.3 Governing Board. The powers of NVTa shall be vested in its governing board (hereinafter referred to as “NVTa Board”).

4.3.1 Appointment, Replacement and Voting Power of NVTa Board Members (“Members”).

(a) **Voting Members.** Each voting Member of the NVTa Board shall be an elected official of the governing board of the appointing Member Jurisdiction. One voting Member from each appointing Member Jurisdiction which is a city or town shall be that Member Jurisdiction’s mayor. Any elected official serving as the Napa County representative to the Metropolitan Transportation Commission shall be one of the voting Members appointed by that Member Jurisdiction. Members shall continue to serve as such until they cease to hold their elected positions, are removed in the sole discretion of their respective Member Jurisdiction, resign or are otherwise removed from or disqualified from holding their elected positions as a matter of law or by judgment of a court of competent jurisdiction.

(b) **Non-Voting Member Representing the PCC.** The non-voting Member appointed by NVTa Board upon nomination by the Paratransit Coordinating Council (PCC) shall also be a member or alternate member of the PCC, selected by and serving at the pleasure of the PCC.

(c) **Vacancies.** Except for a vacancy in the non-voting position appointed by the NVTa Board under subsection (b), vacancies on the NVTa Board shall be filled, to the extent practicable, by the respective Member Jurisdictions within sixty (60) days of the occurrence thereof. NVTa and the NVTa Board shall be entitled to rely upon written notice from the clerk of the governing board of the Member Jurisdiction as conclusive evidence of the appointment and removal of all Members and their alternates.

(d) **Composition of Members.** The composition of the Members of the NVTa Board shall be as follows:

<u>Appointing Entity</u>	<u>Number of Members</u>
City of American Canyon	2
City of Calistoga	2
City of Napa	2

City of St. Helena	2
Town of Yountville	2
County of Napa	2
NVTA Board (nominated by Paratransit Coordinating Council)	1

(e) **Voting Power of Members.** The voting power of the Members of the NVTA Board shall be as follows:

(1) On all matters concerning powers under Section 5.2 subsections (a) through (q), inclusive:

<u>Appointing Entity</u>	<u>Voting Power</u>
City of American Canyon	4 (each Member has two votes)
City of Calistoga	2 (each Member has one vote)
City of Napa	10 (each Member has five votes)
City of St. Helena	2 (each Member has one vote)
Town of Yountville	2 (each Member has one vote)
County of Napa	4 (each Member has 2 votes)
NVTA Board (nominated by Paratransit Coordinating Council)	0 (non-voting)

(2) On all matters concerning powers under Section 5.2 subsection (r), each voting Member shall have one vote.

(f) **Alternate Members.** Each Member Jurisdiction may, in its discretion, appoint alternate(s) for its Members of the NVTA Board. An alternate shall be an elected official of the governing board of the appointing Member Jurisdiction. Any appointed alternate Members may attend in place of that jurisdiction's Member and participate in discussions of the NVTA Board in the same manner as the Members, but an alternate of a voting Member shall vote only when the Member for whom he or she is an alternate is physically absent or cannot vote due to a conflict of interest.

4.3.2 Compensation. No compensation shall be received by any Member of the NVTA Board unless expressly authorized by unanimous resolution of all of the voting Members of the NVTA Board.

4.4 Advisory Committees.

4.4.1 Technical Advisory Committee (TAC). A single Technical Advisory Committee (TAC) shall be appointed by the NVTA Board to advise the NVTA Board regarding transit and roadway issues, including planning, project, and policy aspects. The TAC members shall include the Executive Director of NVTA, serving ex-officio; a member nominated by the PCC and appointed by the NVTA Board; and two members and two alternate members from the technical staffs of each of the Member Jurisdictions, serving ex-officio as designated by the chief administrative officers of the respective Member Jurisdictions.

4.4.2 Active Transportation Advisory Committee. The Active Transportation Advisory Committee (ATAC) shall be appointed by and serve in an advisory capacity to the NVTA Board on matters of bicycling and pedestrian issues. By-laws and amendments thereto for the ATAC shall be approved by the NVTA Board.

4.4.3 Paratransit Coordinating Council (PCC). The Paratransit Coordinating Council (PCC) shall be an advisory committee to the NVTA Board and serve as the social services transportation advisory council for Napa County provided for under Public Utilities Code section 99238. The PCC shall serve as the primary means of advice to the NVTA Board regarding, and representation of, the special transportation interests of the disabled and elderly, in order to carry out the intent of the State Legislature expressed in Public Utilities Code section 99238(d) to avoid duplicative transit advisory councils whenever possible. By-laws and amendments thereto for the PCC shall be approved by the NVTA Board.

4.4.4 Other Advisory Committees. The NVTA Board may create such other advisory committees, both ad-hoc and standing, as it sees fit.

4.4.5 Compliance with Maddy Act. When appointing members to the committees the NVTA Board shall comply with the provisions of the Maddy Local Appointive List Act of 1975, Government Code section 54970 et seq., as such has been and may be amended from time to time.

4.4.6 Compliance with Brown Act. Except for ad hoc committees, all advisory committees created pursuant to this Section 4.4 shall be subject to the

requirements of the Ralph M. Brown Act, Government Code section 54950 et seq.

SECTION 5. POWERS

- 5.1 General.** NVTa shall have all powers necessary to carry out the purpose of this Agreement. Such powers shall be subject only to the limitations set forth in this Agreement, applicable laws and regulations, and such restrictions upon the manner of exercising such powers as are imposed by law upon the County of Napa in the exercise of similar powers except where specifically authorized otherwise by the Joint Exercise of Powers Act, Government Code section 6500 et seq.
- 5.2 Approved Powers.** The powers of NVTa specifically include but are not limited to the following:
- (a) To sue and be sued in its own name;
 - (b) To incur debts, liabilities and obligations;
 - (c) To employ agents, employees and to contract with third parties for goods and services, including but not limited to the services of engineers, planners, attorneys, accountants, fiscal agents (including auditors, controllers, and treasurers), and providers of transit services;
 - (d) To acquire, improve, hold, lease and dispose of real and personal property of all types;
 - (e) To undertake the acquisition of real property through the exercise of eminent domain in furtherance of transportation and transit related projects in accordance with State and Federal laws;
 - (f) To enact an ordinance for the purpose of adopting the California Uniform Construction Cost Accounting Act procedures and establishing an alternative method of procuring small construction contracts pursuant to California Public Contracts Code sections 22000, *et seq*, as amended from time to time.
 - (g) To make and enter into any contracts with any of the Member Jurisdictions for goods, services, equipment, or real property;
 - (h) To assume contracts made by any Member Jurisdiction or made pursuant to joint powers agreement between any of the Member Jurisdictions;
 - (i) To apply for and accept grants, donations, advances and contributions;

- (j) To make plans and conduct studies;
- (k) To coordinate efforts with local, regional, state and federal agencies having jurisdiction over matters pertaining to transportation (including roads) and transit;
- (l) To engage in all activities necessary for NVTa to act as the Abandoned Vehicle Abatement Authority for Napa County;
- (m) To operate, directly or by contract with any person or entity including any Member Jurisdiction, any transit and paratransit services within Napa County in whole or in part and, if so, to submit any corresponding claims for funds or reimbursement under the Transportation Development Act (TDA), Section 29530 et seq. of the Government Code, as such may be amended from time to time;
- (n) To act as the overall program manager within Napa County for the purpose of receiving and reallocating the county's proportionate share of vehicle registration fees collected by the Bay Area Air Quality Management District (BAAQMD) under AB 434 (Chapter 807, Statutes of 1991, set forth in Health and Safety Code section 44241 et seq.);
- (o) To act as, exercise the powers conferred upon, and fulfill the responsibilities of the Consolidated Transportation Service Agency (CTSA) for Napa County as that term is defined in Public Utilities Code section 99204.5 as amended from time to time, if and when appointed as CTSA by the MTC, such appointment being deemed to supersede the appointment of the County of Napa as CTSA;
- (p) To invest any funds in the treasury of NVTa that are not required for the immediate necessities of NVTa in such manner as the NVTa Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601, except where otherwise restricted for particular funds by conditions imposed by the person or agency which is the source of those funds;
- (q) To apply for, expend and allocate all funds related to Transportation Development Act Article Three purposes, as set forth in Public Utilities Code section 99234, *et seq.*, as amended from time to time.
- (r) To act as a countywide advisory deliberative body on issues of land-use, demographics, economic development, community development, and environmental issues. Any such deliberations may result in advisory recommendations only, and such recommendations shall not be binding on any Member Jurisdiction.

- (s) To design, construct and operate buildings and facilities of any kind, including, without limitation, transit facilities.

SECTION 6. PERSONNEL AND ADMINISTRATION

- 6.1 Employees.** NVTA may appoint, retain and compensate as a charge against the funds of NVTA, employees, whether temporary, probationary, limited term or permanent and/or may contract with any person or entity, including a Member Jurisdiction, for the furnishing of any services, including but not limited to legal, financial, accounting, data processing, secretarial, purchasing, and personnel services, which are necessary to fulfill the powers, duties and responsibilities of NVTA under this Agreement or as necessary to comply with the laws applicable to joint powers agencies within the State of California, including but not limited to the services described in Sections 6.2 through 6.4, below. Where such services are provided by employees of a Member Jurisdiction by contract between such Member Jurisdiction and NVTA or pursuant to Section 6.3 or 6.4 of this Agreement, NVTA and the employing Member Jurisdiction hereby expressly waive any conflict of interest or incompatibility of employment created thereby.

6.2 Executive Director.

- 6.2.1 General.** NVTA shall hire or contract for the provision of the services of an Executive Director to serve as the chief administrative officer of NVTA, performing management and other duties which shall be described in a job description/scope of services approved by resolution of the NVTA Board.

- 6.2.2 Filings with Secretary of State.** In addition to any other duties assigned to the Executive Director or otherwise required by law, the Executive Director is hereby authorized to and shall be responsible for filing on behalf of NVTA and the NVTA Board all notices required by Government Code sections 6503.5 and 53051.

6.3 Treasurer.

- 6.3.1 General.** The Napa County Treasurer-Tax Collector shall serve as the NVTA Treasurer and in that capacity shall be the depository and have custody of the funds of NVTA, from whatever source, and shall perform the functions described in Government Code section 6505.5 (a) through (e). Notwithstanding the foregoing, the NVTA Board may retain a certified public accountant to serve as NVTA Treasurer in lieu of the Napa County Treasurer-Tax Collector.

- 6.3.2 Bond.** The NVTA Treasurer shall post an official bond in an amount to be fixed by the NVTA Board. The cost of such bond shall be a charge

against NVTA funds, except that if the NVTA Treasurer is the Napa County Treasurer-Tax Collector, the cost of the bond to be borne by NVTA shall be that amount which is in excess of the cost of the official bond posted by the Napa County Treasurer-Tax Collector for functions unrelated to NVTA.

- 6.3.3 Compensation.** Pursuant to Government Code section 6505.5, the Napa County Board of Supervisors shall determine the charges to be made against NVTA for the services performed by the Napa County Treasurer-Tax Collector for NVTA which shall be a charge against NVTA funds. If the NVTA Board retains a certified public accountant to be NVTA Treasurer, the compensation of the NVTA Treasurer shall be determined by the NVTA Board and shall be a charge against NVTA funds.

6.4 Auditor-Controller.

- 6.4.1 General.** The Napa County Auditor-Controller shall serve as the auditor-controller of NVTA and shall be responsible for drawing warrants to pay demands against NVTA when the demands have been approved by the NVTA Board or, upon delegation by the NVTA Board, by the Executive Director, or designee when acting as purchasing agent for NVTA.
- 6.4.2 Custodian of Property; Bond.** With the exception of NVTA funds which shall be in the custody of the NVTA Treasurer, the Napa County Auditor-Controller shall, acting as NVTA Auditor-Controller, be the public officer designated pursuant to Government Code section 6505.1 to have charge of, handle, have access to, and maintain inventory any property of NVTA and shall post an official bond in an amount to be fixed by the NVTA Board. The cost of such bond, to the extent in excess of the cost of the official bond posted by the Napa County Auditor-Controller in connection with functions unrelated to NVTA, shall be a charge against NVTA funds.
- 6.4.3 Compensation.** Pursuant to Government Code section 6505.5, the Napa County Board of Supervisors shall determine the charges to be made against the NVTA for the services performed by the Napa County Auditor-Controller for NVTA, which shall constitute a charge against the funds of NVTA.

SECTION 7. DUTIES AND RESPONSIBILITIES

- 7.1** Intentionally omitted.
- 7.2 Coordination of Transportation Systems.** NVTA shall facilitate the coordination of transportation systems operated by or on behalf of the Member Jurisdictions with Napa County and adjacent counties.

- 7.3 Coordination of Transportation and Land Use Management.** NVTA shall develop and implement programs and policies for the coordination of transportation and related land use management by the Member Jurisdictions. Such programs may include, but shall not be limited to, providing analysis of the impacts of land use decisions by the Member Jurisdictions on regional transportation systems and the costs associated with mitigating those impacts. In carrying out this responsibility, NVTA shall review and comment on all discretionary projects related to transportation under consideration by any of the Member Jurisdictions and may review and comment on such discretionary projects under consideration by any other public entity which are submitted to NVTA for review and comment.
- 7.4 Countywide Transportation Plans.** NVTA shall develop, adopt, implement, update as necessary, and submit to MTC a county transportation plan under Government Code section 66531 for the incorporated and unincorporated territory of Napa County which shall include consideration of the planning factors included in Section 134 of the federal Intermodal Surface Transportation Efficiency Act of 1991, as such may be amended from time to time.
- 7.5 Submission of Funding Applications and Claims.** NVTA may submit applications and funding claims for transportation related purposes to local government, MTC, the State of California, the Federal Government and other entities supporting transportation.
- 7.6 Intermodal Policies and Programs.** NVTA may consider and adopt policies and programs for all modes of transportation including but not limited to, transit, paratransit, streets and roads, bicycle and pedestrian facilities, airports, marinas, harbors, and railroads.
- 7.7 Transportation Development Act (TDA) Claims for Transit and Paratransit Services.** If NVTA operates directly or by contract with any person or entity including any Member Jurisdiction the operation of any transit and paratransit services within Napa County in whole or in part, NVTA shall be deemed authorized by this Agreement to submit any corresponding claims for funds or reimbursement under the Transportation Development Act (TDA), Section 29530 et seq. of the Government Code, as such may be amended from time to time.
- 7.8 Consolidated Transit Services Agency.** If, in the future and with the consent of all of the Member Jurisdictions and MTC, NVTA is appointed in place of the Napa County Board of Supervisors as the consolidated transportation service agency (CTSA) for Napa County as that term is defined in Public Utilities Code section 99204.5, as such may be amended from time to time, then and only then may NVTA make claims pursuant to the procedure set forth in Article 7 of

Chapter 3 of Title 21 of the California Code of Regulations, commencing with 6680.

- 7.9 Overall Program Manager (AB 434).** NVTA shall act as the overall program manager within Napa County for the purpose of receiving and reallocating the county's proportionate share of vehicle registration fees collected by the Bay Area Air Quality Management District (BAAQMD) under AB 434 (Chapter 807, Statutes of 1991, set forth in Health and Safety Code section 44241 et seq.).
- 7.10 Deliberative Body.** NVTA shall act as the countywide deliberative body for discussions of inter-jurisdictional issues relating to land use, infrastructure, the economy and economic development, community development, and environmental issues. No subject may be deliberated unless a majority of votes, as determined by Section 4.3.1 (e) (2) of this Agreement, of the Board has approved such deliberations. The NVTA may adopt decisions on such matters, but its decisions shall constitute recommendations to the Member Jurisdictions only, and shall have no binding effect. Final decision making on all matters affecting Member Jurisdictions shall remain with the governing body of each Member, except as provided by Sections 5.2 (a) through (p) inclusive, of this Joint Powers Agreement, state or federal law, and applicable regulations.
- 7.11 Other Duties and Responsibilities.** NVTA shall carry out such other duties and responsibilities as the Member Jurisdictions, by unanimous approval expressed through amendment of this Agreement or resolutions of their respective governing boards, may delegate to NVTA.

SECTION 8. FINANCE

- 8.1 Fiscal Year.** The fiscal year for NVTA shall begin on July 1 and end on June 30.
- 8.2 Budget.** A budget for NVTA shall be adopted by the NVTA Board for each fiscal year prior to June 30 of the preceding fiscal year. The budget shall include sufficient detail to constitute an operating guideline. It shall also include the anticipated sources of funds and the anticipated expenditures to be made for the operations of NVTA. Approval of the budget by the NVTA Board shall constitute authority for the Executive Director to expend funds for the purposes outlined in the approved budget, subject to the availability of funds on hand as determined by the NVTA Auditor-Controller and subject to the constraints imposed upon general law counties pertaining to execution of contracts by purchasing agents. Nothing in this Section 8.2 shall be construed to limit the power of the NVTA Board to modify the budget in whatever manner it deems appropriate and to instruct the Executive Director accordingly.

8.3 Revenues.

- 8.3.1 Membership Fees.** The Member Jurisdictions shall pay to NVTA an annual membership fee (the “Membership Fee”) based on (a) the relative populations of the Member Jurisdictions and (b) the relative number of road miles served by NVTA in each Member Jurisdiction. The Membership Fee shall be due and payable on or before June 30 of the current fiscal year. The fees for fiscal year 2021-2022 are shown in the chart below. NVTA shall adjust the Membership Fees based on changes to the Bay Area Consumer Price Index every two years concurrently with NVTA’s biennial budget cycle, provided that the total Membership Fees assessed to the Member Jurisdictions shall not be reduced below \$250,000 until all bonds or other instruments of indebtedness issued or entered into by NVTA, if any, have been paid in full.

Member Jurisdiction	Membership Fee (FY 2021-2022)	Weighted Average
City of Napa	\$109,480	43.79%
Napa County	\$91,841	36.74%
City of American Canyon	\$27,820	11.13%
Town of Yountville	\$3,905	1.56%
City of St. Helena	\$9,666	3.87%
City of Calistoga	\$7,288	2.92%
Total	\$250,000	100%

8.3.2 Approval Required for Changes to Membership Fee Apportionment.

No change shall be made to the apportionment of Membership Fees among the Member Jurisdictions (as set forth in the “Weighted Average” column of the Membership Fee chart shown in Section 8.3.1, above) unless such change in apportionment has been first approved by the legislative bodies of all of the Member Jurisdictions.

- 8.3.3 Transportation Funds.** In order to carry out the transportation duties and responsibilities of this Agreement, NVTA shall be empowered to claim all TDA funds under Articles 4, 4.5 and/or 8 of Chapter 4 of the Public Utilities Code apportioned within Napa County by the Metropolitan Transportation Commission. All TDA funds will be used for purposes allowed under TDA regulations with the exception of those funds for streets and roads, Section 99400(a) of the Public Utilities Code. All TDA funds claimed by NVTA shall be used at the sole discretion of the NVTA Board of Directors only for transportation, transit, paratransit services, related capital improvements and payment of related debt obligations. TDA funds apportioned or allocated under Section 99233.3 are not subject to this

agreement. Member Jurisdictions endorse a single apportionment by MTC under Sections 99233.8 and 99233.9 of the Public Utilities Code to the NVTA on behalf of the jurisdictions of Napa County. If apportionment under Sections 99233.8 and 99233.9 of the Public Utilities Code are made to any Member Jurisdiction, the NVTA is authorized to claim all such apportionments for transit purposes without further action by the Member Jurisdiction. Funds available pursuant to Section 99313.6, excluding funds apportioned or allocated under Section 99314.3, shall be claimed solely by the NVTA for transit purposes. No Member Jurisdiction shall claim funds apportioned or allocated under Section 99313.6, excluding funds apportioned or allocated under Section 99314.3.

8.3.4 Standards For Use of TDA Funds. Every two years, the NVTA will prepare and adopt a Short Range Transit Plan ("SRTP"). As warranted, at the discretion of the NVTA Board, the SRTP may be updated annually. The NVTA Board will adopt the SRTP and any updated SRTP. The SRTP shall provide the basis for evaluating what services are necessary and where services will be provided.

8.4 Accountability.

8.4.1 Accountable to Member Jurisdictions. NVTA shall be strictly accountable to the Member Jurisdictions for all receipts and disbursements of NVTA.

8.4.2 Annual Financial Audit. The NVTA Board shall cause an annual financial audit to be prepared and filed to the extent required by Government Code section 6505.

8.5 Debts, Liabilities and Obligations.

8.5.1 General.

(a) Obligation and Assignment of Debt. The debts, liabilities, and obligations of NVTA shall be solely the obligation of NVTA and not the debts, liabilities, and obligations of the Member Jurisdictions or their respective officers or employees. However, nothing in this Agreement shall prevent any Member Jurisdiction from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of NVTA, provided that both the NVTA Board and that Member Jurisdiction give prior approval of such contract or assumption.

(b) Advance Notice of Debts. NVTA will provide notice to the NVTA Board of Directors at their next regular or special meeting prior to submission of a formal application for long term debt where debt

payments are expected to exceed one year. This notice provision shall not apply to applications for or extensions to lines of credit.

8.5.2 Liability.

(a) **Primary Liability.** If liability is imposed upon NVTA by a court of competent jurisdiction by reason of negligent or willful acts or omissions of NVTA or any of its officers, employees, agents, volunteers, or contractors, any resulting monetary judgment against NVTA shall be paid first from the discretionary funds of NVTA or, if the liability arose from the actions of a contractor, contribution shall be sought from the contractor.

(b) **Insurance.** To comply with subsection (a), above, NVTA shall obtain and maintain in force during the life of this Agreement insurance for errors and omissions, general liability, and vehicle liability in amounts deemed by the NVTA Board to be sufficient to fully cover NVTA, its officers, employees, board members, and agents, and the Member Jurisdictions for any reasonably foreseeable losses. Where services are provided by contract to NVTA, the contract shall require the contractor to obtain insurance sufficient to hold NVTA and the Member Jurisdictions harmless and indemnify them against any claims for liability arising from the provision of the services. The cost of such coverage, whether obtained directly by NVTA or as any increased in the contract price for services obtained under contract, shall be a charge against NVTA funds.

SECTION 9. RULES OF CONDUCT

- 9.1 **Bylaws.** The NVTA Board may from time to time adopt bylaws for the conduct of the affairs of NVTA and the NVTA Board, provided such Rules of Conduct are not inconsistent with this Agreement.
- 9.2 **Quorum.** A majority of the voting power and seven (7) of the twelve (12) voting members (or their alternates) of the NVTA Board shall constitute a quorum for the transaction of business at any meeting of the NVTA Board. Notwithstanding the foregoing, if a quorum is present at the commencement of the meeting, the affirmative vote of a majority of the voting power of the NVTA Board shall constitute the act of the NVTA Board even if, at the time of such vote, less than seven voting members (or their alternates) are present.
- 9.3 **Adjournment of Meetings.** Any meeting of the NVTA Board, whether or not a quorum is present, may be adjourned by a vote of the majority of the voting members (or their alternates) present or, if no voting members or their alternates are present, may be adjourned by the person appointed to serve as Clerk or Secretary of the NVTA Board.

- 9.4 Brown Act.** All meetings of the NVTB Board shall comply with the requirements of the Ralph M. Brown Act (Government Code section 54950 et seq.).

SECTION 10. NOTICES

- 10.1 Method.** All notices which any Member Jurisdiction or NVTB may wish to give in connection with this Agreement shall be in writing and served by personal delivery during business hours at the principal office of the Member Jurisdiction or NVTB to an officer or person apparently in charge of that office, or by deposit in the United States mail, postage prepaid, and addressed to the Member Jurisdiction or NVTB at its principal office or to such other address as the Member Jurisdiction or NVTB may designate from time to time by written notice to NVTB and each of the parties. Service of notice shall be deemed complete on the day of personal delivery (or 24 hours after such delivery for notice of special meetings) or three (3) days after mailing if deposited in the United States mail.

- 10.2 Addresses for Notice.** Until changed by written notice to NVTB and the Member Jurisdictions, notices under this Agreement shall be delivered to the following addresses:

NVTB:

Executive Director
Napa Valley Transportation Authority
625 Burnell Street
Napa, California 94559-3420

COUNTY OF NAPA:

Clerk of the Board of Supervisors
County Administration Building
1195 Third Street, Room 310
Napa, California 94559

CITY OF AMERICAN CANYON:

American Canyon City Clerk
4381 Broadway Street, Suite 201
American Canyon, California 94503

CITY OF NAPA:

Napa City Clerk
955 School Street
Napa, California 94559

TOWN OF YOUNTVILLE:

Yountville Town Clerk
6550 Yount Street
Yountville, California 94599

CITY OF ST. HELENA:

St. Helena City Clerk
1480 Main Street
St. Helena, California 94574

CITY OF CALISTOGA:

Calistoga City Clerk
1232 Washington Street
Calistoga, California 94515

SECTION 11. ASSIGNMENT, WITHDRAWAL AND TERMINATION

- 11.1 Assignment.** This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Member Jurisdictions, except that no Member Jurisdiction shall assign any of its rights under this Agreement except to a duly-formed public entity organized and existing under the laws of the State of California and then only when approved by amendment of this Agreement.
- 11.2 Withdrawal.** A Member Jurisdiction may withdraw from NVTA without the consent of the other Member Jurisdictions by giving no less than ninety (90) days prior written notice to the NVTA Board. A Member Jurisdiction may withdraw from NVTA at any time with the written consent of all of the other Member Jurisdictions contained in an amendment of this Agreement. A Member Jurisdiction electing to withdraw prior to termination of the Agreement pursuant to Section 11.3 shall not be entitled to share in the distribution of assets provided for in Section 11.3. This provision shall not be effective and no Member Jurisdiction may withdraw from NVTA until all bonds or other instruments of indebtedness issued or entered into by NVTA, if any, have been paid in full.
- 11.3 Termination.** The Agreement shall continue in effect until terminated. The Agreement may be terminated at any time and NVTA dissolved with the written consent of the majority of the then-existing Member Jurisdictions representing a majority of the votes on the NVTA Board. Such consent shall be expressed in duly-authorized resolutions of the Member Jurisdictions. This provision shall not be effective so long as any bonds or other indebtedness of NVTA are outstanding and unpaid, or funds are not otherwise set aside for the payment or redemption thereof in accordance with the terms of the bonds or other indebtedness and the documentation relating thereto.
- 11.4 Disposition of Assets.** In the event of termination of the Agreement and dissolution of NVTA, any remaining assets of NVTA shall be sold or, if sale is prohibited under the terms of original acquisition, returned to or otherwise disposed of at the direction of the party or persons from whom they were obtained. After all liabilities, encumbrances and liens have been paid, the proceeds of such sales shall be allocated proportionately to the Member Jurisdictions based upon their respective populations as determined by the latest California State Department of Finance population figures. Notwithstanding the foregoing, in accordance with Government Code section 6512, any funds remaining at the time of termination which were contributed by the Member

Jurisdictions shall be returned to the Member Jurisdictions in proportion to the contributions made.

SECTION 12. AMENDMENTS

- 12.1 Method of Amendment.** Amendments to this Agreement shall be made only with the written consent of all then-existing Member Jurisdictions without regard to voting power on the NVTB Board. So long as any bonds or other indebtedness of NVTB are outstanding and unpaid, or funds are not otherwise set aside for the payment or redemption thereof in accordance with the terms of the bonds or other indebtedness and the documentation relating thereto, this Joint Powers Agreement shall not be amended, modified or otherwise revised, changed or rescinded, unless the NVTB and Member Jurisdictions have first complied with (i) the procedures required to amend any indenture for existing Bonds, or (ii) the terms of other indebtedness, as applicable.

SECTION 13. WAIVER

- 13.1 Limitation.** Waiver by any Member Jurisdiction of breach of any provision of this Agreement shall not constitute a waiver of any other breach of such provision or of any other provision of this Agreement, nor shall failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

SECTION 14. SEVERABILITY

- 14.1 General.** Should any part, term or provision of this Agreement be decided by a final judgment of a court of competent jurisdiction to be illegal or in conflict with any State or federal law or regulation or any applicable local ordinance or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms and provisions shall not be affected.

SECTION 15. SECTION HEADINGS

- 15.1 Effect.** All section numbers and headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

SECTION 16. APPLICABLE LAW AND VENUE

- 16.1 Applicable Law.** The rights, obligations, duties and liabilities of NVTB and of the Member Jurisdictions under this Agreement shall be interpreted in accordance with and governed by the law of the State of California.
- 16.2 Venue for Disputes.** Venue for any action filed by any Member Jurisdiction under state law to enforce this Agreement or any provision thereof shall be in the

courts of Napa County. Venue for any action filed by any Member Jurisdiction under federal law or as a federal action shall be in the federal courts for the Northern District of California.

SECTION 17. NO RIGHTS CREATED IN THIRD PARTIES

- 17.1 No Rights for Third Parties.** The parties to this Agreement hereby expressly agree that it is not the intent of the parties to create, and this Agreement shall not be deemed or construed to create any third party beneficiaries or otherwise inure to the benefit of any third parties.

SECTION 18. ENTIRE AGREEMENT

- 18.1 Integrated Agreement.** The terms and provisions of this Agreement constitute the full and entire agreement between the Member Jurisdictions with respect to the matters covered herein. This Agreement supersedes any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the Member Jurisdictions with respect to such subject matter, including any prior agreement or amendment thereto relating to the CMA.

City of St. Helena

RESOLUTION No. 2020-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA
APPROVING AMENDMENT NO. 12 TO THE JOINT POWERS AGREEMENT FOR
THE NAPA VALLEY TRANSPORTATION AUTHORITY (NVTa)**

RECITALS

WHEREAS, the Napa Valley Transportation Authority (NVTa) is a joint powers agency created by the Member Jurisdictions to provide coordinated transportation planning and transportation services within the County of Napa; and

WHEREAS, the NVTa desires to amend the Joint Powers Agreement; and

WHEREAS, the City of St. Helena is a member of the NVTa Joint Powers Agency and a signatory of the NVTa Joint Powers Agreement; and

WHEREAS, Amendment No. 12 allows the NVTa Board to explore alternative financing mechanisms to fund the new Vine Transit Maintenance Facility and other large capital projects; and

RESOLUTION

NOW THEREFORE BE IT RESOLVED the City Council approves, and authorizes Mayor Ellsworth to execute, Amendment No. 12 to the NVTa Joint Powers Agreement.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the City Council of the City of St. Helena at a regular meeting of the Council held on the 8th day of December, 2020, by the following vote:

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

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafopoulos, City Clerk



Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and approval of a Resolution authorizing: (1) a budget increase of \$30,000 to 561-5000-2130 in FY 2020-21 for costs associated with Phase II Water Restriction implementation and (2) use of Water Fund Balance in the amount of \$30,000 in FY 2020-21.

CEQA Determination: Not a CEQA project

Prepared By: Martin Beltran, Management Analyst

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On June 23, 2020, City Council adopted a resolution establishing Phase I Water Regulations based on Code Section 13.04.230 where conditions requiring the establishment of a Phase II water emergency, as determined by the Director of Public works, appear to be imminent. At the time of the emergency the City had extremely low rainfall (20"), a forecast for a potential multi-year drought, and Bell Canyon Reservoir was at 60% capacity. Water operations had also implemented changes to conserve Bell Canyon water usage by optimizing Stonebridge Wells and City of Napa water use. The forecast was for a potential Phase II trigger by November 2020.

At the October 27, 2020, City Council Meeting, the St. Helena City Council adopted Resolution No. 2020-107 making the determination that conditions requiring the establishment of a Phase II water emergency exist and as a result directed City staff to enact a Phase II Water Emergency in accordance with the St. Helena Municipal Code (SHMC).

The City Council has the overriding authority to control the use of revenues and the appropriations of funds and the total appropriations in any fund may not be increased except by the City Council.

DISCUSSION

With the adoption of the Phase II Emergency, the City will need to establish a methodology for fines and compliance with the Phase II Regulations. To establish this methodology staff is recommending contracting with a consulting firm to assist with the development of water emergency policies, including penalties, during declared water shortage emergencies. City staff will work with the consultant on determining the appropriate basis and the appropriate monetary penalties for exceeding allocations at each stage which will consider socio-economic factors, comparable-agency water shortage penalties, as well as State guidance on maximum penalties as set forth in the Water Code.

In addition to establishing a methodology, the City will be implementing additional public outreach on Phase II Water Regulations and water conservation measures through the City website, utility billing inserts, mailers, SHINE Newsletter, and other media venues.

An allocation for the implementation of Phase II Water Emergency was not included in the adopted FY FY 2020-21 budget. Staff recommends City Council approve a resolution for a budget increase in the amount of \$30,000 to be used towards the implementation of the Phase II Water Emergency.

FISCAL IMPACT

The fiscal impact is use of Water Enterprise Fund Balance of \$30,000 and in increase in Water Fund expenses of the same. Use of the Water Enterprise Fund Balance will leave the estimated Water fund balance at 58%.

RECOMMENDED ACTION

Staff recommends City Council approve a Resolution authorizing: (1) a budget increase of \$30,000 to 561-5000-2130 in FY 2020-21 for costs associated with Phase II Water Restriction implementation and (2) use of Water Fund Balance in the amount of \$30,000 in FY 2020-21.

ATTACHMENTS

[Attachment 1: Resolution](#)

RESOLUTION NO. _____

RESOLUTION AUTHORIZING: (1) A BUDGET INCREASE OF \$30,000 TO 561-5000-2130 IN FY 2020-21 FOR COSTS ASSOCIATED WITH PHASE II WATER RESTRICTION IMPLEMENTATION AND (2) USE OF WATER FUND BALANCE IN THE AMOUNT OF \$30,000 IN FY 2020/21.

WHEREAS, On June 23, 2020, City Council adopted a resolution establishing Phase I Water Regulations based on Code Section 13.04.230 where conditions requiring the establishment of a Phase II water emergency, as determined by the Director of Public works, appear to be imminent; and

WHEREAS, At the October 27, 2020, City Council Meeting, the St. Helena City Council adopted Resolution No. 2020-107 making the determination that conditions requiring the establishment of a Phase II water emergency exist and as a result directed City staff to enact a Phase II Water Emergency in accordance with the St. Helena Municipal Code (SHMC); and

WHEREAS, The City Council has the overriding authority to control the use of revenues and the appropriations of funds and the total appropriations in any fund may not be increased except by the City Council; and

WHEREAS, An increase to the Fiscal Year 2020-21 Professional Contracts budget in the Water Fund is necessary to accommodate additional expenses associated with the Phase II Water Emergency; and

WHEREAS, Use of Water Enterprise Fund balance is necessary for the increase.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of St. Helena as follows:

Section 1. A budget increase of \$30,000 to 561-5000-2130 in FY 2020-21 for costs associated with Phase II water restriction implementation.

Section 2. Use of water fund balance in the amount of \$30,000 in FY 2020-21.

APPROVED at a Regular Meeting of the St. Helena City Council on December 8, 2020, by the following votes:

Mayor Ellsworth: _____

Vice Mayor Dohring: _____

Council Member Chouteau: _____

Council Member Knudsen: _____

Council Member Koberstein: _____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafoopoulos, City Clerk



Report to the City Council
Regular City Council - 08 Dec 2020 - Amended 12-4-20

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed adoption of a resolution certifying the Measure T Maintenance of Effort (MOE) for Fiscal Year 2020.

CEQA Determination: Not a CEQA project

Prepared By: Mandy Kellogg, Finance Manager

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

At the General Election held on November 6, 2012, the voters of Napa County approved a ½-cent sales tax increase known as Measure T, the Napa Countywide Road Maintenance Act of 2012. The sales tax will be implemented by the Napa Valley Transportation Authority - Taxing Authority ("NVTATA"), and the tax proceeds will be allocated among all local agencies within the County.

Measure T funding is to be used for maintenance, reconstruction, and/or rehabilitation of streets, roads, and transportation infrastructure within the public right-of-way including but not limited to: sidewalks, curb and gutters, curb ramps, lighting, traffic signage, striping, and local roadway drainage. Measure T is intended to supplement, not supplant or replace, the City's existing local general fund revenues being used for transportation infrastructure maintenance.

DISCUSSION

On February 13, 2018, City Council established the City's Maintenance of Effort (MOE) at \$379,183.33, which is a calculation of the average maintenance of effort for the FY 2007/2008, FY 2008/2009 and FY 2009/2010 as required by the Measure T Ordinance. Each year going forward, the City is required to certify that it has met the MOE obligation for the prior fiscal year.

For the Fiscal Year 2020, the City's MOE was \$379,183.33 which was met with expenses to Streets Capital Projects R19-79 Pavement Restoration and R20-01 Mitchell Drive to Sulphur Creek Storm Drain.

Maintenance of Effort Calculations are as follows:

Project	Description	MOE Expenses in FY20
R19-79 Pavement Restoration	Rehabilitation of streets throughout the City with various treatments.	\$ 326,278.33
R20-01 Mitchell Drive to Sulphur Creek Storm Drain	Replace storm drain pipe on Mitchell Drive and slip-line portion of pipe from Mitchell Drive to Sulphur Creek.	\$ 52,905.00
Total Expended		\$ 379,183.33

FISCAL IMPACT

There is no financial impact associated with these actions as projects that will be funded by Measure T are eligible for 100% reimbursement of incurred project costs.

RECOMMENDED ACTION

Adopt a resolution certifying the Measure T Maintenance of Effort (MOE) for Fiscal Year 2020.

ATTACHMENTS

[Attachment A - MOE Certification Form](#)

[Attachment 1 Resolution FY20 Measure T MOE Certification](#)

Attachment A

City/County/Town of St. Helena
Measure T Maintenance of Effort (MOE) Certification for
Fiscal Year 2019-2020

NVTA-TA Approved MOE	<u>\$379,183.33</u>
MOE Amount Certified for FY 2020-19	<u>\$379,183.33</u>
Measure T funds Received in FY 2020-19	<u>\$1,293,358.80</u>
Measure T funds Expended in FY 2020-19	<u>\$782,672.75</u>
Measure T funds Balance in Account	<u>\$844,401.43</u>

CITY OF ST. HELENA

RESOLUTION No. 2020-

Adoption of a resolution certifying the Measure T Maintenance of Effort (MOE) for Fiscal Year 2020.

RECITALS

- A. On November 6, 2012, the voters of Napa County passed the Napa Countywide Road Maintenance Act, also known as Measure T, which imposes a half cent transaction and use (sales) tax to provide supplemental funding for road maintenance as detailed in the Measure T Expenditure Plan; and
- B. The Napa Valley Transportation Authority – Taxing Authority (“NVTATA”) is the designated agency that administers and oversees the Measure T revenues; and
- C. The City of St. Helena is an eligible recipient of Measure T funds; and
- D. The tax proceeds will be used to pay for the projects outlined in the Measure T Expenditure Plan allocated to the County of Napa and the cities and town within Napa County (“Local Agencies”) as set forth in Measure Ts; and
- E. Under the Measure T Expenditure Plan, Measure T funds are provided to the Local Agencies to be used for streets and roads projects as defined in the Measure; and
- F. The City of St. Helena has entered into a Master Agreement with NVTATA that outlines procedures for Measure T expenditures; and
- G. The City of St. Helena shall determine and certify to NVTATA the average maintenance of effort amount for Fiscal Years 2007-08, 2008-09, and 2009-10, consistent with the criteria set forth in Section 9 of Ordinance No. 2012-01, including a memorandum detailing the supporting financial documentation and methodology utilized to calculate the average fiscal year street and roads; and
- H. On February 13, 2018, the City Council adopted Resolution 2018-16, which established the average Maintenance of Effort of \$379,183.33; and
- I. By January 1st each calendar year, the City of St. Helena must certify to and provide NVTATA a copy of supporting documentation as well as a Resolution approved by the governing body of the City of St. Helena, including backup documentation that demonstrates that the Maintenance of Effort was met the prior fiscal year; and
- J. Measure T Project(s) will comply with the requirements under the California Environmental Quality Act (California Code Sections 21000 *et seq.*; as implemented through California Regulations Title 14, Chapter 3, Sections 15000 *et seq.*).

RESOLUTION

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

1. The Recitals set forth above are true and correct and are incorporated herein; and
2. The City Council hereby determines and certifies that:

(a) the Maintenance of Effort ("MOE") for the City of St. Helena for Fiscal Year 2019/2020 is \$ 379,183.33, as described:

Project	MOE Expenses in FY20
R19-79 Pavement Restoration	\$ 326,783.33
R20-01 Mitchell Drive to Sulphur Creek Storm Drain	\$ 52,905.00
Total Expended	\$379,183.33

(b) For Fiscal Year 2019/2020, the City of St. Helena met its obligation for an MOE at least \$379,183.33 as set forth in Resolution 2018-16; and

(c) The City of St. Helena will meet its MOE obligation of at least \$379,183.33 for Fiscal Years 2020-2021 and 2021/2022; and

3. This Resolution shall take effect immediately upon adoption.

Approved at a Regular Meeting of the St. Helena City Council on December 8, 2020 by the following vote:

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

APPROVED:

ATTEST:

 Geoff Ellsworth, Mayor

 Cindy Tzafopoulos, City Clerk



Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: PUBLIC HEARINGS

Subject: Discussion of and Direction on the Potential Activities and Projects for Inclusion in the 2021 Community Development Block Grant (CDBG) Applications

CEQA Determination: Exempt from the requirements of CEQA for sections 15332, 15301, and 15303

Prepared By: April Mitts, Finance Director

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) program authorizes the use of funds to assist low- and moderate-income families or aid in the prevention or elimination of slums or blight.

Due to the State of California's low expenditure rate of CDBG funds, the State's Department of Housing and Community Development (HCD) has worked over the past few years redesigning the CDBG program as required by HUD direction. Due to this major concern, many changes have occurred and were implemented under the 2020 Notice of Funding Availability (NOFA) process. The City is required to conduct public outreach regarding potential CDBG projects/activities that could be considered for the current application period including holding a public hearing to discuss the potential application(s) and allow for public input. While the 2021 NOFA will not be released until January, staff is seeking input based on the 2020 NOFA as it is not estimated there will be many changes.

Project/Activity Selection

In order to be considered eligible, a suggested project/activity must meet one or more of the three National Objectives listed in CDBG Federal Statutes:

- Benefit to low- and moderate-income persons;
- Prevention or elimination of slums and blight; or
- Meeting an urgent community need which poses an immediate threat to the health and welfare of the community (State designates when the “urgent need” objective is allowed for a NOFA).

The benefit to low- and moderate-income persons is the most predominately used National Objective. In order to benefit low- or moderate-income persons, the project/activity must either benefit an area that is comprised of at least 51% low- or moderate-income households, or the program benefits individually qualified households (i.e., each participating household is income certified).

The Community Development and Economic Development allocations of the State CDBG program are typically published in a combined "Notice of Funding Availability" (NOFA) each program year in January. Eligible cities and counties may submit Community Development and Housing applications for CDBG funds under the 2021 NOFA for an estimated maximum per application request of \$3,500,000. It is estimated that the funding of the State 2021 CDBG program allocation is approximately \$60,000,000. The estimated allocations are based on the fiscal year 2020 NOFA.

The Economic Development "Over-the-Counter" (OTC) allocation has an approximate maximum limit of \$12,600,000 based on the fiscal year 2020 NOFA. The NOFA also includes the Native American and Colonia allocations. The Native American allocation is only for areas with high concentrations of low-income Native American residents, who are not part of a federally recognized Native American Indian tribe or Rancheria. The Colonia funding is only for designated communities within 150 miles of the Mexican American border.

It is estimated that beginning in January 2021, eligible jurisdictions may apply for a maximum of six applications, with one project or program per application with total funding not to exceed \$3,500,000, excluding the Economic Development OTC program. In addition to meeting one of the three National Objectives, the project/activity must also fall under one of the categories listed below and will be either a competitive or over the counter (OTC) application. The date OTC applications will be accepted is not yet known; however, in fiscal year 2020, they were reviewed on a first-come, first-served basis.

Public Improvements (maximum grant of \$3,500,000). Project must be located in and serve a predominantly residential area within the city. Examples include water and sewer facilities, flood and drainage facilities, accessibility related street improvements (i.e., curb ramps), and utilities.

Public Facility (maximum grant of \$3,500,000). Examples include acquisition, rehabilitation or new construction of buildings used for public purposes such as training,

health services, education, senior and recreation centers, nutrition, shelter, day care, temporary housing and fire protection.

Project Predevelopment (maximum grant up to \$500,000). Predevelopment activities such as the completion of plans and environmental review for a public improvement or public facility project.

Public Service (maximum grant of \$500,000). Examples include subsistence payments, security deposits, childcare, health care, recreation programs, fair housing counseling, drug and alcohol abuse counseling and testing, homeless services, senior services, and nutrition services benefiting low- and moderate-income persons.

Planning and Technical Assistance (maximum grant of \$250,000). The product must show a connection to assisting with an eligible CDBG activity that, if implemented, meets a National Objective. Product(s) are submitted to the State at the time of completion. The grant requires a five percent cash match to be expended prior to expenditure of CDBG funds. Examples include studies, analysis, and data gathering.

Housing Assistance Activities:

- Home-ownership Assistance Program (maximum grant of \$1 million): assistance with loans for down-payment or closing costs.
- Housing Rehabilitation Program for Single Family Homes. (maximum grant of \$1 million): loans for repairs and improvements of owner-occupied units.
- Multi-Family (five or more units at a specific site) Housing Rental Rehabilitation Project (with or without acquisition) (maximum grant of \$3.5 million): loan for repairs and improvements of renter-occupied units for sites where all of the tenants qualify as low- or moderate-income households.
- Acquisition of Real Property for Multi-Family Projects (maximum grant of \$3.5 million): acquisition of a site where all of the tenants qualify as low- or moderate-income households.
- Public Improvements in Support of New Housing (maximum grant of \$3.5 million).

Business Assistance (maximum grant of \$750,000). Examples include financing of working capital, furniture, equipment, and property repairs/improvements.

Microenterprise Assistance (maximum grant of \$500,000). Examples include business training, financing of working capital, furniture, equipment, and property repairs/improvements.

St. Helena Housing Needs The City of St. Helena is within the Association of Bay Area Governments (ABAG) region and ABAG is responsible for conducting the Bay Area's Regional Housing Needs Allocation (RHNA) process in conjunction with the local elected officials and staff. Following State law, every eight years the State determines the total number of new homes the Bay Area needs to build and then ABAG distributes a share of the region's housing need to each City, Town, and

County in the region. During the planning period of 2014-2022, the City of St. Helena's Housing Element RHNA allocation noted the 31 units needed within the following income categories:

Very Low 8; Low 5; Moderate 5; and Above Moderate 13

DISCUSSION

Staff has identified three potential projects and is seeking City Council feedback on each project as well as provide direction on any other projects/activities to include in the 2021 application. In fiscal year 2020, the City had applied for two of the three projects identified below. Although the City has not received denial notices for either grant, it is unlikely the City will receive funds due to the total amount of all applications far exceeds the amount of available grant funding - as of July 24, 2020, a total of almost \$74 million in applications had been received with available funding of only \$23 million. Because both projects are viable and ready for submission, staff recommends they are included in the 2021 application which can be submitted the first day applications are accepted.

Based on City Council direction, the final project list will be brought back to City Council at a later meeting for approval.

CDBG Projects Identified by Staff

Based on the 2020 NOFA eligibility criteria of CDBG funds the following is list of potential projects eligible for OTC applications.

Multifamily Single Family Housing Acquisition and Rehabilitation (applied for in fiscal year 2020)

Our Town St. Helena (OTSH) has identified an opportunity to acquire an existing 4-unit rental property at 723 Hunt Avenue in St. Helena. The building is well maintained, and the current rents are below Fair Market Value. The current owner of the property will require that the existing tenants, who all appear to be below 80% Area Median Income (AMI), remain in the building after the completion of the sale. The current owners have an existing option agreement that has been extended thru 2020, with a contingency of receiving CDBG funds and environmental clearance to close the escrow. With CDBG funds, OTSH would be able to purchase and manage the property with a 55-year deed restriction so that it remains available and affordable to St Helena's working families and seniors.

OTSH believes this would be an excellent use of CDBG funds because it would preserve a well-maintained, low-income housing site that is at risk of conversion to higher rents when sold. The CDBG program allows the City to add funds to the application budget that will cover staff time and expenses and consultants to complete the application, manage funding process and fund compliance activities. The total grant request is for \$1,500,000 which includes \$1,400,000 sale price plus \$100,000 for administrative fees.

Hunt's Grove Parking Lot Project (applied for in fiscal year 2020)

The apartment complex was built on City property and has been in existence since 1991. The property is leased to Hunt's Grove (Bridge Housing Corporation) and is comprised of affordable housing units. There has been an on-going parking related issue at Hunt's Grove Apartments. The proposed project will expand and improve parking for Hunt's Grove Apartments.

The City evaluated the potential of expanding parking at this site to minimize parking in the streets. Based on preliminary plans, it appears an additional six tandem spots would fit in the proposed area, creating space for an additional 12 parked cars. The estimated cost of this project is \$200,000.

Planning Technical Assistance

Planning and Technical Assistance grants can include studies and plans for housing, public works, and community facilities that meet CDBG national objectives and provide principal benefit to low-income persons. In 2015, the City was awarded and utilized CDBG funds to complete a feasibility analysis and comparison of sites for new affordable housing development. Being the study is over five years old, an update may be completed.

FISCAL IMPACT

There is no fiscal impact associated with the discussion and direction of this item.

RECOMMENDED ACTION

Provide direction on the activities and projects to be considered for funding under the 2021 Community Development Block Grant program.

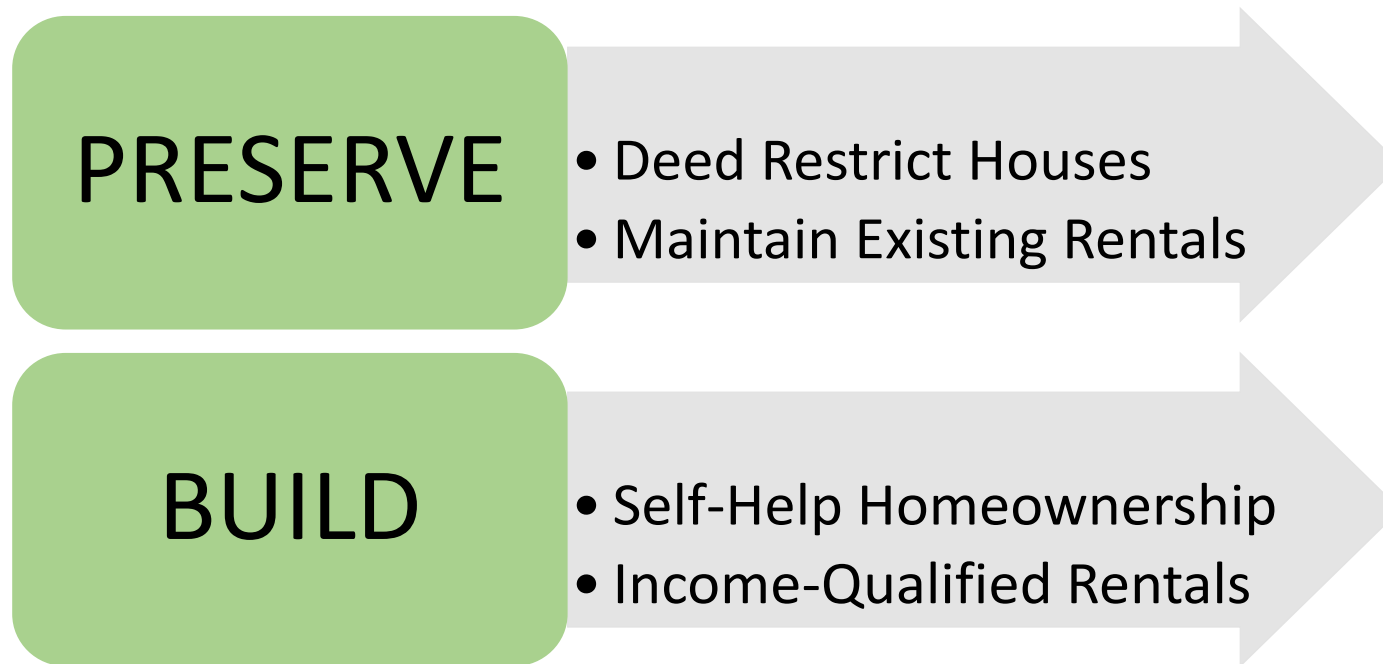


723 Hunt Avenue

St Helena City Council Presentation

December 8, 2020

OTSH's Two-Pronged Approach



723 Hunt Avenue

- 4-unit apartment building
- Appraised at \$1,400,000
- Well maintained
- 2 bedroom/1 bath
- Large units – 1067 sq ft
- Current tenants appear to be at or below 80% AMI



Preserving Existing Housing

- OTSH seeks to purchase 751 Hunt Avenue and preserve it as affordable housing
- Currently have an option to purchase at \$1,400,000 (appraised value)
- Option is contingent upon receiving an acquisition funding grant and due diligence inspections
- At purchase, OTSH will deed restrict the property as affordable rentals for 55 years
- OTSH will retain and manage the property long term

Proposed Financing

- OTSH requests the City of St Helena to apply for a Community Development Block Grant (CDBG) to fund the acquisition of this property
- Grant funds would be placed into the City's Affordable Housing Trust Fund and transferred to OTSH upon completion of required rental restriction documentation
- Requested CDBG grant funds of \$1,500,000 will cover the cost of the property plus the City's and OTSH's administrative costs associated with the property transfer

CDBG Non-Competitive Funds

- The CDBG grant funds are Over-the-Counter (OTC)
 - Grant requests that meet HCD requirements will be approved in the order they are received
 - Grant application opening date is February 2020 (postponed from January)
 - OTSH desires to have the 751 Hunt Avenue grant request submitted on the first day applications are accepted
 - Although the City is required to submit the grant application, OTSH will assist with the process as needed

Good Financial Investment

- 723 Hunt apartments will cost \$350K per unit
 - \$375K with administrative expense
- Cost to build one affordable housing unit is \$480K excluding land
 - 2019 cost per unit for a 50-unit LITC-funded complex
 - Source: UC Berkeley Turner Center for Housing Innovation

Good Precedent for St Helena

- OTSH applauds property owners Joe and Robyn Orsini
 - Desire to keep their units affordable for local working families
 - Willing to wait for OTSH to obtain acquisition funds
- Great example for other property owners
 - Full price or charitable sale offers available
 - Requires a long escrow period to obtain acquisition funds

Must Be Proactive – Missing Opportunities

- Limited supply of market-rate multi-unit housing in St Helena
- Two in escrow right now
- Need to identify and work with potential sellers

Address	Price	# Units	Cost/Unit	Sq Ft	Cost/Sq Ft
723 Hunt Avenue	\$ 1,400,000	4	\$ 350,000	4444	\$ 315
1366 Monte Vista	\$ 2,000,000	6	\$ 333,333	5282	\$ 379
1637 Spring	\$ 2,600,000	8	\$ 325,000	6400	\$ 406



ourtownstheleena.org
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Our Town St Helena December 2020

9



Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: OLD BUSINESS

Subject: Discussion and update on the City of St. Helena Water Supply and Phase II Water Emergency

CEQA Not a CEQA project
Determination:

Prepared By: Martin Beltran, Management Analyst

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

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On June 23, 2020, City Council adopted a resolution establishing Phase I Water Regulations based on Code Section 13.04.230 where conditions requiring the establishment of a Phase II water emergency, as determined by the Director of Public works, appear to be imminent. At the time of the emergency, the City had extremely low rainfall (20"), a forecast for a potential multi-year drought, and Bell Canyon Reservoir was at 60% capacity. Water operations had also implemented changes to conserve Bell Canyon water usage by optimizing Stonebridge Wells and City of Napa water use. The forecast was for a potential Phase II trigger by November 2020.

On October 13, 2020, the Public Works Director informed City Council that a Phase II Water Emergency had been triggered on October 1, 2020. The trigger system utilizes data the water treatment operators submit in a monthly water production report. The September 2020 water report was delayed due to the September 27, 2020 Glass Fire and was not available in time to bring a Phase II emergency for discussion and consideration to City Council. As of October 13, 2020, Bell Canyon was at 399.8' and 39.4% capacity.

Prior to September 2020, the City had been slightly above the Phase II trigger with customer water use on par with the prior year; however additional water loss has since occurred due to continued high temperatures (evaporation at reservoir) and water

usage for fire suppression needs during the LNU Complex and Glass wildfires (City staff is actively researching how much water was utilized for fire suppression activities). It is known that treated water was accessed from fire hydrants and non-treated water was sourced directly from Bell Canyon Reservoir.

At the October 27, 2020, City Council Meeting, the St. Helena City Council adopted Resolution No. 2020-107 making the determination that conditions requiring the establishment of a Phase II water emergency exist and as a result directed City staff to enact a Phase II Water Emergency in accordance with the St. Helena Municipal Code (SHMC).

DISCUSSION

Water Projections Update

The projected water demand through the end of June 2021 is approximately 770 acre-feet and the projected water supply as of December 1, 2020 from all three water sources is as follows:

Water Source	Volume in Acre-Feet
Bell Canyon Reservoir	921
*Stonebridge Well Production	176
**City of Napa	322
Total Supply	1,419

*The City has increased well production from 20% to 30% to address the Phase I and II water emergency

**An additional 200 acre-feet of water is available for allocation from the City of Napa if needed.

The current water delivery from July 1, 2020 through November 30, 2020 is 920 acre-feet for all three water sources.

Total water delivery in 2019/20 was 1,690 acre-feet and as of November 30, 2019 it was 972 acre-feet.

Total water delivery in 2018/19 was 1,688 acre-feet and as of November 30, 2018 it was 924 acre-feet.

See Attachment 1 for three-year Total Water Delivery and Attachment 2 for Historical Water Use by Source.

The available water supply versus projected demand through the end of fiscal year 2020/21 is currently in the positive; however, but the concern lies with meeting the following fiscal year demand (FY 2021/22) if there is a shortage of rainfall again this year. See Attachment 3 - Annual Water Demand

The Bell Canyon Reservoir elevation as of December 1, 2020 was 399.47 feet, which is equivalent to 38.67% of capacity. For the historical capacity, see Attachment 4 - Bell Canyon Historical Capacity.

The City's annual rainfall as of December 1, 2020 was approximately 2.24 inches, which is an increase of 2.13 inches since October 31, 2020, but well below what is considered a dry year without water restrictions. If the City does not receive several additional inches of precipitation by the end of June 2021, it may be in a critically dry year scenario. It is important to note that the rainfall year coincides with the City's fiscal year from July 1 to June 30.

City staff and staff at the State Water Resources Control Board Division of Drinking Water have discussed the City's current water emergency status and will continue to have a monthly check-in meeting until the City is no longer in a water shortage emergency.

Phase II Water Regulations Update

A committee was created amongst City staff to focus on the Phase II Water Regulations. The group consists of the City Manager, Public Works Director, Finance Director, City Clerk, and other staff members from Finance and Public Works. Staff has met a total of four times since the implementation of the Phase II Water Shortage Emergency. The first meeting being on November 3rd and these meetings have been held on a weekly basis. The work group has been working on coordinating the next steps for the Phase II Water Regulations. The items of focus includes the recruitment of members for the Water Advisory Board, implementation of the customer water limitations, public outreach and communications including monthly notifications to water customers on usage, creating a methodology for penalties, and all things Phase II Water Regulations. At the end of November, staff posted information about the Phase II Water Regulations in the newspapers, published two press releases, and have created a website with important information and water conservation tips. The group will continue to meet and will work closely with any potential Consultants that are brought in to assist the City as well as the Water Advisory Board.

Methodology and Timing -

The City has reached out to Consultants that specialize in water rates and establishing a methodology for water shortage emergencies. Currently, there are no penalties or fines established for non-compliance of Phase II. City staff, along with the Water Advisory Board, will work with a Consultant on establishing a methodology which will be brought to City Council for consideration and approval. This work is on-going and an update will be provided as additional information is available.

Water Advisory Board -

With the declaration of a Phase II emergency, City Council will establish a Water Advisory Board consisting of one City Council member, one Planning Commissioner, one winery (water) customer, and two public members, one of whom shall be solely a residential customer. The Water Advisory Board shall meet monthly and may grant

permits for uses of water, for exceptions to water conservation measures, or for water connections otherwise prohibited. There is an open recruitment to fulfill the positions on the Water Advisory Board, the application is available on the City website, and is due December 15, 2020. It is anticipated the Water Advisory Board will be appointed during the City Council meeting of January 12, 2021.

FISCAL IMPACT

The total fiscal impact of Phase II Water Regulations is still unknown. Several components will fiscally affect the City including:

1. Drought Rates - The 2017 adopted water rate structure includes a drought period surcharge that begins once the City implements Phase I Water Regulations. Drought rates are applied to use charges (does not affect service (or base) charges). Drought rates are 6% higher than non-drought rates because during drought years the cost of water per 1,000 gallons is 6% higher than during non-drought years. Drought rates went into effect July 1, 2020.
2. Decrease in Consumption - Phase II Water Regulations limits the amount of use based on winter average for commercial, industrial, and commercial users and limits the amount of use based on the number of persons in a household for residential customers. Prior to being able to estimate the decrease in consumption and decrease in revenues, all residential customers will need to update the number of persons in the household and winter averages must be established for commercial, industrial, and commercial users. Additionally, potable use for landscaping is not permissible from November to April during Phase II.
3. Additional Staffing and Outreach - Additional staffing and outreach costs will be associated with the implementation of Phase II Water Regulations due to: (a) outreach to all customers which will include mailers and possible follow-up phone calls, (b) calculations which must be done for each customers based on classification, (c) customer data input into the City's financial software system for each customer; (d) monitoring of water use for the duration of the water emergency, and (e) implementation of fines if violations occur. Council action has been requested to allocate up to \$30,000 for these items.
4. Fines - Municipal Code Section 13.04.230 Subsection B.9 establishes a fine of up to five hundred dollars (\$500.00) for each day in which a violation of the restrictions occurs. Actual fines are to be determined.

RECOMMENDED ACTION

No action required at this time.

ATTACHMENTS

[Attachment 1: Three Year Total Water Delivery](#)

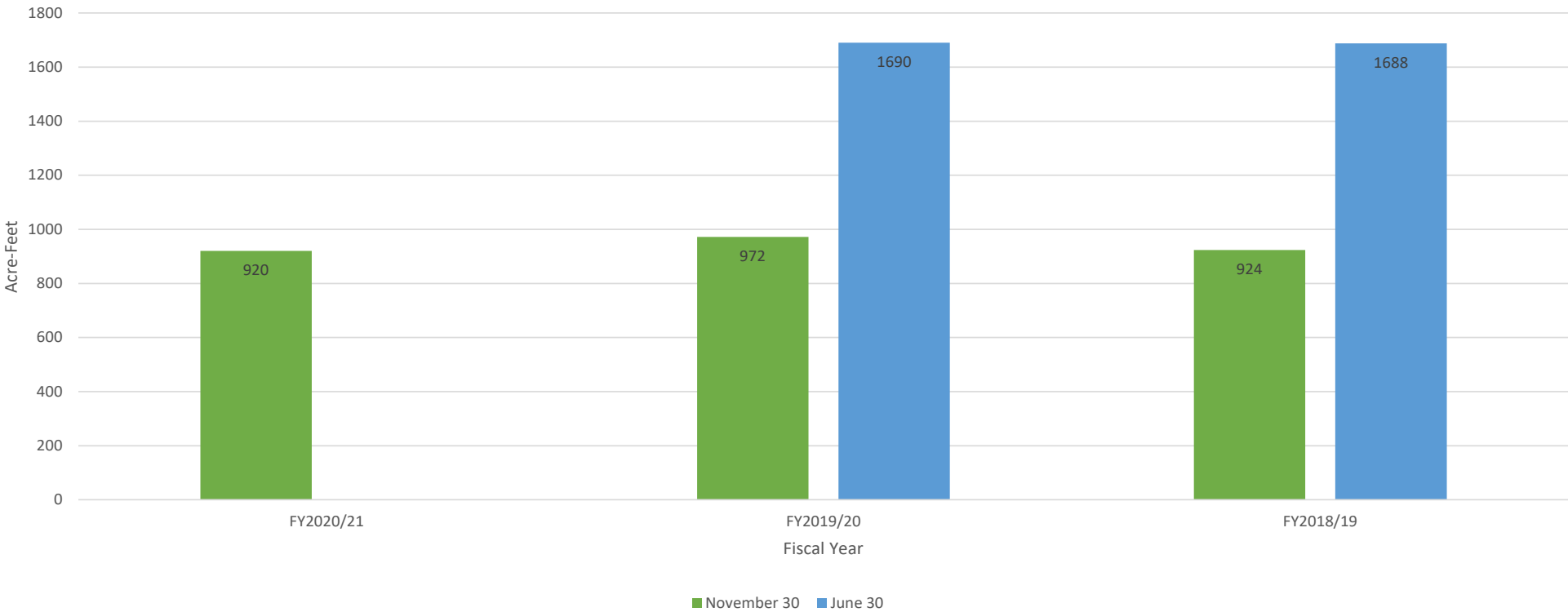
[Attachment 2: Historical Water Use by Source](#)

[Attachment 3: Annual Water Demand](#)

[Attachment 4: Bell Canyon Historical Capacity](#)



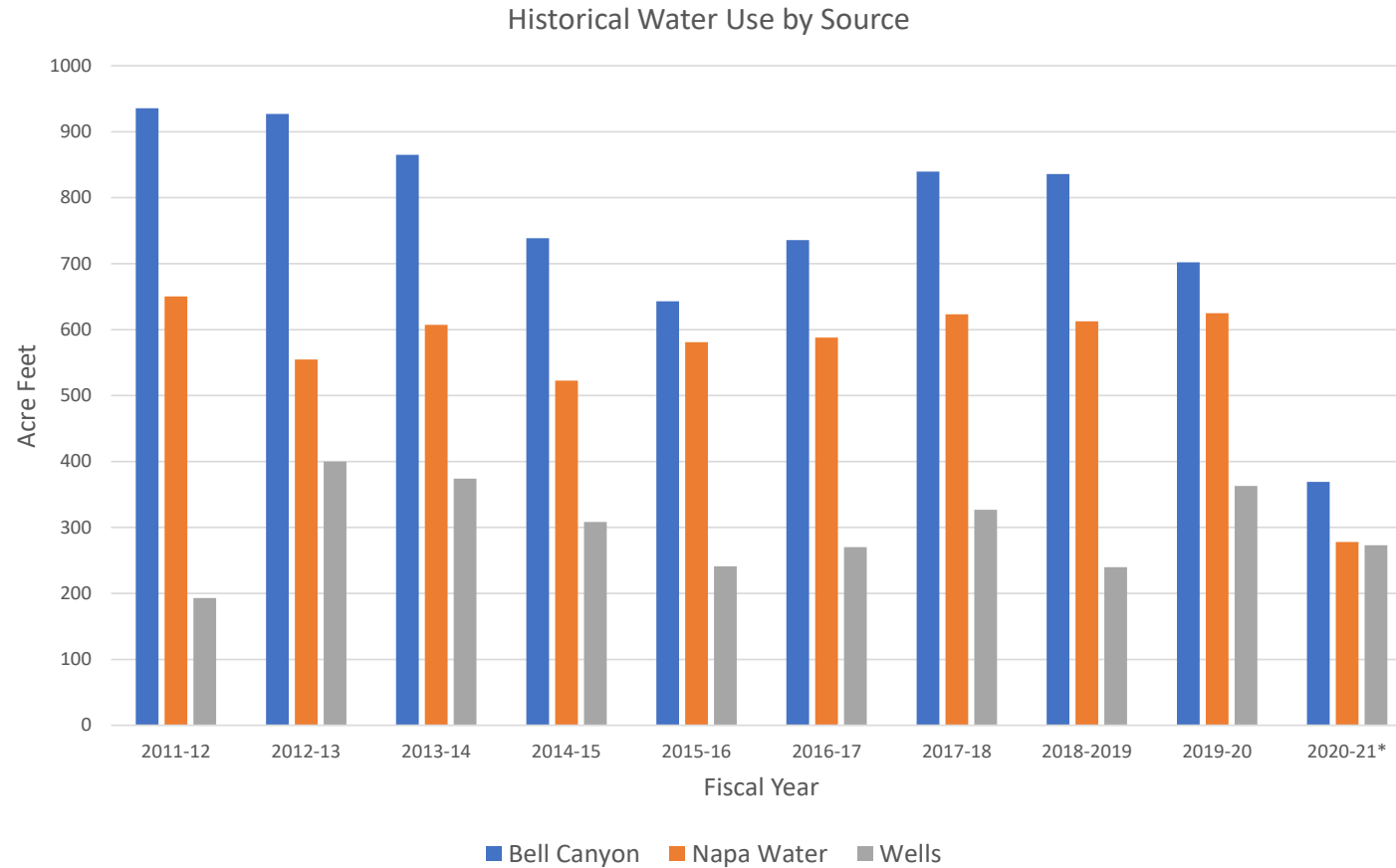
Three Year Water Delivery





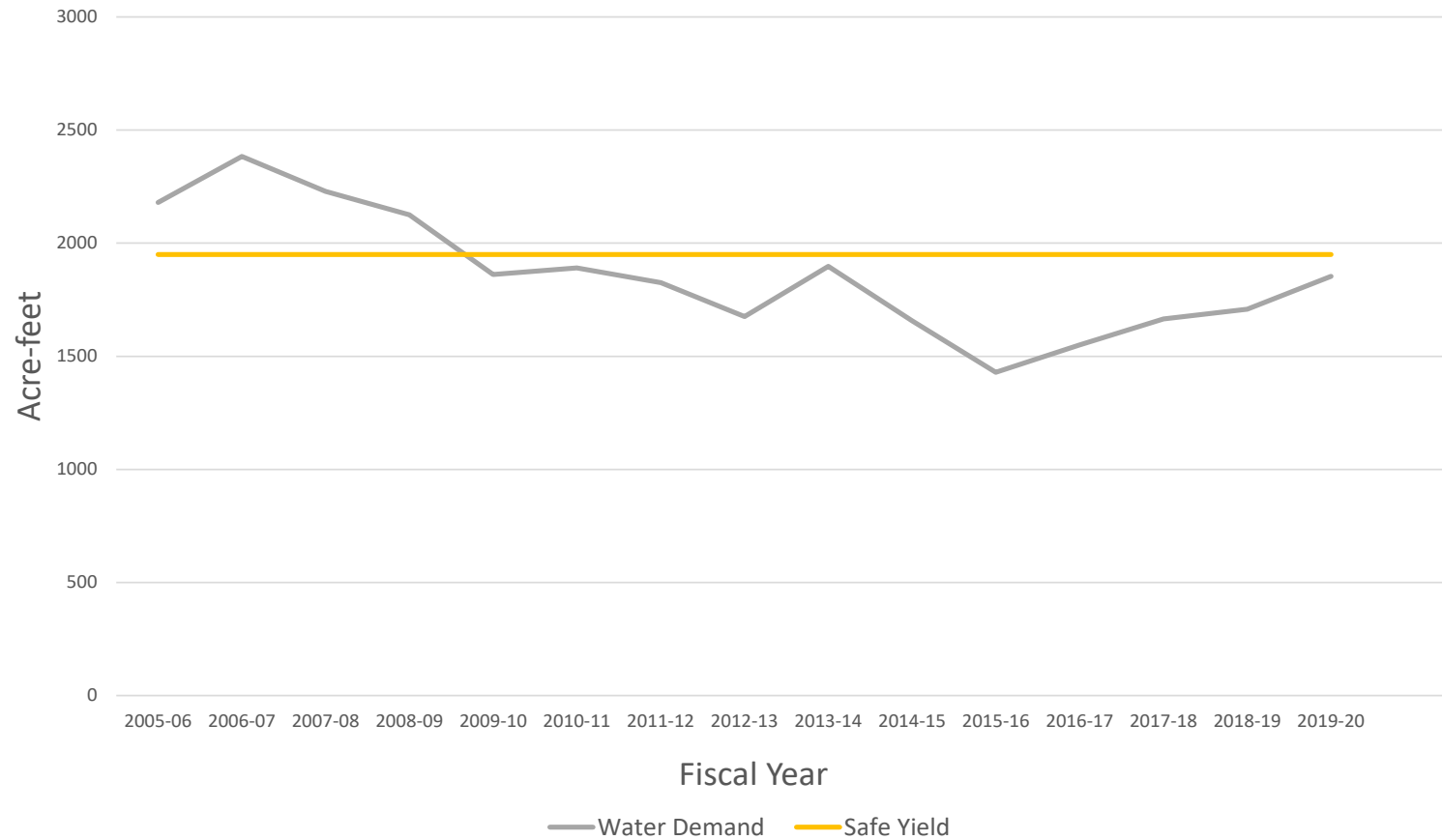
Combined Water Source Usage

FY 2011/12 – FY 2020/21 through November 30, 2020





Annual Water Demand

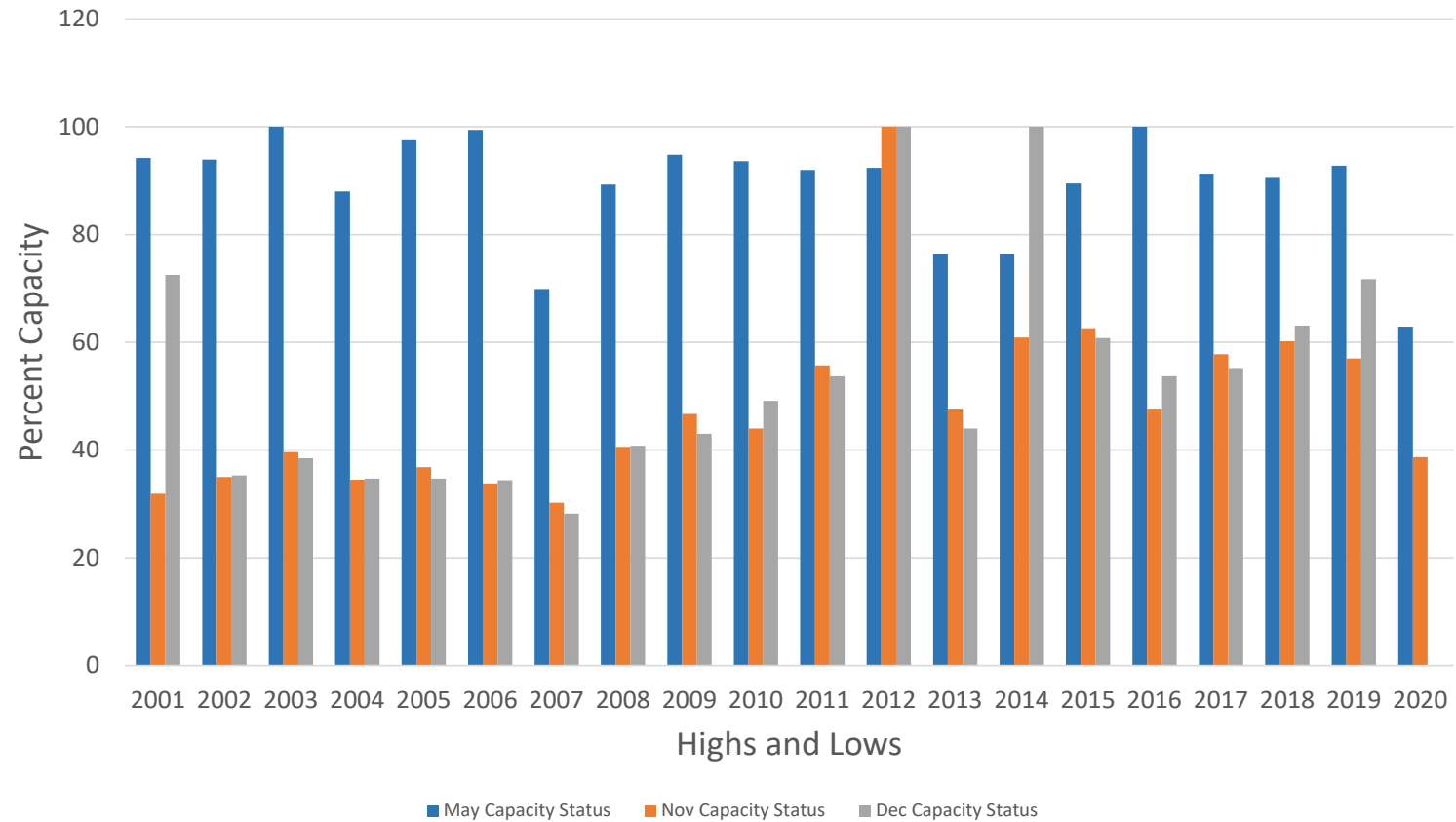


- Metered Water Demand factors an estimated 15% water loss for a *Net* Safe Yield



Bell Canyon Reservoir

Historical Capacity in May, November, and December since 2001



8 December 2020

Corrected Public Comment on Item 10.1
(City Council Meeting December 8, 2020)

To the Mayor and City Council:

I have reviewed the Staff Memorandum of Mr. Martin Beltran, submitted in connection with Item 10.1 ("Discussion and update on the City of St. Helena Water Supply and Phase II Water Emergency") on your amended agenda for your meeting on December 8, 2020. I offer the following observations:

1. In the double-asterisked footnote on page two the Staff Memorandum states: "An additional 200 acre-feet of water is available for "allocation" from the City of Napa if needed." To be precise, the City's water contract with Napa provides, in 2011 Amendment No. 3. Paragraph 1(4)(ii) on pages 2-3, that the City may request an "Optional Supply" of 200 AF annually but also states that it is within the City of Napa's "*sole discretion*" (italics added) as to whether it will fulfill such request. In consequence, the City cannot count on an additional 200 AF, as would be the case under a formal allocation.

I see the following issues that the Council should explore with Staff in discussion of the potential for an additional 200 AF from the City of Napa.

A. Given DWR's recent public statement that its contactors (which indirectly include the City of Napa, as it purchases State water through the Napa Flood Control and Conservation District) will have an initial allotment of only 10% (the lowest in my memory) in its current water year, is it realistic to think that the City of Napa would be willing to sell an additional 200 AF to St. Helena? Has City Staff received assurance here from the City of Napa?

B. Is the water pipeline up from Rutherford (owned and operated by St. Helena's Water Enterprise) capable of delivering an additional 200 AF (over the contractual 600 AF) to the City of St. Helena? There are potentially pipe size, pumping capacity, and downtime maintenance constraints. The Council should seek a firm understanding of each. (Heretofore, the City has not moved a water volume close to 800 AF of Napa water through its pipeline in any water year.)

C. Under the City's contract with Napa the City today pays in excess of \$2500 per AF for the 600 AF the City purchases each year from the City of Napa -- over \$1.5 million per year. Given the price, the City of Napa presumably would want to sell the City an additional 200 AF, assuming no need to protect its water resources for its own residents. The issue then becomes whether the City's Water Enterprise, with the many demands upon it, can afford an additional purchase of 200 AF -- \$500,000 or more at the City of Napa's current price. This is worthy of discussion with City financial staff.

2. A comment about the Water Advisory Board (“WAB or Board”):

In connection with the application process, the City Clerk circulated an accurate description of the Board’s purpose. She advised that its *sole* function was to address appeals from the Public Works Director arising out of grants and denials of Exceptions to regulated water usage under the Phase II Water Emergency Regulations. She specifically stated that the WAB had no policy role.

The Staff Memorandum (page three) is not consistent with the City Clerk’s description. Staff states: “City staff, along with the Water Advisory Board, will work with a Consultant on establishing a methodology [for penalty assessment] which will be brought to the City Council for consideration and approval.”

The Council should carefully consider whether it wishes to broaden the work of the Board to include making policy recommendations. Is it better to insulate a body that was formed strictly to address appeals from any policy role? If the WAB takes on a policy role, even if just recommendatory, does this require a change in the language of the ordinance?

3. Water Supply Projection

The Staff Memorandum (page two) projects that the City in the period December 1, 2020 through June 30, 2021 can produce a total of 1,419 AF: 921 AF from Bell Canyon, 176 AF from the Stonebridge Wells, and 322 AF in purchased water from the City of Napa.

The thinking behind the projected supply from the City of Napa is apparent. As of November 30, the City had taken 278 AF from Napa, leaving 322 AF for the period December 1, 2020 through June 30, 2021, and thereby taking the full 600 AF under the City’s contract with Napa. by the end of the current water year.

The thinking behind projected production for the remainder of the 2020 water year for Bell Canyon is not explained or readily discernible.

As of November 30, 2020, the City had produced 369 AF from Bell Canyon since July 1, 2020, the beginning of the current water year. Thus, the City, in projecting 921 AF from Bell Canyon in the period December 1, 2020 through June 30, 2021, is projecting that *total* Bell Canyon production in the current water year at 1290 AF (369 AF + 921 AF).

The projected total production from Bell Canyon is materially greater than the City has been able to produce from Bell Canyon in recent years, including in strong rainfall years. In water year 2016 (ending June 30, 2017, the City produced 736 AF from Bell Canyon (66.0” rainfall); in water year 2017 (ending June 30, 2018), the City produced 840 AF (25.5” rainfall); in water year 2018 (ending June 30, 2019)

the City produced 836 AF (53.8" rainfall), and in water year 2020 (ending June 30, 2020) 702 AF (20" rainfall).

The Council should explore with Staff the basis of its projection that it can produce 921 AF from Bell Canyon in the period December 1, 2020 through June 30, 2021 for a water year total of 1290 AF. There is no basis in recent data, indeed data going back ten or more years, for such a projection.

Stonebridge Wells: As of November 30, 2020, the City had produced 179 AF from the City Wells. The Staff Memorandum (page two) projects additional production of 176 AF for the period December 1, 2020 through June 30, 2020. Total projected production from the two Stonebridge potable production wells is therefore projected at 355 AF.

In comparison, the City produced 270 AF from the City wells in water year 2016, 327 AF in water year 2018, 240 AF in water year 2019, and 363 AF in water year 2020. Presumably, the somewhat higher total projection for the current fiscal year is a consequence of raising well water from no more than 20% to 30% of total production as allowed in a Phase I and Phase II water emergency.

The policy issue here is whether the total projected production for this water year from the City wells is consistent with City policy if the Council determines that the projected total supply for the current water year from Bell Canyon is significantly too high, as it appears to be.

Finally, the projected water demand and supply estimates in the Staff Memorandum (page two) are hard to reconcile with the Council declarations of a Phase I and then a Phase II water emergency. The Staff memorandum projects total demand from December 1, 2020 through June 30, 2021 at 770 AF. As noted above, it projects total available supply at 1,419 AF. There appears to be something amiss here. The Council should explore the matter with Staff.

Thank you for the opportunity to comment.

Note: the correction relates to a date. The corrected date is highlighted in yellow and also underlined.

Alan Galbraith
St. Helena Mayor, 2014-18



Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: **NEW BUSINESS**

Subject: **Consideration of the Vice Mayor Nomination Made by the Mayor and Requiring Council Approval**

CEQA **Not a CEQA project**
Determination:

Prepared By: Cindy Tzafopoulos, City Clerk

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

In accordance with Resolution 2019-16 (City Council Rules of Procedure), the Mayor nominates one of the Council Members as Vice Mayor, subject to approval by the majority of the City Council. This selection is done at the regularly scheduled meeting following the declaration of the election. The Vice Mayor assumes duties immediately upon his/her appointment and serves for the duration of the Mayor's term of office.

DISCUSSION

The position of the Vice Mayor is created in California pursuant to Government Code § 36802. In an instance when the Mayor is absent or unable to act, the Vice Mayor carries out the Mayor's duties until the Mayor returns or is able to act. While the Mayor and the Vice Mayor have some additional ceremonial and administrative responsibilities, in the establishment of policies, voting and in other significant areas, all members of the City Council are equal.

FISCAL IMPACT

None

RECOMMENDED ACTION

Mayor nominates Vice Mayor for Council approval.

ATTACHMENTS

[2019-16 Rescinding Resolution No. 2018-169 Adopting Rules of Procedure for the Conduct of Council Meetings and City Council Standards of Conduct](#)

CITY OF ST. HELENA

RESOLUTION NO. 2019-16

**RESCINDING RESOLUTION NO. 2018-169
ADOPTING RULES OF PROCEDURE FOR
THE CONDUCT OF COUNCIL MEETINGS
AND CITY COUNCIL STANDARDS OF
CONDUCT, AND RE-ESTABLISHING
RULES OF PROCEDURE FOR THE
CONDUCT OF COUNCIL MEETINGS AND
RE-ESTABLISHING CITY COUNCIL
STANDARDS OF CONDUCT**

RECITALS

- A. WHEREAS, City Council Rules of Procedure for the Conduct of Council Meetings are established to provide an effective environment for the City Council to provide leadership; and
- B. WHEREAS, City Council Standards of Conduct are established to provide guidance to Council Members to assist in fully understanding the role and scope of the responsibilities of office; and
- C. WHEREAS, City Council reviews City Council Rules of Procedure for the Conduct of Council Meetings and reviews City Council Standards of Conduct and revise as deemed necessary.

RESOLUTION

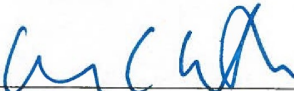
NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

- 1. Resolution No. 2018-169 Adopting Rules of Procedure for the Conduct of Council Meetings is hereby rescinded; and
- 2. City Council Rules of Procedure and Standards of Conduct are adopted and hereby made part of this resolution. Attached hereby as Exhibit A.

Approved at a Regular Meeting of the St. Helena City Council on February 26, 2019, by the following vote:

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

APPROVED:


Geoff Ellsworth, Mayor

ATTEST:


Cindy Tzafopoulos, City Clerk

Exhibit A - City Council Rules of Procedure and Standards of Conduct



Exhibit A



CITY COUNCIL

RULES OF PROCEDURE FOR THE CONDUCT OF COUNCIL MEETINGS

&

STANDARDS OF CONDUCT

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APPENDIX

Exhibit–*Rosenberg’s Rules of Order*: Simple Parliamentary Procedures for the 21st
Century

1. PURPOSE

The purpose for establishing City Council Protocols is to provide an effective environment for the City Council to provide leadership. The protocols may be amended by resolution adopted by a majority vote of the Council Members and should be reviewed on a regular basis to ensure that the document remains helpful to the Council by providing a framework for effective leadership.

The protocols set forth herein are not intended to limit the inherent power and general legal authority of the City Council. Any of the protocols herein may be waived by a majority vote of the Council Members when it is deemed that there is good cause to do so based upon the particular facts and circumstances.

1.1 Council-Manager Form of Government

The City of St. Helena operates according to the Council-Manager form of government which vests authority in an elected City Council which, in turn, hires an appointed executive, the City Manager. The City Council is composed of five members elected from the City on a nonpartisan basis to serve overlapping four-year terms. The Mayor is elected at-large to serve a two-year term as presiding officer at City Council meetings and as the official head of the City for legislative and ceremonial purposes. The City Manager is appointed by the City Council and serves at the pleasure of that body.

The City Council is the City's legislative and policy-making body. Acting as a whole, the City Council is responsible for setting the direction of City policy and for adopting ordinances, resolutions and other orders as necessary for governing the City. The City Manager is responsible for the overall administration of the City, which includes implementation of the general policies set by the City Council in addition to the day-to-day operation of all City functions. The City Manager, with the help of the Staff, provides the City Council with the information needed to fulfill its policy-making role.

The Council-Manager form of government separates legislative and executive responsibilities in a manner similar to state and federal governments. This system provides "checks and balances" of both policy and administrative branches of government by limiting the power of each.

1.2 City Council Vision and Mission Statement

Vision Statement

The City of St. Helena will strive to be economically sustainable, and continue to be a family-friendly, diverse and safe community which prudently manages its financial and human resources, continues to upkeep and improve its infrastructure, ensures its water security, provides a full range of housing, business, cultural and recreational opportunities and embraces and retains

its historic, small-town character, beautiful natural environment and high quality of life.

Mission Statement

The City of St. Helena is dedicated to serving the needs and desires of our citizens by:

- Maintaining and improving our short and long-term economic sustainability
- Offering excellent professional services to all customers
- Establishing, improving and maintaining City infrastructure
- Maintaining and encouraging an environmentally sustainable community
- Preserving and embracing the historic, small-town, rural character of St Helena
- Expanding and improving recreational services and facilities and cultural opportunities
- Encouraging a wide range of innovative, well-designed housing available for residents of all ages and income levels
- Facilitating full civic participation and ongoing communication
- Strengthening partnerships with the private, non-profit and public sectors

(See Resolution Number 2016-47, dated April 12, 2016.)

2. RULES OF PROCEDURE FOR THE CONDUCT OF COUNCIL MEETINGS

2.1 Regular Meeting

The Council shall hold a Regular Meeting on the second and fourth Tuesday of each month, except that the Council may by motion at a Regular Meeting and with adequate public notice, either cancel that meeting or reschedule it to some other date.

Regular Meetings shall be held at the Vintage Hall Board Room, 465 Main Street, St. Helena, and shall begin at 6:00 p.m. If it is necessary to hold a closed session prior to the start of a Regular Meeting, the closed session may begin earlier than the normal starting time to allow the Regular Meeting to begin at 6:00 p.m. The closed session shall begin in an open meeting and the Council shall adjourn to closed session.

2.2 Special, Emergency, and Adjourned Meetings

(a) **Special Meetings.** The Mayor or the Vice Mayor in the Mayor's absence or a majority of the members of the Council or the City Manager may at any time call a Special Meeting. At least twenty-four hours before a Special

Meeting, written notice of the meeting stating its time and place and the subjects to be considered shall be (a) delivered to the Mayor and each Councilmember personally or by any other means; (b) posted on the Council's principal bulletin board, City website and place of meeting; and (c) emailed to the agenda subscribers. Only those items of business specified in the notice may be considered at a Special Meeting called in this manner.

(b) **Emergency Meeting.** The Council may hold an Emergency Meeting in emergency situations as set forth in the City's Municipal Code and State Law.

(c) **Adjourned Meeting.** A properly called Regular, Special, or Emergency Meeting may be adjourned to a time and place specified. A copy of the notice of adjournment shall be posted as specified on the door of the place where the meeting was held within twenty-four hours after the time of the adjournment. Further notice need not be given of an adjourned session of a properly called Regular, Special, or Emergency Meeting.

2.3 Regular Meeting Agenda

(a) **Setting and Posting of Agenda.** The agenda of business to come before the Council at a Regular Meeting shall normally be closed at the end of eighteen business days preceding the meeting. Under State Law the agenda for a Regular Meeting must be posted at least seventy-two (72) hours prior to the scheduled convening of the Regular Meeting, and no items may be added to the agenda fewer than seventy-two (72) hours prior to the meeting except as may be allowed by State Law. The City Council endeavors to publish the meeting agenda at least ten days prior to the meeting.

(b) **Placing Items on the Council Agenda.** Each City Council agenda shall specifically provide for a discussion of Future Agenda Items. Any Council Member may request that an item be considered on a future agenda during that portion of the City Council meeting and, upon agreement by a second Council Member concurring that Staff time and City resources should be expended on the item, the item shall be placed on the soonest practical regularly scheduled Council meeting as determined by the City Manager. A member of the public may request that an item be placed on a future agenda during Public Forum or through other communication with a Council Member. Staff reports may not be prepared on Council Member requested items until Council discussion has occurred and direction provided by the Council unless Staff otherwise determines. If Council action is contemplated, proposed action shall be included in the Staff report. The City Manager may also add any item of business to a future agenda in his or her sole discretion.

(c) **Agenda Packet Distribution.** Each Councilmember shall be furnished a copy of the agenda and the package of agenda material by 5:00 p.m., on

the Friday eleven days preceding a Regular Meeting, and the agenda and agenda materials shall be available for public inspection and distribution or copying at that time. Each Councilmember may opt out from receiving a paper agenda and instead receive and review the agenda electronically on a City issued iPad. Any agenda materials not included in the agenda package by 5:00 p.m., that Friday shall be separately identified, and the Council may by majority vote continue such agenda item until the following meeting to allow for proper study of the materials.

(d) **Order of Agenda.** The business of the Council shall be taken up for consideration in substantially the following order except as may be otherwise ordered:

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Public Forum
5. Reports by Staff and City Council, Future Agenda Items and AB 1234 Reports
6. Presentations and Public Recognitions
7. Staff Briefing
8. Consent Items and Items Removed from Consent
9. Public Hearings
10. Old Business
11. New Business
12. Items likely to be placed on the next or future meeting agenda.
13. Adjournment

(e) A copy of the agenda and the package of agenda materials shall be made available for public inspection at City Hall and at the St. Helena Public Library at or near the time they are circulated to the City Council.

2.4 Public Testimony and Comments Before the Council

(a) **Addressing the Council Generally.** Each person addressing the Council may give his or her name and address (optional) in an audible tone of voice for the record. Each person's comments are limited to four minutes except as provided in section (b) regarding land use Public Hearings. In the further interest of time, speakers may be asked to limit their comments to new materials and not repeat what a prior speaker said. Organized groups may choose a single spokesperson who may speak for the group. Speakers may not concede their allotted time to another speaker. The Mayor may extend time for the speaker.

(b) **Addressing Council at Land Use Public Hearings.** An applicant appellant at a land use Public Hearing shall be permitted to address the Council for 15 minutes following the Staff report. If there is a spokesperson for the opposition, the spokesperson shall be permitted to speak for 15 minutes. All other speakers are limited to four minutes each. Applicant shall first be permitted five minutes at close of public comments for rebuttal. If the applicant is the appellee the appellant shall have 15 minutes, the applicant appellee shall have 15 minutes, the appellant five minutes, and the applicant appellee five minutes.

(c) **Presentation by Spokesperson.** Whenever any group of persons wishes to address the Council on the same subject matter, it shall be proper for the Mayor to request that a spokesperson be chosen by the group to address the Council, and, in case additional matters are to be presented at the time by any other member of the group, to limit the number of persons so addressing the Council so as to avoid unnecessary repetition before the Council.

(d) **Irrelevant Testimony.** The Mayor shall rule out of order any testimony not relevant to the agenda item then under discussion.

(e) **Protocol.** The purpose of public testimony is for Councilmembers to benefit from the views of the public. Comments from the public should be directed towards the Council. Councilmembers and Staff should avoid entering into a dialogue with members of the public who may address the Council. Questions raised by members of the public may be referred to Staff.

(f) **Public Comment on Agendized Items.** Members of the public are entitled to speak on any item on the agenda during a Public Hearing on the subject matter opened by the Mayor. Each person is entitled to speak on any agenda item only once at any meeting, and the right to speak at the appropriate time waives any further right to address the Council on that item at that meeting. Participation in debate on any item before the Council shall be limited to members of the Council, although Councilmembers may ask members of the public for additional information.

(g) **Public Comment on Non-Agendized Items.** Members of the public are entitled to speak on matters of municipal concern not on the agenda, during consideration of that portion of the meeting agenda entitled "Public Forum" when that item is called by the Mayor. Each person is entitled to speak on non-agendized items only once at any meeting. Brief questions by Councilmembers for clarifications may be posed and answered, and Councilmembers may make requests that items be placed on future agendas, but in accordance with State Law, no substantive discussion may take place unless and until the matter properly appears on the agenda.

2.5 Roll Call and Voice Votes

A roll call vote shall be taken on the approval of the Consent Calendar, the introduction of ordinances, and the adoption of ordinances, resolutions, and orders for the payment of money. Roll call votes shall be entered in the minutes of the Council showing those members voting yes, those voting no, and those abstaining or absent.

Any other motion may be passed by voice vote provided, however, that any Councilmember may request a roll call vote on any items to be voted on.

2.6 Consent Items

Those items on the agenda considered routine by the City Manager shall be grouped together under "Consent Items" and the recommended actions approved by a single vote of the Council. At the request of any Councilmember or any other person, a Consent Item shall be considered separately following approval of the remaining "Consent Items." Items approved under the heading "Consent Items" will appear in the Council minutes in their proper form, as if approved item by item.

2.7 Reports

Under the agenda heading "Reports" the City Manager, other City Staff, and Councilmembers may make reports on matters not on the agenda. Also at this time, Councilmembers or Staff may identify issues or agenda items that need to be addressed by the City Attorney during the meeting, and may propose future agenda items.

2.8 Closing Time of Council Meetings

Council meetings shall adjourn by 9:00 p.m. However, the Council may by majority vote extend the meeting up to an additional thirty minutes (9:30 p.m.) if the Council deems such extension necessary. A unanimous Council vote shall be required to extend the meeting past 9:30 p.m. and adjourn by 10:00 p.m. Otherwise, the meeting shall be adjourned to another day acceptable to the Council, or unfinished business may be continued to the next regular meeting.

2.9 Old Business

"Old Business" will include uncompleted items carried over from a prior meeting agenda and placed under this agenda heading for consideration.

2.10 New Business

The Council shall not consider any resolution, motion, or matter which does not affect the conduct of the business of the City of St. Helena or its corporate powers or duties as a municipal corporation nor shall the Council consider any resolution or motion supporting or disapproving any legislation or action pending in the Legislature of the State of California, the Congress of the United States or before

any officer or agency of the State or Nation unless such proposed legislation or action, if adopted, will affect the conduct of the municipal business or the powers and duties of the City of St. Helena or its officers or employees as such.

2.11 Office of the Mayor

The Mayor shall preside at meetings of the Council, shall be entitled to vote on all matters, and shall be considered a Councilmember for all purposes, including the determination of whether a quorum is present. The Mayor will recognize members that wish to speak.

The Mayor shall have the following powers:

- a) To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
- b) To enforce the Council's rules regarding public testimony and to determine whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;
- c) To ensure that the public has reasonable opportunity to be heard;
- d) To entertain and answer questions of parliamentary law or procedure;
- e) To call a brief recess at any time;
- f) To adjourn in an emergency;
- g) To appoint a Vice Mayor subject to Council approval who shall serve during the term of the Mayor, and becomes the Mayor Pro Tempore in the Mayor's absence.

2.12 Office of Mayor Pro Tempore

A Councilmember who serves as Mayor pro tempore shall be entitled to vote on all matters and shall be considered a Councilmember for all purposes, including the determination of whether a quorum is present. In the Mayor's absence, the Mayor pro tempore shall have the Mayor's powers and duties. If the Mayor should become physically or mentally unable to perform the duties of his or her office, the other Councilmembers may by unanimous vote declare the Mayor is incapacitated and confer the Mayor's powers and duties on the Mayor pro tempore.

When the Mayor declares that he or she is no longer incapacitated, and a majority of the Council concurs, the Mayor shall resume the exercise of his or her powers and duties. If both the Mayor and the Mayor pro tempore are absent from a meeting, the Council may elect from among its members a temporary chair to preside at the meeting.

2.13 Action by the Council

Action by the Council shall be by motions made and voted upon. A motion shall require a second. The Mayor and any other Councilmember may make or second a motion. A substantive motion is out of order while another substantive motion is pending.

2.14 Adoption by Majority Vote

A motion shall be adopted by a majority of the votes cast, a quorum being present, unless otherwise required by these rules or the laws of California. Resolutions, orders for the payment of money, and all ordinances require at least three votes for passage.

2.15 Discussion

The City Council shall address an agenda item as follow:

- (a) Staff shall introduce the agenda item and present the Staff report.
- (b) City Council shall ask questions of Staff.
- (c) The Mayor will invite public comment on the item.
- (d) Having received all public testimony, the Council will deliberate on the matter.
- (e) If appropriate, the Mayor will entertain a motion, including any motion proposed by the Mayor.
- (f) If a motion has received a second, the Mayor shall state the motion and if any Council Member wishes for the discussion, open for additional Council discussion.
- (g) The Mayor shall preside over the discussion according to the following general principles:
 - 1. The maker of the motion is entitled to speak first;
 - 2. A person who has not spoken on the issue shall be recognized before someone who has already spoken;
 - 3. To the extent possible, the discussion shall alternate between opponents and proponents of the measure.

2.16 Ratification of Actions

To the extent permitted by law, the Council may ratify actions taken on its behalf but without its prior approval. A motion to ratify is a substantive motion.

2.17 Procedural Motions

- (a) In addition to substantive proposals, the following procedural motions, and no others, shall be in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority of the votes cast, a quorum being present, for adoption.
- (b) To Adjourn. The motion may be made only at the conclusion of action of a pending substantive matter; it cannot interrupt deliberation of a pending matter.
- (c) To Take a Brief Recess.
- (d) Call to Follow the Agenda. The motion must be made at the first reasonable opportunity, or the right to make it is waived for the out-of-order item in question.
- (e) To Suspend the Rules. The motion requires for adoption a vote of a majority of the quorum of the Council. The Council may not suspend provisions of the rules that are state requirements imposed by law on the Council.
- (f) To Divide a Complex Motion and Consider It by Paragraph.
- (g) To Call the Previous Question. The motion is not in order until every member has had an opportunity to speak once.
- (h) To Continue an Item to a Future Meeting Certain.
- (i) To Refer to Staff for Action.
- (j) To Amend. An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if the amended motion has the same effect as rejection of the original motion. A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last amendment is disposed of by a vote.
- (k) To Reconsider. The motion must be made by a member who voted with the prevailing side, and only at the meeting during which the original vote was taken, including any continuation of that meeting through adjournment to a time and place certain, or at the next Regular Meeting unless intervening actions taken based on the original action make such reconsideration impracticable. The motion cannot interrupt deliberation on a pending matter, but is in order at any time before final adjournment of the meeting.
- (l) To Rescind or Repeal a Previous Action. A motion to rescind or repeal a previous action is not in order if the rescission or repeal is forbidden by law or made inappropriate by virtue of actions taken in accordance with the previous action.
- (m) To call for a Straw Vote. The Mayor, at the Mayor's discretion, may call for a Straw Vote among members on any item prior to inviting public testimony or Council comment.

2.18 Withdrawal of Motion

A motion may be withdrawn by the introducer at any time before a vote, with or without the consent of any “seconder” of the motion. However, any other Councilmember may ask to be considered the introducer of the motion and, if again seconded, debate may continue without further interruption.

2.19 Duty to Vote

Every member must vote on every item unless prevented from doing so by virtue of an actual or potential conflict of interest under applicable State Law. Any member who believes he or she has a conflict or potential conflict of interest must announce such at the initiation of discussion or when such conflict or potential conflict becomes apparent, and shall refrain from any part in the debate, deliberations, or voting on that issue, except as allowed by State Law.

2.20 Introduction and Passage of Ordinance

A proposed ordinance shall be deemed to be introduced on the date the subject matter is first voted on by the Council. The Mayor shall read the title of the ordinance, after which a roll call vote shall be taken to introduce the ordinance. The City Clerk shall then read the ordinance in its entirety unless such reading is waived by a separate motion adopted by unanimous vote of the Councilmembers present. An ordinance, other than an urgency, may not be passed within five days of its introduction or alteration. Corrections of typographical or clerical errors are not alterations.

2.21 Closed Sessions

- (a) The Council may hold closed sessions only as provided for by law and according to the provisions herein.
- (b) As part of any regular or special City Council meeting as appropriate, the City Council, the City Attorney, and relevant Staff may discuss and agree upon the need for any future closed sessions, including the legal authority for the closed session and the nature of the matter to be discussed, in adequate detail to meaningfully inform the public while maintaining required confidentiality and any applicable attorney-client privilege. Where the City Manager and City Attorney agree that the nature of a matter requires consideration in closed session, the requirement for prior open session discussion shall not apply.
- (c) The City Council agenda for any regular or special Council meeting shall include general information about closed sessions as follows:

The City Council will convene in open session at the stated time, but will then adjourn to address any closed

sessions items listed on the agenda. The public is invited to address the Council with comment on any listed closed session item immediately prior to Council's adjournment into closed session or consistent with any other provisions permitting public comment. The Council will reconvene in Public Session at 6:00 p.m. or at the first Council meeting following any closed session. At that time, if appropriate and as required under the Brown Act, any actions taken during the preceding closed session will be announced by the City Attorney or Mayor. If necessary, the Council may reconvene in closed session to continue discussion of listed items following the completion of open session business.

- (d) The City Council agenda for any regular or special Council meeting at which the Council will adjourn to closed session shall provide notice of that closed session as provided for under the Brown Act and shall include a narrative description of the legal authority for the closed session and the nature of the matter to be discussed in adequate detail to inform the public while maintaining required confidentiality or any applicable attorney-client privilege. Reporting out of closed session shall be consistent with the requirements of Brown Act, and may be of greater detail than required when the disclosure of such detail is not inconsistent with maintaining required confidentiality and any applicable attorney-client privilege.

2.22 Quorum

A majority of the actual membership of the Council, including the Mayor but excluding vacant seats, shall constitute a quorum. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

2.23 Telephonic Attendance Of Council Members At Council Meetings

- (a) The City Council Procedures provisions concerning Telephonic Attendance shall apply to all Boards and Commissions as well as the City Council. Requests by Council Members to attend a Council meeting via telephonic appearance are actively discouraged. Telephonic attendance shall only be permitted in the event of extraordinary events such as a medical, family or similar emergency requiring a Council Member's absence. In addition, at least a quorum of the Council must participate from a location within the City (Government Code Section 54953(b)(3)).

- (b) If these two threshold requirements are met, the Council Member who will be appearing telephonically must ensure that:
 - 1. The meeting agenda identifies the teleconference location and is posted at that location in an area that is accessible and visible 24 hours a day for at least 72 hours prior to the meeting.
 - 2. The teleconference location is open and fully accessible to the public, and fully accessible under the Americans with Disabilities Act, throughout the entire meeting. These requirements apply to private residences, hotel rooms, and similar facilities, all of which must remain fully open and accessible throughout the meeting, without requiring identification or registration.
 - 3. The teleconference technology used is open and fully accessible to all members of the public, including those with disabilities.
 - 4. Members of the public who attend the meeting at the teleconference location have the same opportunity to address the Council from the remote location that they would if they were present in Council Chambers.
 - 5. The teleconference location must not require an admission fee or any payment for attendance.
 - 6. If the Council Member determines that any or all of these requirements cannot be met, he or she shall not participate in the meeting via teleconference.
- (c) Approved Teleconference Guidelines for Council Members:
 - 1. One-week advance written notice must be given by the Council Member to the City Clerk's office; the notice must include the address at which the teleconferenced meeting will occur, the address the Council packet should be mailed to, who is to initiate the phone call to establish the teleconference connection, and the phone number of the teleconference location. Cellular telephones shall not be used to participate in teleconferenced meetings.
 - 2. The Council Member is responsible for posting the Council agenda in the remote location, or having the agenda posted by somebody at the location and confirming that posting has occurred. The City Clerk will assist, if necessary, by faxing or mailing the agenda to whatever address or fax number the Council Member requests; however, it is the Council Member's responsibility to ensure that the agenda arrives and is posted. If the Council Member will need the assistance of the City Clerk in delivery of the agenda, the fax number or address must be included in the one-week advance written notice above.

3. The Council Member must ensure that the location will be publicly accessible while the meeting is in progress.

4. The Council Member must state at the beginning of the Council meeting that the 72-hour posting requirement was met at the location and that the location is publicly accessible. The Council Member also must describe the location. Furthermore, the City Clerk will provide Council with a quarterly report detailing the telephone charges associated with teleconferenced meetings.

2.24 Public Hearings

Public Hearings shall be scheduled and notice published without any action required by the City Council, excepting that the Council may, if it so desires, scheduled a Public Hearing on an item of interest for a date certain. In order to accommodate members of the public responding to a noticed Public Hearing, such Hearings will, to the extent practicable, begin at 6:00 p.m. At the time designated for the Public Hearing, or soon after as is practicable, the Mayor shall direct the attention of the Council Members to the Staff report and Staff may respond to questions from Council members, after which the Mayor shall formally open the Public Hearing and members of the public shall be allowed to speak in accordance with the rules set forth elsewhere in these Rules of Procedure. When the allotted time expires, or when no one wishes to speak who has not done so, the Mayor shall declare the hearing closed.

Following the close of the Public Hearing, the Council may discuss or take action on the matter in accordance with these rules. The Mayor may in his or her discretion allow questions and/or comments from the public after close of Public Hearing.

2.25 Appointments to Committees and Boards

The City Clerk posts a Notice of Vacancy in the City designated posting locations, the City's website and sends a Media Release to the St. Helena Star advertising vacancies to Commissions, Committees and Boards.

Applicants must submit a completed application to the City Clerk and shall be interviewed by the Council at a special meeting prior to a regular meeting. Applicants are requested to list references on their applications and individual Council Members may contact those references as part of the interview process. Council Members contacting references should disclose this information during the appointment process.

Council reviews applicants for appointments to Commissions, Committees and Boards based on interviews and qualifications. Council shall rank all applicants from highest to lowest and appoint by ballot process. Mayor shall nominate applicants and appointments are subject to approval by the majority of Council.

Depending on the qualifications of the applicants and the needs of the City, there may be times when the City Council does not appoint an applicant who has applied. If an applicant is not appointed, the City Clerk will automatically readvertise for the vacant position(s) to seek additional applicants.

2.26 Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century

All procedural matters not otherwise provided for in or controlled by state law or by any ordinance, resolution, rule or regulation of the City shall be governed by Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century (attached as Exhibit). However, no ordinance, resolution, or other action of the Council shall be invalidated or the legality thereof otherwise affected by the failure or omission of the Council to observe or follow such rules. Certain procedures relating to motions, agenda item discussion, debate, and courtesies contained in *Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century* are incorporated into this document, except to the extent they are modified by this Protocol document.

3. CITY COUNCIL STANDARDS OF CONDUCT

3.1 Policy Purpose

The St. Helena City Council adopts this Code of Ethics and Conduct to assure that all elected and appointed officials, while exercising their office, conduct themselves in a manner that will instill public confidence and trust in the fair operation and integrity of St. Helena's City government.

3.2 Ethics

The citizens and businesses of St. Helena are entitled to have fair, ethical and accountable local government. To this end, the public should have full confidence that their elected and appointed officials:

- Comply with both the letter and spirit of the laws and policies affecting the operations of government;
- Are independent, impartial and fair in their judgment and actions;
- Use their public office for the public good, not for personal gain; and
- Conduct public deliberations and processes openly, unless required by law to be confidential, in an atmosphere of respect and civility.

Therefore, members of the City Council, City Treasurer, and City Clerk and of all Boards, Committees and Commissions shall conduct themselves in accordance with the following ethical standards:

- (a) **Act in the Public Interest.** Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of St. Helena and not for any private or personal

interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before them.

(b) **Comply with both the spirit and the letter of the Law and City Policy.** Members shall comply with the laws of the nation, the State of California and the City of St. Helena in the performance of their public duties.

(c) **Conduct of Members.** The professional and personal conduct of members while exercising their office must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, Boards, Committees and Commissions, the Staff or public.

(d) **Respect for Process.** Members shall perform their duties in accordance with the processes and rules of order established by the City Council.

(e) **Conduct at Public Meetings.** Members shall prepare themselves for public issues, listen courteously and attentively to all public discussions before the body, and focus on the business at hand.

(f) **Decisions Based on Merit.** Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations. When making adjudicative decisions (those decisions where the member is called upon to determine and apply facts peculiar to an individual case), members shall maintain an open mind until the conclusion of the hearing on the matter and shall base their decisions on the facts presented at the hearing and the law.

(g) **Communication.** Members shall publicly disclose substantive information that is relevant to a matter under consideration by the body which they may have received from sources outside of the public decision-making process.

(h) **Conflict of Interest.** In order to assure their independence and impartiality on behalf of the common good and compliance with conflict of interest laws, members shall use their best efforts to refrain from creating an appearance of impropriety in their actions and decisions. Members shall not use their official positions to influence government decisions in which they have (a) a material financial interest, (b) an organizational responsibility or personal relationship which may give the appearance of a conflict of interest, or (c) a strong personal bias.

A member who has a potential conflict of interest regarding a particular decision shall disclose the matter to the City Attorney and reasonably cooperate with the City Attorney to analyze the potential conflict. If advised by the City Attorney to seek advice from the Fair Political Practices Commission (FPPC) or other appropriate state agency, a member shall not participate in a decision unless and until he or she has requested and received advice allowing the member to participate. A member shall diligently pursue obtaining such advice. The member shall provide the Mayor and the City Attorney a copy of any written request or advice, and conform his or her participation to the advice given. In providing assistance to members, the City Attorney represents the City and not individual members.

In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and if they have a conflict of interest regarding a particular decision, shall not, once the conflict is ascertained, participate in the decision and shall not discuss or comment on the matter in any way to any person including other members unless otherwise permitted by law.

(i) **Gifts and Favors.** Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office that is not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.

(j) **Confidential Information.** Members must maintain the confidentiality of all written materials and verbal information provided to members which is confidential or privileged. Members shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

(k) **Use of Public Resources.** Members shall not use public resources which are not available to the public in general (e.g., City Staff time, equipment, supplies or facilities) for private gain or for personal purposes not otherwise authorized by law.

(l) **Representation of Private Interests.** In keeping with their role as stewards of the public interest, members of Council shall not appear on behalf of the private interests of third parties before the Council or any Board, Committee, Commission or proceeding of the City, nor shall members of Boards, Committees and Commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.

(m) **Advocacy.** Members shall represent the official policies or positions of the City Council, Board, Committee or Commission to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of St. Helena, nor will they allow the inference that they do. Councilmembers and Board, Committee and Commission members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention or display endorsements during Council meetings, or Board, Committee and Commission meetings, or other official City meetings.

(n) **Policy Role of Members.** Members shall respect and adhere to the council-manager structure of St. Helena City government as outlined in the St. Helena City Code. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by City Staff, Boards, Committees and Commissions, and the public. Except as provided by the City Code, members shall not interfere with the administrative functions of the City or the professional duties of City Staff; nor shall they impair the ability of Staff to implement Council policy decisions.

(o) **Independence of Boards, Committees and Commissions.** Because of the value of the independent advice of Boards, Committees and Commissions to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of Board, Committee and Commission proceedings.

(p) **Positive Work Place Environment.** Members shall support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to Staff.

3.3 Code of Ethics and Conduct

The Code of Ethics and Conduct are designed to describe the manner in which elected and appointed officials should treat one another, City Staff, constituents, and others they come into contact with while representing the City of St. Helena.

(a) Elected and Appointed Officials' Conduct with Each Other in Public Meetings

Elected and appointed officials are individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this

diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even though individuals may not agree on every issue.

1. Honor the role of the chair in maintaining order

It is the responsibility of the chair to keep the comments of members on track during public meetings. Members should honor efforts by the chair to focus discussion on current agenda items. If there is disagreement about the agenda or the chair's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.

2. Practice civility and decorum in discussions and debate

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of debate by a free democracy in action. Free debate does not require nor justify, however, public officials to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments.

3. Avoid personal comments that could offend other members

If a member is personally offended by the remarks of another member, the offended member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other member to justify or apologize for the language used. The chair will maintain control of this discussion.

4. Demonstrate effective problem-solving approaches

Members have a public stage and have the responsibility to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

(b) Elected and Appointed Officials' Conduct with the Public in Public Meetings

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

1. Be welcoming to speakers and treat them with care and gentleness.

- a. While questions of clarification may be asked, the official's primary role during public testimony is to listen.
- 2. *Be fair and equitable in allocating public hearing time to individual speakers.*
 - a. The chair will determine and announce limits on speakers at the start of the public hearing process.
- 3. *Practice active listening*
 - a. It is disconcerting to speakers to have members not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time or gazing around the room gives the appearance of disinterest. Members shall try to be conscious of facial expressions, and avoid those that could be interpreted as "smirking," disbelief, anger or boredom.
- 4. *Maintain an open mind*
 - a. Members of the public deserve an opportunity to influence the thinking of elected and appointed officials.
- 5. *Ask for clarification, but avoid debate and argument with the public*
 - a. Only the chair – not individual members – can interrupt a speaker during a presentation. However, a member can ask the chair for a point of order if the speaker is off the topic or exhibiting behavior or language the member finds disturbing.

(c) Elected and Appointed Officials' Conduct with City Staff

Governance of a City relies on the cooperative efforts of elected officials, who set policy, appointed officials who advise the elected, and City Staff who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

- 1. *Treat all Staff as professionals*
 - a. Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards Staff is not acceptable.
- 2. *Do not disrupt City Staff from their jobs*
 - a. Elected and appointed officials should not disrupt City Staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to

have their individual needs met. Do not attend City Staff meetings unless requested by Staff – even if the elected or appointed official does not say anything, his or her presence implies support, shows partiality, may intimidate Staff, and hampers Staff's ability to do their job objectively.

3. *Never publicly criticize an individual employee*

- a. Elected and appointed officials should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about Staff performance should only be made to the City Manager through private correspondence or conversation. Appointed officials should make their comments regarding Staff to the City Manager or the Mayor.

4. *Do not get involved in administrative functions*

- a. Elected and appointed officials acting in their individual capacity must not attempt to influence City Staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.

5. *Do not solicit political support from Staff*

- a. Elected and appointed officials should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City Staff. City Staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

6. *No Attorney-Client Relationship*

- a. Members shall not seek to establish an attorney-client relationship with the City Attorney, including his or her Staff and attorneys contracted to work on behalf of the City. The City Attorney represents the City and not individual members. Members who consult with the City Attorney cannot enjoy or establish an attorney-client relationship with the attorney.

(d) Council Conduct with Boards, Committees and Commissions

The City has established several Boards, Committees and Commissions as a means of gathering more community input. Citizens who serve on Boards, Committees and Commissions become more involved in government and

serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

1. *Respect Role of Liaison to City's Boards, Committees and Commissions*

Several of the City's Boards, Committees and Commissions have a Council Member who serves as its Council liaison. The City Council will collectively review and approve liaison appointments annually. Council Members serving as liaisons should act as an advisor and resource to committee/board/commission members and the committee/board/commission's Staff liaison when issues regarding process, procedure, attendance, interpersonal or public relations arise.

2. *Respect that Boards, Committees and Commissions serve the community, not individual Councilmembers*

The City Council appoints individuals to serve on Boards, Committees and Commissions, and it is the responsibility of Boards, Committees and Commissions to follow policy established by the Council. But Board, Committee and Commission members do not report to individual Councilmembers (whether or not they are serving as liaisons), nor should Councilmembers feel they have the power or right to threaten Board, Committee and Commission members with removal if they disagree about an issue. Appointment and re-appointment to a Board, Committee or Commission should be based on such criteria as expertise, ability to work with Staff and the public, and commitment to fulfilling official duties. A Board, Committee or Commission appointment should not be used as a political "reward."

3. *Be respectful of diverse opinions*

A primary role of Boards, Committees and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers may have a closer working relationship with some individuals serving on Boards, Committees and Commissions, but must be fair and respectful of all citizens serving on Boards, Committees and Commissions.

4. *Keep political support away from public forums*

Board, Committee and Commission members may offer political support to a Councilmember, but not in a public forum while conducting official duties. Conversely, Councilmembers may support Board, Committee and Commission members who are running for office, but not in an official forum in their capacity as a Councilmember.

(e) Elected and Appointed Officials' Conduct With Each Other and the Public in Private Encounters

1. Continue Respectful Behavior in Private

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions, and set forth above in subsections (a) through (d), should be maintained in private conversations, including telephone calls, texts, e-mails or other forms of communication. Council Members and appointed officials shall refrain from abusive conduct, intimidation, bullying tactics, personal charges, or verbal attacks upon the character or motives of other members or the public.

2. Be Aware of the Insecurity (Non-Confidentiality) of Written Notes, Texts, Voicemail and E-mail

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable to have this note faxed to others? How would you feel if this voicemail message was played on a speakerphone in a full office? What would happen if this E-mail or text message were forwarded to others? Written notes, voicemail messages, texts and E-mail should be treated as potentially "public" communication.

3. Understand that Even Private Conversations can have Public Presence

Elected and appointed officials are always on display — their actions, demeanor, fitness, mannerisms, language and timing and form of communication are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, late-night e-mails will be questioned and casual comments between individuals before and after public meetings noticed.

3.4 Enforcement and Sanctions

(a) Acknowledgement of Code of Ethics and Conduct

Upon assuming office each Councilmember, and each Board, Committee and Commission Member ("Member"), shall sign a statement affirming that he or she has been provided with and has read the Code of Ethics and Conduct. Each Councilmember, Board, Committee and Commission Member, shall adhere to the Code of Ethics and Conduct as well as the Council's Rules of Procedure. Councilmembers who do not sign an acknowledgement that they have read and understand the Code of Ethics and Conduct shall be ineligible for intergovernmental assignments or Council subcommittees. Board, Committee and Commission members who do not sign an acknowledgement that they have read and understand the Code of Ethics and Conduct are not eligible to hold office.

(b) Ethics Training for Local Officials

Councilmembers, City Treasurer, City Clerk, Board, Committee and Commission Members shall report annually to the City Clerk with respect to his or her compliance with State or City mandated requirements for ethics training. Councilmembers, City Treasurer, City Clerk, Board, Committee and Commission Members who are out of compliance with State or City mandated requirements for ethics training shall not represent the City on intergovernmental assignments or Council subcommittees and may be subject to sanctions.

(c) Behavior and Conduct

The St. Helena Code of Ethics and Conduct expresses standards of ethical conduct expected for members of the St. Helena City Council, Boards, Committees and Commissions. Each Member him or herself has the primary responsibility to assure that he or she understands and satisfies the ethical standards, so that the public can continue to have full confidence in the integrity of government. The chairs of Boards, Committees and Commissions and the Mayor and Council have the additional responsibility to intervene when actions of Members that appear to be in violation of the Code of Ethics and Conduct are brought to their attention. Without violating Brown Act serial meeting requirements, individual Members should point out to the offending Member perceived infractions of the Code of Ethics and Conduct. If the offenses continue, then the process under 3.4(e) 1-10 shall govern.

(d) Council Authority

Under California law, the Council does not have the legal authority to remove Members elected or appointed to the City Council or to otherwise deprive them of their office. However, as provided in Section 3.4(e) 9., a majority of the Councilmembers may remove a Councilmember from any or all Council honorary and/or ceremonial positions and ad-hoc and standing committees, as well as from positions with other governmental agencies or other organizations they hold by virtue of appointment by the City Council.

(e) Process to Address Alleged Violation of Code of Ethics and Conduct

1. *Complaint.* Where any person has substantial evidence that a Member has materially violated the Code of Ethics and Conduct, he or she may file a written statement with the City Clerk who will then provide it to the City Council, and the affected Member. The name of the complainant shall initially be redacted and kept confidential and not disclosed until it has been determined as provided in Section 3.4(e) 2 that there is substantial evidence that the Member has materially violated the Code of Ethics and Conduct.

“Substantial evidence” means evidence that reasonably supports a conclusion. It does not mean simply any evidence, nor does it include mere opinions. It must be reasonable in nature, credible, and of solid value.

2. *Hearing Officer.* Upon receipt of a Complaint as provided in Section 3.4(e) 1., or upon the direction of the City Council, the Mayor, in consultation with the City Manager, shall make a preliminary determination whether there is substantial evidence to support a conclusion that a Member has materially violated the Code of Ethics and Conduct, thereby warranting the further proceedings below. If the Mayor either submitted the Complaint or is the subject of the Complaint, the Vice Mayor (and who is not the subject of the complaint) shall make the preliminary determination as provided above.

If the Mayor (or, where the Mayor is disqualified as set forth above, the Vice Mayor) makes the initial determination that there is substantial evidence to support a conclusion that a Member has materially violated the Code of Ethics and Conduct, thereby warranting the further proceedings, he or she, in consultation with the City Manager, shall appoint an independent Hearing Officer to review and investigate the Complaint. If the Mayor either submitted the Complaint or is the subject of the Complaint, the Vice Mayor (and who is not the subject of the complaint) shall appoint the Hearing Officer as provided above.

In the event both the Mayor and Vice Mayor are disqualified as set forth above or otherwise unable to carry out the duties under this Section, the Council member with the longest tenure shall do so. If two or more Council members have equal tenure, the Council member (who is not the subject of the Complaint) shall be selected by a process of drawing straws supervised by the City Clerk.

3. *Investigation.* To the extent reasonably practicable, the Hearing Officer shall investigate and report, within not more than thirty (30) days, as to whether there is substantial evidence in support of an allegation that a Member has materially violated the Code of Ethics and Conduct. If the Hearing Officer concludes that there is not substantial evidence to support an alleged violation, or that the violation was not material, he or she shall so report to the Council and the matter shall be deemed dismissed unless the Council directs that a public hearing be held pursuant to Section 3.4(e) 5. If the Hearing Officer concludes that there is substantial evidence to support an alleged material violation of the Code of Ethics and Conduct, he or she shall issue a report ("Report") to the City Council and the Member. The Hearing Officer shall allow the affected Member a reasonable opportunity to provide any written comments, evidence and/or arguments which the Hearing Officer shall consider in the investigation and Report.
4. *Enforcement.* The City Council, in its sole discretion, shall enforce the Code of Ethics and Conduct against Members depending upon the extent and severity of the violation by means of either (i) a warning (ii) a written reprimand; (iii) censure; (iv) removal from assignments; or (v) other action as deemed appropriate to the City Council, including without limitation disavowal and/or disapproval of the Member's violation and/or other action and/or statement. The following procedure shall be utilized:

5. *Receipt of Report.* As reasonably practicable, within 30 days after receipt of the Report, the Council will hold a public hearing after which it will determine, among any other determination the Council may deem appropriate, whether the Complaint should be dismissed, a warning should be issued, a written reprimand should be issued, censure issued, or the Member should be removed from his or her office (only for Members other than Council members) or assignments. The City shall provide written notice of the public hearing and opportunity to be heard to the affected Member. The City Council determination shall be set forth in written findings that the Council may direct staff to prepare for subsequent Council approval.
6. *Dismissal.* Where the Council, based on the Report and any statement from the affected Member, determines that it is clear that no violation occurred or that only a trivial or de minimus violation occurred, or that the Complaint was motivated by revenge or other improper motive, the Council may dismiss the Complaint.
7. *Warning.* Where the Council, based on the Report and any statement from the affected Member, determines that there is some evidence that only a minor violation or a questionable practice has occurred, the Council may issue a written warning to the affected Member specifying the violation(s) and requesting corrective action.
8. *Reprimand.* Where the Council, based on the Report, any statement from the affected Member, and other evidence accepted, determines that there is substantial evidence that the Member has materially violated one or more provisions of the Code of Ethics and Conduct, the Council may adopt a resolution reprimanding the affected Member for their conduct, stating that any violations shall cease, and requesting corrective action. The affected Member may file a rebuttal to the Reprimand with the City Clerk which will become a matter of public record.
9. *Censure.* Where the Council, based on the Report, any statement from the affected Member, and other evidence accepted at a public hearing of the matter, determines that there is substantial evidence that the Member has materially violated one or more provisions of the Code of Ethics and Conduct, and that such violation(s) impugn the integrity or dignity of the City or that such violations are egregious or chronic in nature, then the Council may adopt a resolution censuring the affected Member by condemning his or her actions, removing the Member from all appointive positions representing the City in front of other governments and agencies, demoting the affected Commissioner, Committee or Board member appointed by the City Council who holds a position of chairperson or vice chairperson, stating that the violations shall cease, and demanding corrective actions. The affected Member may file a rebuttal to the Censure with the City Clerk which will become a matter of public record.
10. *Removal from Office.* Notwithstanding any of the provisions in this Section 3.4, the City Council may remove any Commissioner, Committee or Board member

appointed by the City Council at its pleasure, and nothing in the Code of Ethics and Conduct or these rules effects or diminishes such power nor vests such Commissioners or Board members with any additional rights.

3.5 Implementation

The Code of Ethics and Conduct is intended to be self-enforcing and is an expression of the standards of conduct for members expected by the City. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, this document shall be included in the regular orientations for candidates for City Council, City Treasurer, City Clerk, applicants to Board, Committee and Commissions, and newly elected and appointed officials. Members entering office shall sign a statement (example below) acknowledging they have read and understand the Code of Ethics and Conduct. In addition, the Code of Ethics and Conduct shall be periodically reviewed by the City Council, Boards, Committees and Commissions, and updated it as necessary.

Example:

I affirm that I have read and understand the City of St. Helena Code of Ethics and Conduct for Elected and Appointed Officials.

Signature

Date

Exhibit

Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century



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"Rosenberg's Rules of Order" first appeared in *Western City* magazine in August and September 2003.

About the Author

Dave Rosenberg is an elected county supervisor representing the 4th District in Yolo County. He also serves as director of community and intergovernmental relations, director of operations, and senior advisor to the governor of California. He has served as a member and chair of numerous state and local boards, both appointed and elected, and also served on the Davis City Council for 12 years, including two terms as mayor. He has taught classes on parliamentary procedure and has served as parliamentarian for large and small governing bodies. In the fall of 2003, Gov. Davis appointed Rosenberg as a judge of the Yolo County Superior Court.

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Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century

by Dave Rosenberg

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that hasn't always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules, *Robert's Rules of Order*, which are embodied in a small but complex book. Virtually no one I know has actually read this book cover to cover.

Worse yet, the book was written for another time and purpose. If you are running the British Parliament, *Robert's Rules of Order* is a dandy and quite useful handbook. On the other hand, if you're running a meeting of a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order. Hence, the birth of "Rosenberg's Rules of Order."

This publication covers the rules of parliamentary procedure based on my 20 years of experience chairing meetings in state and local government. These rules have been simplified and slimmed down for 21st century meetings, yet they retain the basic tenets of order to which we are accustomed.

"Rosenberg's Rules of Order" are supported by the following four principles:

1. **Rules should establish order.** The first purpose of the rules of parliamentary procedure is to establish a

framework for the orderly conduct of meetings.

2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate and those who do not fully understand and do not fully participate.
3. **Rules should be user-friendly.** That is, the rules must be simple enough that citizens feel they have been able to participate in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of the rules of procedure is to encourage discussion and to facilitate decision-making by the body. In a democracy, the majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself (but not dominate) and fully participate in the process.

The Chairperson Should Take a Back Seat During Discussions

While all members of the governing body should know and understand the rules of parliamentary procedure, it is the chairperson (chair) who is charged with applying the rules of conduct. The chair should be well versed in those

rules, because the chair, for all intents and purposes, makes the final ruling on the rules. In fact, all decisions by the chair are final unless overruled by the governing body itself.

Because the chair conducts the meeting, it is common courtesy for the chair to take a less active role than other members of the body in debates and discussions. This does *not* mean that the chair should not participate in the debate or discussion. On the contrary, as a member of the body, the chair has full rights to participate in debates, discussions and decision-making. The chair should, however, strive to be the last to speak at the discussion and debate stage, and should not make or second a motion unless he or she is convinced that no other member of the body will do so.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, published agenda; informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon road map for the meeting. And each agenda item can be handled by the chair in the following basic format.

First, the chair should clearly announce the agenda item number and should clearly state what the subject is. The chair should then announce the format that will be followed.

Second, following that agenda format, the chair should invite the appropriate people to report on the item, including any recommendation they might have. The appropriate person may be the chair, a member of the governing body,

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire to move on.

Rosenberg's Rules of Order: Simple Parliamentary Procedure for the 21st Century

a staff person, or a committee chair charged with providing information about the agenda item.

Third, the chair should ask members of the body if they have any technical questions for clarification. At this point, members of the governing body may ask clarifying questions to the people who reported on the item, and they should be given time to respond.

Fourth, the chair should invite public comments or, if appropriate at a formal meeting, open the meeting to public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of each public speaker. At the conclusion of the public comments, the chair should announce that public input has concluded (or that the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion from the governing body members. The chair should announce the name of the member who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member who seconds the motion. It is normally good practice for a motion to require a second before proceeding with it, to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and a vote on the motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion. This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the members of the governing body. If there is no desired discussion or the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or a very brief discussion, the vote should proceed immediately, and there is no need to repeat the motion. If there has been substantial discussion, it is normally best to make sure everyone understands the motion by repeating it.

Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Ninth, the chair takes a vote. Simply asking for the "ayes" and then the "nays" is normally sufficient. If members of the body do not vote, then they "abstain." Unless the rules of the body provide otherwise or unless a super-majority is required (as delineated later in these rules), a simple majority determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and should announce what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members, if any, who voted in the minority on the motion. This announcement might take the following form: "The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring 10 days' notice for all future meetings of this governing body."

Motions in General

Motions are the vehicles for decision-making. It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus on the motion before them.

Motions are made in a simple two-step process. First, the chair recognizes the member. Second, the member makes a motion by preceding the member's desired approach with the words: "I move ..." A typical motion might be: "I move that we give 10 days' notice in the future for all our meetings."

The chair usually initiates the motion by:

1. Inviting the members to make a motion: "A motion at this time would be in order."

2. Suggesting a motion to the members: "A motion would be in order that we give 10-days' notice in the future for all our meetings."
3. Making the motion.

As noted, the chair has every right as a member of the body to make a motion, but normally should do so only if he or she wishes a motion to be made but no other member seems willing to do so.

The Three Basic Motions

Three motions are the most common:

1. **The basic motion.** The basic motion is the one that puts forward a decision for consideration. A basic motion might be: "I move that we create a five-member committee to plan and put on our annual fundraiser."
2. **The motion to amend.** If a member wants to change a basic motion that is under discussion, he or she would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

- 3. The substitute motion.** If a member wants to completely do away with the basic motion under discussion and put a new motion before the governing body, he or she would "move a substitute motion." A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

A motion to amend seeks to retain the basic motion on the floor, but to modify it in some way.

A substitute motion seeks to throw out the basic motion on the floor and substitute a new and different motion for it.

The decision as to whether a motion is really a motion to amend or a substitute motion is left to the chair. So that if a member makes what that member calls a motion to amend, but the chair determines it is really a substitute motion, the chair's designation governs.

When Multiple Motions Are Before The Governing Body

Up to three motions may be on the floor simultaneously. The chair may reject a fourth motion until the three that are on the floor have been resolved.

When two or three motions are on the floor (after motions and seconds) at the same time, the *first* vote should be on the *last* motion made. So, for example, assume the first motion is a basic "motion to have a five-member committee to plan and put on our annual fundraiser." During the discussion of this motion, a member might make a second motion to "amend the main motion to have a 10-member committee, not a five-member committee, to plan and put on our annual fundraiser." And perhaps, during that discussion, a member makes yet a third motion as a "substitute motion that we not have an annual fundraiser this year." The proper procedure would be as follows.

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passes*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be complete. No vote would be taken on the first or second motions. On the other hand, if the substitute motion (the third motion) *failed*, the chair would proceed to consideration of the second (now the last) motion on the floor, the motion to amend.

If the substitute motion failed, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would now move to consider the main motion (the first motion) as *amended*. If the motion to amend failed, the chair would now move to consider the main motion (the first motion) in its original format, not amended.

The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee) or, if amended, would be in its amended format (10-member committee). And the question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are *not* debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

A motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. This motion requires a simple majority vote.

A motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess, which may range from a few minutes to an hour. It requires a simple majority vote.

A motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: "I move we adjourn this meeting at midnight." It requires a simple majority vote.

A motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to

be placed on "hold." The motion may contain a specific time in which the item can come back to the body: "I move we table this item until our regular meeting in October." Or the motion may contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

A motion to limit debate. The most common form of this motion is to say: "I move the previous question" or "I move the question" or "I call for the question." When a member of the body makes such a motion, the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the chair should ask for a second to the motion, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body. Note that a motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the

the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions occur when the body is taking an action that effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super-majority) to pass:

Motion to limit debate. Whether a member says, "I move the previous question," "I move the question," "I call for the question" or "I move to limit debate," it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body, such as the chair, nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers, and it requires a two-thirds vote to pass.

pend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself: the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to reconsider is made.

A motion to reconsider requires a majority vote to pass, but there are two special rules that apply only to the motion to reconsider.

First is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon or at the very next meeting of the body. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted *in the majority* on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body may second the motion). If a member who voted *in the minority* seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of the minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If you are running the British Parliament, *Robert's Rules of Order* is a dandy and quite useful handbook.

motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super-Majority Votes

In a democracy, decisions are made with a simple majority vote. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means

Motion to object to the consideration of a question. Normally, such a motion is unnecessary, because the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to sus-

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. And at the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every

It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus.

lege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be: "Point of order." Again, the chair would ask the interrupter to "state your point." Appropriate points of order

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

Special Notes About Public Input

The rules outlined here help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.

Public input is essential to a healthy democracy, and community participation in public meetings is an important element of that input. The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items. The rules presented here for conducting a meeting are offered as tools for effective leadership and as a means of developing sound public policy. ■

speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focus on the item and the policy in question, not on the personalities of the members of the body. Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body. Can a member of the body interrupt the speaker? The general rule is no. There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be: "Point of privilege." The chair would then ask the interrupter to "state your point." Appropriate points of privi-

relate to anything that would not be considered appropriate conduct of the meeting; for example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, "Let's return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair's determination may be appealed.

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Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: NEW BUSINESS

Subject: Discussion and direction regarding a crosswalk study on Spring Street and Madrona Avenue, including possible adoption of a resolution appropriating Gas Tax Funds in an amount not-to-exceed \$10,000 to complete this study and/or providing direction to advance a more comprehensive Citywide Active Transportation and Safe Routes to School Plan.

CEQA Determination: Not a CEQA project

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

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On October 27, 2020, City Council received public comment regarding safety concerns for students walking or bicycling to school on the west side of St. Helena. The letter focused on the lack of crosswalks and sidewalk gaps on both Madrona Avenue and Spring Street with a request for City Council action on addressing those concerns. City Councilmembers requested this concern be agendaized for discussion at a future meeting.

As noted by the Federal Highway Administration (FHWA), marked crosswalks must be installed carefully and selectively. Before installing new marked crosswalks, an engineering study is needed to determine whether the location is suitable for a marked crosswalk. For an engineering study, a site review may be sufficient at some locations, while a more in depth study of pedestrian volume, vehicle speed, sight distance, vehicle mix, and other factors may be needed at other sites.

The City has three active projects underway to address high traffic areas identified in earlier City Council adopted pedestrian plans. These three projects were only recently funded for implementation through grants and Measure T funds and include the following: (1) crosswalk on Main Street and Pratt Avenue - CIP R21-02, (2) crosswalk on Main Street at Elmhurst - CIP R21-02, and (3) crosswalk on Pope Street at College Avenue - CIP R21-04.

DISCUSSION

On November 5, 2020, the Public Works Director reached out to three engineering firms with known transportation experience requesting proposals for studying the Madrona Avenue and Spring Street corridors in St. Helena. Additionally, because the City periodically receives concerns from residents citywide, the City requested a proposal for a more comprehensive citywide Active Transportation and/or Safe Routes to School Plan. Table 1 is a summary of the proposals:

Table 1

Consultant	Madrona Avenue and Spring Street Traffic Engineering Study Corridor-Level	Citywide Active Transportation and/or Safe Routes to School Plan
Interwest	\$9,800	N/A
GHD	\$19,974	\$39,128
W-Trans	\$20,000-\$50,000	\$100,000

While both types of proposals will provide analysis of suitable locations for crosswalks, the Madrona Avenue and Spring Street Traffic Engineering Study (Corridor-Level) focuses on one specific area while the Active Transportation and/or Safe Routes to School Plan provides a comprehensive approach citywide. Additionally, if complete, the Active Transportation and/or Safe Routes to School Plan may increase the City's ability to apply for, and receive, grant awards for implementation of identified projects. Both are briefly described below.

Madrona Avenue and Spring Street Traffic Engineering - Corridor-Level

This proposal will study the Madrona Avenue and Spring Street corridors in St. Helena. Traffic Engineering Services will be provided to analyze certain segments of Madrona Avenue between Oak Avenue and Hudson Avenue, and Spring Street between Oak Avenue and Valley View Street. The analysis will focus on pedestrian and cycling safety, sidewalk gap closures, review of existing conditions, and collision history of each segment. Proposals range in cost from \$9,800 to \$50,000.

Citywide Active Transportation and/or Safe Routes to School Plan

An Active Transportation Plan will identify and help prioritize strategies intended to increase the number of people walking and bicycling, while supporting safety and multimodal connectivity throughout the City. This plan includes a comprehensive set of

strategies to ensure better options for biking, walking, and transit and include recommendations for prioritizing infrastructure improvements and outline recommendations for new policies, processes, and infrastructure based on public and stakeholder input.

Safe Routes to School (SRTS) is an international movement to increase the number of children who can, and do, safely walk and bicycle to school. Successful SRTS programs include elements of each of the 6 E's: Education, Encouragement, Engineering, Enforcement, Evaluation, and Equity. Each of these E's is designed to remove barriers that prevent children from walking and bicycling to school. By providing a flexible model to increase walking and bicycling, SRTS programs can address many public health issues facing children and families today.

Proposals range in cost from \$39,128 to \$100,000.

Both Interwest and GHD have approved Master Professional Services Agreements (MPSA's) to provide professional consulting services for the City of St. Helena. While W-Trans does not have a MPSA with the City, this does not preclude them from being selected as a qualified vendor. If City Council recommends moving forward with the corridor-level plan, staff recommends utilizing Interwest for the project.

Funding for either of these projects has not been included in the FY 2020-21 Adopted budget.

Staff is seeking City Council discussion and direction regarding a crosswalk study on Spring Street and Madrona Avenue, including possible adoption of a resolution appropriating Gas Tax Funds in an amount not-to-exceed \$10,000 to complete this study and/or providing direction to advance a more comprehensive Citywide Active Transportation and Safe Routes to School Plan.

FISCAL IMPACT

The fiscal impact ranges from \$10,000 up to \$100,000 dependent on City Council direction. Funds have not been allocated in the FY 2020-21 adopted budget for this work. Projects such as these are typically be funded by General Fund, Gas Tax, or grant funds. Funds are currently available through Gas Taxes.

Based on the submitted proposal by Interwest, the cost for the Madrona Avenue and Spring Street corridor study is \$9,800. Funds for this study are available through Gas Tax funds. If Council directed and funds appropriated, Interwest can perform the work through a work order under the Council authorized Master Professional Services Agreement.

RECOMMENDED ACTION

City Council discussion and direction regarding a crosswalk study on Spring Street and Madrona Avenue, including possible adoption of a resolution appropriating Gas Tax

Funds in an amount not-to-exceed \$10,000 to complete this study and/or providing direction to advance a more comprehensive Citywide Active Transportation and Safe Routes to School Plan.

ATTACHMENTS

[Attachment 1: October 27 Public Comment by Sophia Tsilimigras](#)

[Attachment 2: Interwest Proposal for Traffic Engineering Review for Madrona Ave Spring St 11302020](#)

[Attachment 3: GHD Proposal Active Corridor Study of Spring and Madrona](#)

[Attachment 4: GHD Proposal Citywide Active Transportation and Safe Routes to School Plan](#)

[Attachment 5: W-Trans St Helena ATP plan evaluation](#)

[Attachment 6: Resolution](#)

Cindy Tzaopoulos

From: Sophia Tsilimigras-Hendricks <sophia.hendricks@yahoo.com>
Sent: Tuesday, October 27, 2020 9:29 AM
To: Public Comment
Subject: [External] Public Comment for 10/27 from Sophia Tsilimigras

Please add the following for Public Comment today, thank you.

Honorable Members of our City Council

I'm here today to request that the City of St. Helena address the lack of proper crosswalks available for the children of St. Helena to safely walk or ride to schools daily. I am asking that this issue be added to your agenda for review. Currently on the West side of St. Helena, Spring and Madrona both lack crosswalks in the natural traffic patterns children use to get to school making it unsafe for both children and drivers. I live in the neighborhood south of Spring Street and east of Valley View, this neighborhood is heavily populated with families with children and I'm alarmed how many times I've witnessed near misses.

To quickly remind you of the current situation:

- On Spring Street we have a cross walk at Valley View which is one of the busiest intersections in town; traffic here is at its peak during school start and end times with parents racing to get kids to the primary and high school on time, and workers getting to Sulphur Springs and out of town. The next available crosswalk on Spring is at Kearney, leaving kids living south of Spring the only options at Kearney or Oak streets.
- Madrona, like Spring has become one of the through streets drivers and large trucks use to avoid Highway 29 or get to wineries. Madrona's first crosswalk traveling east is at Kearney and then again at Oak.
- There are also many workers using these two streets who don't live in the area and not aware that kids are going to school. Traffic on the side streets has increased as people try to get passed the back up on 29.
- The route to school is unsafe and a recipe for disaster.

Again my neighborhood has many kids, and parents should be able to either have crossing guards or a couple of crosswalks on high traffic streets like Spring and Madrona to insure everyone's safety. I am requesting that City adds either one additional crosswalk and/or stop sign on both Spring and Madrona Streets.

I understand that our city is facing many difficult issues at this same time and not all issues are of the same magnitude, but I'm frustrated that our schools are encouraging riding and walking to school – as they should – yet my kid was almost plowed down by a teacher riding home from school. This wasn't the teacher's fault as my son was not using in a crosswalk. I'm concerned that our luck will run out! How inept will we all feel as a community if ONE child is injured or killed going to school.

I ask that we please not complicate this by lumping it into our city's big bucket of projects and then requiring multiple meetings, studies, budget approvals and then NOTHING getting done. While I don't wish to skip normal procedures I feel strongly that we can't wait for politics or bureaucracy to be put before our kids' safety. Nothing is simple, I get it, but sometimes common sense must be prioritized.

In conclusion I ask what I can do as a citizen to assist the process and when can we move this forward in the agenda?

Compassionately yours,

Sophia

Sophia Tsilimigras
1990 Olive Ave.
St. Helena
707-227-9295



November 30, 2020

City of St Helena Task Order

SUBJECT: TRAFFIC ENGINEERING-PEDESTRIAN/BICYCLE SAFETY REVIEW OF MADRONA AVENUE FROM OAK AVENUE TO HUDSON AVENUE AND SPRING STREET FROM OAK AVENUE TO VALLEY VIEW STREET

Interwest Consulting Group is pleased to submit our proposal to provide professional engineering services for the subject analysis. Included with this proposal is our anticipated scope of work and estimated fees to complete the assignment.

Scope of Work

Interwest Consulting Group (Interwest) will provide professional Traffic Engineering Services to analyze certain segments of Madrona Avenue between Oak Avenue and Hudson Avenue, and Spring Street between Oak Avenue and Valley View Street. The analysis will focus on pedestrian and cycling safety, sidewalk gap closures, review of existing conditions, and collision history of each segment.

Interwest will complete the analysis for the segments listed above and provide recommendations and cost estimates to implement the work. The following items will be completed and included in each segment analysis:

- a) Collision history for 2018 and 2019 will be collected and reviewed for each segment;
- b) Field observations of each segment and the adjacent area will be done, land use, location of schools, parking, street width, bike lanes, sidewalk gap closure, and segment length between traffic controls are some of the features that will be recorded and included in each study.
- c) The results of items a and b will be used to create a list of potential improvements with cost estimates to be considered for implementation.
- d) A Technical Memorandum will be prepared to document the results of the analysis and to provide any recommendations for improvements to each segment. An existing and proposed layout for each segment will be included in the document.

9300 WEST STOCKTON BOULEVARD | SUITE 105 • ELK GROVE, CALIFORNIA 95758
TEL. 916.683.3340 • FAX. 916.683.3375 • www.interwestgrp.com

City of St Helena
 Task Order-Madrona Ave and Spring St Ped & Bike Safety Analysis
 November 30, 2020

Estimated Fee

We will perform the work on a time-and-material basis in accordance with the estimate below. It is suggested that a not-to-exceed fee of \$9,800 be established for these services. Additional data collection, meetings, or technical/field review beyond the scope of work listed above will be billed on a time and materials basis, in accordance with our rate schedule. Staffing will be provided by David Yatabe and Juan Vargas with QA/QC oversight by a Project Manager.

Task	Staff	Hours	Hourly Rate	Total
Field Review	Traffic Engineer	8	\$160	\$1280
Analysis	Traffic Engineer	24	\$160	\$3840
Technical Memo	Traffic Engineer	8	\$160	\$4040
	Engineering Tech	24	\$115	
QA/QC	Project Manager	4	\$160	\$640
Total				\$9800

Please contact David Yatabe (707) 592-1714 or dyatabe@interwestgrp.com for any additional information.

Approved:

Erica Ahmann-Smithies
Public Works Director

Date



November 18, 2020

Erica Ahmann Smithies, PE
Public Works Director, City Engineer
City of St. Helena
1572 Railroad Avenue
St. Helena, CA 94574

Re: Proposal for Active Transportation Corridor Study

Dear Ms. Ahmann Smithies:

In response to your request, GHD is pleased to submit this proposal for an Active Transportation Corridor Study focusing on the Madrone Avenue and Spring Street corridors, seeking to prioritize addition of crosswalks as well as sidewalk gap closures. There is a separate proposal for the other requested option, an Active Transportation or Safe Routes to School Plan.

This proposal is based on our initial review of existing regional plans and the St. Helena context. The Napa Valley Transportation Authority Pedestrian Plan (2016) and Bicycle Plan (2019) provide a solid foundation for this effort, with facility recommendations provided within each. For purposes of the proposal, GHD assumes that the City of St. Helena has the GIS data produced as part of these plans, specifically the sidewalk gap, curb ramp, and crosswalk datasets, as well as existing and proposed bicycle facilities.

The GHD team includes Matt Wargula, who is actively working with the City of St. Helena, most recently assisting the City with traffic calming and pedestrian safety improvements along Main Street and other locations within the City. In addition to Matt Wargula's local experience working for the City, the GHD team includes Kendra Ramsey, AICP, who has developed Active Transportation and Safe Routes to School Plans for communities throughout California, as well as conducted numerous corridor studies focused on improving conditions for pedestrians and bicyclists utilizing both spot and systemic treatment recommendations.

Thank you for the opportunity to submit this set of proposals for your review. We can tailor our approach to meet the City's needs; please do not hesitate to let us know if you'd like to discuss any changes to either of the proposed scopes. We look forward to discussing this further with you.

Sincerely,

Matt Wargula, P.E., T.E.
Associate
707 540 9689
Matt.Wargula@ghd.com

Kamesh Vedula, P.E., T.E.
Principal
916 918 0622
Kamesh.Vedula@ghd.com

Kendra Ramsey, AICP
Project Manager
916 245 4218
Kendra.Ramsey@ghd.com



Active Transportation Corridor Study

Task 1 Project Management and Coordination

1.1 Project Management and Coordination

Following notice to proceed, GHD will coordinate and host a project kick-off call to discuss scope, schedule, communications protocols, and review timelines. Throughout the project, GHD will host project check-ins each month to provide an ongoing touchpoint to discuss project deliverables and milestones, budget status, and any anticipated challenges. Monthly invoice packages will also be provided.

Deliverables:

- Kick-Off Agenda and Action Item Minutes
- Monthly Check-In Agendas and Action Item Minutes
- Monthly Invoice Packages

Task 2 Document and Data Collection and Analysis

2.1 GIS Data Collection and Analysis

GHD will provide the City a list of GIS data needed for the project, to include the sidewalk, sidewalk gap, curb ramp, and crosswalk datasets created as part of the NVTa Pedestrian Plan, and existing and proposed bicycle facilities developed as part of the NVTa Bicycle Plan; while this project focuses on pedestrian improvements, the Bicycle Plan dataset would show if any Class I shared use path facilities were added as recommendations after the Pedestrian Plan was adopted, which would benefit pedestrians as well as bicyclists. GHD assumes the City will provide these datasets updated to present condition, showing any facilities constructed since the Plans were adopted.

GHD will incorporate provided files into a geodatabase and will review proposed projects, current facilities, and set up the geodatabase to allow addition of new recommendations as developed under this project.

2.2 Collision Analysis

GHD will conduct an updated collision analysis to cover the most recent five years of data. This will allow the project to incorporate any safety needs which have presented since the prior Plans were developed. The analysis, including GIS maps, charts and tables as needed, and narrative summary, will be included in the Technical Memorandum developed under Task 2.4.

2.3 Field Investigations

Following review of existing infrastructure needs presented in the Bicycle and Pedestrian plans, as well as the recent collision trends uncovered in the collision analysis, GHD will conduct field investigations to better understand conditions and needs in key areas identified. The field investigations will allow development of more nuanced recommendations to meet the challenge of conditions.



Field investigations can also be an opportunity to engage with key stakeholders identified by the City, should the City deem their feedback critical to understanding needs and developing solutions. GHD would look to the City to identify and invite these stakeholders to participate in the field visits.

2.4 Technical Memorandum

GHD will prepare a Technical Memorandum to synthesize the findings of Tasks 2.1, 2.2, and 2.3, including any photos, measurements, and observations collected during field observations. The Memorandum will form the basis for recommendation development in Task 3. GHD will provide the Memorandum to the City, and will revise based on one set of consolidated, internally-consistent comments.

Deliverable:

- Existing Conditions Memorandum

Task 3 Develop Recommendations

3.1 Draft Recommendations

GHD will develop comprehensive improvement recommendations for the Madrona Avenue and Spring Street corridors focused on improving connectivity, safety and comfort for pedestrians. Recommendations will draw from prior studies, and be updated to reflect recent collision trends, field investigations, and any feedback received from the City and stakeholders invited to participate in field investigations. Recommendations will be developed in GIS and presented in map and table format (Excel). The recommendations will be revised based on one set of consolidated, internally-consistent comments received from the City.

Deliverable:

- Recommendation Map(s) (PDF) and Tables (PDF/Excel)

3.2 Develop Cost Estimates

GHD will prepare planning-level cost estimates for the projects identified in task 3.1 based on a set of unit cost assumptions developed based on recent projects in the region. The cost estimates will be presented in tabular format, and will be revised based on one set of consolidated, internally-consistent comments received from the City.

Deliverable:

- Cost Estimate Table (PDF/Excel)

3.3 Develop Implementation Plan

GHD will develop an implementation plan reflecting a short, medium, and long term phased approach to the recommendations presented in Task 3.1. The phases will be developed based on several factors:



- Financial constraints: project costs estimated in Task 3.2, funding levels estimated in the CIP, and ability to secure outside funding
- Complexity: projects which can be implemented within existing maintenance or upcoming projects, those which can be funded within existing signage and striping annual budgets, or projects requiring outside funding, for example
- Importance: this criterion can be further developed in consultation with the City, but is likely to include consideration of safety- i.e. projects which directly address a noted safety challenge/collision hotspot- as well as community request, proximity to activity generator, etc.

The Implementation Plan will be prepared in Memorandum format to include the phased approach, methodology, and maps depicting each phase of projects, and revised based on one set of consolidated, internally-consistent comments from the City.

Deliverable:

- Implementation Plan Memorandum

Task 4 Draft and Final Plan

4.1 Draft Plan

GHD will compile the memoranda prepared in Tasks 2 and 3 into a cohesive document, understandable to members of the public and useful as a planning tool to City staff. The Plan will include information to support future grant applications, including any stakeholder engagement, analysis developed, and field conditions documented. The Plan will also include illustrative graphics such as cross sections, representative conceptual images, and specification tables to clarify the project recommendations, as appropriate. The Draft can be publicly circulated if the City desires. GHD will revise the Draft Plan based on one set of consolidated, internally-consistent comments received from the City, to include public comments if solicited.

Deliverable:

- Draft Plan (PDF)

4.2 Final Plan

GHD will develop the Final Plan in response to comments received on the Draft Plan, and prepare a PowerPoint presentation for a City Council presentation. GHD will attend one City Council meeting and assist City staff with presenting the Plan. The final document will be provided in PDF format, along with any GIS data developed (in ArcGIS format).

Deliverable:

- Final Plan (PDF)
- GIS layers/shapefiles produced as part of the project (ArcGIS formats)
- PowerPoint for City Council



Schedule

The schedule proposed encompasses approximately six months, as follows:

Event	Milestone
Kick Off Meeting/Data Request	Within 2 weeks after Notice to Proceed
Field Investigation	Within 4 weeks of Kick Off, weather permitting
Existing Conditions Memo	Within 6 weeks of Kick-Off
Draft Recommendations	Within 1 month of Receipt of Comments on Existing Conditions Memo
Cost Estimates	Within 2 weeks of Delivery of Recommendations
Implementation Plan Memo	Within 1 month of Receipt of Comments on Recommendations and Cost Estimates
Draft Plan	Within 2 weeks of Receipt of Comments on Implementation Plan
Final Plan/PowerPoint	Within 1 month of Receipt of Comments on Draft Plan

Budget

The Budget for this project is estimated as follows:

Category	Staff	Hours	Rate	Total
Principal	Kamesh Vedula, PE, TE	2	\$252	\$504
QA/QC, Lead Engineer	Matt Wargula, PE, TE	4	\$227	\$908
Project Manager	Kendra Ramsey, AICP	24	\$202	\$4,848
Lead Planner	Emily Shandy, AICP	32	\$167	\$5,344
Analysis/GIS	Paige Thornton, Brittany White	60	\$137 (Avg)	\$8,220
Direct Expenses				\$150
			Total	\$19,974



Erica Ahmann Smithies, PE
Public Works Director, City Engineer
City of St. Helena
1572 Railroad Avenue
St. Helena, CA 94574

Re: Proposal for Active Transportation/Safe Routes to School Plan

Dear Ms. Ahmann Smithies:

In response to your request, GHD is pleased to submit this proposal for a holistic study to develop a Master Plan. Due to the small size of St. Helena and the recent active transportation infrastructure recommendations developed in recent Napa Valley Transportation Authority (NVTA) plans mentioned below, an Active Transportation Plan with a Safe Routes to School emphasis is recommended for St. Helena.

This proposal is based on our initial review of existing regional plans and the St. Helena context. The NVTA Pedestrian Plan (2016) and Bicycle Plan (2019) provide a solid foundation for this effort, with facility recommendations provided within each. For purposes of the proposal, GHD assumes that the City of St. Helena has the GIS data produced as part of these plans, specifically the sidewalk gap, curb ramp, and crosswalk datasets, as well as existing and proposed bicycle facilities.

The GHD team includes Matt Wargula, who is actively working with the City of St. Helena, most recently assisting the City with traffic calming and pedestrian safety improvements along Main Street and other locations within the City. In addition to Matt Wargula's local experience working for the City, the GHD team includes Kendra Ramsey, AICP, who has developed Active Transportation and Safe Routes to School Plans for communities throughout California, as well as conducted numerous corridor studies focused on improving conditions for pedestrians and bicyclists utilizing both spot and systemic treatment recommendations.

Thank you for the opportunity to submit this set of proposals for your review. We can tailor our approach to meet the City's needs; please do not hesitate to let us know if you'd like to discuss any changes to either of the proposed scopes. We look forward to discussing this further with you.



Sincerely,

Matt Wargula, P.E., T.E.
Associate

Kamesh Vedula, P.E., T.E.
Principal

Kendra Ramsey, AICP
Project Manager

Active Transportation/Safe Routes to School Plan

Task 1 Project Management and Coordination

1.1 Project Management and Coordination

Following notice to proceed, GHD will coordinate and host a project kick-off call to discuss scope, schedule, communications protocols, and review timelines. Throughout the project, GHD will host project check-ins each month to provide an ongoing touchpoint to discuss project deliverables and milestones, budget status, and any anticipated challenges. Monthly invoice packages will also be provided.

Deliverables:

- Kick-Off Agenda and Action Item Minutes
- Monthly Check-In Agendas and Action Item Minutes
- Monthly Invoice Packages

Task 2 Document and Data Collection and Analysis

2.1 Document Review

GHD will supply a data and information request to the City at the Kick-Off meeting, which will include the adopted plans and policies influencing active transportation and Safe Routes to School (SRTS). GHD will review these documents and prepare a brief synthesis of information relevant to the development and implementation of the Active Transportation and Safe Routes to School Plan. This synthesis is likely to include guidance and standards for active transportation facilities, School District policy related to active transportation, and local and regional guidance regarding active transportation. The findings of the document review will be incorporated into the Existing Conditions Chapter developed under Task 2.4.

2.2 GIS Data Collection and Analysis

GHD will provide the City a list of GIS data needed for the project, to include the sidewalk, sidewalk gap, curb ramp, and crosswalk datasets created as part of the NVTa Pedestrian Plan, and existing and proposed bicycle facilities developed as part of the NVTa Bicycle Plan; while this project focuses on pedestrian improvements, the Bicycle Plan dataset would show if any Class I shared use path facilities were added as recommendations after the Pedestrian Plan was adopted, which would benefit pedestrians



as well as bicyclists. GHD assumes the City will provide these datasets updated to present condition, showing any facilities constructed since the Plans were adopted.

GHD will incorporate provided files into a geodatabase and will review proposed projects, current facilities, and set up the geodatabase to allow addition of new recommendations as developed under this project.

2.3 Collision Analysis

GHD will conduct an updated collision analysis to cover the most recent five years of data. This will allow the project to incorporate any safety needs which have presented since the prior Plans were developed. The analysis, including GIS maps, charts and tables as needed, and narrative summary, will be included in the Existing Conditions Chapter developed under Task 2.4.

2.4 Technical Memorandum

GHD will prepare the Existing Conditions Chapter to synthesize the findings of Tasks 2.1, 2.2, and 2.3, including any photos, measurements, and observations collected during field observations. The Memorandum will form the basis for recommendation development in Task 3. GHD will provide the Memorandum to the City, and will revise based on one set of consolidated, internally-consistent comments.

Deliverable:

- Existing Conditions Chapter

Task 3 Stakeholder Engagement

3.1 Public Workshops

Public engagement is a critical component of planning active transportation systems, especially when incorporating safe routes to school. Due to the COVID-19 pandemic and related limitations on public gathering, GHD proposes to utilize web-based public workshops for this project. Workshops can be held on a platform such as Zoom or Microsoft Teams, and incorporate interactive components such as live polling and breakout discussions. We propose to host two online public workshops for this project:

- First Workshop: Following completion of the Existing Conditions Chapter, a public workshop will be held to share findings and ask for the public's feedback on the findings, to highlight areas of concern, priorities, and challenges.
- Second Workshop: Following release of the Draft Plan, the public will be invited to see a presentation on the Plan and provide comments.

GHD will prepare workshop notifications, such as email and social media content, for the City to share via existing email lists and social media channels. Each workshop will be documented, and the comments, any photos, and recommendations will be included in a Public Engagement Chapter of the Plan.

**Deliverable:**

- Public Engagement Chapter

3.2 Walk Audits

Walk audits will be held at each of the four public school sites in St. Helena, and key stakeholders will be invited to participate. Walk Audits provide an excellent opportunity to gather specific feedback from the school community on safety and connectivity challenges as well as student travel patterns. The Walk Audits will be scheduled to coincide with the first Public Workshop- perhaps the same day if possible. GHD assumes the City will identify and invite key stakeholders such as district and school administrators, PTO/PTA representatives, SRTS parent leaders (if applicable), and other similar stakeholders. Due to COVID-19, the group size will need to be small; GHD will plan to have two staff attend each walk audit to allow for smaller groups to travel in different directions to enable social distance during the Walk Audits. Findings of the Walk Audits will be incorporated into the Public Engagement Chapter.

Task 4 Develop Recommendations and Implementation Plan**4.1 Draft Recommended Projects and Programs**

GHD will develop comprehensive improvement recommendations for the City of St. Helena focused on improving connectivity, safety and comfort for pedestrians and bicyclists. Special attention will be paid to recommendations near the four public schools, providing a Safe Routes to School emphasis in the Plan. Recommendations will draw from prior studies, and be updated to reflect recent collision trends, field investigations, and any feedback received from the City and stakeholders invited to participate in field investigations. Recommendations will be developed in GIS and presented in map and table format.

Program recommendations will also be included in the recommendations Chapter, to complement the infrastructure improvements. Program recommendations typically provide ways to address the five of the six Es of active transportation planning:

- Education
- Encouragement
- Engagement
- Equity
- Evaluation

The sixth E is engineering, which is covered by infrastructure recommendations. Program recommendations will build on any existing programs identified in the plan and policy review or mentioned by stakeholders, and will seek to address observed challenges in the St. Helena community.

The Recommendations Chapter will be provided for City review, and will be revised based on one set of consolidated, internally-consistent comments received from the City.

Deliverable:



- Recommendations Chapter, to include:
 - Maps and Tables
 - Program Recommendations

4.2 Develop Cost Estimates

GHD will prepare planning-level cost estimates for the projects identified in task 4.1 based on a set of unit cost assumptions developed based on recent projects in the region. The cost estimates will be presented in tabular format, and will be revised based on one set of consolidated, internally-consistent comments received from the City.

Deliverable:

- Cost Estimate Table (PDF/Excel)

4.3 Develop Implementation Plan Chapter

GHD will develop a project prioritization methodology to assist the City with phasing implementation of the projects recommended in the plan. The prioritization criteria and methodology will be presented to the City in memorandum format for review and comments, and revised based on one set of consolidated, internally-consistent comments. Prioritization criteria typically follow criteria of grant programs such as the Active Transportation program, as well as local priorities. For example, criteria may include:

- Safety/Collision History
- Addresses a Gap or Barrier in Network
- Proximity to Activity Generators such as schools, civic facilities, parks
- Community Identified Improvement/Community Support
- Disadvantaged Community (project is located within a Disadvantaged Community)

Once the prioritization criteria and methodology are approved, GHD will prioritize the infrastructure improvement recommendations.

The Implementation Plan Chapter will be provided to the City for review, and revised based on one set of consolidated, internally-consistent comments.

Deliverables:

- Prioritization Memorandum
- Implementation Plan Chapter

Task 5 Draft and Final Plan

5.1 Administrative Draft Plan

GHD will compile the Chapters developed in Task 2 through 4 into cohesive document, understandable to members of the public and useful as a planning tool to City staff. The Administrative Draft will be provided



to the City for review and comment by all relevant internal stakeholders; GHD will revise the Administrative Draft based on one set of consolidated, internally-consistent comments received from the City.

Deliverable:

- Administrative Draft Plan (PDF)

5.2 Draft Plan

GHD will revise the Administrative Draft Plan per the direction received from the City, and produce a Draft Plan. The Draft Plan should be made publicly available, by posting to the City's website. Following release of the Draft Plan, GHD will hold the Public Workshop described in Task 3 to provide an opportunity for public review and comment. The City may also elect to collect comments via email or website. GHD will produce a comment log including all public comments received, and supply suggested revisions/responses; the City will then provide direction on each suggested revision. GHD will revise the Draft Plan based on this set of consolidated direction.

Deliverables:

- Draft Plan (PDF)
- Comment Log (Excel)

5.3 Final Plan

GHD will prepare the Final Plan following direction supplied by the City in Task 5.2. The Final Plan will be provided in PDF format, along with all GIS data (layers) and other documentation produced during the project.

GHD will prepare a PowerPoint Presentation for City Council adoption, and attend one City Council meeting to support staff presentation of the Plan for adoption.

Deliverables:

- Final Plan (PDF)
- PowerPoint for Council meeting



Schedule

The schedule proposed encompasses approximately eight months, as follows:

Event	Milestone
Kick Off Meeting	Within 2 weeks after Notice to Proceed
Existing Conditions Chapter	Within 6 weeks of Kick-Off
Public Workshop and Walk Audits (weather permitting)	Within 2 weeks of receipt of Comments on Existing Conditions Chapter
Recommendations Chapter	Within 6 weeks of Public Workshop
Implementation Chapter	Within 2 weeks of Delivery of Recommendations Chapter
Admin Draft Plan	Within 1 month of Receipt of Comments on Implementation Chapter
Draft Plan	Within 1 month of Receipt of Comments on Admin Draft Plan
Public Workshop	Within 1 week of Release of Draft Plan
Final Plan/PowerPoint	Within 1 month of Receipt of Comments on Draft Plan

Budget

The Budget for this project is estimated as follows:

Category	Staff	Hours	Rate	Total
Principal	Kamesh Vedula, PE, TE	4	\$252	\$1008
QA/QC, Lead Engineer	Matt Wargula, PE, TE	4	\$227	\$908
Project Manager	Kendra Ramsey, AICP	46	\$202	\$9,292
Lead Planner	Emily Shandy, AICP	60	\$167	\$10,020
Analysis/GIS	Paige Thornton, Brittany White	130	\$137 (Avg)	\$16,900
Direct Expenses				\$1000
			Total	\$39,128



Memorandum

Date: December 1, 2020 **Project:** SHE018

To: Ms. Erica Ahmann Smithies
City of Saint Helena **From:** Barry Bergman
bbergman@w-trans.com

Dalene Whitlock
dwhitlock@w-trans.com

Subject: Consideration of Approaches to Identify Pedestrian and Bicycle Facility Improvements

W-Trans was asked to provide recommendations regarding the development of a citywide Safe Routes to School (SRTS) or active transportation plan. The scope of these types of studies can vary considerably and each approach can be more appropriate in certain contexts and based on the needs of a local jurisdiction. This memo outlines some of the key issues for the City to consider in determining how to best move forward to improve conditions for walking and bicycling.

Corridor-Level Planning

A corridor-focused analysis is typically undertaken as a step toward implementation of high priority improvements, such as has been requested for Madrona Avenue and Spring Street. This will generally include the completion of some level of design which can range from concept plans up to a more fully realized project. Since corridor plans focus on a considerably smaller geographic scope than an SRTS or Active Transportation Plan, they would therefore require a lower level of effort. Corridor plans are generally used as a means of implementing improvements that have been identified at the city level through a prioritization process so that limited resources can best be directed to achieve multiple policy goals. It should be noted that the completion of a citywide effort could potentially reduce the corridor-focused analysis, as the citywide effort may have already included some of the work needed for the more focused effort, such as community outreach.

Citywide Planning Approaches

A high-level planning effort can help to establish priorities for pedestrian and bicycle improvements through an assessment of facilities, safety and access needs, and the needs of local residents and businesses. If needs and priorities have not previously been identified, a citywide approach can lay the groundwork for more detailed project-focused improvements and project implementation. A comprehensive active transportation plan is recommended for Saint Helena as opposed to a stand-alone SRTS plan, based on several considerations:

- *Community size:* Saint Helena has an area of only five square miles, and the primary concentration of development in a considerably smaller area. As a result, if an SRTS plan considers improvements within one-half mile of each school – a typical study area for such plans – this plan would consider improvements for the entire center of the City.
- *Trip purpose:* Walking and bicycling trips can be made for a wide variety of purposes. While trips to and from school are one of the primary trip purposes, other uses include access to work, shopping, and recreational trips. While an SRTS plan would emphasize the needs of students for school-related trips, a broader active transportation plan would engage a range of stakeholders interested in accessing other destinations. Some

Ms. Erica Ahmann Smithies

Page 2

December 1, 2020

of these individuals have unique needs that could be addressed through a broader scope, particularly seniors and people with disabilities.

- *Access to funding:* Projects identified and analyzed based on broader stakeholder engagement and serving a larger segment of the population could be eligible for a wider range of funding sources or could present a stronger statement of need to make the case for project funding.
- *Cost-effectiveness:* Due to the broader scope, the cost of preparing an SRTS plan would be somewhat less than an Active Transportation Plan. However, since both efforts include many similar tasks, the comprehensive approach would avoid duplication of effort and would be more cost-effective in the long run than analyzing pedestrian and bicycle improvements outside the scope of the SRTS plan.

Estimated Budget Required

The project scope and budget for citywide and corridor-level efforts can vary considerably. The typical cost for consultant services for a corridor study focused on active transportation improvements in Saint Helena would range from approximately \$20,000 to \$50,000, depending on the length of the corridor. Factors that could increase or decrease this amount include the data already available (such as surveyed plans), the degree to which staff completes any of the required tasks, the level of effort required for public outreach activities, and the level of design work that may be built into the project. For citywide plans, other small cities have been awarded grants close to \$200,000, but since some recent planning work has been conducted in Saint Helena as part of the countywide bicycle and pedestrian plans, it is expected that a citywide plan could be completed for a smaller amount, perhaps \$100,000 or less. It should be noted that this type of higher-level effort does not typically include design work.

DJW/bdb/SHE018.M1

RESOLUTION NO. _____

RESOLUTION AUTHORIZING: (1) A BUDGET INCREASE OF \$10,000 TO 101-5000-2130 IN FY 2020-21 FOR COSTS ASSOCIATED WITH A CORRIDOR-LEVEL TRAFFIC ENGINEERING STUDY FOR MADRONA AVENUE AND SPRING STREET, (2) USE OF GAS TAX FUNDS IN THE AMOUNT NOT-TO-EXCEED \$10,000 FOR THE STUDY, AND (3) A TRANSFER FROM GAS TAX FUNDS TO THE GENERAL FUND IN AN AMOUNT NOT-TO-EXCEED \$10,000 UPON COMPLETION OF THE STUDY.

WHEREAS, On October 27, 2020, City Council received public comment regarding safety concerns for students walking or bicycling to school on the west side of St. Helena; and

WHEREAS, The public comment focused on the lack of crosswalks and sidewalk gaps on both Madrona Avenue and Spring Street with a request for City Council action on addressing those concerns; and

WHEREAS, City Councilmembers requested this concern be agendized for discussion at a future meeting; and

WHEREAS, As noted by the Federal Highway Administration (FHWA), marked crosswalks must be installed carefully and selectively and before installing new marked crosswalks, an engineering study is needed to determine whether the location is suitable for a marked crosswalk; and

WHEREAS, City Council has provided direction to complete a corridor-level traffic engineering study for Madrona Avenue and Spring Street for a cost not-to-exceed \$10,000; and

WHEREAS, Use of Gas Tax Funds are necessary to cover the costs of the study.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of St. Helena as follows:

Section 1. Approves a budget increase of \$10,000 to 101-5000-2130 in FY 2020-21 for costs associated with a corridor-level traffic engineering study for Madrona Avenue and Spring Street; and

Section 2. Approves use of Gas Tax Funds in the amount not-to-exceed \$10,000 for the corridor-level traffic engineering study for Madrona Avenue and Spring; and

Section 3. Approves a transfer from Gas Tax Funds to the General Fund upon completion of the study for an amount not-to-exceed \$10,000.

APPROVED at a Regular Meeting of the St. Helena City Council on December 8, 2020, by the following votes:

Mayor Ellsworth: _____

Vice Mayor Dohring: _____

Council Member Chouteau: _____

Council Member Knudsen: _____

Council Member Koberstein: _____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

Christopher K. Cole
P.O. Box 533
St. Helena California 94574

Cell: (707) 363-3198

ckcole@comcast.net

December 8, 2020

St. Helena City Council
via email submittal to City Clerk

Tuesday, December 8, 2020 City Council Meeting, Item 11.4

Re: PLEASE SUPPORT the crosswalk study on Spring Street and Madrona Avenue.
Please advance the Citywide Active Transportation and Safe Routes to School Plan.

Dear City Council:

The City Council recently supported the Spring Street Bike Plan. Thank you! Studies are now funded to address the critical crossings on Main Street. Please support this proposed study along Madrona Avenue and Spring Street to extend and improve the primary east-west alternative transportation corridors. We need these connections that are essential to get kids to school, citizens to downtown shops and local residents to work.

If we want to address the City's climate mandate and promote St. Helena as a local and friendly place to live, this is how it will happen. We need viable and safe east-west alternative corridors.

Please support this Spring Street and Madrona Avenue crosswalk study.

Sincerely,

Christopher K. Cole

140 Rose Lane
St. Helena CA

Cindy Tzaopoulos

From: Anthony Albright <albrightony@gmail.com>
Sent: Tuesday, December 8, 2020 11:17 AM
To: Public Comment
Subject: [External] Public Comment - Crosswalks, stop signs and community safety

Public Comment:

Here's a quick response regarding the need for crosswalks and more stop signs throughout the town.

It is great to have more mindfulness around children, families and individuals bring out and about; on foot, bicycles, scooters etc. And with that comes the need for continued oversight and awareness around safety. That may mean more stop signs and or crosswalks to do so.

Best,
Tony Albright

Cindy Tzaopoulos

From: Glenn Smith <steamnpc@gmail.com>
Sent: Tuesday, December 8, 2020 10:52 AM
To: Public Comment
Subject: [External] Crosswalks

The staff report seems to note a Federal Highway requirement to conduct an engineering study to install crosswalks on our city streets. This would require a \$10,000 consulting study. I can certainly understand need for carefully analyzing risks and rewards where heavy traffic could be an issue, but neither of the streets here appear to rise to this level of concern. I encourage City Council to just move forward with a decision to paint the crosswalks or not.

Glenn Smith
St. Helena
Vice-chair, ATSC

December 8, 2020

To Mayor Ellsworth, Councilpersons Dohring, Chouteau, Hall, and Hardy

Public comment re: 12/8/20 agenda item “crosswalk study on Spring and Madrona”

Thank you for your service to our community and for the opportunity to comment. I am very much in favor of adding some crosswalks on the western sections of Spring and Madrona. Crosswalks will no doubt make these streets safer. These two streets are infamous for speeding.

I understand the need for “federal highway standards” being applied to the highway crossings at Elmhurst and Pratt. Do we need to do this level of work on Spring and Madrona? Can’t our own engineering staff make recommendations based on the NATCO guidelines? NACTO is used by cities and towns across the country, it is free to access.

The ATSC received public comment, verbal and written, last year (2019) regarding safety and crossings needed. Several letters were written (a compelling one from a fourth grader). Staff and I have copies if you need them. This process of collecting information from the public would be duplicated in any new study, taking time and costing money unnecessarily. What role can/should the ATSC play in this decision making?

In addition, we have several documents already at our disposal. Our 2016 Pedestrian Plan states “connectivity and safety are two of the top pedestrian issues identified from the public”. It includes Exhibits showing existing crosswalks. From these Exhibits it is clear there is a lack of crosswalks on the western sections of Spring and Madrona west of Oak (except one existing at Valley View). Our General Plan also contains significant resources, recommendations, and goals (in the Circulation Section). It would seem we have resources available to us for implementing crosswalks on Spring and Madrona without resorting to new consultants and accompanying costs.

By executing the needed crossings on these two streets as soon as possible, you will be sending a message 1-to cars to slow down, 2-to students and their families that you are committed to their safety, and 3-you will be fulfilling our obligation (per our General Plan) to make our streets “Complete Streets” -streets safe for ALL users. As the fourth grader said in her letter, “I don’t want to get hit by a car any time soon.”

Thank you for your consideration.

Pam Smithers
707-696-0530

Cindy Tzafopoulos

From: sophia.tsili@yahoo.com
Sent: Tuesday, December 8, 2020 10:40 AM
To: Public Comment
Subject: [External] Dec 8 Public Comment- 11.4. Consideration of a crosswalk study on Spring Street and Madrona Avenue

Please add the following for Public Comment today, thank you.

Honorable Members of our City Council

I would like to thank you for responding to my Public Comment on October 27 which asked for the Council's consideration to add crosswalks to streets that our Saint Helena Public School children use daily; specifically Spring and Madrona streets. Since we last met, I have taken the opportunity to ask neighbors in the area to voice their position regarding this matter, and not surprisingly I have had only messages of support. I have forwarded the messages to the Council's Public Commentary site as well as some messages which went directly to the Public Comment site for your review.

Again I appreciate the time and effort you have placed on this subject and wish to reiterate a few key points:

1. Spring and Madrona Streets have become shortcuts for many service vehicles and delivery trucks in the area, often at hazardous driving speeds. Therefore making the safety of pedestrians dangerous at best with no safe route to cross.
2. Since our last meeting, Schools reopened and our kids are doing exactly what we've asked, walk and bike to school. This serves not only a healthy form of exercise but also supports the City of St. Helena's goal to reduce its carbon footprint.
3. If schools and our town do return to a stay-at-home order, cycling and walking remain the safest forms of outdoor activity for all our citizens.
4. With the increased traffic on these streets, we cannot wait to have a tragedy in our wonderful town and I ask we preemptively plan for the safety of our kids, adults and furry friends.

Sincere regards,

Sophia

Sophia Tsilimigras
email: sophia.tsili@yahoo.com
cell: 707.227.9295

Cindy Tzaopoulos

From: Denise Henquet Sprengers <denisehenquet@gmail.com>
Sent: Tuesday, December 8, 2020 2:07 PM
To: Public Comment
Subject: [External] Safe biking St Helena

Dear City Council,

Thank you for working on more safer biking options in St Helena.

I understood that at this time there is a budget to look at safer options at Madrona Ave and Spring Street.

During my time at the ATSC , we started the Walk and roll to school project (something that we love to make bigger every year in September and in the spring, once Covid allows us) and parents would come up to us almost daily .

They told us about how they would love to see more safe crossing for the kids (and themselves) especially on Spring St and Madrona Ave. Both these streets are used for often 'high' speeds.

It would be very helpful if there were actual crossing sites for children to cross both streets. Ideally there would be more stop signs, roundabouts or the best a crossing guard system in place.

On a separate note, although walk and bike related, I would like to add to this, that most parents don't feel it is safe to send the children throughout time and cross from E to W and vv.

Best of luck and I'm happy to help in any of these projects.

Kind regards,
Denise Henquet

Cindy Tzaopoulos

From: laura symon <symonlaura@gmail.com>
Sent: Monday, December 7, 2020 6:12 PM
To: Public Comment
Subject: [External] Agenda Item 11.4

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mayor Ellsworth and City Council Members,

I am a St. Helena community member and parent of two children in the St. Helena Public Schools. My family and I live on Spring Mountain Road near Madrona Ave. I have a good sense of which streets children frequent to walk or ride bikes to and from the RLS middle school and the St. Helena elementary school. Also, I participated in the bike committee meeting last year in which several parents rode around town brainstorming safe routes and possible obstacles children may encounter to get to and from school safely.

I strongly recommend that lighted crosswalk systems be installed on Madrona at Kearney St. and Oak Ave. (<https://www.lightguardsystems.com/how-to-get-a-lighted-crosswalk-in-your-community/>). In addition please consider a stop sign at Madrona and Kearney St.

In the past year I have witnessed two drivers illegally run the stop sign at Oak Ave eastward bound on Madrona. During the spring of 2019 a car crashed into an electrical pole on Madrona between Kearney and Spring Mountain Road. This November two cars were involved in an accident at Kearney and Madrona in the morning during student drop off.

Please consider Increasing safety systems along Madrona at Oak Ave and Kearney St.

Thank you,
Laura Symon



Report to the City Council
Regular City Council - 08 Dec 2020

Agenda Section: NEW BUSINESS

Subject: 2021 City Council assignments to various City and Napa County Committees, Boards and Commissions

CEQA Not a CEQA project
Determination:

Prepared By: Cindy Tzaopoulos, City Clerk

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The City Council has created a number of Committees, Boards and Commissions and assigns Council liaisons to the following:

- a. Active Transportation/Sustainability Committee
- b. Board of Library Trustees
- c. Parks and Recreation Commission

Council Members also sit on various City/County collaborative agency committees which include:

- a. City/SHUSD/Chamber/NVC (Monrovia)
- b. St. Helena Sewer District No. 1
- c. Association of Bay Area Governments (ABAG) - Executive Board
- d. Association of Bay Area Governments (ABAG) - General Assembly
- e. Napa Valley Tourism Corporation/ St. Helena Tourism Improvement District (SHTID)
- f. League of California Cities – North Bay Division
- g. Napa County City Selection Committee
- h. Napa County Flood Control and Water Conservation District

- i. Napa County Youth Opportunities Commission
- j. Napa County League of Governments (NCLOG)
- k. Napa County Local Agency Formation Commission (LAFCO)
- l. Napa County Transportation and Planning Agency (NVTa)
- m. Napa County Watershed Information Center & Conservancy (WICC)
- n. Upper Valley Waste Management Board
- o. Napa County Regional Climate Action Committee

Some City/County collaborative agency committees specify in by-laws and/or policy who sits on the board. If the position is not specified, the City Council appoints or recommends the appointment.

DISCUSSION

It is appropriate for the City Council to annually review and update liaisons to Boards, Committees, Commissions and intergovernmental City Council assignments.

FISCAL IMPACT

No fiscal impact.

RECOMMENDED ACTION

1. Affirm or recommend City Council Liaisons to each committee:
 - a. Active Transportation/Sustainability Committee
 - b. Board of Library Trustees
 - c. Parks and Recreation Commission
2. Affirm or recommend appointment to various City/County collaborative agency committees:
 - a. One Alternate - City/SHUSD/Chamber/NVC (Monrovia)
 - b. One Primary/One Alternate - Association of Bay Area Governments (ABAG) General Assembly
 - c. One Primary - Napa Valley Tourism Corporation/ St. Helena Tourism Improvement District (SHTID)
 - d. One Alternate - Napa County City Selection Committee Alternate
 - e. Two Primary - Napa County Regional Climate Action Committee
3. Make recommendation to the Napa County Board of Supervisors to affirm or recommend new member:
 - a. One Alternate - Napa County Flood Control and Water Conservation District
 - b. One Primary - Napa County Youth Opportunities Commission
 - c. One Primary and One Alternate - Napa Valley Transportation Authority (NVTa)
 - d. One Primary and One Alternate - Napa County Watershed Information Center & Conservancy (WICC)
 - e. One Primary and One Alternate - Upper Valley Waste Management Board

ATTACHMENTS

[Boards and Commissions Members Updated 11-19-2020](#)
[2020 Intergovernmental CC Assignments](#)

St. Helena Boards, Committee & Commissions Roster

Updated: 11/19/2020

Name	Address	Phone Number	Email Address	Appointment Date	Term Expires
Active Transportation/Sustainability Committee Meets 1st Wednesday @ 5:00 PM, Public Works Conference Room Term of office is 2 years					
Vacant					6/30/2021
Glenn Smith, Vice Chair				9/8/2015	6/30/2022
Vacant					6/30/2022
Jeff Farmer				6/27/2017	6/30/2021
Madelyn Chandler				8/13/2019	6/30/2022
Vacant (alternate)					6/30/2022
Vacant (alternate)					6/30/2022
<i>City Council Liaison/Paul Dohring</i>					
<i>Staff Liaison/Preya Nixon</i>	St. Helena City Hall	968-2635	pnixon@cityofstheleena.org		
Board of Library Trustees Meets 2nd Wednesday @ 5:00 PM Term of office is 2 years					
Lin Weber, Chair				10/14/2014	6/30/2021
Terry Wood, Vice Chair				11/1/2014	6/30/2021
Skip Lane				6/25/2013	6/30/2022
Rebecca Wendt				7/1/2018	6/30/2022
Susan Swan				11/18/2008	6/30/2022
David Slaby				6/27/2017	6/30/2021
Emily Armstead				9/27/2016	6/30/2022
<i>City Council Liaison/Council Member Chouteau</i>			achouteau@cityofstheleena.org		
<i>Staff Liaison/Chris Kreiden</i>	St. Helena Public Library	963-5244	chris@shpl.org		
Parks and Rec Commission Meets 3rd Monday @ 4:30 PM, Carnegie Building Term of office is 2 years					
Matthew Demchuk, Chair				7/14/2015	6/30/2021
Rebekah Weeman, Vice Chair				3/26/2019	6/30/2021
Tye Taylor				8/13/2019	6/30/2022
Susan Kenward				3/26/2019	6/30/2022
Michelle Deasy				6/30/2020	6/30/2022
<i>City Council Liaison/Council Member Knudsen</i>			dknudsen@cityofstheleena.org		
<i>Staff Liaison/Andre Pichly</i>	Parks & Recreation Dept. Office	967-2798	apichly@cityofstheleena.org		

Planning Commission		Meets 1st & 3rd Tuesday @ 6:00 PM		Term of office is 4 years	
Lester Hardy, Chair				6/27/2017	6/30/2021
John Ponte, Vice Chair				6/27/2017	6/30/2021
Autumn Anderson				2/12/2019	6/30/2024
Daniel Hale				11/13/2018	6/30/2022
Vacant					6/30/2024

2020 St. HELENA INTERGOVERNMENTAL CITY COUNCIL ASSIGNMENTS

MAYOR/COUNCIL COMMITTEE ASSIGNMENTS:	Date/Time & Location	Contact	Primary	Alternate	700 Form Filiers
City/SHUSD/Chamber/NVC (Monrovia) • Meet to discuss interests in common • No Compensation	Meets: Qtrly	(707) 967-2701 Erica Madrigal	Mayor Ellsworth Vice Mayor Dohring Staff: City Manager Finance Director		Not Required
St. Helena Sewer District No. 1 • Meets only as needed • 11-08-1964 Resolution 1964-597 Establishing Sewer District No. 1 and 1964-598 Description			All		
Association of Bay Area Governments (ABAG) - Executive Board • Appointed by the City Selection Committee • To enhance the quality of life in the San Francisco Bay Area by leading the region in advocacy, collaboration, and excellence in planning, research and member services • Agency membership dues based on population • Compensation - \$150.00 per Meeting	101 Eighth St. Oakland CA 94607 Meets: 7:00 p.m., 3rd Thursday of every other month	(415) 820-7913 Fred Castro			Not Required
Association of Bay Area Governments (ABAG) - General Assembly • St. Helena City Council appoints member and alternate, no term limit • To enhance the quality of life in the San Francisco Bay Area by leading the region in advocacy, collaboration, and excellence in planning, research and member services • Agency membership dues based on population	101 Eighth St. Oakland CA 94607 Meets: Annually	(510) 464-7900	Vice Mayor Dohring	Council Member Knudsen	Not Required
Napa Valley Tourism Corporation (Umbrella for Napa County) St. Helena Tourism Improvement District (SHTID) • Elected official appointed by the St. Helena City Council • 7 members from St. Helena (4-members of lodging, 1-Chamber of Commerce, 1-Elected Official and 1-City Manager) Membership includes: Kevin Dimond, Harvest Inn Mark Hoffmeister, Wydown Hotel Mark Prestwich, City Manager Chair - Marcelle Adderley, Inn at Southbridge - General Manager Chamber Rep - Executive Director Pirrette Therene, El Bonita Hotel - GM St. Helena City Council Representative • No Compensation	Meets: Qtrly Southbridge	Catherine Heywood 707-260-0112	Council Member Chouteau Staff: City Manager		Not Required

2020 St. HELENA INTERGOVERNMENTAL CITY COUNCIL ASSIGNMENTS

MAYOR/COUNCIL COMMITTEE ASSIGNMENTS:	Date/Time & Location	Contact	Primary	Alternate	700 Form Filers
League of California Cities – North Bay Division • To maintain a central office of information and research for matters pertaining to City government and to influence legislation that affects cities • Agency membership dues required * No Compensation	P.O. Box 458, Mill Valley, CA 94941 <i>Meets: Quarterly</i>	(415) 302-2032 Nancy Hall Bennett	All		Not Required
Napa County City Selection Committee • In counties where 2 or more cities are incorporated, this Committee appoints city representatives to certain boards, commissions and agencies as prescribed by law (Section 50270, CA Govt Code) • Representative must be Mayor (per above Gov't. Code) * No Compensation	1195 Third Street, Suite 310, Napa 94558 <i>Meets: 1:00pm, 3rd Tuesday of the month, Quarterly</i>	(707) 253-4423 Karita Whitney	Mayor Ellsworth (Delegate)	Vice Mayor Dohring	Not Required
Napa County Flood Control and Water Conservation District • Mission is the conservation and management of flood and storm waters to protect life and property; the maintenance of the County watershed using the highest level of environmentally sound practices; and to provide coordinated planning for water supply needs for the community. • Representative must be Mayor • Bylaws * No Compensation	1195 Third Street, Room 305, Napa 94558 <i>Meets: 1:30 a.m., 1st and 3rd Tuesday of the Month</i> *Flood Control is located at 804 1st Street, Napa	(707) 259-8600 Krista Reif krista.reif@countyofnapa.org (707) 253-4423 Karita Whitney	Mayor Ellsworth	Vice Mayor Dohring	Required Forward forms to: Napa County Flood Control and Water Conservation District 804 First Street Napa, CA 94559-2623
Youth Opportunities Commission (Formerly Napa County Gang & Youth Violence Commission) * Prevention, intervention & suppression of gang violence • City Council makes appointee recommendation to the Napa County Board of Supervisors * No Compensation	Location Changes <i>Meets: 4:30 p.m., on 3rd Wednesdays, As needed/no less than quarterly</i>	(707) 253-4211 District Attorney's Office	Vice Mayor Dohring		Not Required
Napa County League of Governments (NCLOG) * No Compensation • Bylaws • Mayors of the City and County rotate the Chair position	Location rotates <i>Meets: 6:00 p.m., 2nd Thursday of the month, Quarterly</i>	(707) 253-4423 Karita Whitney	All		Not Required
Napa County Local Agency Formation Commission (LAFCO) • City Selection Committee makes appointment • Four-Year Term Gov Code; Informal Policy Two-Year Rotation * \$125 per meeting	1195 Third Street, Napa 94558 <i>Meets: 4:00p.m., 1st Thursday of the month</i> *LAFCO is located at 1030 Seminary, Napa	(707) 259-8645 Kathy Mabry			Required Mail to: Kathy Mabry 1030 Seminary St, Suite B Napa CA 94558

2020 St. HELENA INTERGOVERNMENTAL CITY COUNCIL ASSIGNMENTS

MAYOR/COUNCIL COMMITTEE ASSIGNMENTS:	Date/Time & Location	Contact	Primary	Alternate	700 Form Filiers
Napa Valley Transportation Authority (NVTa) • 2 Members and 2 alternates(1-Mayor with City Council appointing the other City Council Member/Alternate • Bylaws	625 Burnell Street, Napa 94559 <i>Meets:</i> 1:30p.m., 3rd Wednesday of the month	Karrie Sanderlin (707) 259-8633 or Kate Miller	Mayor Ellsworth Vice Mayor Dohring Staff: City Manager Public Works Director	Council Member Chouteau	Requried Mail to: Board Secretary 625 Burnell Street Napa CA 94559
Napa County Watershed Information Center & Conservancy (WICC) • City Council makes appointment recommendation to the Board of Supervisors * No Compensation • BOS Resolution 02-202	1125 Third Street, 2nd Floor Conference Room, Napa 94558 <i>Meets:</i> 4:00p.m., 4th Thursday of the month	(707) 259-5936 Jeff Sharp, Liaison Gladys or Nadine	Mayor Ellsworth	Council Member Koberstein	Not Required
Upper Valley Waste Management Authority • City Council makes appointment recommendation to the Board of Supervisors	Yountville Town Council Chambers <i>Meets:</i> 1:30p.m., 3rd Monday of the month	(707) 259-6716 Alice Ramirez, Board Clerk Napa County Public Works 1195 Third Street, Suite 101 Napa, CA 94559	Council Member Koberstein	Mayor Ellsworth	Required send to
Napa County Regional Climate Action Committee • City Council makes two appointments to the Committee	Board of Supervisoers Chambers <i>Meets:</i> No schedule has been determined	Louie Valdez Administrative Manager/Clerk of the Board County of Napa, CA 1195 3rd St., 3rd Floor Napa, CA 94559 707-253-4196	Mayor Ellsworth Council Member Chouteau		Not Required



real estate law • land use law • business law • climate change law

December 4, 2020

Mark Prestwich
City Manager
1572 Railroad Avenue
St. Helena, CA 94574

Delivery via email to mprestwich@cityofsthenana.org

RE: City Council Agenda Item 11.5 - December 8, 2020
Appointments to Upper Valley Waste Management Agency

Dear Mr. Prestwich,

This firm represents Upper Valley Disposal Service, Inc. and Clover Flat Landfill, Inc. (collectively "UVDS"). In its December 8 meeting, the St. Helena City Council will consider appointments to various boards and commissions including the City's appointment to the Board of Directors for the Upper Valley Waste Management Agency (the "JPA"). UVDS has specific concerns regarding the possible appointment of Mayor Geoff Ellsworth to the JPA's Board of Directors based on Mr. Ellsworth's activities as a private citizen. As explained below, we are concerned Mr. Ellsworth's activities as a private citizen would cloud and confuse his representation of the City's interests on the JPA's Board. As part of City Council's appointment deliberations, we ask that this letter be shared with City Council and made part of the City's record on this matter.

The JPA was created to contract for the collection and disposal of solid waste in three municipalities (Yountville, St. Helena, and Calistoga) and upvalley portions of Napa County's unincorporated lands.¹ The JPA's Formation Agreement states that Directors serve at the pleasure of the municipality appointing that Director.² Therefore, the City's appointment to the JPA Board is the City's voice in *contractual* oversight of solid waste operations. Regulatory oversight of landfill operations is the jurisdiction of the many other agencies, including CalRecycle, Napa County Local Enforcement Agency ("LEA"), California Department of Fish and Wildlife, and the Regional Water Quality Control Board. The JPA does not have regulatory oversight of UVDS's landfill or other solid waste operations.

Mr. Ellsworth has appeared before the JPA Board multiple times to advocate for the closure of the Clover Flat landfill even though the JPA does not have the power to take that action. More recently, Mr. Ellsworth has addressed the JPA Board in opposition to modernized contracts with

¹ Upper Valley Waste Management Agency Formation Agreement, Section 6.

² Upper Valley Waste Management Agency Formation Agreement, Section 4.3.

UVDS and has mischaracterized the contract negotiations between the JPA and UVDS.³ For example, Mr. Ellsworth has repeatedly described the JPA's recent contract as a "no-bid" contract, but, respectfully, he should know that there was nothing that was subject to bid. The prior contract was a collection of nine separate documents that needed to be restated into a single document. The staff report for the JPA's consideration of this contract clearly stated that the restated agreement "contains the same term as the current agreement".⁴ The term of the prior contract and the new contract expires in 2036, so there was no open contract on which other companies could bid. If the JPA had not adopted the new contract, the prior contract still would be in place for the next 16 years.

Mr. Ellsworth's statements to the JPA Board were not on behalf of City Council or as an alternate member of the JPA Board. Instead, he was acting as a private citizen in furtherance of personal goals. In this effort, Mr. Ellsworth hired a personal lawyer to advocate before the JPA Board,⁵ and Mr. Ellsworth has hired a public relations firm to draft negative newspaper articles that mischaracterize UVDS's operations and compliance with regulations.⁶ Mr. Ellsworth's comments to the JPA Board and the press, even where the facts contradict his comments, indicate his personal desire to close Clover Flat landfill, regardless of the cost in money or carbon footprint.⁷ This predetermined judgment makes it impossible for Mr. Ellsworth to be impartial in relation to UVDS's operations, especially given that the JPA does not have the authority to close the Clover Flat landfill.

California law provides that public officials are bound to exercise their powers with disinterested skill and diligence and primarily for the public's benefit.⁸ Decisionmakers cannot be strongly biased in favor of one set of parties in a proceeding or have unalterable notions of facts related to a proceeding.⁹ The administration of the JPA's existing contracts requires fair process with unbiased decisionmakers.¹⁰ Our concern is that Mr. Ellsworth would be disqualified from many JPA decisions based on his unalterable personal views and desires.

³ <https://www.wine-searcher.com/m/2020/10/landfill-woes-napas-latest-concern>
<https://localnewsmatters.org/2020/10/16/napa-county-landfill-reopens-after-being-damaged-by-glass-fire/>
<https://www.sfgate.com/news/bayarea/article/North-Bay-Fires-Bring-New-Challenge-With-Debris-15693914.php>

⁴ The October 19, 2020 staff report to the JPA Board is enclosed with this letter.

⁵ A copy of the October 19, 2020 letter from lawyer Stuart Flashman is enclosed with this letter. In the letter, Mr. Flashman confirms that he represents Geoffrey Ellsworth.

⁶ See enclosed press release drafted by Public Good PR, an Oregon public relations firm hired by Mr. Ellsworth.

⁷ See St. Helena Star article at https://napavalleyregister.com/community/star/news/st-helena-mayor-ellsworth-landfill-spar-over-fire-risk/article_c045246d-f306-51b7-a941-692479e00f4d.html a copy of which is enclosed.

⁸ See page 116 of California League of Cities publication *A guide for Local Agency Counsel: Providing Conflict of Interest Advice* available online at <https://www.cacities.org/Resources-Documents/Resources-Section/Open-Government/Providing-Conflict-of-Interest-Advice>

⁹ *Breakzone Billiards v. City of Torrance* (2000) 81 Cal. App.4th 1205, 1234 n. 23; *Petrovich Dev. Co. v. County of Sacramento* (2020) 48 Cal.App.5th 963, 972 (councilmember's statements and circulation of talking points in opposition to gas station evidenced bias disqualifying councilmember from proceedings on the project).

¹⁰ While the JPA's Bylaws do not speak to whether the JPA acts in a legislative or adjudicatory capacity, even legislative acts are subject to due process standards requiring a fair process. (*Mennig v. City Council* (1978) 86 Cal.App.3d 341, 351.)

Mr. Ellsworth certainly has the free speech right to advocate his personal views. Having already hired a lawyer and a public relations firm to advance these personal views, he clearly is passionate on this topic. As a company, UVDS always is willing to dialogue with our customers about UVDS's operations and the many coming changes to California solid waste regulation. We submit that other councilmembers would be better suited to representing solely the City's interests on the JPA Board, which would allow Mr. Ellsworth to continue advocacy of his personal goals.

We thank the City Council for its consideration on this matter.

Respectfully,



Rob Anglin

cc: Mayor Geoff Ellsworth
Vice Mayor Paul Dohring
Councilmember Anna Chouteau
Councilmember Lester Hardy
Councilmember Eric Hall
Ethan Walsh (City Attorney)
Cindy Tzafopoulos (City Clerk)



Agenda Date: 10/19/2020

Agenda Placement:

Upper Valley Waste Management Agency Board Agenda Letter

TO: Board of Directors

FROM: Steven Lederer - Manager
Upper Valley Waste Management Agency

REPORT BY: Alice Ramirez, Senior Office Assistant - 259-6716

SUBJECT: PUBLIC HEARING: RESOLUTION OF THE BOARD OF DIRECTORS OF THE UPPER VALLEY WASTE MANAGEMENT AGENCY APPROVING AMENDMENT OF SOLID WASTE SERVICES FRANCHISE AGREEMENT WITH UPPER VALLEY DISPOSAL SERVICE AND ESTABLISHING FRANCHISE AND OTHER FEES

RECOMMENDATION

PUBLIC HEARING: RESOLUTION OF THE BOARD OF DIRECTORS OF THE UPPER VALLEY WASTE MANAGEMENT AGENCY APPROVING AMENDMENT OF SOLID WASTE SERVICES FRANCHISE AGREEMENT WITH UPPER VALLEY DISPOSAL SERVICE AND ESTABLISHING FRANCHISE AND OTHER FEES

REQUESTED ACTION: Adoption of Resolution and authorization for the Chair to sign the franchise agreement:

- Agency Resolution 2020-4 approving the "Amended and Restated Franchise Agreement between Upper Valley Waste Management Agency and Upper Valley Disposal Service for Recyclables, Organics, Construction and Demolition Debris and Solid Waste Collection Services"

EXECUTIVE SUMMARY

The Agency entered into a franchise agreement with Upper Valley Disposal Service (UVDS) on September 25, 1995 and the parties have amended it nine times since. This franchise agreement amends and restates the agreement, modernizing the relationship and addressing oversight, transparency, and accountability of UVDS. It would take effect on July 1, 2021, the next year for which rates will be modified, and contains the same term as the current agreement: terminating on June 30, 2036 with automatic one-year extensions each year unless the Agency gives notice not to extend and/or the agreement is assigned or UVDS is in default (in which case the term automatically reverts to a fixed fifteen year term). The franchise agreement provides for:

1. An exclusive franchise for collection, processing, and transportation of solid waste, recyclable materials, construction and demolition debris, and organics materials with mandatory collection in members' jurisdictions requiring it and voluntary collection in all others. Certain things are exempted from the franchise (self-haul, materials removed by contractor, source separated e-waste, sewage treatment by-product, materials generated by state and federal facilities, and others);
2. Reimbursement from UVDS to the Agency for approximately half of the Agency's cost to develop and negotiate the agreement;
3. Agency approval of all subcontractors;

4. Authority for the Agency to require additional services as laws and industry requirements change (e.g., when SB 1383 takes effect);
5. All Franchised materials to be delivered to Clover Flat Land Fill or Upper Valley Recycling unless another disposal facility is preapproved by the Agency or an emergency exists;
6. No-cost services to members (the County of Napa, the Cities of Calistoga and St. Helena, and the Town of Yountville) for member facilities, member public containers, and member community events (these may be updated from time to time by the members);
7. Required pick up by UVDS of up to five tons per month of abandoned solid waste as directed by the Agency;
8. A public education and outreach plan preapproved by the Agency to educate the public about the requirements and opportunities for reducing and diverting solid waste, recyclable materials, construction and demolition debris, and organics materials;
9. Diversion standards to ensure the Agency and its members meet diversion goals required by state law;
10. Required hours of operation, customer service requirements, load inspection programs and handling standards for hazardous waste, safety training, vehicle and driver requirements, signage, and maintenance, collection vehicle noise restrictions, equipment inventory, required personnel (CFO/COO), billing requirements, notification to the Agency of cancelled accounts, Agency access to billing records, customer privacy protections, documentation and reporting of customer complaints;
11. An administrative process for resolving disputes between the parties;
12. Quarterly and annual reporting to the Agency of services provided, tons delivered, customer complaints, financials, and other information requested by the Agency;
13. Performance reviews and performance audits by the Agency to ensure compliance with the franchise agreement;
14. Franchise fees to the Agency of a percent of UVDS's gross receipts equal to: 2.5 percent for 2021-2022, 6 percent for 2022-2023, and 10 percent for 2023-2024 and each year thereafter;
15. An AB 939/statutory fee to the Agency of 3 percent of UVDS's gross receipts;
16. A three-year rate cycle in which rates are set and then automatically indexed (by the Bay Area CPI) on July 1 in intervening years with the possibility of extraordinary rate adjustments under certain circumstances and the ability for the Agency to reset rates in its discretion;
17. Indemnification (including environmental indemnification) for claims arising from UVDS's performance under the agreement or its failure to comply with the agreement (e.g., the requirement it comply with all applicable laws);
18. Significantly increased insurance limits of \$5,000,000 for general liability, automobile liability, and environmental liability;
19. A performance bond of \$3,000,000 or, at the Agency's option, an irrevocable letter of credit of \$2,000,000;
20. Events of default including: fraud or deceit, insolvency or bankruptcy, failure to maintain insurance coverage, violations of regulation, violations of applicable law, failure to perform services, failure to provide mandatory reports or pay amounts due, acts or omissions that violate the agreement, false, misleading, or inaccurate statements, seizure or attachment of assets, suspension or termination of service, criminal activity, assignment of agreement without approval, failure to provide proposals or implement a change in service directed by the Agency;
21. Cure periods for events of default of 10 days, 30 days, or none with the ability of UVDS to request a longer cure and correct period;
22. Remedies for the Agency in the event of default: suspension of UVDS's obligations under the agreement, liquidated damages, and/or termination of the agreement;
23. Liquidated damages and performance standards in addition to remedies under an event of default; and
24. The right of the Agency to demand assurance of performance from UVDS.

Agency Staff is happy to provide additional information during the meeting about any topic above or the franchise agreement generally.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15301, 15237, 15306, 15307, 15308, 15273, 15183, and/or 15061(b)(3).

Conclusion

The Agency Manager considers this proposal to be fair and balanced for both the companies and recommends adoption of this Resolution.

RECOMMENDATION: Staff recommends approval of the amendment to the Franchise Fee Agreement between Upper Valley Waste Management Agency and Upper Valley Disposal Service.

Law Offices of
Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
(510) 652-5373 (voice & FAX)
e-mail: stu@stufash.com

October 19, 2020

Board of Directors
Upper Valley Waste Management
Agency
c/o County Administration Building
1195 Third Street
Napa, CA 94559

Re: Item 6.B on agenda for board meeting of October 19, 2020

Dear Board Members:

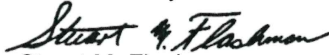
I am writing on behalf of my client, Geoffrey Ellsworth, to comment on the above-referenced agenda item, which concerns approving a restated and amended franchise agreement with the Clover Flats Landfill Facility. My client has major concerns about the Agency moving ahead with an unqualified approval of this amended agreement, especially its term, extending to 2040. That concern arises from the combination of recent events concerning the landfill facility and the County's pending consideration of a request to modify the use permit for that facility.

As you may be aware, there have been a series of violations of environmental regulations involving the landfill facility. My client will be bringing those violations to the Board's attention. In addition, the facility has applied to County for a modification of its conditional use permit to expand the allowable uses at the facility.

While the Agency has asserted that the amendment to the franchise agreement is exempt from CEQA review, the same cannot be said for the application for a use permit modification. Indeed, the environmental review of approving that modification must take into account, among other things, the environmental record of the facility, which is not good. It seems likely that consideration of that use permit application will require preparation of an Environmental Impact Report, which will take a significant amount of time. Further, given the facility's environmental record, approval of the modification cannot be assumed.

My client is concerned about the Agency's extending the franchise agreement until 2040 while that modification remains pending. I would strongly suggest that the agreement, at the moment, only be extended until the use permit decision has been made. Alternatively, the Agency could make extension of the permit beyond that time contingent on the County granting the use permit modification. If the use permit modification is not granted, the Agency should consider opening up the franchise agreement for competitive bidding.

Most sincerely,


Stuart M. Flashman

cc: Geoffrey Ellsworth

Begin forwarded message:

From: "Mary C. Derr"
<mary@publicgoodpr.com>
Subject: Concerns Grow in Napa County
over Risk of Landfill to Grape Industry
Date: October 21, 2020 at 2:59:19 PM PDT
To: "news@yountvillesun.com"
<news@yountvillesun.com>

Hi Sharon – Please let me know if you would like to learn more or schedule an interview with Mr. Ellsworth.

Thanks,
Sev

FOR IMMEDIATE RELEASE
October 21, 2020

CONTACT:

Severn Williams, 510-336-9566
Public Good PR
sev@publicgoodpr.com

**Concerns Grow in Napa County
over Risk of Landfill to Grape
Industry**

*Residents cite radioactivity, fire risk for entire
Napa region at troubled Clover Flat Landfill*

ST. HELENA, Calif. –The landfill for the City of St. Helena, located in the heart of Napa's wine country, has become a growing concern after a forced closure due to damage incurred because of the Glass Fire and test results showing elevated levels of radioactivity.

of the Glass Fire and last year's closure after landfill activity led to contamination of the Napa River that directly irrigates many Napa Valley vineyards.

For nearly a year from 2019 into 2020 the Clover Flat Landfill stored unregulated radioactive waste for an extended period and has posed numerous threats in recent years to safety, water quality, and regional wine and agriculture industries, from fires and from contaminant leakage into the Napa River. Local residents are calling for stricter regulation or relocation of the landfill.

"St. Helena is located just six rural, forested miles away and downriver of this landfill, where highly flammable and explosive gasses continue to be processed and fueled by continued operation," said Geoff Ellsworth, mayor and resident of St. Helena, speaking as an individual elected official. "PG&E and Cal Fire maps clearly show this as a high fire risk area and as we know, forest fires in this region can move at great speed. There are also concerns about impacts to air quality if a fire does burn through the landfill as with the Glass Fire. Landfill fires pose a health risk from burn, toxic smoke, gases, explosion hazards and exposure to particulate matter. It is irresponsible to our community to not at least consider moving our waste management to a safer location."

A chemical explosion related to commercial winery waste and more than a dozen fires in a five-year period, large enough to require CalFire response, add to the litany of dangers the landfill has posed.

The landfill was "severely damaged" by the recent Glass Fire complex, according to a [report posted on CalRecycle](#), the state agency responsible for overseeing the site. The gas collection system was "heavily impacted" and uncontrolled flames have been observed at gas wellheads. The leachate collection system was damaged, which could result in more contamination of the Napa watershed. Power lines were burned or toppled, several machines, the oil collection center and other structures burned, and all erosion control measures along

burned, and an erosion control measures along hillsides and creeks were destroyed.

The landfill's operator did make significant improvements and investments last year, under threat of losing its contract, and is actively attempting to repair damage from the Glass Fire complex. Nevertheless, Ellsworth explains that "this litany of environmental violations and system failures illustrates the inherent, ongoing danger Clover Flat poses to our local and regional water quality and agriculture-based economy. And in what universe do the words 'radioactive waste material' fail to spur immediate action? It's unconscionable."

"Residents and business owners in our region should be concerned that the existing review process has not brought about significantly enhanced oversight of this facility," added Ellsworth. "As it is currently managed, Clover Flat poses serious risks from catastrophic fire and contamination of the region's drinking water and the water that feeds our wine grapes and other agricultural products. We need to move beyond political maneuverings and do what's right for safety and economic security."

Ellsworth and others are calling for ramped-up safety regulations at the site and a community-driven process to both closely examine potential dangers posed by Clover Flat, and to consider making a change in where the city sends its trash. The Clover Flat Landfill is associated with Upper Valley Disposal Company, and both operate under non-competitive, no-bid evergreen agreements.

Ellsworth noted, "It may not have been well understood in the mid-1960s, when this landfill was first established, that all landfills are prone to leakage and fire. But the science informs us today that no matter what measures are taken at the landfill, fire risk is inherent and leakage into the Napa River and watershed will be an ongoing issue of concern. We know we will have more fires, floods and possibly earthquakes due to nearby fault lines, so we need to look at vulnerable locations like the landfill and rethink these operations to protect our community, our waterways and our Napa Valley brand."

12/4/2020

St. Helena Mayor Ellsworth, landfill spar over fire risk | News | napavalleyregister.com

https://napavalleyregister.com/community/star/news/st-helena-mayor-ellsworth-landfill-spar-over-fire-risk/article_c045246d-f306-51b7-a941-692479e00f4d.html

St. Helena Mayor Ellsworth, landfill spar over fire risk

Jesse Duarte

Sep 1, 2020

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Upper Valley Recycling Center at Clover Flat Landfill in a 2019 photo.

Cynthia Sweeney photo, The Weekly Calistogan

Jesse Duarte

https://napavalleyregister.com/community/star/news/st-helena-mayor-ellsworth-landfill-spar-over-fire-risk/article_c045246d-f306-51b7-a941-692479e00f4d.html

1/12

12/4/2020

St. Helena Mayor Ellsworth, landfill spar over fire risk | News | napavalleyregister.com

St. Helena Mayor Geoff Ellsworth and Clover Flat Landfill are sparring after Ellsworth questioned whether the landfill should continue operating given the risk of fires.

Ellsworth first raised the issue at the Aug. 11 City Council meeting. He noted that a fire originating in one of the Upvalley's remote, high-wind canyons could have "devastating" consequences, and that landfills are "by nature prone to fire."

"As politically challenging as an issue like this can be, and while I recognize some efforts have been made to mitigate recent problems with fires and other environmental issues, I believe logic tells us it's time to more deeply weigh the value of continuing an inherently high fire risk operation in a remote, high-wind canyon in a high fire risk area just a few miles away and over forested lands from Upvalley population centers like St. Helena, Calistoga, Angwin and Deer Park," he said.

Ellsworth acknowledged the potentially high cost, both in money and carbon footprint, of relocating the operation "to a more fire safe area." However, he said the matter "should be considered in a timely manner by our safety teams."

He made the comments during a portion of the meeting set aside for brief reports by councilmembers. Since his specific concern wasn't listed on the meeting's agenda, nobody from the landfill was able to respond immediately.

Christy Pestoni, the landfill's chief operating officer, responded two weeks later with a **letter to the Star** and a statement at the Aug. 25 council meeting, where she called Ellsworth's comments "politically motivated."

12/4/2020

St. Helena Mayor Ellsworth, landfill spar over fire risk | News | napavalleyregister.com

Ellsworth **is campaigning for re-election** against City Councilmember Mary Koberstein and former Vice Mayor Peter White. Pestoni's husband, Eric Hall, **is running for City Council**.

"The landfill ... has had challenges, but it's currently operating in a compliance mode, and there hasn't been a fire there in two years," Pestoni said.

When Ellsworth raised the issue on Aug. 11, Koberstein said it lay within the purview of the Upper Valley Waste Management Agency (UVWMA), a joint powers authority (JPA) that oversees the landfill's operations. She said the council lacks "any independent ability to do anything."

"I suggest that we work through the agency, through our appointed members, to handle this," she said.

St. Helena's appointed members to the UVWMA board are Koberstein, a full member, and Ellsworth, an alternate.

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St. Helena Mayor Ellsworth, landfill spar over fire risk | News | napavalleyregister.com

“(Ellsworth) knows that the site is compliant, he attends all the public JPA meetings, and he’s toured the facility – in fact, I organized the tour for him last October,” Pestoni said. “He didn’t have any issues last October and actually was very pleased about our progress.”

“We are a community partner. He is an alternate on the JPA board,” Pestoni said. “This is a new platform for the mayor, in my opinion, and a conflict of interest.”

In a statement to the Star, Ellsworth said he has a responsibility as mayor to advocate for health, safety and environmental matters.

“And while I do appreciate our local partnerships and I do receive a certain amount of information as an alternate on the Joint Powers Authority related to this landfill, there are considerations I have raised there that are still to be fully addressed,” he said.

Ellsworth proposed engaging in a Local Agency Formation Commission (LAFCO) Municipal Service Review on countywide solid waste management “rather than getting into an unproductive back and forth on a sensitive landfill issue.”

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St. Helena Mayor Ellsworth, landfill spar over fire risk | News | napavalleyregister.com

“A number of companies currently provide solid waste management in Napa County and the region, and such a review could identify synergies to maximize best practices and methods of process and oversight,” Ellsworth said. “With new climate realities, new fire behavior patterns and newer understandings of the underground hydrogeologic dynamics related to landfills there would certainly be a value to an open and comprehensive discussion.”

According to the Napa Valley Register, the agency threatened to revoke Clover Flat’s contract to operate the landfill in April 2019 after a series of fires in 2018 and leaks affecting a nearby creek. The agency **withdrew its breach-of-contract notice** last October, determining the landfill had taken significant steps to address the fire concerns.

In her letter to the Star, Pestoni said the landfill has spent \$10 million on improvements such as using only soil as daily cover, replacing its onsite management team, providing 24-hour fire watch during fire season, and providing a staging area for

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St. Helena Mayor Ellsworth, landfill spar over fire risk | News | napavalleyregister.com

Illumination Technologies' IQ 24-Hour Fire Watch detection system. It also installed a \$1 million compactor.

Bryce Howard, general manager for Upper Valley Disposal Services and Clover Flat Landfill, briefed the city council on the landfill's latest fire control and prevention measures, including on-site water storage for firefighting purposes. He said the county fire marshal accepted the plan, and the county's Environmental Health Division conducts monthly inspections to ensure compliance.

The landfill completed remedial actions for fire mitigation and control of excess leachate, said Margie Mohler, chair of the Upper Valley Waste Management Agency, and Steve Lederer, Napa County Director of Public Works, in a joint statement to the Star.

"The UVWMA is satisfied that the past safety concerns of the oversight regulatory bodies have been met by Clover Flat Landfill," they said. "The UVWMA has not held any discussion on changing the location of this landfill."

Calistoga Mayor Chris Canning, who serves on the UVWMA board and was highly critical of the landfill after the 2018 fires, said the landfill "has come a long way."

12/4/2020

St. Helena Mayor Ellsworth, landfill spar over fire risk | News | napavalleyregister.com

“Fire risk is inherent to their business, but they are in a much better place today compared with before,” Canning said.

Watch now: Helicopters fight Mondavi Fire in the hills west of Robert Mondavi Winery

You can reach Jesse Duarte at 967-6803 or jduarte@sthelenastar.com.

Jesse Duarte

St. Helena Reporter

Jesse has been a reporter for the St. Helena Star since 2006.