



City of St. Helena
Regular City Council Meeting
Tuesday, May 11, 2021 @ 6:00 PM
Published: Wednesday, May 5, 2021 6:56 PM

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

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@cityofstheleena.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.

In the event a quorum of the City Council loses electrical power or suffers an internet connection outage that is not corrected within 10 minutes, the meeting will automatically be adjourned. Any items noticed as public hearings will be continued to the next regularly scheduled evening meeting of the City Council. Any other items on the agenda that the Council has not taken action on will be placed on a future 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/83916598506>

Or One tap mobile :

US: +16699006833,,83916598506# or +12532158782,,83916598506#

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: 839 1659 8506

International numbers available: <https://us02web.zoom.us/j/83916598506>

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Ciudad de Santa Helena Reunión Especial del Ayuntamiento 11 de mayo de 2021

@ 6:00 PM De acuerdo con las órdenes ejecutivas 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 día siguiente.

En el evento que el Ayuntamiento pierda la energía eléctrica o sufra un corte de conexión de internet que no pueda ser corregido en 10 minutos, la reunión se terminará automáticamente. Todos los artículos notificados como audiencias públicas continuarán a la próxima reunión regular programada del Concejo Municipal. Cualquier otro tema en la agenda sobre el que el Consejo no haya tomado acción se incluirá en una futura agenda.

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.

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.

Habrà traducción en español durante la junta

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

<https://us02web.zoom.us/j/83916598506>

O por iPhone one-tap:

US: +16699006833,,83916598506# or +12532158782,,83916598506#

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

US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799

ID de la Reunión: ID: 839 1659 8506

International numbers available: <https://us02web.zoom.us/j/83916598506>

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1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL  
Mayor: Geoff Ellsworth, Vice Mayor: Paul Dohring, City Council Members: Anna Chouteau, Eric Hall and Lester Hardy
4. ADOPTION OF THE AGENDA

5. 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.
  - 5.1. [Public Comment.Connie Wilson](#) 15 - 61  
[Public Comment.Lowell H. Young](#)  
[Public Comment.Nancy Dervin](#)  
[Public Comment.Larry Vermeulen](#)  
[Public Comment.Michael Caldarola](#)  
[Public Comment.Chris and Jessica Fowler](#)  
[Public Comment.Sandi Thompson](#)  
[Public Comment.Clare Barr](#)  
[Public Comment.Debbie Polverino](#)
6. 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.
7. PRESENTATIONS AND PUBLIC RECOGNITIONS
  - 7.1. Proclamation in recognition of May is Mental Health Month presented to Sarah O'Malley, Director of Napa County Health and Human Services Agency 63  
[Proclamation](#)
  - 7.2. National Police Week Proclamation - May 9-15, 2021 65  
[Proclamation](#)
  - 7.3. Proclamation recognizing Public Works Week – May 16-22, 2021 67  
[Proclamation](#)
  - 7.4. PG&E Electric Transmission Upgrade for St. Helena Presentation by Clayton Hertz, Project Manager, Mark Van Gorder, Government Relations Representative and Linda Clifton, Customer Outreach Specialist 69 - 80  
[St. Helena PGE Electric Transmission Upgrade Project Presentation](#)
8. STAFF BRIEFING
  - 8.1. Update on Waste Water Treatment Plant Upgrade Project
9. 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)

- 9.1. Consideration and proposed approval of Regular Meeting Minutes of April 27, 2021. (~~Minutes forthcoming~~ Provided 5-10-21) 81 - 88  
 Prepared By: Cindy Tzaopoulos, City Clerk  
 Recommendation:  
 Adopt  
[4-27-2021 Regular City Council - Minutes](#)
- 9.2. Quarterly Grant Report for FY 2021 Q3, for the period ending March 31, 2021 89 - 93  
  
 CEQA Determination: Not a CEQA project  
 Prepared By: Mandy Kellogg, Finance Manager  
 Recommendation:  
 Receive and file report.  
[Staff Report - Pdf](#)
- 9.3. Consideration and proposed adoption of a Resolution authorizing: (1) the City Manager to execute Amendment No. 2 to STH Contract: FY2021-022 in the amount of \$27,444 with BKF for designing Capital Improvement Project R20-02 Mills Lane Storm Drain for a total contract amount not-to-exceed \$309,940; (2) a budget increase of \$27,444 to CIP Project R20-02; and (3) use of Fund 742 Storm Drain Impact Fees of the same. 95 - 142  
  
 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: (1) the City Manager to execute Amendment No. 2 to STH Contract: FY2021-022 in the amount of \$27,444 with BKF for designing Capital Improvement Project R20-02 Mills Lane Storm Drain for a total contract amount not-to-exceed \$309,940; (2) a budget increase of \$27,444 to CIP Project R20-02; and (3) use of Fund 742 Storm Drain Impact Fees of the same.  
[Staff Report - Pdf](#)
- 9.4. Consideration and proposed approval of a resolution approving: 143 - 157  
 1. Flying the the Italian flag on the City's ceremonial flag pole during the month of October 2021 for Italian Heritage Month; and  
 2. Waiving fees for the encroachment permit and Lyman Park Gazebo reservation for the Festa Italiana community celebration to be held on October 2, 2021 from 10:00 am to 5:00 pm; and  
 3. Authorizing temporary street parking closure on the westside of Railroad Avenue from the Fire House to the end of Lyman Park and the public parking lot between Lyman Park and the Fire House for Festa Italiana event on October 2, 2021 from 10:00 am to 5:00 pm; and  
 4. Approval of mobile food truck(s) to be parked on Railroad Avenue in the street closure area and wine and beer vendors in Lyman Park during the Festa Italiana event.



CEQA Determination: Not a CEQA project  
Prepared By: Cindy Tzaopoulos, City Clerk  
Recommendation:  
Staff recommends City Council adopt the attached Resolution.  
[Staff Report - Pdf](#)

- 9.5. Consideration and approval of a resolution approving a Subrecipient Agreement with UpValley Family Centers for a total amount not-to-exceed \$200,000 and authorizing the City Manager to execute a subrecipient agreement upon award of CDBG-CV2 and CV3 grant. (Agreement Forthcoming) 159 - 178

CEQA Determination: Not a CEQA project  
Prepared By: Mandy Kellogg, Finance Manager  
Recommendation:  
Consideration and approval of the attached resolution.  
[Staff Report - Pdf](#)

- 9.6. Consideration and proposed approval of a resolution rescinding resolution 2016-47 and adopting the City of St. Helena's new Council Vision and Council Mission 179 - 185

CEQA Determination: Not a CEQA project  
Prepared By: Cindy Tzaopoulos, City Clerk  
Recommendation:  
Approve of a resolution rescinding resolution 2016-47 and adopting the City of St. Helena's updated Council Vision and Council Mission  
[Staff Report - Pdf](#)

- 9.7. Consideration and proposed approval of a resolution rescinding resolution 2019-18 and re-establishing Rules of Procedure for the Conduct of Council Meetings and re-establishing City Council Standards of Conduct 187 - 258

CEQA Determination: Not a CEQA project  
Prepared By: Cindy Tzaopoulos, City Clerk  
Recommendation:  
Adopt a resolution rescinding resolution 2019-18 and re-establishing Rules of Procedure for the Conduct of Council Meetings & re-establishing City Council standards of Conduct  
[Staff Report - Pdf](#)

- 9.8. Fiscal Year 2020-21 3rd Quarter Finance Report and Consideration of a Resolution Approving Budget Adjustments for Fiscal Year 2020-21 259 - 282

CEQA Determination: Not a CEQA project  
Prepared By: April Mitts, Finance Director  
Recommendation:  
Staff recommends the City Council approve the attached Resolution Approving Budget Adjustments for FY 2020-21.  
[Staff Report - Pdf](#)

10. PUBLIC HEARINGS

- 10.1. None
11. OLD BUSINESS
- 11.1. Review and Discussion of City's Proposed Diversity, Equity, and Inclusion Strategy 283 - 289
- CEQA Determination: Not a CEQA project  
Prepared By: Preya Nixon, Asst. to the City Manager  
Recommendation:  
Provide direction and feedback to the City Manager.  
[Staff Report - Pdf](#)
- 11.2. Review and Proposed Adoption of the City of St. Helena City Council Three Year Goals 2021-22 Workplan 291 - 299
- CEQA Determination: Not a CEQA project  
Prepared By: Mark T. Prestwich, City Manager  
Recommendation:  
Adopt citywide three-year goals and 2021 workplan.  
[Staff Report - Pdf](#)
12. NEW BUSINESS
- 12.1. Consideration and approval of: 301 - 350
- (1) A Resolution authorizing the following:
- (A) Loan Agreement with Our Town St. Helena (OTSH) for the purchase of 723 Hunt Avenue;
  - (B) Promissory Note for a Deferred Loan with OTSH for the Purchase of 723 Hunt Avenue;
  - (C) Regulatory Agreement with OTSH for 723 Hunt Avenue;
  - (D) Deed Restriction for 723 Hunt Avenue; and
  - (E) Authorizing the City Manager to execute all necessary agreements related to 723 Hunt Avenue.
- (2) A Resolution authorizing temporary, short-term use of Affordable Housing Trust Funds in an amount not-to-exceed \$1,410,000.00 for the Purchase of 723 Hunt Avenue.
- CEQA Determination: Not a CEQA project  
Prepared By: Mandy Kellogg, Finance Manager  
Recommendation:  
Staff recommends approval of the attached resolution.  
[Staff Report - Pdf](#)
13. ITEMS LIKELY TO BE PLACED ON THE NEXT OR FUTURE MEETING AGENDA:
- 13.1. **May City Council Meetings:**  
**\*5/19 Townhall Emergency Preparedness Mtg 6pm**  
**5/25 (Staff reports due 5/7)**

|                                                                                   |
|-----------------------------------------------------------------------------------|
| <b>5/13 Budget Study Session 9-12</b>                                             |
| <b>5/27 Budget Study Session (if needed) 9-12</b>                                 |
| <b>Presentation</b>                                                               |
| 5/25 PG&E SCADA Infrastructure Pole Project                                       |
| <b>STAFF BRIEFING:</b>                                                            |
| (Second mtg of the month) 5/25 City Manager COVID Update                          |
| <b>CONSENT:</b>                                                                   |
| 5/25 Amendment #2 to the Napa Countywide Storm Water Pollution Prevention Program |
| 5/25 FY22 SB1 Project List                                                        |
| 5/25 Vintage Hall Agreement                                                       |
| 5/25 LGBTQ and Pride Month and POW flag request                                   |
| 5/25 Vine Trail alignment through St. Helena                                      |
| <b>PH or OLD / NEW BUSINESS:</b>                                                  |
| 6/8 Election calendar                                                             |
| 6/8 Revenue options                                                               |
| 5/25 Non-Profit Grant awards                                                      |
| 5/25 Chamber annual report presentation                                           |
| 5/25 Napa Valley College Lease Agreement                                          |

14. ADJOURNMENT

The next Regular City Council meeting is scheduled for May 25, 2021, at 6:00 p.m.

I do hereby certify that a copy of the foregoing agenda was posted on the City website on May 5, 2021.

Cindy Tzaferopoulos, 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.

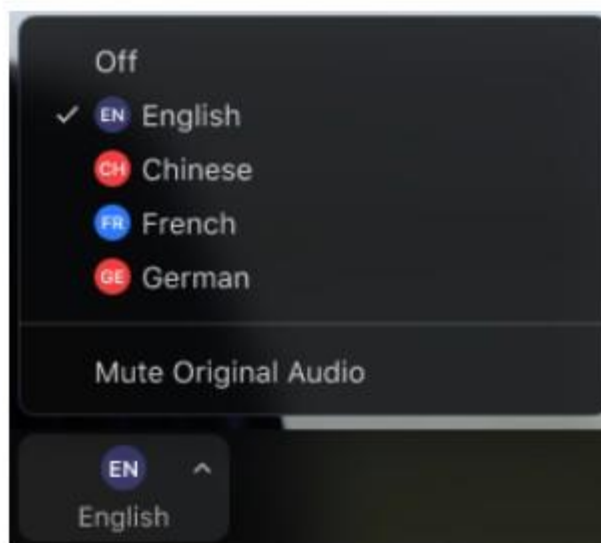
Cómo escuchar la interpretación de un idioma



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. Vea 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 la mano.

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.

May 10, 2021

My name is Connie Wilson, and I join hundreds of St. Helena residents protesting the arrival of the real estate holdings company, Pacaso, and its scheme for fractional ownerships, or timeshares, in our residential neighborhoods. This deep-pocketed company would have us believe that the City of St. Helena does not have the authority to regulate the kinds of uses that occur within its boundaries, and has initiated a lawsuit as such, despite significant opposition from residents and our city government.

Two weeks ago I started a Change.org petition against Pacaso and its business model. As of this writing, we have garnered over **1100** signatures. Many local residents are alarmed that modest houses in working-class neighborhoods are being converted to vacation-style homes, then resold to fractional owners in a scheme that essentially amounts to unregulated transient occupancy in residential neighborhoods. The loss of housing that might otherwise have been purchased by local residents and the disruption that comes with unregulated transient occupancy have struck a nerve in our community. Some of the residents' written concerns on our petition include: accountability and regulation, maintaining residential neighborhoods in a manner that fosters true community, economic imbalance as Pacaso buys homes and drives up real estate prices even higher and out of reach for families and residents, opposition to vacation-style homes with transient occupants, concern that a commercial enterprise has invaded residential neighborhoods, promotion of second homes vs first homes and affordable housing for locals.

Pacaso has slick advertising and feel-good testimonials, but as a real estate holdings company they sense an opportunity to skirt local zoning rules to make a big profit. With their extensive financial resources, Pacaso may have every intention of buying more homes in St. Helena and moving on to Calistoga and Yountville. Those of us opposed to Pacaso bringing their vacation timeshares to our residential neighborhoods are concerned that this violation of both the letter and intent of our city's regulations will have multiple negative impacts upon the quality and character of those neighborhoods. It is clear that all the negative impacts associated with transient occupancy in residential neighborhoods can be expected if Pacaso is allowed to circumvent the regulations designed to protect our neighborhoods and residents that contribute to the fabric of community.

Thank you.

Connie Wilson
Scott Street

Justice Denied

Approximately eight years ago, perhaps the most egregious act of democratic nullification in St. Helena occurred in full view and those in authority did nothing to correct it. A group of environmentally concerned citizens banded together to submit an ordinance proposal to ban all gas-powered leaf blowers in the City of St. Helena. Many highly educated members did much research over a broad spectrum of issues; e.g. global warming, noise and smoke pollution, exacerbating dust—pollen—fungal spores and animal feces etc.

One of their first discoveries was that St. Helena had been sadly negligent regarding the issue. Los Angeles County and some smaller cities had banned leaf blowers including Belvedere, Berkley, Beverly Hills, Carmel, Claremont, Indian Wells, Lawndale, Los Altos, Los Gatos, Malibu, Mill Valley, Newport Beach, Ojai, Palo Alto, Piedmont, Santa Barbara, Solana Beach, Tiburon, and West Hollywood.

Since then the list has been growing rapidly and includes over 60 cities and towns, including Coronado, Encinitas and Sonoma to name a few.

On October 20, 2020, the Yountville Town Council adopted Ordinance 20-498 which bans the use of all gas-powered leaf blowers. The Town Council took this action in response to a citizen led petition that gathered over 200 signatures and a formal request by residents who raised concerns over environment reasons, noise, and quality of life.

The committee had done its homework and (if memory serves) procured over 600 signatures, enough to launch a ballot initiative. However, in an attempt to save the City the expense of the special election, Mayor Britton brokered a deal whereby the committee would withdraw its request if The City passed an ordinance banning all leaf blowers with a noise rating over 64db. However, the very night the City Council voted to adopt the resolution, the Chief of Police boldly announced that “her” department would not “actively” enforce the new law.

The bane of “situational ethics” prevailed! So much for democracy and the rule of law.

The Chief did not stand alone. Why did the Mayor, City Manager and Councilmembers not demand that she follow her oath to enforce the laws of the land? What she did do was transfer the responsibility of enforcement to local property owners, many of whom were reluctant to call the police when neighbors (or gardeners) were blatantly using blowers that could be heard from a mile away. The problem is increasing with each new absentee owner. Typically, they have garden work done on weekdays so noisy blowers will not bother them; “to hell with the locals.”

On Sunday, 5-2-21, at 7:30 AM, a commercial gardener arrived at our absentee neighbor's home and fired up his illegal blower. When I politely asked him to stop because the blower was illegal, he became belligerent and said he knew of fellow gardeners "using illegal blowers all over town." I was put in a difficult position because of the continued failure of The City of St. Helena to enforce an agreement that was obviously negotiated in very bad faith; that bad faith remains to this day. There is no need to ascribe blame to one individual. What has happened was the result of not a single city official being courageous enough to take a proactive role to correct the abhorrent miscarriage of justice.

As I write this, The State of California is drafting legislation that will ban all gas-powered leaf blowers, but probably not be enacted until 2022-2023.

In a stunning irony, if a private citizen or business owner were to selectively ignore laws that did not suit him/her, he/she could be fined or put into prison. Should the same principle not apply to public officials? The City of St. Helena adopted a leaf blower ordinance and has overtly failed to enforce the law. Perhaps those people responsible should be fined or put into jail?

Ergo: I respectfully request that the current Mayor, City Council members and City Manager begin the process of correcting the miscarriage of justice that was caused by the City of St. Helena, so many years ago.

Respectfully,

Lowell H. Young
2323 Spring Mt. Rd.
St. Helena, Ca. 94574
young.lowell@gmail.com

May 10, 2021

Dear City Council and Manager,

Here's an idea for Councilman Dohring and any other hotel pushing people: get over your preoccupation and declare Adams Street off the table for hotel development, and then pursue all other options, of which there are many. We just voted on the issue 6 months ago and, again, advised the city we do not want a hotel on Adams Street. Can people not see how a hotel on that property would be a huge nail in the coffin of our rapidly dying middle class while bowing to the wealthy? Maybe they do see it and are just fine with what is happening. Nobody with that mindset is fit for community leadership.

We're a town with tremendous assets beyond Adams Street, and we have no debt. But we lack water resources and responsible, pro-community leadership. We need a moratorium on all new development until we have achieved water security. If we can do that, then we need leadership that will see to it we have sufficient workforce and affordable housing before we even think about building anything else new.

There's no piece of property, no amount of tourist revenue, that is more sacred or valuable than human beings. When water allows, we need to step up and provide housing for working locals and commuters, retired seniors, and families trying to find a way to live in reasonable comfort and safety in this town. We need them as much as they need us.

Paul Dohring says the promise of the 2009 Vision Statement still has not been honored because there is no financing plan to make the community's vision a reality, which is patently untrue. Uses haven't materialized because the city has rejected every community-centric offer.

On November 22, 2011, the city formerly rejected six proposals for affordable housing on Adams Street. All were nitpicked rather than work with one of them to bring housing forward. "Relying too heavily upon the city to contribute funds" was one excuse. One offer asked the city to contribute \$300,000 on a project that would've built 30 units of new housing (City of St Helena Resolution NO. 2012-4). The city wouldn't do it.

But then, just two years later, the city paid \$700,000 for property on McCorkle Avenue and sold it to Our Town St. Helena (OTSH) for one dollar. Their 8-unit self-help housing project is on track for completion later this year, which is fantastic. Not fantastic, the city wouldn't contribute \$300,000 for a 30-unit housing project on Adams Street, but would take a \$699,000 loss for an 8-unit project somewhere else. Really? So not ok!

Further clarifying their values, less than two years ago the city gave Noll & Tam Architects \$300,000 to create "massing concepts and cost estimates" for new civic buildings for which the city was contemplating spending up to \$38.7 million dollars (St. Helena Civic Institutions Concept Design Options, March 3, 2020). How grandiose, and unnecessary, for a town that is supposedly broke, in desperate need of housing, and owns properties that could cost effectively be updated for civic use. When you're broke you don't buy a brand-new house, you fix up the one you have.

Dohring states "With an older proposal for amphitheater/parking lot/historical society space and now a newer proposal for affordable housing on Adams Street, I became concerned that our focus would become overly myopic. The downside to such tunnel vision is that we may miss other creative opportunities to make the 2009 Vision Statement a reality." What downside? **The older proposals coupled with the current proposal from St. Helena Housing Coalition, sent to our city manager just this last week, is the 2009 Vision being realized!** Dohring warns against a "piecemeal approach" which makes no sense. The Vision has always been community-centric development all on Adams Street. What is piecemeal about that?

On November 12, 2019, a Heritage Center, amphitheater and Farmer's Market space on Adams Street were offered at no cost to the city. Verify that at the 1 hour and 35 minute mark of the video for which a link is provided. Be sure to watch to the end of public comment to hear Paul Dohring's personal friend ask the city to seek estimates from hotel brokers who want to exploit our property. That is telling.

It appears Dohring's myopic focus leaves him blind to any strategizing that doesn't include the option of a hotel on Adams Street. His tunnel vision is unfortunate, as he does have some really good ideas.

Sincerely,

Nancy Dervin

Council meeting where local nonprofits offer to finance their establishment on Adams Street and a friend of Paul Dohring asks the council to get proposals from hotel brokers:

<https://sthelena.civicweb.net/Portal/MeetingInformation.aspx?Org=Cal&Id=430>

Why remodeling is greener than building new, even if the new is with Green standards:

<https://grist.org/cities/this-old-house-why-fixing-up-old-homes-is-greener-than-building-new-ones/>

The community benefit of parks: <https://cityparksalliance.org/about-us/why-city-parks-matter/>

You Can't Trust Pacaso

Larry Vermeulen

Mr. Mayor and members of the City Council,

Pacaso would have you believe that their mission is to “democratize second-home ownership”. I contend that their mission is simply to make a lot of money.

Their founders, Spencer Rascoff and Austin Allison, have both made millions from dot.com companies they founded and sold. Rascoff was a cofounder and CEO of Zillow and (quoting from his website) “is an active angel investor in over 50 companies”. In 2017, he was named “The Most Powerful Person in Residential Real Estate” by the Swanepoel Power 200.

Allison was the founder of Dotloop, a real estate technology company, which he sold to Zillow in 2015 for \$108 million dollars.

Their joint venture, Pacaso LCC (which was called Landholdings, Inc. before being rebranded this past January), has secured \$1 billion dollars in funding from angel investors and venture capitalists in less than a year from its founding. It has been celebrated for achieving so-called “unicorn” status faster than any other U.S. company.

I provide this background because I think it demonstrates that these are a couple of very business-savvy young men who, I suspect, are used to getting their way. My personal opinion is that regardless of what they say, they have little concern for the well-being of St. Helena, but are really just intent on making more money.

With their deep pockets and slick marketing machine, they'll spin their business model to appear altruistic and claim they want to be good neighbors and part of the community, but I don't buy it. Their track record so far reveals a number of instances of ignoring the law, misrepresenting the facts, and showing that they don't have systems in place to manage their properties.

Case in point. Pacaso purchased its first home in St. Helena at 1005 Valley View sometime in early 2020 and began doing business in our town. But they didn't even bother to get a City Business License to do so. They still don't have a business license.

In their lawsuit against the City they claim among other things that:

1. “Pacaso homes are single-family homes with two parking spaces per dwelling unit”.
Fact: Not 1 of the 5 Pacaso homes in St. Helena has 2 on-site parking spaces. Some have eliminated this requirement by converting garages to ADUs with no intention of ever using them as such.
2. “Pacaso encourages homeowners to avoid parking on the street unless absolutely necessary.”

Fact: It is necessary for them park on the street due to the lack of on-site parking as noted in #1 above.

3. "Co-owners agree not to have large events or parties."

Fact: You will hear from a number of neighbors about the parties at the house on Valley View. Pacaso's own website celebrates the fact that "more than 100 people showed up for a house party" in celebration of one of the owners' birthdays. They mention that this was before it was a Pacaso house, but you get the point. It's a party house.

4. "Co-owners adhere to 9PM to 7AM quiet hours."

Fact: You will hear from nearby neighbors that this simply is not true.

Pacaso's co-owner rules also prohibit the commercial use of their fractional ownership homes but just last week a Pacaso home in Napa was discovered to have been holding multi-person, deluxe yoga retreat weekends since January of 2021. Only after being inquired about by a Napa Register reporter was this activity shut down.

Pacaso argues that they are reducing pressure on vacation home conversion in St. Helena by selling 8 fractional shares in one home, theoretically removing 7 potential 2nd-home buyers from the pool. However, they also allow 50% shares and even list the whole-house price. The truth is, they'll sell the house any way that works and allows them to continue to manage it for a fee.

They also claim they are 'democratizing second home ownership' by selling fractional shares and thus allowing people of lesser net worth to buy into a vacation home that they could not otherwise afford. But again, they are just as willing to sell 50% shares as they are to sell 1/8th shares. And while one of their listings is available for as little as \$209,000 for a 1/8th share, many sell for more than \$1,000,000 per share and go as high as \$2,500,000 per share. This hardly feels like 'democratizing second home ownership' and feels more like 'money, money, money, money, money'.

Pacaso only manages one home in St. Helena at this moment but has 4 more in various stages of development for resale as fractional owner vacation homes. Their track record so far tells me that they'll say anything to make the sale and they don't have systems in place to manage these homes according to their own guidelines. If it takes the threat of a newspaper expose' to get them to halt the commercial use of one of their limited number of properties in the Napa Valley, how can we trust them to manage many more?

I don't think they can be trusted to do business in St. Helena and urge you to 'Just say No to Pacaso'.

City Council Meeting 5/11/21
 Comment by Michael Caldarola

In his Sermon on the Mount, Jesus said, “Beware of false prophets, who come in sheep’s clothing, but who underneath are ravenous wolves. (Mat. 7:15.) Well, Pacaso is our wolf in sheep’s clothing, and it’s trying to pull the *wool* over our eyes. Posing as an altruistic lamb, Pacaso promises to democratize and diversify. However, Don’t be fooled. Its fleece is not as white as snow. Rather, it’s here to fleece us by mining our neighborhoods for money.

The Pacaso model is to buy a home, trick it out as a party house, form a corporation to own it, and then peddle corporate shares to 8 buyers. Each shareholder gets to use the house for 1/8 of the year but *only* in increments of two-weeks or less.

The less-than-two-week increments constitute transient occupancy, which is highly regulated in SH. Pacaso has sued SH to block enforcement. Pacaso distinguishes its buyers from short-term occupants and timeshare-holders on the ground that its buyers OWN the home they get to use.

Pacaso likens their buyers to siblings who inherit the family house and can use it as they please without triggering transient-occupancy regulations. It’s more accurate, however, to liken Pacaso buyers to 8 friends who pool their money to buy a house. Even then, however, the comparison fails. Pacaso buyers are fundamentally different.

Siblings who inherit a house or friends who buy one own an actual interest in real property. Pacaso buyers don’t; they own shares of a corporation. The corporation owns the house. This distinction is what allows the Pacaso model to fleece us.

When friends collectively own a piece of real property and one of them sells his/her interest, the County, in effect, reappraises the whole property as of the time of the sale. For tax purposes, the base value of the remaining owners’ *individual* pieces stays the same. But the value of the interest that was sold is added to the base value of the *whole* property and thus increases the property tax that the County is entitled to collect. This is only fair and comports with Prop 13.

The Pacaso model thwarts the process. As I said, the corporation owns the real property, not the shareholders. According to the County Assessor, corporate ownership does not change, and thereby trigger reappraisal, unless and until 51% of the corporation is transferred to a *single* person or entity. In other words, as long as the corporation has 8 shareholders, the property assessment and tax liability stay the same. Consequently, if, a shareholder sells to a new buyer, the transfer would not trigger reappraisal, reassessment, and potentially increased tax liability as is the case when siblings or friends sell their interests. And this is so even if all the shares change hands numerous times at a profit that is directly related increases in property value. Indeed, the tax dodge makes the slices even more valuable, and the whole model an even greater threat.

This dodge is among the many objectionable aspects to the Pacaso model. In my view, it exploits the corporate vehicle and the protections of Prop 13 so that Pacaso and its corporate buyers can plunder the neighborhoods and rob the County. Democratization? Diversity? Again, “Beware of false prophets, who come in sheep’s clothing, but who underneath are ravenous wolves. (Mat. 7:15)

May 11, 2021

The public comment period at the last council meeting was very obviously a well-coordinated effort designed to keep pushing forward a very controversial subject, and cherry pick what little good there is in this model. They outlined some points that, on the surface, seem like positive attributes and outcomes for the city, but like a magician, it's all smoke and mirrors.

Marcus Kirkwood, who provided public comment, would have you believe that this is, in part, a racial equality issue, which we all know it isn't. Mr. Kirkwood, and Pacaso, would have you believe that fractional ownership will free up more housing inventory for middle-class, local working families, which it will not, as the properties that are being purchased and renovated for fractional use are largely within moderately affordable working class neighborhoods.

If you will reflect back, with all the speakers during the public comment period, only one single speaker in favor of fractional ownership was local to St. Helena. Mr. Kirkwood claims to not be involved with Pacaso, but I think the way he frames his role with fractional ownership is a little "broad". He has purchased, renovated, and then sold properties to Pacaso, thus keeping his overall role in relation to the end seller and end user, a little at arms-reach. Every single other speaker in favor of fractional ownership does not actually live in St. Helena. You need to ask yourselves why that is. Pacaso doesn't use a local-to-Saint-Helena broker to represent their offerings. Elizabeth Olcott, a broker with Keller Williams who appears to represent Pacaso exclusively within the Napa Valley, is of course in favor of this. Why wouldn't she be? It's easy money for her (Pacaso's website claims this in their Agent Marketing section)) and none of these properties are in her neighborhood, or next door to where she resides.. She is from Napa; local agents or brokers understand and acknowledge the broader implications on the local community.

I am happy that the couple of fractional owners are happy with their purchases. They genuinely sound respectful and happy to be part of this community. Conversely, I think it needs to be pointed out that currently, the neighbors on either side, and across the street of the Fractional Home on Valley View all have anti-Pacaso signs in their yard. Why is this? They are the neighbors that, though they were not asked to do so, have been beta

testing the fractional ownership method from a neighbors perspective. I spoke with one of them last week when they came into my business and they said that the Pacaso home was the single worst thing to happen to Valley View since the Sulphur Creek bridge was put in, thereby allowing cut-through traffic to be the norm. They complained about chronic noise issues, and though, the owners who spoke last week are likely very respectable neighbors, it appears many other owners and their guests may not be.

This leads me to property management and use of these properties. Pacaso regulates stays for owners at 2-14 days at a time. To me this appears to be a clear violation of The City's Short Term Rental ordinance. These homes are obviously not rentals, nor are they allowed to be such based on Pacaso's own rules, but those stay limits are directly in line with St. Helena's STR ordinance of what constitutes transient occupancy. Secondly, St. Helena requires the few STR's that are permitted within the city limits to have a property manager within they city and those managers have their contact information readily available if/when the need arises to be contacted. Based on Pacaso's stated management model, they are also in violation of city ordinance.

Pacaso and their model of ownership is just a workaround to St. Helena's, and other municipalities, time-share and short term rental ordinances and laws...and to put money in Pacaso's coffers to do this over and over and over again until this model has run its course and saturated various neighborhoods with a revolving door of transient occupiers.

Thank you for your time.

With appreciation,
Chris & Jessica Fowler
1336 Magnolia Ave.

Cindy Tzaopoulos

From: Sandi Thompson <saludwi94062@yahoo.com>
Sent: Tuesday, May 11, 2021 12:50 PM
To: Cindy Tzaopoulos
Cc: Smith Matt & Kami; Leslie Velasco; Paul Heiselmann
Subject: [External] Filed and Served Complaint for the Council Package tonight
Attachments: St. Helena - Summons, Complaint, Civil Case Cover Sheet and Notice of CMC 5 10 21.pdf

Councilmembers,
Please see the attached complaint which has been filed and served on UVDS today. I am a party to the complaint along with my husband and neighbors for injunctive relief and public/private nuisance.

I wish to include this in the package for your meeting tonight.

Thank you,
Sandi Thompson
1457 S Whitehall Lane
St Helena

21CV000681
Napa - Civil

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

UPPER VALLEY DISPOSAL SERVICE, UPPER VALLEY DISPOSAL AND RECYCLING SERVICE, CLOVER FLAT LANDFILL and DOES 1-100

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

SANDRA THOMPSON, JOHN W. THOMPSON, PAUL J. HEISELMANN, LESLIE VELASCO, JOHN WITT, MATT SMITH, KAMI SMITH

FILED

5/10/2021 10:57 AM

Clerk of the Napa Superior Court
By: Isabel Rodriguez, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): NAPA COUNTY SUPERIOR COURT
825 Brown Street
Napa, CA 94559

CASE NUMBER: (Número del Caso):

21CV000681

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Wallace C. Doolittle, Esq. (#158116), 1260 B Street, Suite 220, Hayward, CA 94541 Tel: 510/888-0600 Fax: 510/888-0606

DATE: 5/10/2021
(Fecha)

Clerk, by
(Secretario) Isabel Rodriguez, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

Robert E. Fleshman



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

21CV000681
Napa - Civil

FILED
5/10/2021 10:57 AM
Clerk of the Napa Superior Court
By: Isabel Rodriguez, Deputy

WALLACE C. DOOLITTLE (SBN 158116)
JAMES P. DOWNS (SBN 139489)
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Hayward, California 94541

TELEPHONE: (510) 888-0600
FACSIMILE: (510) 888-0606
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Attorneys for Plaintiffs SANDRA THOMPSON, JOHN W. THOMPSON,
PAUL J. HEISELMANN, LESLIE VELASCO, JOHN WITT, MATT SMITH and KAMI
SMITH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NAPA

SANDRA THOMPSON, JOHN W.
THOMPSON, PAUL J. HEISELMANN,
LESLIE VELASCO, JOHN WITT, MATT
SMITH, KAMI SMITH,

Plaintiffs,

v.

UPPER VALLEY DISPOSAL SERVICE,
UPPER VALLEY DISPOSAL AND
RECYCLING SERVICE, CLOVER FLAT
LANDFILL and DOES 1-100,

Defendants.

Case No. 21CV000681

VERIFIED COMPLAINT FOR:

1. **PRIVATE NUISANCE;**
2. **PUBLIC NUISANCE;**
3. **TRESPASS;**
4. **INJUNCTIVE RELIEF.**

Plaintiffs SANDRA THOMPSON, JOHN W. THOMPSON, PAUL J. HEISELMANN,
LESLIE VELASCO, JOHN WITT, MATT SMITH and KAMI SMITH allege against UPPER
VALLEY DISPOSAL SERVICE, UPPER VALLEY DISPOSAL AND RECYCLING SERVICE,

1 CLOVER FLAT LANDFILL (hereinafter referred to as "Defendants" or "Upper Valley") and
2 DOES 1-100 as follows:

3 **I. INTRODUCTION**

4 1. Plaintiffs are all property owners in the Whitehall Lane area of the unincorporated
5 area adjacent to St. Helena California, who have suffered pervasive, unhealthy, harmful and
6 damaging odors, noise and other pollution emanating from Upper Valley's operations and other
7 interference with their quiet and peaceful enjoyment of their properties. Plaintiffs bring this action
8 as a last resort, after exhausting all administrative, legislative, community and collaborative efforts
9 to obtain abatement of Defendants' illegal, continuing and unnecessarily dangerous, malodorous
10 and noisy activity adjacent to their properties.

11 2. Defendants have owned and operated a composting facility at 1285 Whitehall Lane,
12 south of St. Helena, California, since 1974. The facility composts grape pomace, that consists of
13 pressed grapes, stems, skins and leave from wineries in St. Helena and unincorporated Napa
14 County. Composting operations and compostable materials handling operations are currently
15 performed on approximately 50% of the 46 plus acre site. A Full Solid Waste Facility Permit was
16 issued on July 24, 1994, and a revised Solid Waste Facility Permit on October 13, 1998. The
17 Conditional Use Permit has been modified over the years to increase recycling and composting.
18 Wood and yard waste was added with a modification to the Use Permit in 1998. Subsequently,
19 organics blending and food waste have been added to the business operations of Defendants. These
20 increased UVDS services have continued to proceed without a request for proposal and without
21 competitive bidding.

22 3. Since its inception, and continuing to the present, the operations of Defendants have
23 ignored regulatory guidelines, have been dismissive of the complaints of adjacent landowners, and
24 have failed to honor their promises, contracts, mandatory mitigation plans, industry standards and
25 best practices. In the words of the current Chief Operating Officer Christy Pestoni:

26 **"I assumed this role two years ago when ownership brought in a new management**
27 **team to correct serious operating deficiencies."**

28 *****

“... my father, Bob Pestoni ... began to behave differently. He became singularly focused on his own personal interests. He lost connection with his core operational duties. He ignored regulatory issues. He ignored complaints. He stopped listening to professionals because he didn’t like what they had to say. He just wanted to focus on his things.” [April 13, 2021 e-mail and public comment from Christy Pestoni to the St. Helena City Council – Attached hereto as Exhibit A.]

II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this matter pursuant to Code of Civil 395(a) because, at all times relevant, Defendants and each of them have resided in, been incorporated in, or has done significant business in the State of California so as to render the exercise of jurisdiction over Defendants and each of them, by California Courts consistent with traditional notions of fair play and substantial justice. The amount in controversy exceeds the jurisdictional minimum of this Court.

5. Venue is proper in this County because substantially all the events, acts, omissions, and/or transactions complained of herein occurred in/or originated from Napa County, State of California.

III. PARTIES

A. Plaintiffs

6. Plaintiffs SANDRA THOMPSON and JOHN W. THOMPSON are individuals who own properties located at 1457 S. Whitehall Lane, St. Helena, Napa County, California.

7. Plaintiff PAUL J. HEISELMANN is an individual who owns property and resides at 1449 S. Whitehall Lane, St. Helena, California, County of Napa.

8. Plaintiff JOHN WITT is an individual who owns the property at 1500 S. Whitehall Lane, St. Helena, California, County of Napa. LESLIE VELASCO occupies the property located at 1500 S. Whitehall Lane, St. Helena, County of Napa and holds a power of attorney for John Witt.

9. Plaintiffs MATT SMITH and KAMI SMITH are individuals who own property and reside at 1480 S. Whitehall Lane, St. Helena, California, County of Napa.

B. Defendants

10. At all times herein mentioned Defendants UPPER VALLEY DISPOSAL SERVICE, UPPER VALLEY DISPOSAL AND RECYCLING SERVICE and CLOVER FLAT LANDFILL (collectively, "Upper Valley") were business entities authorized to do business and doing business, in the State of California, with their principal place of business in the County of Napa, California. Defendant UPPER VALLEY DISPOSAL SERVICE ("UVDS") is a California corporation headquartered in the County of Napa. It is the owner or affiliate of Defendants UPPER VALLEY DISPOSAL AND RECYCLING SERVICE and CLOVER FLAT LANDFILL.

11. Plaintiffs allege that UVDS, UPPER VALLEY DISPOSAL AND RECYCLING SERVICE and CLOVER FLAT LANDFILL are jointly and severally liable for each other's wrongful acts and/or omissions as hereafter alleged, in that:

- a. UVDS, UPPER VALLEY DISPOSAL AND RECYCLING SERVICE and CLOVER FLAT LANDFILL operate as a single business enterprise operating out of the same building located at 2465 Whitehall Lane, St. Helena, California for the purpose of effectuating and carrying out UVDS's business and operations and/or for the benefit of UVDS;
- b. UPPER VALLEY DISPOSAL AND RECYCLING SERVICE, CLOVER FLAT LANDFILL and UVDS do not operate as completely separate entities, but rather, integrate their resources to achieve a common business purpose;
- c. UPPER VALLEY DISPOSAL AND RECYCLING SERVICE and CLOVER FLAT

- 1 LANDFILL are so organized and controlled, and their decisions, affairs and business so
- 2 conducted as to make them mere instrumentalities, agents, conduits and/or adjuncts of
- 3 UVDS;
- 4 d. UPPER VALLEY DISPOSAL AND RECYCLING SERVICE and CLOVER FLAT
- 5 LANDFILL's income contribution results from their function, integration, centralization
- 6 of management and economies of scale with UVDS;
- 7
- 8 e. UPPER VALLEY DISPOSAL AND RECYCLING SERVICE and CLOVER FLAT
- 9 LANDFILL's and UVDS's officers and management are intertwined and do not act
- 10 completely independent of one another;
- 11
- 12 f. UPPER VALLEY DISPOSAL AND RECYCLING SERVICE's, CLOVER FLAT
- 13 LANDFILL's and UVDS's officers and managers act in the interest of UVDS as a single
- 14 enterprise;
- 15
- 16 g. UVDS has control and authority to choose and appoint UPPER VALLEY DISPOSAL
- 17 AND RECYCLING SERVICE and CLOVER FLAT LANDFILL's board members as
- 18 well as its other top officers and managers;
- 19
- 20 h. Despite being waste management companies with government contracts, UPPER
- 21 VALLEY DISPOSAL, RECYCLING SERVICE AND CLOVER FLAT LANDFILL and
- 22 UVDS do not compete with one another, but have been structured, organized, and
- 23 businesses effectuated so as to create a synergistic, integrated single enterprise where
- 24 various components operate in concert one with another;
- 25
- 26 i. UVDS maintains unified administrative control over UPPER VALLEY DISPOSAL
- 27 AND RECYCLING SERVICE and CLOVER FLAT LANDFILL;
- 28
- j. Plaintiffs are informed and believe and thereon allege that UPPER VALLEY DISPOSAL

- 1 AND RECYCLING SERVICE, CLOVER FLAT LANDFILL and UVDS are insured by
- 2 the same carriers and provide uniform or similar pension, health, life and disability
- 3 insurance plans for employees;
- 4 k. UPPER VALLEY DISPOSAL AND RECYCLING SERVICE, CLOVER FLAT
- 5 LANDFILL and UVDS have unified 401(k) Plans, pensions and investment plans, bonus
- 6 programs, vacation policies and paid time off from work schedules and policies;
- 7
- 8 l. UPPER VALLEY DISPOSAL AND RECYCLING SERVICE and CLOVER FLAT
- 9 LANDFILL and UVDS have unified personnel policies and practices and/or a
- 10 consolidated personnel organization or structure;
- 11
- 12 m. UPPER VALLEY DISPOSAL AND RECYCLING SERVICE, CLOVER FLAT
- 13 LANDFILL and UVDS have unified accounting policies and practices dictated by UVDS
- 14 and/or common or integrated accounting organizations or personnel;
- 15
- 16 n. UPPER VALLEY DISPOSAL AND RECYCLING SERVICE AND CLOVER FLAT
- 17 LANDFILL and UVDS are represented by common legal counsel;
- 18
- 19 o. UVDS's officers, directors, and other management make policies and decisions to be
- 20 effectuated by UPPER VALLEY DISPOSAL AND RECYCLING SERVICE AND
- 21 CLOVER FLAT LANDFILL and/or otherwise play roles in providing directions and
- 22 making decisions for UPPER VALLEY DISPOSAL AND RECYCLING SERVICE and
- 23 CLOVER FLAT LANDFILL;
- 24
- 25 p. UVDS's officers, directors, and other management direct certain financial decisions for
- 26 UPPER VALLEY DISPOSAL AND RECYCLING SERVICE and CLOVER FLAT
- 27 LANDFILL including the amount and nature of capital outlays;
- 28
- q. UVDS's written guidelines, policies, and procedures control UPPER VALLEY

DISPOSAL AND RECYCLING SERVICE and CLOVER FLAT LANDFILL, its

employees, policies, and practices;

- r. Plaintiffs are informed and believe and thereon allege that UVDS files consolidated earnings statements factoring all revenue and losses from UPPER VALLEY DISPOSAL AND RECYCLING SERVICE and CLOVER FLAT LANDFILL as well as consolidated tax returns, including those seeking tax relief; and/or, without limitation; and
- s. UVDS generally directs and controls UPPER VALLEY DISPOSAL AND RECYCLING SERVICE's and CLOVER FLAT LANDFILL's relationship with, requests to, and responses to inquiries from, state, county, municipal and city governments and uses such direction and control for the benefit of UVDS.

C. DOE Defendants

20. The true names and capacities, whether individual, corporate, associate, or otherwise of the Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names pursuant to Code of Civil Procedure section 474. Plaintiffs further allege that each of said fictitious Defendants is in some manner responsible for the acts and occurrences hereinafter set forth. Plaintiffs will amend this Complaint to show their true names and capacities when the same are ascertained, as well as the manner in which each fictitious Defendant is responsible.

D. Agency and Concert of Action

21. At all times herein mentioned herein, Defendants and/or each of them, hereinabove, were the agents, servants, employees, partners, aiders and abettors, co-conspirators, and/or joint venturers of each of the other Defendants named herein and were at all times operating and acting within the purpose and scope of said agency, service, employment,

1 partnership, enterprise, conspiracy, and/or joint venture, and each Defendant has ratified and
2 approved the acts of each of the remaining Defendants. Each of the Defendants aided and
3 abetted, encouraged, and rendered substantial assistance to the other Defendants in breaching
4 their obligations to Plaintiffs as alleged herein. In taking action to aid and abet and substantially
5 assist the commission of these wrongful acts and other wrongdoings complained of, as alleged
6 herein, each of the Defendants acted with an awareness of his/her/its primary wrongdoing and
7 realized that his/her/its conduct would substantially assist the accomplishment of the wrongful
8 conduct, wrongful goals, and wrongdoing.
9

10 **IV. STATEMENT OF FACTS**

11 **A. ODORS**

12 22. UVDS maintains a holding pond on its property located at 2465 Whitehall Lane.
13 This pond has consistently been the source of noxious odors, causing neighbors to complain to
14 UVDS about the smell. On or about March 19, 2019, the pond became completely anerobic
15 from bacterial growth, causing the entire Whitehall Lane area to inundated with unbearable
16 stench. Residents could not socialize or dine in the outdoor areas of their properties, could not
17 leave their windows open and had to refrain from allowing children to play outside.
18

19 23. UVDS and/or its predecessors in interest began processing compost as early as the
20 1970s. Over time, the small compost operation at UVDS evolved into a much larger, complex
21 and more odorous and indeed dangerous operation. UVDS currently operates a large-scale
22 compost blending business, offering harvest, restaurant, topsoil, mulch and other blended
23 compost for sale. UVDS's Conditional Use Permit has been modified over the years to increase
24 the scope of recycling and composting. Wood and yard waste was added with a modification to
25 the Use Permit in 1998. Most recently, UVDS has begun accepting organic and food waste.
26
27
28

1 Although the kickoff for UVDS's food waste program is officially slated for July 1, 2021, in
2 reality, UVDS has been accumulating organic and food waste for some time. Since 2019,
3 UVDS's neighbors have noticed an increased rotten garbage smell emanating from the UVDS
4 Whitehall Lane facility, drifting over and inundating the properties, interfering with the
5 residents' enjoyment of the properties, including the properties of the Plaintiffs.

6 24. A major source of unacceptable odor comes from UVDS's grape pomace
7 operation. Grape pomace is the byproduct of wine making – the seeds, skins, stems, sticks and
8 other portions of the grapes left after the grape are crushed. Grape pomace continues to ferment
9 long after it is removed and transported to UVDS. Its fermentation is accelerated by being stored
10 and exposed to the hot sun. Grape pomace has caused an odor problem for the Whitehall Lane
11 residents since UVDS began its operations. But UVDS has, in recent years, accelerated and
12 expanded the volume of its grape pomace operation, bringing in thousands of tons from
13 vineyards outside of the Napa Valley. This has predictably increased the intolerable and rotten
14 fermentation stench wafting out from the UVDS Whitehall Lane facility into the Whitehall Lane
15 neighborhood.

18 **B. FIRES**

19 25. The entire Napa Valley is susceptible to devastating wildfires. The occurrence of
20 wildfires presents an existential threat to the Napa Valley wine industry and the uniquely bucolic
21 physical environment of the valley. Some California fires have been ignited by lightning, such
22 as the 2012 Rush Fire in Lassen County, California. However, most wildfires are ignited by the
23 intentional, reckless and negligent acts of businesses, commercial entities and residents.
24
25
26
27
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26. According to the National Fire Protection Association (NFPA), an estimated 14,070 fires occur annually from spontaneous combustion. Spontaneous compost fires occur under the following conditions:

- a. The pile is large and core temperature reaches 150 degrees Fahrenheit or higher.
- b. High summer temperatures and pile heat encourage evaporation of moisture from the piles.
- c. Lack of uniform moisture in the pile leads to dry pockets, i.e., combustible material.
- d. Wet organics are compacted in the pile, perhaps due to inadequate turning and churning and possibly due to lack of adequate coarse bulking material. This leads to pockets of anaerobic decomposition producing methane gas.
- e. In summary, dry areas plus heat combined with methane gas result in a flash point which results in fire ignition.

27. All the foregoing unmitigated conditions exist at the UVDS facility. During the past two years, the size and number of compost piles has increased to the point where UVDS's Whitehall Lane neighbors can see, from within their property boundary lines, unsightly mountains of compost rising ever higher.

28. UVDS has consistently failed to take the following fire mitigation actions at its Whitehall Lane facility:

- a. Maintain uniform moisture at all times throughout the decomposition process.
- b. Maintain uniform bulking to avoid compaction of wet organics. Bulk as you build.

- c. Churn the pile regularly to assist with uniform moisture and bulking distribution.
- d. Avoid anaerobic conditions which produce methane gas.
- e. Monitor pile temperature. Turn, churn and sprinkle with water to manage too high temperatures in pile.

29. The enormous piles of compost accumulated at UVDS's Whitehall Lane facility, combined with Defendants' lack of proper mitigation measures, has caused spontaneous combustion of its compost on numerous occasions. Most recently, on December 20, 2020, a fire erupted in UVDS's Whitehall Lane facility, sending thick white smoke drifting through the properties of the Whitehall Lane neighbors. Neighbors reported the fire to UVDS, and were advised by UVDS that it was not a fire but, rather, a "hot spot." This fire, and/or others like it, could easily have caused a wildfire engulfing the Napa valley.

30. Plaintiffs cannot stand by and passively wait for disaster to strike their community. Defendants' compost practices present a clear and present danger of igniting a fire that could wipe out the entire valley. For these and other reasons set forth herein, Plaintiffs seek abatement of this continuing nuisance as well as injunctive and declaratory relief as set forth herein.

C. NOISE

31. Defendants' continually expanding operations on Whitehall Lane have caused the noise levels to be consistently offensive to the Whitehall Lane neighborhood, including, but not limited to Plaintiffs. Plaintiffs have been subject to continuing and constant noise pollution, from early in the morning hours, through the evenings, including, but not limited to, the following:

- a. High pitched crashing, smashing and shattering sounds from the regular dumping and breaking of glass bottles from trucks on the UVDS Whitehall Lane property.
- b. Reverberating metallic banging sounds from, among other things, dropping metal containers.
- c. Droning of engines and braking sounds of large diesel vehicles.
- d. Until very recently, the beeping sounds of backup warnings emanating from backing trucks and other vehicles and equipment. Defendants have only quite recently replaced these beeping signals with white noise backup warning indicators.

D. LIGHT

32. Defendants have increased their use of artificial floodlights and other lighting as their early morning, evening and nighttime operations have proliferated over time. The bright lights disturb the peace of Defendants' Whitehall Lane neighbors, including, without limitation, Plaintiffs.

E. UNPERMITTED BUILDING STRUCTURES, ROADS AND BRIDGES

33. In or around June 2017, Defendants built a structure on property directly adjacent to Plaintiffs Matt and Kami Smith. Plaintiffs are informed and believe and thereon allege that the structure was intended to be used to expand Defendants' operations outside the fence perimeter in which the composting, recycling and disposal service is currently contained. Plaintiffs are further informed and believe and thereon allege that this structure was built without permits and that Defendants were required to tear down the structure. Recently, a large road was improved to bring in large trucks on the parcel off S. Whitehall Ln adjacent to the property

owned and occupied by Plaintiffs MATT and KAMI SMITH. The road borders the Sauvignon Blanc vineyard and the Pestoni property and continues in the direction of UVDS.

34. At least two bridges have been placed across the creek that runs through or adjacent to the properties of several Plaintiffs as well as Defendants' property. Plaintiffs are informed and believe and thereon alleges that Defendants did not obtain permits to bridge the creek.

F. VECTOR INCREASE

35. Defendants' expanding operation on Whitehall Lane attract insects and animals in large numbers. Residents, including Plaintiffs, have noticed in the last two years clouds of flies that are attracted to the rotting waste in Defendants' Whitehall facility. Additionally, residents have noted that Raccoons, attracted to the food waste operations have congregated in the surrounding properties, tearing up gardens and uprooting plants.

G. UNSIGHTLY DUMPING OF RUSTED OUT VEHICLES AND EQUIPMENT

36. Defendants' Whitehall Lane property contains an unsightly dumping ground for abandoned, rusting and decrepit vehicles and equipment. This ad hoc dump is also located immediately adjacent to the property of Plaintiffs MATT and KAMI SMITH and is close enough to the road to appear unsightly to all passersby on Whitehall Lane. The Whitehall Lane community is not suited as an automobile junkyard. Moreover, Defendants have left unmaintained, abandoned and dilapidated steel nursery buildings which are very unsightly. Plaintiffs request that these eyesores – the ad hoc dump and the dilapidated old nursery buildings – be removed.

H. DEFENDANTS' PRACTICES AT CLOVER FLAT

37. The "ignorance of regulatory issues" and "ignorance of complaints" described by

1 Defendant COO Christy Pestoni in her April 13, 2021 e-mail are pervasive, ongoing and
2 continuing. The Defendants' harmful, illegal and dangerous practices, affecting all residents of
3 Napa Valley, including, without limitation, Plaintiffs, include the following issues at the Clover
4 Flat Landfill:

- 5 a. Unauthorized radioactive material stored at landfill for nearly a year (Spring
6 2019-Spring 2020) at the same facility that processes highly flammable,
7 potentially explosive landfill gasses.
8
- 9 b. Five (5) workers exposed to radiation at Clover Flat Landfill - all went to the
10 hospital, one employee needed specialized treatment for his level of radiation
11 exposure.
12
- 13 c. Chemical explosion sent at least one (1) employee to the emergency room
14 with respiratory issues after driving over a barrel with winery chemical waste
15 in it that exploded.
16
- 17 d. Since 2013 Napa County Fire/CAL Fire has responded to twenty-six (26)
18 incidents at the landfill. Thirteen (13) of those have been confirmed fires
19 which have required fire department intervention (adequate fire suppression
20 was NOT in place).
21
- 22 e. According to the original Napa County LEA report the Clover Flat Landfill
23 was severely impacted by the Glass Fire, again raising questions about its
24 location in a high fire tier area as well as air quality/smoke issues related to
25 fire damage not reported to the public.
- 26 f. Closure of northern portion of Napa River in 2019 due to chemical
27 contamination from the landfill. Many Napa Valley Vineyards are directly
28

irrigated from the Napa River.

I. WATER CONTAMINATION

38. On May 18, 2020, River Watch transmitted three (3) notices of violation to Defendants alleging the contamination by Defendants of Napa Valley surface and groundwater as well as the Napa River and its watershed. River watch provided these notices pursuant to the Federal Resource Conservation and Recovery Act, the Endangered Species Act and the Clean Water Act. Defendants' violations were not remediated within the relevant statutory time frames, causing River Watch to file suit against Defendants. River Watch's lawsuits are still pending as of the filing of this Complaint.

J. OTHER VIOLATIONS

39. Defendants continue to engage in a pattern and practice constituting violations of numerous solid waste, chemical, drainage, discharge, leachate, permit and environmental regulations. These documented violations span the period August 2018 to present and include illegal storage and release of radioactive materials, chemical explosions, illegal drainage of sludge from frac tanks, hazardous materials spills, improper spraying of leachate for dust control, failure to have fire suppression equipment and many more similar violations.

**FIRST CAUSE OF ACTION
(Private Nuisance – against all Defendants)**

40. Plaintiffs allege and incorporate herein by reference paragraphs 1-39 of this Complaint.

41. Plaintiffs are owners and in possession of the real properties located on Whitehall Lane.

42. Defendants, by acting or failing to act, created a condition or permitted a condition to exist that was harmful to health, was indecent or offensive to the senses, was an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life

1 or property. This condition also was dangerous, a fire hazard, indeed caused a fire and interfered
2 with Plaintiffs' use of their land.

3 43. Plaintiffs did not consent to Defendants' conduct. An ordinary person would be
4 reasonably annoyed or disturbed by Defendants' conduct. Plaintiffs were harmed and damaged
5 by Defendants' conduct; Defendants' conduct was a substantial factor in causing Plaintiff's
6 harm. The seriousness of the harm outweighs the public benefit of Defendants' conduct.
7

8 WHEREFORE, Plaintiffs pray for relief as set forth hereinbelow.

9 **SECOND CAUSE OF ACTION**
10 **(Public Nuisance – against all Defendants)**

11 44. Plaintiffs allege and incorporate herein by reference paragraphs 1-43 of this
12 Complaint.

13 45. Plaintiffs own or occupy property at or near Defendants' operations that are the
14 subject of this action. At all relevant times, Plaintiffs had the right to occupy, enjoy and/or use
15 their property without interference by Defendants, and each of them.

16 46. Defendants, and each of them, owed a duty to the public, including Plaintiffs herein,
17 to conduct their business, in particular the maintenance and operation of waste, recycling,
18 mulching and trucking operations in a manner that did not threaten harm or injury to the public
19 welfare.

20 47. Defendants, and/or each of them, by acting and/or failing to act, as alleged
21 hereinabove, created a condition which was harmful to the health of the public, including these
22 Plaintiffs, and which interfered with the comfortable occupancy, use and/or enjoyment of
23 Plaintiff's property. Plaintiffs did not consent, expressly or impliedly, to the wrongful conduct of
24 Defendants, and/or each of them, in acting in the manner set forth above.

25 48. The harmful conditions created by and/or permitted to exist by Defendants, and/or
26 each of them, affected a substantial number of people within the general public, including Plaintiffs
27 herein, and constituted a public nuisance under Civil Code Sections 3479 and 3480 and Public
28

Resources Code Sections 4170 and 4171. These harmful conditions are ongoing and affect the public at large.

49. As a direct and legal result of the conduct of the Defendants, and/or each of them, Plaintiffs suffered harm that is different from that suffered by the general public. Specifically, Plaintiffs have lost the use and/or enjoyment of their land, real and/or personal property, including, but not limited to: a reasonable and rational fear that the area is in danger of fire loss as a result of the multiple instances that compost combusted near their property; a diminution in the fair market value of their property; an impairment of the salability of their property; exposure to an array of toxic substances; frequent intolerable odors; and a lingering smell of smoke, and/or soot, ash and/or dust in the air.

50. As a further direct and legal result of the conduct of Defendants, and/or each of them, Plaintiffs have suffered, and will continue to suffer, discomfort, anxiety, fear, worries, annoyance, and/or stress attendant to the interference with Plaintiffs' occupancy, possession, use and/or enjoyment of their property, as alleged above.

51. A reasonable, ordinary person would be reasonably annoyed or disturbed by the condition created by Defendants, and/or each of them, and the resulting, smells, noise, fires, smoke and other conditions.

52. The conduct of Defendant, and/or each of them, is unreasonable and the seriousness of the harm to the public, including the Plaintiffs herein, outweighs the social utility of Defendants' conduct.

53. The individual and/or collective conduct of Defendants set forth above, and/or each of them, are not isolated incidents, but are ongoing and/or a repeated course of conduct. Defendants' prior conduct and/or failures have resulted in other pollution, contamination, fires and damage to the public.

54. Defendants, and each of them, have routinely failed to and refused to conduct proper inspections of the compost piles, the landfill and other facilities in order to maintain safe and clean waste management services to the residents of St. Helena, Yountville, Calistoga and Napa County, California. These acts and/or omissions of Defendants and/or each of them, exposed

every member of the public, including those who reside in St. Helena, Yountville, Calistoga and Napa County, California, to a foreseeable danger of personal injury, death and/or a loss of use and/or the destruction of real and personal property.

55. the conduct of Defendants, and/or each of them, set forth above constitutes a public nuisance within the meaning of Civil Code Sections 3479 and 3480, Public Resources Code Section 4104 and 4170, and Code of Civil Procedure Section 731. Under Civil Code Section 3493, Plaintiffs have standing to maintain an action for public nuisance because the nuisance is specially injurious to Plaintiffs, because, as more specifically described above, it is injurious and/or offensive to the senses of the Plaintiffs, unreasonably interferes with the with the comfortable enjoyment of their properties, and/or unlawfully obstructs the free use, in the customary manner, of Plaintiffs' properties, and have suffered harm, injury and damages.

56. For these reasons, Plaintiffs seek a temporary restraining order, and preliminary and permanent injunctions ordering that Defendant, and each of them, cease and desist from the activities set forth above. Plaintiffs also seek an order directing Plaintiffs to abate the existing and continuing nuisance described above.

WHEREFORE, Plaintiffs pray for relief as set forth hereinbelow.

THIRD CAUSE OF ACTION
(Trespass – against all Defendants)

57. Plaintiffs allege and incorporate herein by reference paragraphs 1-56 of this Complaint.

58. At all times relevant herein, Plaintiffs were the owners and/or lawful occupants of properties in the Whitehall Lane area.

59. Defendants, and/or each of them, in wrongfully acting and/or failing to act in the manner set forth above, caused the above-referenced noise, light, odors, smoke, vectors and other contaminants to spread to Plaintiffs' properties, resulting in a trespass upon Plaintiffs' property interests.

60. Plaintiffs did not consent to Defendants' conduct. As a direct and legal result of Defendants' conduct, Plaintiffs were harmed and damaged. Defendants' conduct was a substantial factor in causing Plaintiffs' harm.

61. Defendants' actions were intentional, fraudulent, malicious, willful and engaged in with the intent to cause harm and damages to Plaintiffs. Therefore, Plaintiffs are entitled to punitive damages against Defendants in an amount according to proof.

WHEREFORE, Plaintiffs pray for relief as set forth hereinbelow.

FOURTH CAUSE OF ACTION
(Injunctive Relief – against all Defendants)

62. Plaintiffs allege and incorporate herein by reference paragraphs 1-61 of this Complaint.

63. Unless and until restrained from doing so, Defendants' actions will continue to cause irreparable harm to the interests of Plaintiffs.

64. Monetary damages would be inadequate to remedy the harm.

65. The balance of harms from an injunction favor Plaintiffs. Any potential harm to Defendants caused by an injunction is greatly outweighed by the probability of harm to Plaintiffs if an injunction is not entered against Defendants.

66. Therefore, Plaintiffs seek a temporary restraining order, preliminary and permanent injunction, enjoining Defendants UPPER VALLEY DISPOSAL SERVICE, UPPER VALLEY DISPOSAL AND RECYCLING SERVICE, CLOVER FLAT LANDFILL, and all those working for or with Defendants UPPER VALLEY DISPOSAL SERVICE, UPPER VALLEY DISPOSAL AND RECYCLING SERVICE, CLOVER FLAT LANDFILL from the following:

- a. Continuing to engage in dumping, transfer, crushing or breaking of glass outside the hours of 9 am to 5 pm weekdays only.
- b. Allowing trucks and equipment to operate outside the hours of 9 am to 5 pm weekdays only.

- 1 c. Using bright floodlights or any lighting systems that allow lights to shine directly
- 2 or indirectly on the Plaintiffs' properties.
- 3 d. Continuing to maintain unmitigated compost piles in a manner that poses a fire
- 4 danger.
- 5 e. Continuing to maintain unmitigated compost piles in a manner that causes any
- 6 portion of the compost pile to exceed 150 degrees Fahrenheit.
- 7 f. Allowing fires, hotspots, smoldering, smoke or other ignition of any kind in any
- 8 and all compost piles.
- 9 g. Building or constructing any and all unpermitted buildings, structures, roads and
- 10 bridges.
- 11 h. Continuing to use properties along Whitehall Lane to contain rusted, abandoned
- 12 vehicles.
- 13 i. Continuing to use properties in the Whitehall Lane area to be used as a junkyard
- 14 or dumping ground for old vehicles and equipment.
- 15 j. Engaging in practices that allow offensive odors, such as fermenting pomace and
- 16 rotting garbage to be detectable on Plaintiffs' properties.
- 17 k. Accepting, storing, transporting or processing grape pomace from outside Napa
- 18 Valley.
- 19 l. Causing or allowing storage ponds to emit offensive odors detectable on
- 20 Plaintiffs' properties.
- 21 m. Causing or allowing storage ponds to become anaerobic.
- 22 n. Causing or allowing any operations to emit offensive odors detectable on
- 23 Plaintiffs' properties.
- 24 o. Allowing the proliferation of pests, such as flies, mosquitoes, rats, mice and
- 25 raccoons.
- 26 p. Release of chemicals, radioactive materials or leachate.
- 27
- 28

WHEREFORE, Plaintiffs pray for relief as set forth hereinbelow.

PRAYER

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants, and each of them, as follows:

1. Compensatory and Economic Damages, in an amount exceeding the minimum jurisdiction of this Court, \$25,000, according to proof.

2. Punitive Damages.

3. Equitable Relief as the court deems proper.

4. A temporary restraining order, preliminary and permanent injunction, enjoining Defendants UPPER VALLEY DISPOSAL SERVICE, UPPER VALLEY DISPOSAL AND RECYCLING SERVICE, CLOVER FLAT LANDFILL, and all those working for or with Defendants UPPER VALLEY DISPOSAL SERVICE, UPPER VALLEY DISPOSAL AND RECYCLING SERVICE, CLOVER FLAT LANDFILL from the following:

- a. Continuing to engage in dumping, transfer, crushing or breaking of glass outside the hours of 9 am to 5 pm weekdays only.
- b. Allowing trucks and equipment to operate outside the hours of 9 am to 5 pm weekdays only.
- c. Using bright floodlights or any lighting systems that allow lights to shine directly or indirectly on the Plaintiffs' properties.
- d. Continuing to maintain unmitigated compost piles in a manner that poses a fire danger.
- e. Continuing to maintain unmitigated compost piles in a manner that causes any portion of the compost pile to exceed 150 degrees Fahrenheit.
- f. Allowing fires, hotspots, smoldering, smoke or other ignition of any kind in any and all compost piles.
- g. Building or constructing any and all unpermitted buildings, structures, roads and bridges.

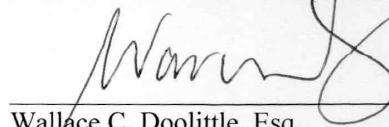
- h. Continuing to use properties along Whitehall Lane to contain rusted, abandoned vehicles.
- i. Continuing to use properties in the Whitehall Lane area to be used as a junkyard or dumping ground for old vehicles and equipment.
- j. Engaging in practices that allow offensive odors, such as fermenting pomace and rotting garbage to be detectable on Plaintiffs' properties.
- k. Accepting, storing, transporting or processing grape pomace from outside Napa Valley.
- l. Causing or allowing storage ponds to emit offensive odors detectable on Plaintiffs' properties.
- m. Causing or allowing storage ponds to become anaerobic.
- n. Causing or allowing any operations to emit offensive odors detectable on Plaintiffs' properties.
- o. Allowing the proliferation of pests, such as flies, mosquitoes, rats, mice and raccoons.
- p. Release of chemicals, radioactive materials or leachate.

5. For costs of suit.

8. Such other and further relief as the court may deem proper.

Dated: May 5, 2021

LAW OFFICES OF WALLACE C. DOOLITTLE

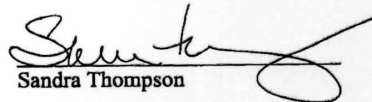


Wallace C. Doolittle, Esq.
Attorney for Plaintiffs SANDRA THOMPSON,
JOHN W. THOMPSON, PAUL J. HEISELMANN,
LESLIE VELASCO, JOHN WITT, MATT SMITH
and KAMI SMITH

VERIFICATION

I, Sandra Thompson, am an individual Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and I believe them to be true.

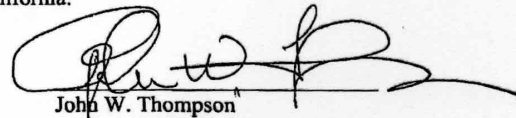
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed under the penalty of perjury on this 5 day of May 2021 at St. Helena, California.


Sandra Thompson

VERIFICATION

I, John W. Thompson, am an individual Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed under the penalty of perjury on this 5 day of May 2021 at St. Helena, California.


John W. Thompson

VERIFICATION

I, Paul J. Heiselmann, am an individual Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed under the penalty of perjury on this ____ day of May 2021 at St. Helena, California.

Paul J. Heiselmann

VERIFICATION

I, Sandra Thompson, am an individual Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed under the penalty of perjury on this ___ day of May 2021 at St. Helena, California.

Sandra Thompson

VERIFICATION

I, John W. Thompson, am an individual Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed under the penalty of perjury on this ___ day of May 2021 at St. Helena, California.

John W. Thompson

VERIFICATION

I, Paul J. Heiselmann, am an individual Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed under the penalty of perjury on this 6th day of May 2021 at St. Helena, California.

Paul J. Heiselmann

VERIFICATION

I, Leslie Velasco, am an individual Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and I believe them to be true.

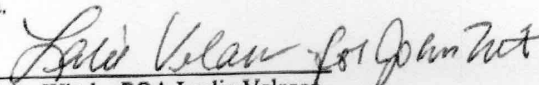
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed under the penalty of perjury on this 5th day of May 2021 at St. Helena, California.


Leslie Velasco

VERIFICATION

I, Leslie Velasco hold a power of attorney for John Witt, an individual Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed under the penalty of perjury on this 5th day of May 2021 at St. Helena, California.


John Witt by POA Leslie Velasco

VERIFICATION

I, Matt Smith, am an individual Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed under the penalty of perjury on this ___ day of May 2021 at St. Helena, California.

Matt Smith

VERIFICATION

I, Leslie Velasco, am an individual Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed under the penalty of perjury on this ____ day of May 2021 at St. Helena, California.

Leslie Velasco

VERIFICATION

I, Leslie Velasco hold a power of attorney for John Witt, an individual Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and I believe them to be true.

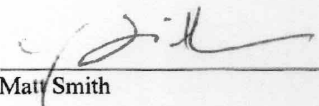
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed under the penalty of perjury on this ____ day of May 2021 at St. Helena, California.

John Witt by POA Leslie Velasco

VERIFICATION

I, Matt Smith, am an individual Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed under the penalty of perjury on this 11 day of May 2021 at St. Helena, California.



Matt Smith

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VERIFICATION

I, Kami Smith, am an individual Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed under the penalty of perjury on this 7th day of May 2021 at St. Helena, California.


Kami Smith

21CV000681
Napa - Civil

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Wallace C. Doolittle, Esq. (#158116) James P. Downs (#139489) LAW OFFICES OF WALLACE C. DOOLITTLE 1260 B Street, Suite 220, Hayward CA 94541		FOR COURT USE ONLY FILED 5/10/2021 10:57 AM Clerk of the Napa Superior Court By: Isabel Rodriguez, Deputy	
TELEPHONE NO.: 510/888-0600 FAX NO. (Optional): 510/888-0606 ATTORNEY FOR (Name): Plaintiffs			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA STREET ADDRESS: 825 Brown Street MAILING ADDRESS: 825 Brown Street CITY AND ZIP CODE: Napa, CA 94559 BRANCH NAME:			
CASE NAME: SANDRA THOMPSON, et. al., v. UPPER VALLEY DISPOSAL SERVICE, et al			
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000)		Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 21CV000681
		JUDGE: DEPT.:	

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☐ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☒ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. ☐ Large number of separately represented parties b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. ☐ Substantial amount of documentary evidence	d. ☐ Large number of witnesses e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. ☐ Substantial postjudgment judicial supervision
--	--

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): 4

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 10, 2021

Wallace C. Doolittle, Esq.

(TYPE OR PRINT NAME)

NOTICE

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA
825 Brown Street, Napa, CA 94559**

Notice of Case Management Conference

Case #: 21CV000681 Sandra Thompson et al vs Upper Valley Disposal Service et al

A Case Management Conference has been scheduled in this matter pursuant to California Rule of Court 3.221.

Date: 10/19/2021

Time: 8:30 AM

Room: Courtroom B

The plaintiff/petitioner must include a copy of this notice with the complaint when serving the defendant/respondent. Cross complainants must serve a copy of this notice on any new parties named to the action. (Civil only)

To learn more about the types and benefits of Alternative Dispute Resolution (ADR), and whether it may be appropriate for your case, please access the California Courts website at <http://www.courts.ca.gov/programs-adr.htm>.

This site also contains Judicial Council forms applicable to ADR.

CERTIFICATE OF ELECTRONIC DELIVERY

This notice was delivered via eMail to: doolittlew@doolittlelaw.com

The court encourages remote audio/video appearances using Zoom. Meeting links and participant information can be found at www.napacourt.com/remote. When appearing via video, court hearings should be treated the same as if you are appearing in court. Please contact the court with any questions 707-299-1100.

May 11, 2021

Good evening City Council members. My name is Clare Barr and I live in St. Helena. Tonight I would like to speak about the Pacaso Vacation Share homes.

I listened carefully to the public comments of Pacaso Share owners made at our last City Council meeting. They sounded sincere in their desire to be a part of the St. Helena community. The problem is they have bought into a business model that will make that nearly impossible.

To be a part of a real community means forming bonds with neighbors. How can that come about with a home next door that has possibly dozens of strangers coming and going, with visits no longer than 14 days at a time, a few times a year? And with the likelihood of visits gifted by other share owners, and a cleaning crew who appears before each arrival, the number swells. With the result that a Pacaso share owner, is viewed by their neighbors as only one in a sea of unfamiliar faces.

And though the intentions of some of the share buyers might be good, can we say the same for all 7 of the remaining shareowners? One of whom might gift a weekend to his brother for a blowout bachelor party? Or as was the case in Napa, a single shareowner who conducted retreats in which close to a dozen visitors would come and go within one stay. That particular shareowner was charging her guests, which is a complication on an entirely different level.

Pacaso would have us believe that their sharebuyers are families who simply want a quiet, lovely getaway. But in actuality, a Pacaso home is built for partying. Their own website says of one offering "This home takes entertaining to new heights". And yet another listing says that a

particular home “has been completely re-imagined to accommodate families, friends, and large groups”. Another listing offers “year round fun and adventure”.

Now, none of us resent the visitor who wants to have fun. Indeed, our beautiful valley is an ideal place for celebration. And we all do that on occasion. But when you realize that every single visitor owning a Pacaso share has been wooed with the promise of “fun and adventure” within a house “built for entertaining”, then you have the possibility of major partying with each and every visitor, all crammed into stays that last from 2-14 days. This is transient occupancy in our residential neighborhoods that cannot possibly be regulated under the Pacaso system.

There is a reason why we have ordinances in place that designate where tourists and visitors can stay. It allows us to appreciate our visitors, giving them the space and accommodations in which to party and celebrate, while we ourselves can conduct our daily lives in the sanctuary of our residential neighborhoods. Which in turn, are places where we know our neighbors so well that we trust them with our keys, our pets, and even our children. With whom we share joy and sometimes sorrow, and whom are quick to lend a hand in times of crisis.

And if we have learned anything in the last few years, it is that the ability to know and rely on our neighbors is the very thing that sustains our community through thick and thin. A vacation home with a parade of visitors coming and going, does not belong in our residential neighborhoods. Please Say No to Pacaso.

Clare Barr
St. Helena

PACASO = PARTY HOUSES!

Debbie Polverino 5/11/2021

To the members of the City Council. In the recent Napa Register article, Austin Allison agrees that short term rentals are a problem, that commercial Timeshares are a problem- that's not what Pacaso is he said. Yet, Pacaso listed the Valley View Street "Pool House" as a 1/8 Timeshare Ownership property. After the city was notified by several concerned citizens and myself regarding "timeshares" listed for sale in residential zoned areas, Pacaso changed its online marketing from "1/8 Timeshare Ownership to 1/8 Shared Ownership. Owners who purchase still share the property in available time slots just like a timeshare.

Living next door to a Pacaso home has been living next door to a full-time party house! The constant music with speakers blaring, loud conversations until 2 am and later, noise violations along with excessive vehicles parked on the street or in front of our homes. The additional noise of gardeners blowing dirt and leaves into our yard, Pool service, catering trucks, housekeeping scheduled more frequently. Open houses are held with statements made with, "this is a great place for pool parties and entertaining, it's a perfect place to bring friends and extended family."

This home on Valley View Street was a weekend getaway home for the previous owners who had loud weekend parties. It was a constant nightmare and all the homes nearby complained. Now the property has been split up to 8 owners. The Saint Helena P.D. has already been to this home at least 3 times for noise violations after 10pm. There must be a way to stop these repeated violations and offenders.

Pacaso's has written policies for its owners on their website that they must adhere to. No parking on the street, no parties, no noise after 9pm to 7am, no dogs over 80 pounds. Policies have been broken several times already from each group including the Pacaso's owners.

According to Mr. Allison, Saint Helena is running a dishonest campaign against Pacaso. Pacaso claims discrimination of outside ownership which is not the case. As we all know we welcome all people the opportunity to live in our quiet small town. Pacaso selling an 1,100 square foot home which is smallest of any home on our street for \$1.7M is dishonest in my opinion. This is what he says is affordable housing for second home buyers who are paying in full, plus maintenance fees?

When commercial companies buy a dozen homes in Napa Valley and plans additional purchases to be split up to 8 shares it is not committed to the community or our quiet neighborhoods. Zoning is in place for a reason. Commercial companies operating in full time residential streets should adhere to the rules that are in place and only buy up in areas where other vacation homes are abundant and not a disruption.

What happens should we decide to sell our home? How will people feel about buying next door to a home owned by 8 owners who don't know each other and all come at different time slots for as little as 2 days at a time? We will have to disclose this information. This put a negative mark on our property. This is something I want you to think about! Say NO to Pacaso! Thank you.

CITY OF ST. HELENA

PROCLAMATION

Mental Health Awareness Month May 2021

WHEREAS, mental health is fundamental to overall health and well-being; and

WHEREAS, early identification and treatment can make a difference to the millions of adults and children who suffer from mental illness every year; and

WHEREAS, stigma keeps many who would benefit from mental health services from seeking help and thus greater public awareness about mental health can change attitudes and behaviors; and

WHEREAS, it is critical that we create a community where individuals feel comfortable seeking support and prioritizing their mental health; and

WHEREAS, a holistic approach to services that includes prevention, early intervention and comprehensive services is an effective way to meet the needs of individuals with mental illness; and

WHEREAS, Napa County acknowledges the contribution and dedication of mental health treatment providers who strive to reduce barriers to access, improve community engagement, and ensure culturally and linguistically competent mental health care is provided; and

WHEREAS, we support the shared vision of a community in which anyone affected by mental illness can get the support and care they need to live fulfilling lives.

Now, therefore let it be resolved, that I, Geoff Ellsworth, Mayor of the City of St. Helena, do hereby proclaim, May 2021 as Mental Health Month in St. Helena. As the Mayor, I also call upon the citizens, government agencies, public and private institutions, businesses and schools in St. Helena to recommit ourselves and our community to increasing awareness and understanding of mental health, to supporting our community members so that they can take action to protect their mental health, and to promoting appropriate and accessible services for all people with mental health conditions.

Dated: May 11, 2021

Geoff Ellsworth, Mayor
City of St. Helena

CITY OF ST. HELENA
PROCLAMATION
NATIONAL POLICE WEEK

Whereas, during the month of May, National Police Week is recognized beginning on the 9th and ends on the 15th which is National Peace Officers Memorial Day; and

Whereas, President Kennedy proclaimed in 1962 that the 15th of May would be a day of special recognition to those law enforcement officers who have lost their lives in the line of duty for the safety and protection of others; and

Whereas, there are approximately 900,000 law enforcement officers serving in communities across the United States, including the dedicated members of the St. Helena Police Department; and

Whereas, the St. Helena Police Department plays an essential role in safeguarding the rights and freedoms of all members of the community; and

Whereas, it is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of their law enforcement agency, and that members of our law enforcement agency recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; and

Whereas, the men and women of the St. Helena Police Department unceasingly provide this vital public service; and

NOW THEREFORE BE IT RESOLVED that I, Geoff Ellsworth, Mayor of St. Helena, and the City Council Members of the City of St. Helena hereby declares the week of May 9 to May 15, 2021 to be National Police Week in the City of St. Helena and May 15 as Peace Officers' Memorial Day in honor of law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community, and let us recognize and pay respect to the survivors of our fallen heroes.

Be It Further Resolved, that the St. Helena City Council calls upon all citizens to join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their communities and have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens. The St. Helena City Council publicly salutes the service of law enforcement officers in our community and in communities across the nation.

Dated this eleventh day of May 2021.

Geoff Ellsworth, Mayor
City of St. Helena

CITY OF ST. HELENA
PROCLAMATION

WHEREAS, public works services provided in our community are an integral part of our citizens' everyday lives; and

WHEREAS, the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs such as water, sewer, streets and highways, public buildings, and solid waste collection; and

WHEREAS, the health, safety and comfort of this community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities, as well as their planning, design, and construction, are vitally dependent upon the efforts and skill of public works crews; and

WHEREAS, the efficiency of the qualified and dedicated personnel who staff public works department is materially influenced by the people's attitude and understanding of the importance of the work they perform; and

WHEREAS, the year 2021 marks the 61st annual National Public Works Week sponsored by the American Public Works Association; and

NOW THEREFORE, BE IT RESOLVED, that the St. Helena City Council, City staff and the citizens of St. Helena do hereby proclaim the week of May 16-22, 2021 as "National Public Works Week" and encourage all citizens to join us in this worthy observance.

Dated this eleventh day of May 2021.

Geoff Ellsworth, Mayor
City of St. Helena

PG&E PSPS Switch Installation Project

Electric Transmission Upgrade for St. Helena



Together, Building
a Better California



Agenda

Overview

- 3 New Switch structures to be installed Q4 of 2021
- Resulting in safer and shorter duration PSPS events
- Minimal impact to neighborhood traffic during and post construction

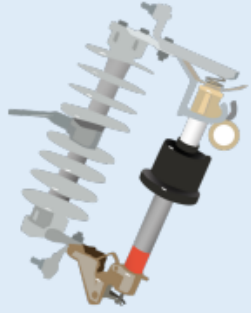
Agenda

- What is a SCADA Switch..... 1 min
- Why are they important 2 min
- Existing Switches 2 min
- Location 1 1 min
- Location 21 min
- Location 3 1 min
- Questions2 min



What is a SCADA Switch?

SCADA – Supervisory Control & Data Acquisition



Sectionalizing Device

Switches, when activated, **cut off power to portions of the electric system** while other parts of the grid continue to provide electricity.

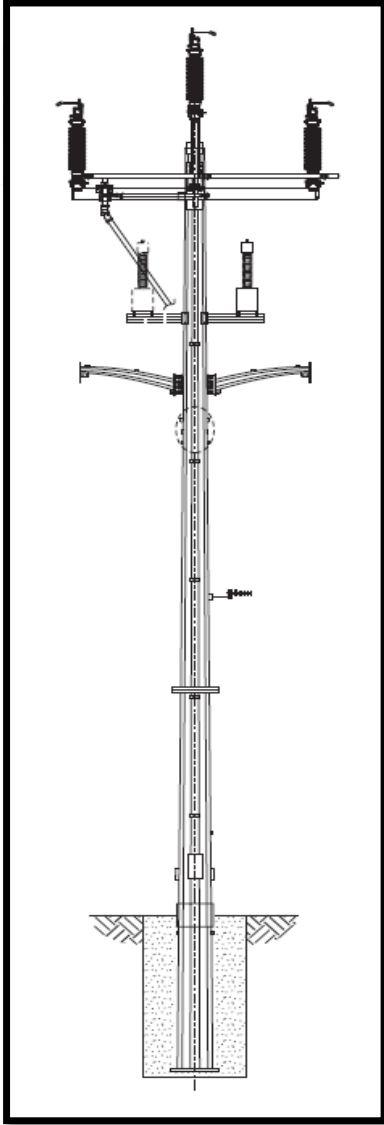
Sectionalizing devices, which include switches, on distribution lines separate the electric grid into **smaller parts** to keep electricity on for more customers. **Transmission switches can turn off power to segments of a transmission line serving substations.**



Transmission Switch

These devices work with reclosers to **only turn off power to lines impacted by weather or debris**, without having to turn off power to the entire grid.

What is a SCADA Switch (cont.)?



- **75' tall**
- **Weathered Steel brown finish**
- **Grounded platform 4'x6'**



Why are they Important?

Benefits

Reduce customer outage restoration time

Reduce employee safety risks at inaccessible locations

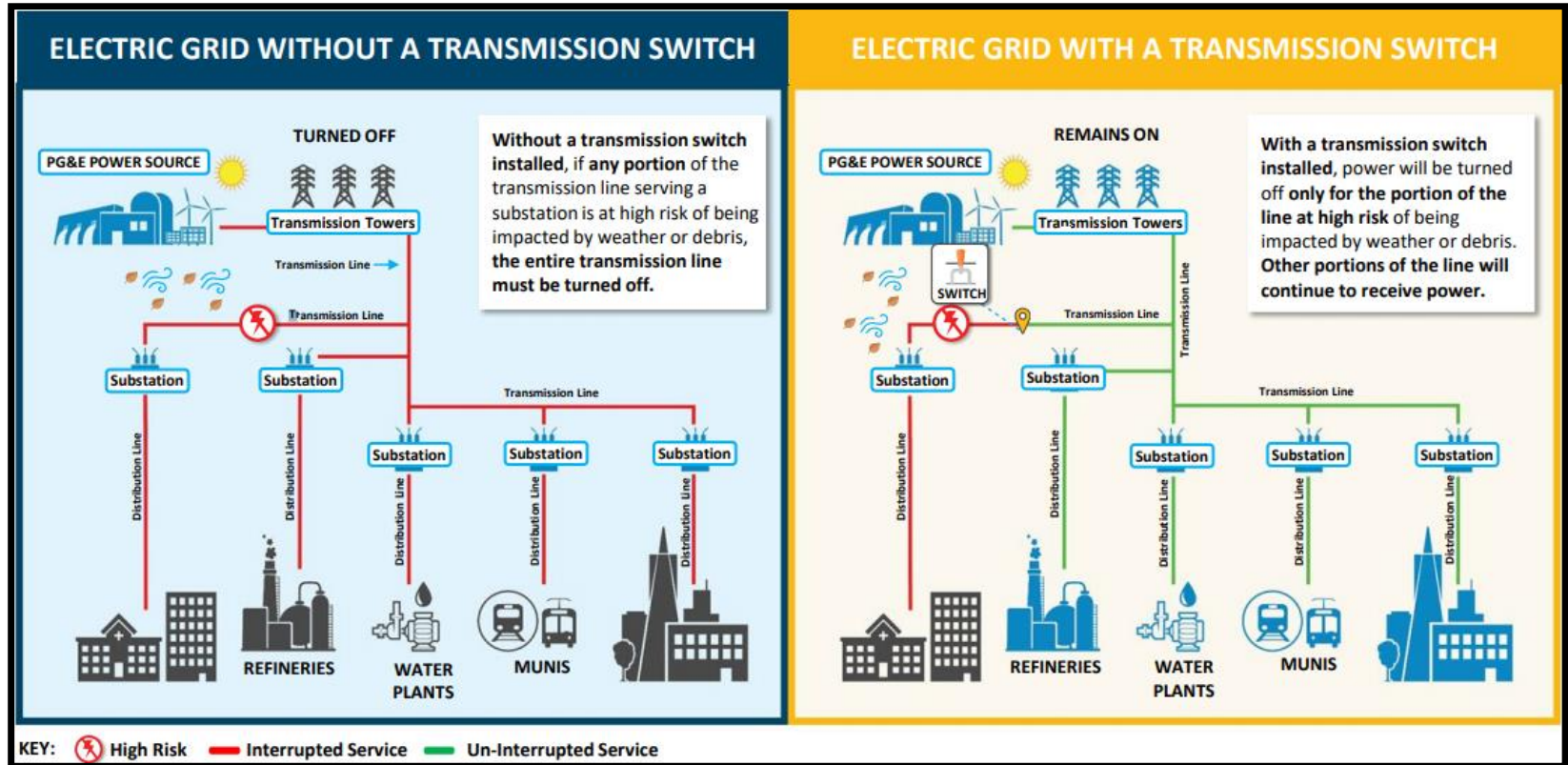
Provide operational solutions during clearances

Asset lifecycle renewal through proactive upgrades

Remotely operated Switch installations in other high fire threat areas have resulted in an average of 65% improvement to the outage durations, decreasing total outage time by over 3 hours.



Why are they Important?

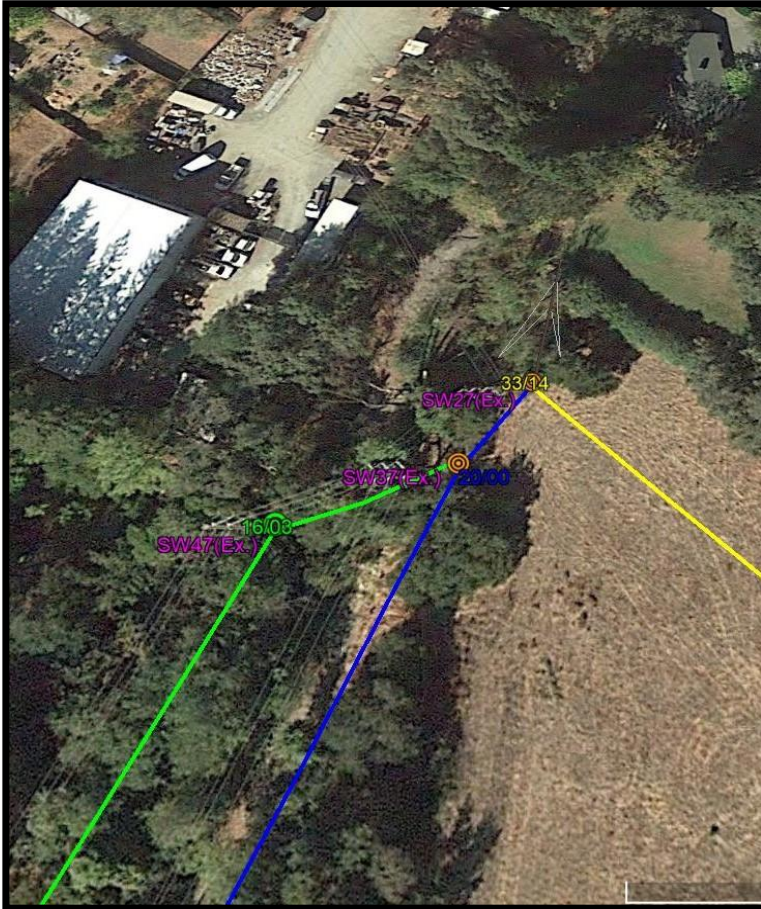


Existing Switches



- The 3 existing switches are located at the St. Helena Junction in the vacant lot just SE of 1057 Main St.
- These 60kv lines are where the Calistoga, Dunbar, & Fulton transmission feeds meet.
- They currently provide ***manual*** line isolation only which can be slow and unpredictable in returning power during PSPS.

Existing Switches (cont.)



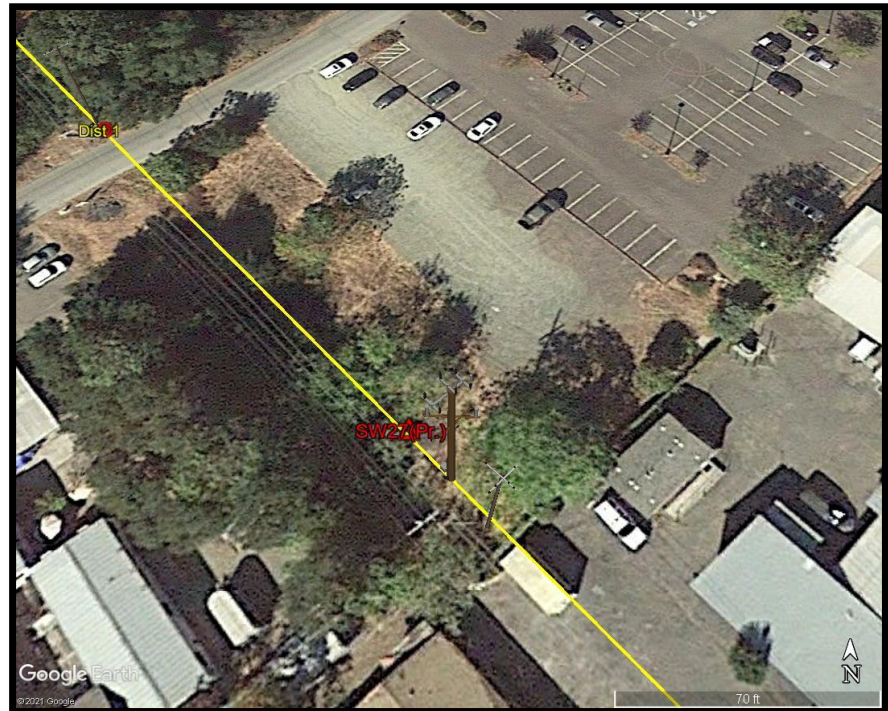
- Project will not conflict with road widening work on Mills Ln.
- New locations were selected as the closest available options that avoid conflict with potential development in between Charter Oak Ave. and Mitchell Dr.



Location 1 – Switch 27



Location: SW Corner of 801 Main St. within unimproved area.



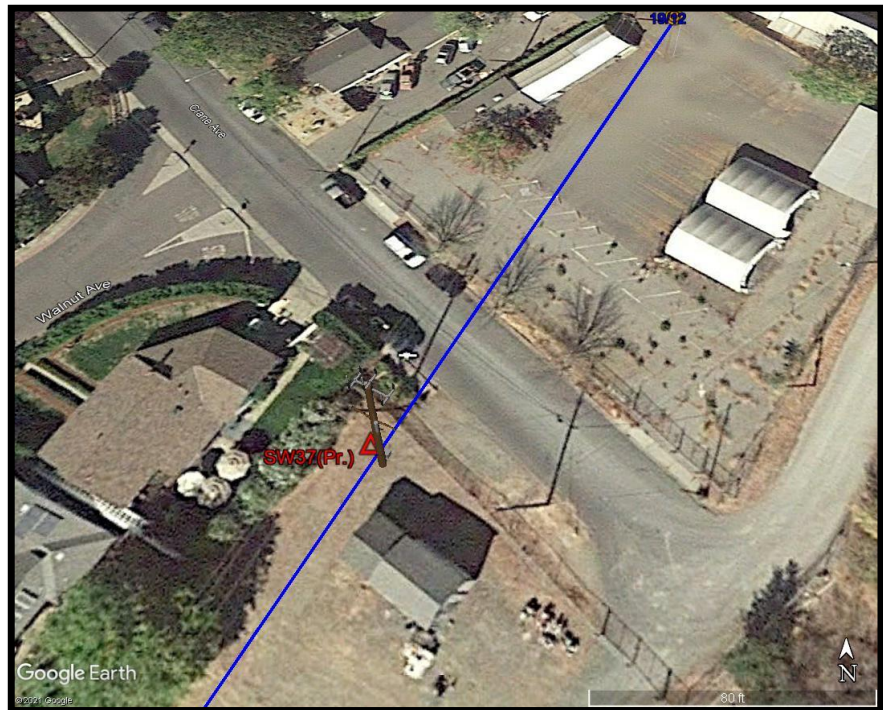
PG&E has an electric transmission easement in place to complete this scope of work.



Location 2 – Switch 37



Location: PG&E lot at the end of Crane Ave.



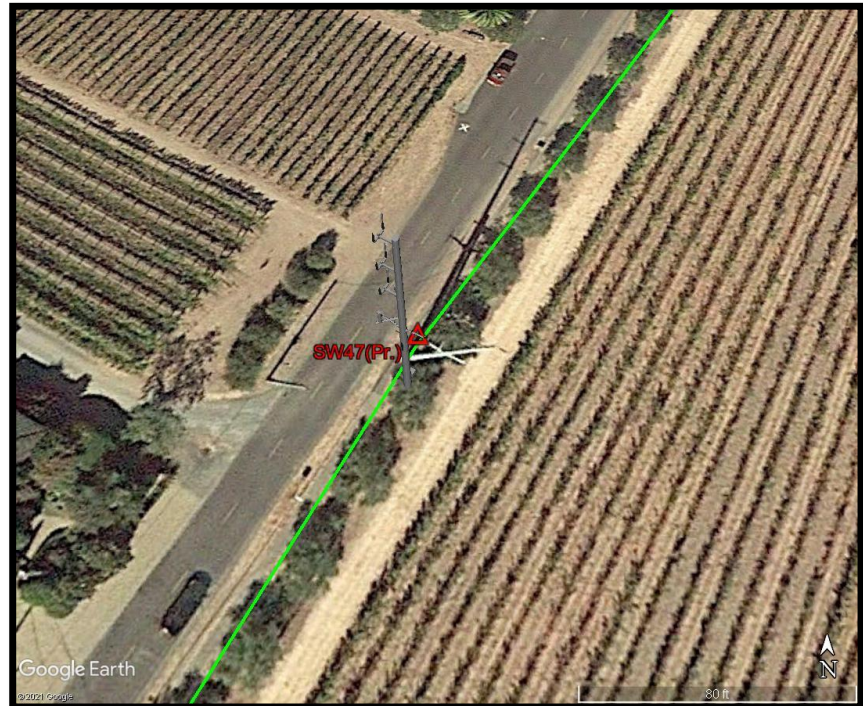
PG&E owns the property at this location.



Location 3 – Switch 57



Location: Across the street from 2016 Madrona Ave.



PG&E is within the public right of way and has rights for this scope of work.



Wrap Up

- Engineering designs in progress.
- Encroachment permits and Notice of Construction (NOC) will be submitted after 60% design completion and in advance of construction.
- Construction to start in Q4 and for a duration of two weeks.

MINUTES
City of St. Helena
Regular City Council Meeting
Tuesday, April 27, 2021 @ 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: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member Lester Hardy, and Council Member Eric Hall

Absent: None

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. ADOPTION OF THE AGENDA**

4.1

City Clerk Cindy Tzafopoulos reported and noted that New Business item 12.1 would be heard prior to Public Hearing item 10.1.

Council Member Lester Hardy moved to adopt the agenda with the stated changes. The motion was seconded by Council Member Eric Hall and on roll call carried by the following vote:

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member Lester Hardy, and Council Member Eric Hall

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: None

- 5. PUBLIC FORUM:**
Will Maroun, Gary Acosta, Austin Allison, Francisco Guzman, Michael Sene, Elizabeth Olcott, Sandi Thompson, Marcus Kirkwood, Dave Samson and Nancy Dervin addressed the City Council.
- 6. REPORTS BY STAFF AND CITY COUNCIL, FUTURE AGENDA ITEMS, and AB 1234 REPORTS:**

Regular City Council
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City Attorney Ethan Walsh reported that there was no reportable action taken at the City Council Closed Session special meetings held on April 23, 2021 or on April 27, 2021.

Reports were made by staff and City Council.

7. PRESENTATIONS AND PUBLIC RECOGNITIONS

- 7.1 PG&E Gas Main Project Presentation by Brian Garber, Project Manager, Mark van Gorder, Government Relations and Michele Williams, Customer Outreach, Deanna Contreras, Marketing & Communications

Brian Garber and Mark van Gorder presented the item.

- 7.2 Proclamation Declaring May as Bike Month and Friday, May 21st, 2021 as Bike to Wherever Day 2021 presented to Patrick Band Executive Director, Napa County Bicycle Coalition

Carlotta Sainato, Program Coordinator with Napa Valley Bicycle Coalition received the proclamation.

- 7.3 May is Monarch & Pollinator Conservation Month Proclamation Presented to Erin Arnsteen, Western Monarch Society of Napa County Representative

Erin Arnsteen, founder of The Western Monarch Society of Napa County received the proclamation.

8. STAFF BRIEFING

- 8.1 Monthly Water Update

This item was not heard.

- 8.2 City Manager COVID Update

City Manager Mark Prestwich provided the COVID update.

9. 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)

- 9.1 Consideration and proposed approval of Regular Meeting Minutes of:
1. Regular Meeting Minutes of March 9, 2021
 2. Special Meeting Minutes of March 15, 2021
 3. Regular Meeting Minutes of March 23, 2021
 4. Special Joint City Council and Planning Commission Meeting Minutes of

Regular City Council
April 27, 2021

March 23, 2021

- 5. Special Meeting Minutes of April 2, 2021
- 6. Regular Meeting Minutes of April 13, 2021
(Minutes are forthcoming)

- 9.2 Consideration and approval of a resolution approving a Subrecipient Agreement with Aldea Children & Family Services for a total amount not-to-exceed \$500,000 and authorizing the City Manager to execute a subrecipient agreement upon award of CDBG grant. (Subrecipient Agreement Forthcoming)

CEQA Determination: Not a CEQA project

Prepared By: Mandy Kellogg, Finance Manager

Recommendation:

Adopt a resolution approving a subrecipient agreement with Aldea Children & Family Services for a total amount not-to-exceed \$500,000 and authorizing the City Manager to execute the subrecipient agreement upon award of CDBG grant.

- 9.3 Consideration and proposed adoption of a Resolution Authorizing (1) City Manager to execute Professional Service Agreement with Operational Technical Services (OTS) for temporary Wastewater Treatment Operator with SWRCB Wastewater Treatment Grade 4 Certification or higher for an amount not-to-exceed \$100,620; (2) authorizing an increase of \$100,620 to 571-5029-2130; and (3) authorizing use of Wastewater Operations Fund balance in an amount not-to-exceed \$58,620.

CEQA Determination: Not a CEQA project

Prepared By: April Mitts, Finance Director

Recommendation:

Staff recommends City Council adopt the attached Resolution.

- 9.4 Consideration and proposed approval of a resolution ratifying the SB 95 COVID-19 Supplemental Paid Sick Leave and Temporary Policy Administrative Temporary Policy P-CC-0005.

CEQA Determination: Not a CEQA project

Prepared By: Kathy Robinson, Human Resources & IT Director

Recommendation:

Approve Resolution ratifying the SB 95 COVID-19 Supplemental Paid Sick Leave and Administrative Policy P-CC-0005 Temporary Policy.

- 9.5 Consideration and proposed approval of a resolution establishing designation of City's agents by title to obtain Federal and/or State financial assistance through the California Office of Emergency Services (Cal OES) under the California Disaster Assistance Act.

CEQA Determination: Not a CEQA project

Prepared By: Mandy Kellogg, Finance Manager

Regular City Council
April 27, 2021

Recommendation:

Staff recommends City Council approve the resolution establishing designation of City's agents by title to obtain Federal and/or State financial assistance through the California Office of Emergency Services.

- 9.6 Consideration and proposed approval of a resolution authorizing: (1) City of St. Helena's participation in the California Intergovernmental Risk Authority (CIRA) Workers' Compensation Program effective 07/01/21; (2) the City Manager to execute documents necessary or appropriate to implement the agreement on behalf of the City; and (3) the City of St. Helena to be governed and abide by the master program documents, the memoranda of coverage, and other documents and policies adopted by CIRA.

CEQA Determination: Not a CEQA project

Prepared By: Kathy Robinson, Human Resources & IT Director

Recommendation:

Staff recommends the City Council approve the attached resolution.

- 9.7 Consideration and proposed adoption of a Resolution authorizing the City Manager to execute Amendment No. 1 to STH Contract: FY 2021-046 in the amount of \$15,000 with Interwest for a total contract amount not-to-exceed \$40,000.

CEQA Determination: Not a CEQA project

Prepared By: Maya DeRosa, Planning & Building Director

Recommendation:

Staff recommends City Council adopt the attached resolution.

Item 9.8 was removed from consent.

- 9.8 Consideration and proposed approval of a resolution: (1) approving a Professional Services Agreement with O'Connor Environmental, Inc. in the amount not-to-exceed \$205,000 and authorizing the City Manager to execute the agreement; (2) authorizing a budget increase not-to-exceed \$205,000 to 561-5000-2145; and (3) authorizing the use of Water Fund balance in an amount not-to-exceed \$205,000.

- 9.9 *NEW ITEM 4-23-21

Review and Acceptance of City of St Helena Interim Operational Protocols for Stonebridge Wells (Staff report forthcoming Provided 4-26-21)

CEQA Determination: Not a CEQA project

Prepared By: Ethan Walsh, City Attorney

Recommendation:

That Council review and accept the Interim Operational Protocols for the Stonebridge Wells

Item 9.10 was removed from consent.

Regular City Council
April 27, 2021

- 9.10 ~~Consideration and proposed adoption of a Resolution authorizing the City Manager to execute a Professional Services Agreement with Interwest for Hunter Subdivision Planning Contract Staff Services for a total contract amount not-to-exceed \$150,000.~~

Council Member Anna Chouteau moved to approve Consent items 9.1 through 9.7 and item 9.9. The motion was seconded by Council Member Eric Hall and on roll call carried by the following vote:

AYES: Council Member Anna Chouteau and Council Member Eric Hall

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: None

- 9.8 Consideration and proposed approval of a resolution: (1) approving a Professional Services Agreement with O'Connor Environmental, Inc. in the amount not-to-exceed \$205,000 and authorizing the City Manager to execute the agreement; (2) authorizing a budget increase not-to-exceed \$205,000 to 561-5000-2145; and (3) authorizing the use of Water Fund balance in an amount not-to-exceed \$205,000.

CEQA Determination: Not a CEQA project

Prepared By: Ethan Walsh, City Attorney

Recommendation:

City staff recommends the Council approve the attached resolution.

No public comment was received.

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

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member Lester Hardy, and Council Member Eric Hall

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: None

- 9.10 Consideration and proposed adoption of a Resolution authorizing the City Manager to execute a Professional Services Agreement with Interwest for Hunter Subdivision Planning Contract Staff Services for a total contract amount not-to-exceed \$150,000.

CEQA Determination: Not a CEQA project

Regular City Council
April 27, 2021

Prepared By: Maya DeRosa, Planning & Building Director
Recommendation:
Staff recommends City Council adopt the attached Resolution.

Council Member Hardy pulled item 9.10 from the consent calendar as a courtesy to the public comment received earlier from John Milliken requesting to remove this item from consent.

No public comment was received.

Council Member Lester Hardy moved to approve item 9.10. The motion was seconded by Council Member Eric Hall and on roll call carried by the following vote:

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member Lester Hardy, and Council Member Eric Hall
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None

10. PUBLIC HEARINGS

Council Member Chouteau recused herself from items 10.1 and 12.1 and left the Zoom meeting without returning to the virtual meeting.

- 10.1 Consideration and approval of a Resolution adopting a penalty structure for a violation of the City's Phase II and Phase III water regulations set forth in the St. Helena Municipal Code section 13.04.220 et seq. (This Public Hearing Item was Continued from the April 13, 2021 Regular City Council Meeting to the April 27, 2021 Regular City Council Meeting)

CEQA Determination: Not a CEQA project
Prepared By: April Mitts, Finance Director
Recommendation:
Adopt the attached resolution.

Item 10.1 was heard after item 12.1.

Finance Director April Mitts reported on the item.

Mayor Ellsworth opened the public hearing.

No public comment was received.

Regular City Council
April 27, 2021

Mayor Ellsworth closed the public hearing.

Council Member Hardy requested item 10.1 be agendaized for discussion at the July 27, 2021 regular City Council meeting, Mayor Ellsworth agreed with the request.

Council Member Lester Hardy moved to approve the recommended penalty structure and agendaize this matter for discussion at the July 27, 2021 regular City Council meeting. The motion was seconded by Council Member Eric Hall and on roll call carried by the following vote:

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Lester Hardy, and Council Member Eric Hall

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: Council Member Anna Chouteau

11. OLD BUSINESS

11.1 None

12. NEW BUSINESS

12.1 Consideration adoption of an urgency ordinance amending Chapter 13.04 of the Municipal Code to address the criteria for initiating phased water regulations and the conservation measures for commercial, industrial, and institutional users. (~~Staff report forthcoming~~ Provided 4-26-21)

CEQA Determination: Not a CEQA project

Prepared By: Ethan Walsh, City Attorney

Recommendation:

Adopt Ordinance No. _____

Item 12.1 was heard after item 9.10 and prior to item 10.1.

City Attorney Walsh introduced the item and Council Member Hardy reported on the item.

Michelle Benvenuto addressed the City Council for public comment.

Council Member Hardy requested item 12.1 be agendaized for discussion at the July 27, 2021 regular City Council meeting, Vice Mayor Dohring agreed with the request.

Regular City Council
April 27, 2021

Vice Mayor Paul Dohring moved to approve the urgency Ordinance and agendaize item 12.1 for discussion at the Regular City Council meeting of July 27th. The motion was seconded by Council Member Eric Hall and on roll call carried by the following vote:

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Lester Hardy, and Council Member Eric Hall

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: Council Member Anna Chouteau

Council Member Chouteau had also recused herself from item 10.1 and did not return to the Zoom meeting.

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

13.1 Items forthcoming.

14. ADJOURNMENT

Mayor Ellsworth adjourned the meeting at 8:44 p.m.

The Regular meeting minutes of April 27, 2021 were approved at the Regular City Council meeting of May 11, 2021.

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafopoulos, City Clerk



Report to the City Council
Regular City Council - 11 May 2021

Agenda Section: CONSENT ITEMS

Subject: Quarterly Grant Report for FY 2021 Q3, for the period ending March 31, 2021

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

This report covers grant activity for the 3rd Quarter of Fiscal Year (FY) 2021.

DISCUSSION

New Awarded Grant Applications in FY 2021 3rd Quarter

The City of St Helena received one new grant award during 3rd Quarter of Fiscal Year 2021.

Agency	Project	Award
CDBG-CV1 - Childcare Scholarship Program	Provide childcare scholarships to income qualified families.	\$74,484

Applications Pending

The City currently has two grant applications pending.

Agency	Project	Amount
CDBG - Christine Apartments	Acquisition of a 4-unit rental property at 723 Hunt Avenue to preserve a low income housing site.	\$1,509,560
CDBG - Hunt's Grove Parking Lot	Expansion and improvements for Hunt's Grove parking lot.	\$200,000

CDBG - Christine Apartments - In conjunction with Our Town St. Helena (OTSH) funding will be used to acquire an existing 4-unit rental property at 723 Hunt Avenue. The acquisition of the building along with impositions of long-term rent restrictions will preserve a well-maintained, low-income housing site. The total amount of requested funding is \$1,509,560. HCD is actively working with City Staff and OTSH to complete the final documents necessary to issue the grant award letter.

CDBG - Hunts Grove Parking Lot Project - Funds will be used to expand and improve parking for Hunt's Grove Apartments to create space for an additional 12 parked cars. The total amount of requested funding is \$200,000. This project is currently on a waiting list.

Applications Not Awarded At This Time

Agency	Project	Amount	Response
CalOES - Community Power Resiliency	Redundant power for critical City facilities.	\$300,000	Not awarded.

Active Grants

These are grant awards with signed agreements. This chart identifies the grant award, required match, and percent expended. Staff is currently managing \$8.08 million in active grant funds.

Grant	Project	Award Amount	Additional Project Funding	% Grant Funds Expended	Notes
CENIC on behalf of Califia	Connection to CalRen Hub at St. Helena Public Library	Based on discounts applied	\$ -	0.0%	The CENIC connection was completed in March 2019.
Department of Water Resources (DWR)	Comprehensive Flood Control Project	\$2,371,333	\$20,000,000	100.0%	Holding \$237,000 in retention until Conservation Easement is completed.
Environmental Protection Agency (EPA)	Upper York Creek Ecosystem Restoration	\$987,876	\$987,876	100.0%	Project completed in November 2020. Final Draw was received December 2020. Completing closeout paperwork.

CalTrans/Federal - OBAG2	Main Street Pedestrian Improvements	\$1,206,000	\$351,000	0.0%	Planning and design continues on this project on schedule.
SF Bay Area Integrated Regional Water Management (IRWM)	Upper York Creek Ecosystem Restoration	\$800,000	\$1,174,119	100.0%	Project was completed in November 2020. Final Draw was received February 2021. Completing closeout paperwork.
Friends & Foundation	Enhancements for Library (PT Staff, Spanish/Youth/Adult Programs, Materials, Elsie the Cat, Supplies)	\$135,000	\$ -	66.8%	The third grant disbursement of \$32,700 was received December 2020.
Bulletproof Vest Partnership	Purchase of one bulletproof vest	\$2,956	\$1,356	0.0%	
CalTrans/Federal - HSIP	Replacement of 1,175 lineal feet of guardrail on Silverado Trail that is located in the City limits of St. Helena	\$556,100	\$ -	0.9%	Design began in summer 2020 and construction is anticipated to begin 2021.
Department of Justice	Prop 56 - Hire law enforcement officer to manage programs educating and enforcing issues of underage tobacco use.	\$393,514	\$ -	35.8%	4th Quarter Claim was received in November 2020.
Housing and Community Development (HCD) - SB2 Planning Grant	Updates to current zoning code in order to implement housing policies and directives identified in the General Plan and in the 2015 Housing Element.	\$160,000	\$159,990	59.9%	Grant Draw #1 was requested and received in November 2020.
CalOES - HMPG	Purchase of generators and upgrading electrical panels to provide emergency backup power to City facilities.	\$485,392	\$161,797	16.5%	Generators have been ordered and are anticipated to arrive by May 2021. An extension to the grant deadline was approved to

					November 2021.
CalOES - PSPS Resiliency Allocation	Replace two generators at the treatment plants and purchase a roving generator.	\$300,000	\$ -	0.0%	Generators have been ordered and are anticipated to arrive by May 2021.
HCD - Local Early Action Planning (LEAP) Grant	Housing Element update to facilitate compliance with the 6th Regional Housing Needs Allocation (RHNA) cycle.	\$65,000	\$ -	0.0%	Standard Agreement was issued to the City in December 2020.
Upper Valley Waste Management	Money Way Waste/Recycling Consolidation Project	\$120,000	\$ -	0.0%	Project is anticipated to start in 2021.
HCD - HOME Investment Partnership Program: Program	Funding to continue the Owner-Occupied Rehabilitation Program.	\$500,000	\$ -	0.0%	It is anticipated that the Standard Agreement will be issued by 07/2021.

Closed Out Grants

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

Flood Projects

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

Non-Profit Grant Funding

The 2020/21 grant application period was opened at the beginning of December 2019 and closed on February 14, 2020. The City received a total of 27 applications and a total of 11 applications were funded. The charts below identify the grant type, grantee, project description, and award amount.

Grant Type	Grantee	Project Description	Award Amount
Community Enrichment	Friends of the Cameo	Drive-In Cinema	\$10,000
Programmatic	Boys & Girls Club	Teen Center	\$30,000
Programmatic	Collabria Care	UpValley Village Fee Waiver Program	\$6,000
Programmatic	Mentis	Mentis Teens Connect Teen Mental Health	\$20,000
Programmatic	Napa County Bicycle Coalition	Saint Helena Safe Streets	\$14,000
Programmatic	Napa Valley Community Organizations	Back to School Community Preparedness Event	\$4,900
Programmatic	Ole Health	OLE Health St. Helena Health Center	\$1,988
Programmatic	Our Town St. Helena	Preserve and Build Program	\$20,000
Programmatic	Rianda House Senior Activity Center	Senior Activity Center	\$30,000
Programmatic	St. Helena Farmers Market	Market Match Program	\$5,100
Programmatic	UpValley Family Center	Community Connections and Immigration Assistance	\$30,000
		Totals	\$171,988

The FY 2021/22 grant application period closed on March 15, 2021 at 5:00 PM. The City received 26 applications with a total of \$421,828 in funding requests. The City Council working group is currently reviewing the applications and it is anticipated the recommendations for the FY 2021/22 funding cycle will be presented at the May 27th council meeting.

FISCAL IMPACT

There is no fiscal impact associated with this report.

RECOMMENDED ACTION

Receive and file report.



Report to the City Council
Regular City Council - 11 May 2021

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed adoption of a Resolution authorizing: (1) the City Manager to execute Amendment No. 2 to STH Contract: FY2021-022 in the amount of \$27,444 with BKF for designing Capital Improvement Project R20-02 Mills Lane Storm Drain for a total contract amount not-to-exceed \$309,940; (2) a budget increase of \$27,444 to CIP Project R20-02; and (3) use of Fund 742 Storm Drain Impact Fees of the same.

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

Prepared By: Edrees Argand, Assistant Engineer

Reviewed By: John Wanger, Interim City Engineer

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The City identified the need for a storm drain on Mills Lane from Highway 29 to the Napa River in the early 1970's. In 1974, the City designed 600' of the storm drain from the east end of Mills Lane to an outfall at the Napa River; however, nothing further was done. This storm drain was also considered in the City's 2000 Master Plan of Drainage, identified in the City's Storm Drain Impact Fees, and included in the 2005 Highway 29 Specific Plan and its Environmental Impact Report (EIR) prepared in 2003 (SCH #2001082017). While the storm drain was considered in the above documents, the project was never implemented.

The storm drain will be constructed along Mills Lane, which is a City street for most of its length, from its intersection with State Highway 29 east to the Napa River. The proposed storm drain would be 36 inches in diameter and gradually increase to 60 inches at the river. The total length of the pipe would be approximately 4,900 feet. A 60-inch outfall would be constructed in the west bank of the Napa River.

After receiving proposals and reviewing them for the most qualified firm, on September 8, 2020, via Resolution 2020-92, City Council authorized the City Manager to execute a Professional Service Agreement with BKF for design of the R20-02 project.

Part of BKF's scope of work is to assemble the necessary supportive data and studies to complete CEQA compliance for the project. Recently, the City was informed by BKF and their environmental subconsultant WRA that additional work was needed to investigate potential archeological material in the alignment of the proposed pipeline. The additional work is necessary to adequately address mitigation measures needed if archeological sites are found to be sensitive.

DISCUSSION

BKF, on behalf of our environmental sub-consultant WRA, is requesting an increase in the budget associated with Task 2: Environmental Services. A potentially sensitive archeological site was identified within the project area as a result of the archaeological field survey. Given the field survey findings and the proximity of the proposed project to the potentially sensitive archeological site, subsurface cultural resource identification efforts are recommended to avoid any impacts to potential historical resources, as defined by CEQA regulations. This Amendment will allow subsurface cultural resource identification to be conducted.

The proposed additional work consists of excavating approximately 30 trenches along the proposed pipeline. Each trench will be approximately 5 feet in length and 8 feet in depth. Select samples of sediments will be dry-screened and inventoried. If cultural resources are encountered, a site record will be completed. If cultural resources are located during the survey, boundaries will be delineated and the location of the resources will be mapped. A tribal monitor will be present to observe all ground disturbing activities. The fee for tribal monitoring has been included in this Amendment.

Findings from this survey will be used as part of the CEQA environmental review process to determine if the project may significantly impact cultural resources. The results of this survey are necessary to justify findings under CEQA.

FISCAL IMPACT

The Mills Lane Storm Drain, Project No. R20-02 is included in the adopted five-year Capital Improvement Plan (CIP). Attachment 5 is a summary of the estimated budget for Design and Environmental/Planning which includes the recommended budget increase.

R20-02 had an initial design and environmental/planning budget of \$200,000. The budget was increased on September 8, 2020, via Resolution No 2020-92, to \$257,357 to be funded with Storm Drain Impact Fees, Fund 742. The budget was increased on February 23, 2021 via Resolution No 2021-21, to \$282,496 to be funded with Storm Drain Impact

Fees, Fund 742. Amendment No. 2 is for an additional \$27,444 for a total design contract for a not-to-exceed amount of \$309,940.

The current balance of Fund 742 is \$791,493 with \$282,496 currently designed for CIP R20-02 leaving an available fund balance of \$508,997. Staff is recommending utilizing Storm Drain Impact Fees to fund the increase to CIP Project R20-02 in the amount of \$27,444 for a total not-to-exceed amount of \$309,940.

RECOMMENDED ACTION

Staff recommends City Council adopt a Resolution authorizing: (1) the City Manager to execute Amendment No. 2 to STH Contract: FY2021-022 in the amount of \$27,444 with BKF for designing Capital Improvement Project R20-02 Mills Lane Storm Drain for a total contract amount not-to-exceed \$309,940; (2) a budget increase of \$27,444 to CIP Project R20-02; and (3) use of Fund 742 Storm Drain Impact Fees of the same.

ATTACHMENTS

[Attachment 1: Resolution](#)

[Attachment 2: Amendment No. 2 BKF STH Contract FY2021-022](#)

[Attachment 3: STH Contract FY2021-022 CIP R20-02 Mills Lane Storm Drain Improvements](#)

[Attachment 4: STH Contract FY2021-022-01A Amendment No. 1 BKF R20-02 Mills Lane Storm Drain](#)

[Attachment 5: R20-02 Mills Lane Storm Drain Updated 051121](#)

CITY OF ST. HELENA

RESOLUTION No. 2021 -

Authorizing the City Manager to execute Amendment No. 2 to STH Contract: FY2021-022 in the amount of \$27,444, to the Professional Service Agreement with BKF for designing Capital Improvement Project R20-02 Mills Lane Storm Drain Project for an amount not to exceed \$309,940 and authorizing a budget increase of \$27,444 to CIP Project R20-02 with available funding transferred from Fund 742 Storm Drain Impact Fees

RECITALS

- A. On September 8, 2020, City Council authorized the City Manager to execute a Professional Service Agreement with BKF for design of the R20-02 project for an amount not to exceed \$257,357;
- B. On February 23, 2021, City Council authorized the City Manager to execute Amendment No. 1 to STH Contract: FY2021-022 in the amount of \$25,139 with BKF for designing Capital Improvement Project R20-02 Mills Lane Storm Drain for a total contract amount not-to-exceed \$282,496; a budget increase of \$25,139 to CIP Project R20-02; and use of Fund 742 Storm Drain Impact Fees of the same.
- C. The Agreement's current Scope of Services does not include the funds or the additional work for additional professional services associated with environmental permitting and review process;
- D. Amendment No.2 is for an additional \$27,444 for a total design contract for a not-to-exceed amount of \$309,940;
- E. The Mills Lane Storm Drain, CIP Project No. R20-02 is included in the May 2019 adopted five-year Capital Improvement Plan (CIP) which is being funded by Traffic Mitigation Impact Fees;
- F. There is adequate funds in Fund 742 Storm Drain Impact Fees to fund the additional work for additional professional services associated with environmental permitting and review process in the amount of \$27,444.

RESOLUTION

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

1. Authorizes the City Manager to execute Amendment No. 2 to STH Contract: FY2021-022 in the amount of \$27,444, to the Professional Service Agreement

with BKF for designing Capital Improvement Project R20-02 Mills Lane Storm Drain for an amount not to exceed \$309,940.

2. Authorize a budget increase of \$27,444 to CIP Project R20-02 with available funding transferred from Fund 742 Storm Drain Impact Fees.

Approved at a Regular Meeting of the St. Helena City Council on May 11, 2021, by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Hardy:	_____
Councilmember Chouteau:	_____
Councilmember Hall:	_____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT WITH BKF; STH CONTRACT NO: 2021-022
FOR DESIGN SERVICES, CAPITAL IMPROVEMENT PROJECT: R20-02 MILLS LANE
STORM DRAIN FOR AN ADDITIONAL \$27,444 FOR A TOTAL CONTRACT AMOUNT NOT-
TO-EXCEED \$309,940.

This Second Amendment to Professional Services Agreement STH Contract: 2021-022 dated September 9, 2020 ("Agreement") is made as of this ____ day of _____, 2021 by and between the City of St. Helena, a municipal corporation ("City"), and BKF. ("Consultant").

RECITALS

- A. On September 9, 2020, the City and Consultant entered into the Agreement for Consultant to provide professional design services for the R20-02 Mills Lane Storm Drain Project; and
- B. On February 23, 2021, a First Contract Amendment was approved to amend the Agreement for Consultant to provide professional design services associated with environmental permitting and right of way acquisition; and
- C. City and Consultant now desire to amend the Agreement with Consultant for the purpose of additional professional services associated with environmental services.

AGREEMENT

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

- 1. Section 1. Basic Services
Parties agrees to amend Section 1, "Basic Services" of the Agreement to provide additional services, as outlined in Exhibit A, "Scope of Work" Attached hereto.
- 2. Section 4. Compensation, is amended to read as follows:
"Total compensation shall not exceed \$309,940..."

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

Entered as of the day and year first above stated.

CONSULTANT:

CITY OF ST. HELENA
a Municipal Corporation

Signatures of Authorized Persons:

By: _____

By: _____

Print Name: Mark T. Prestwich

Print Name: Jason Kirchmann

Title: City Manager

Title: Vice President

APPROVED AS TO FORM:

Ethan Walsh, City Attorney

ATTEST:

City Clerk

Attachments:

Exhibit A-1, "Scope of Services"
Exhibit B-1, "Compensation"

Second Amendment to Professional Services Agreement
Consultant: BKF

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EXHIBIT A-1 – SCOPE OF SERVICES**“Scope of Work”**

BKF have prepared the following fee and scope for the request to amend the original contract for additional professional services associated with environmental services.

Design Services –**Task 2: Environmental Services**

BKF, on behalf of our environmental sub-consultant WRA, is requesting an increase in the budget associated with Task 2: Environmental Services. A prehistoric lithic scatter was identified within the project area as a result of the archaeological field survey. Given the positive survey findings and the proximity of the proposed project to several archeological sites, in addition to the high probability of the project to encounter buried soils that may harbor archaeological resources, surface cultural resource identification efforts are recommended to avoid any harmful effects to potential historical resources, as defined by CEQA regulations. Through this Amendment, subsurface cultural resource identifications and evaluation will be conducted.

A backhoe will be used to excavate a series of trenches along the proposed pipeline route at 50-meter intervals, for a total of 30 trenches. Trenches will be approximately 5 feet in length and 8 feet in depth. Select samples of sediments will be dry-screened and inventoried. If cultural resources are encountered, a site record will be completed using standard California Department of Parks and Recreation (DPR 523) Archaeological Site forms. As/if cultural resources are located during the survey, boundaries will be delineated and the location of the resources will be mapped. A tribal monitor will be present to observe all ground disturbing activities, the fee for which has been included in this Amendment.

Findings from this survey will be used as part of the CEQA environmental review process to determine if the project may significantly impact cultural resources. The results of this survey are necessary to justify findings under CEQA.

Deliverables associated with this additional service include the following:

- Subsurface Cultural Resource Identification Efforts
- Cultural Resource Evaluation

Field work and the associated evolution report are expected to be completed within approximately 45 calendar days of receiving authorization for this additional service.

EXHIBIT B-1 – COMPENSATION

BKF requests the following increases in total contract amount in order to provide the services described above. Budget assumes that one prehistoric cultural resource will be present that will

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Second Amendment to Professional Services Agreement
Consultant: BKF

require evaluation. Evaluation of additional cultural resources will constitute an additional service.

The estimated fee for Amendment No. 2 work is \$27,444.

Original Contract	\$257,357
Amendment #1	\$25,139
Amendment #2	<u>\$27,444</u>
Total	\$309,940



BKF ENGINEERS
PROFESSIONAL SERVICES RATE SCHEDULE

JANUARY 1, 2021 – DECEMBER 31, 2021

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
PROJECT MANAGEMENT	
Principal/Vice President	\$251.00
Senior Associate/Vice President	\$225.00
Associate	\$219.00
Senior Project Manager Senior Technical Manager	\$218.00
Project Manager Technical Manager	\$213.00
Engineering Manager Surveying Manager Planning Manager	\$197.00
TECHNICAL STAFF	
Senior Project Engineer Senior Project Surveyor Senior Project Planner	\$183.00
Project Engineer Project Surveyor Project Planner	\$160.00
Design Engineer Staff Surveyor Staff Planner	\$140.00
BIM Specialist I, II, III	\$140.00 - \$160.00 - \$183.00
Technician I, II, III, IV	\$133.00 - \$142.00 - \$155.00 - \$167.00
Drafter I, II, III, IV	\$104.00 - \$114.00 - \$123.00 - \$138.00
FIELD SURVEYING	
Survey Party Chief	\$182.00
Instrumentman	\$157.00
Survey Chainman	\$117.00
Utility Locator I, II, III, IV	\$95.00 - \$135.00 - \$161.00 - \$184.00
Apprentice I, II, III, IV	\$72.00 - \$97.00 - \$107.00 - \$113.00
CONSTRUCTION ADMINISTRATION	
Senior Consultant	\$239.00
Senior Construction Administrator	\$207.00
Resident Engineer	\$154.00
Field Engineer I, II, III	\$140.00 - \$160.00 - \$183.00
ASSISTANTS	
Project Assistant	\$88.00
Engineering Assistant Surveying Assistant Planning Assistant	\$86.00
Clerical Administrative Assistant	\$74.00

Expert witness rates are available upon request.

Subject to the terms of a professional services agreement:

- Charges for outside services, equipment, materials, and facilities not furnished directly by BKF Engineers will be billed as reimbursable expenses at cost plus 10%. Such charges may include, but shall not be limited to: printing and reproduction services; shipping, delivery, and courier charges; subconsultant fees and expenses; agency fees; insurance; transportation on public carriers; meals and lodging; and consumable materials.
- Allowable mileage will be charged at the prevailing IRS rate per mile.
- Monthly invoices are due within 30 days from invoice date. Interest will be charged at 1.5% per month on past due accounts.

STH CONTRACT FY2021 -022

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on September 9, 2020 by and between the City of St. Helena, located in the County of Napa, State of California (City), and BFK (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Capital Improvement Plan Project No. R20-02 Mills Lane Storm Drain Improvements, for engineering, environmental and permitting services.

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

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

SECTION 1 – BASIC SERVICES

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

SECTION 2 – ADDITIONAL SERVICES

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

SECTION 3 – TIME FOR COMPLETION

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

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in Exhibit B, “Compensation” attached hereto and made a part hereof. Total compensation shall not exceed \$257,357 (Two Hundred Fifty-seven Thousand Three Hundred Fifty-seven Dollars and Zero Cents) unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following

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BKF – R20-02 Mills Lane Storm Drain Improvements

categories if applicable: labor (by sub-category), travel, materials, equipment, supplies, subconsultant contracts, and miscellaneous expenses. Each original invoice furnished shall include the expenses incurred during the preceding month, the cumulative Agreement amount, and the amount remaining on the Agreement. City shall independently review each invoice submitted to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. If no charges or expenses are disputed, the invoice shall be approved, and City will use its best efforts to cause Consultant to be paid within 30 days of receipt of invoice. If the City disputes any charges or expenses, the City will return the original invoice to Consultant for correction and resubmission. If the City reasonably determines, in its sole judgment, that the invoiced charges and expenses exceed the value of the Services performed to date and that it is probable that the Agreement will not be completed satisfactorily within the contract price, City may retain all or a portion of the invoiced charges and expenses. Within thirty (30) days of satisfactory completion of the project, City shall pay the retained amount, if any, to Consultant.

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

SECTION 5 – STANDARD OF PERFORMANCE

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

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

SECTION 6 – INSPECTION AND FINAL ACCEPTANCE

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within sixty (60) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject work by a timely written explanation, otherwise Consultant's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects and fraud. Acceptance of any of Consultant's work by

City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections pertaining to indemnification and insurance.

SECTION 7 – INSURANCE REQUIRED

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

- A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
 - 1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
 - 2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
 - 3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:
 - 1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - 2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
 - 3. Employer's Liability: \$2,000,000 per accident for bodily injury or disease.

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

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

- E. Primary Coverage. For any claims related to this contract the Consultants insurance

coverage shall be primary insurance as respects to City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Consultants insurance and shall not contribute with it.

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

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

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

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

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

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

SECTION 8 – INDEMNIFICATION

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

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

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

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

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

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

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

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

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

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

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

A. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of Services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts with the interests of City in the performance of this Agreement.

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

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

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report to City any information or incident(s) about possible fraudulent or corrupt activities Consultant may discover, and will cooperate in any fraud or corruption investigation conducted, with respect to Consultant's service provided pursuant to this Agreement.

SECTION 11 – OWNERSHIP OF DOCUMENTS

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

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

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

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

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

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

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

SECTION 13 – SUSPENSION OF WORK

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

SECTION 14 – COMPLIANCE WITH LAW

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

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

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BKF – R20-02 Mills Lane Storm Drain Improvements

SECTION 16 – AUDIT AND INSPECTION OF RECORDS

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

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

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

SECTION 17 – LIMITATION OF LIABILITY

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

B. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed hereunder.

SECTION 18 – COOPERATION BY CITY

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

SECTION 19 – NOTICES

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

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

To Consultant: BFK
200 4th Street, Suite 300
Santa Rosa, CA 95401

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

SECTION 20 – TERMINATION

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

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

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

SECTION 21 – ATTORNEYS' FEES

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

SECTION 22 – ENTIRE AGREEMENT

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

shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 23 – SUCCESSORS AND ASSIGNS

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

SECTION 24 – CONTINUITY OF PERSONNEL

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

SECTION 25 – DEFAULT

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

SECTION 26 – WAIVER

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

SECTION 27 – LAW TO GOVERN; VENUE

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

SECTION 28 – SEVERABILITY

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

SECTION 29 – THIRD PARTY BENEFICIARIES

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

SECTION 30 – STATUTES OF LIMITATION

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

SECTION 31 – SPECIAL PROVISIONS

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

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

Consultant:

By: Digitally signed by Jason Kirchmann
 Name: Jason Kirchmann
 Title: Vice President

City:

Mark T.
 By: Prestwich
 Name: Mark T. Prestwich

Digitally signed by Mark T.
 Prestwich
 Date: 2020.09.16 15:07:13
 -07'00'

Title: City Manager

Approved as to Form:

By: Kara K. Ueda
 Name: Kara K. Ueda
 Title: City Attorney

Exhibit A

Scope of Services

DETAILED WORK PLAN

Based on the project understanding and our proposed project approach described above, BKF and the project team will execute the following work plan and scope of work for successful bid and construction of the project.

I. PROJECT MANAGEMENT AND COORDINATION

BKF will manage the design team, as well as track progress, schedule, and budget. We will be responsible for documenting all design decisions and keeping an official record of the project. Furthermore, we will submit monthly progress reports identifying tasks completed, budget status, and issues status. A senior member of our team will perform an independent quality control review of the team's documents prior to each submittal. The review will evaluate constructability, cost, and discrepancies between the disciplines. We believe that at appropriate phases of the project, meetings are essential to convey ideas and resolve issues.

Kickoff Meeting: BKF will conduct a kickoff meeting with St. Helena City staff to define communication protocols and reaffirm project scope goals, schedule or budgets.

Regular Progress Meetings: BKF will conduct regularly scheduled meetings to update City staff on the project progress, identify open action items, confirm closed action items and provide updates to the project schedule.

Meeting Deliverables: BKF will provide agendas and minutes for each meeting conducted.

II. ENVIRONMENTAL SERVICES

BKF, in conjunction with our environmental consultant WRA, will provide services related to environmental review as required by applicable federal, state and local environmental laws. Based on the information contained in the City's RFP and our initial research, it is anticipated that an Initial Study and Mitigated Negative Declaration (MND) will be the appropriate approach to navigate the project through the CEQA process. CEQA and environmental inherently do have quite a bit of variability, and alternates clearance documents may be appropriate for environmental clearances. Based on our experience locally and with the applicable agencies, we believe an Initial Study/MND is the appropriate approach. The project may qualify as a Categorical Exemption which would generate significant time and soft cost savings to the City. We currently are offering our services based on the approach of an IS/MND since we believe that is the most likely path to CEQA compliance. Should the City wish to investigate a Categorical Exemption approach, we would welcome the opportunity to discuss this in more detail and we can provide a separate scope and fee.

Baseline Consultants will provide evaluations for air quality, GHG emissions, and noise, and ALTA will provide cultural resources services to satisfy CEQA. Services provided by Baseline and Alta will be managed through our subconsultant, WRA.

TASK 1: PROJECT INITIATION

To kick-off the environmental review process, the team will collect all relevant reports and drawings (or identify relevant documents for copying); resolve issues regarding overall assumptions; identify key City contacts; and discuss overall communication protocols as it relates

to the environmental review process. WRA will prepare a draft Project Description for the Initial Study/MND and permit applications which will include discussions of the following: 1) project area regional and local location; 2) project objectives and goals; 3) project characteristics; and 4) a list of required approvals and regulatory permits.

TASK 2: PREPARE CEQA ADMINISTRATIVE DRAFT INITIAL STUDY

WRA will prepare an Administrative Draft Initial Study that will include a completed environmental checklist form, including project description; an evaluation of impacts following the outline established in the checklist, including analysis of each environmental issue; and mitigation measures. WRA will tier from existing documents to the extent feasible, including the City's General Plan EIR and Highway 29 Specific Plan EIR. WRA has also retained Alta Archaeological Consulting (ALTA) to assist with Cultural Resources analysis and Baseline Environmental Consulting (Baseline) to assist with Air Quality, Greenhouse Gas Emissions, and Noise analyses for the Initial Study. Technical reports to be prepared by the BKF project team (e.g., geotechnical and hydrology) will also be used in the preparation of the Administrative Draft Initial Study/MND.

Task 2a: Cultural Resources

Background Research and Literature Review

ALTA will perform a records search at the California Historical Resources Information System, Northwest Information Center (NWIC) located on the campus of Sonoma State University. The Information Center is the primary repository for cultural resources information that covers an 18-county area including Napa County. The purpose of archival research is to identify any previously conducted archaeological surveys or known archaeological sites located on the subject properties and within a one-half mile radius of the project area(s). In addition, ethnographic and historic literature will be reviewed to create background contextual information relevant to the project area.

In addition to reviewing historic documents, maps, and photographs ALTA will also complete a desktop geoarchaeological review of the project area. Soil maps, geotechnical studies, and historic survey maps will be reviewed and georeferenced to help postulate the locations most likely to contain subsurface historic and prehistoric cultural resources without damaging or disrupting the current infrastructure.

Native American Outreach

All tribal consultation is a government to government action, and ALTA will assist in communication as needed. For these projects, communication assistance will be held to local, state, and federal Section 106 standards.

Assembly Bill 52, which went into effect in July 2015, is an amendment to CEQA Section 5097.94 of the Public Resources Code. AB52 established a consultation process with all California Native American tribes identified by the Native American Heritage Commission (NAHC) with cultural ties to an area and created a new class of resources under CEQA known as Tribal Cultural Resource.

ALTA will request the NAHC review the Sacred Lands Files for any resources that may be present within the project areas and to provide a list of local Native American tribes. ALTA (if the Lead Agency has not completed) will use certified mail to contact Native American groups or individuals identified by the NAHC to inform them of the proposed project and to solicit their input from the tribe regarding their knowledge of cultural resources that may be within the project area. The letter will state that our outreach letter does not constitute AB52 consultation, and that

the Lead Agency should be contacted directly if the tribe would like to enter into consultation under AB52.

Follow up phone calls may be made to ensure that letters were received and to discuss any potential concerns with the project. Comments and information provided by the Native American community and government agencies will be provided in the draft and final reports.

ALTA assumes that one, in-person meeting with Native Americans may be necessary for each project.

Field Survey

ALTA staff will conduct an on-site field reconnaissance of the project area. The project area(s) will be intensively examined for cultural resources. A complete inventory entails systematic pedestrian examination of the ground surface. In accordance with established standards, field reconnaissance will be conducted using transects spaced no more than 10 meters apart. The survey will include periodic shovel tests pits to expose soil in areas of dense vegetation. No artifacts will be collected as part of this reconnaissance. Transect interval spacing will be reduced in areas depending upon the sensitivity of the parcel. Areas of low sensitivity will be given cursory survey coverage. The field crew will maintain daily field notes and the findings will be made available immediately following the field investigation.

All resources identified within the project area will be recorded using the standard State of California Department

of Parks and Recreation Archaeological Site Forms. A cultural resource shall have a minimum age of 45 years. As cultural resources are located during survey, approximate boundaries will be delineated and the location of the resource plotted on topographic maps. Global Positioning System (GPS) mapping of each site location

will be undertaken. Site recordation will include site and feature mapping, completing of site record forms, and photography. All photographs will be done in a digital format. An evaluation of the impact agents and structural condition will be noted for each resource in the project area. As appropriate, a limited narrative will be provided to further describe the nature, extent, and location of resources.

Archaeological Survey Report

ALTA will prepare an Archaeological Survey Report (ASR) in accordance with the standard guidelines in Archaeological Resource Management Reports (1990). The ASR will include a summary of the identification efforts undertaken in the study, consultation with agencies and local governments, provide a summary of archaeological methods and findings, and make preliminary recommendations for appropriate treatment and/or evaluation of resources. The archaeological survey report will be sufficient to satisfy requirements defined in the CEQA.

Task 2b: Air Quality

The Bay Area Air Quality Management District's (BAAQMD's) CEQA Air Quality Guidelines will be used to assess the air quality impacts of the project. Because the project would not result in a permanent change in operational emissions of criteria pollutants upon completion of construction, Baseline will provide a qualitative analysis on the project's operational emissions of criteria pollutants.

Based on the preliminary review of the proposed project, the primary air quality concern will likely be related to construction emissions of criteria pollutants and the exposure of existing sensitive receptors to toxic air contaminants (TACs) emissions from project construction. Baseline will perform an air quality health risk assessment (HRA) in accordance with the BAAQMD's CEQA Air Quality Guidelines. The project-generated TACs emissions will include DPM emissions from

construction equipment. Because the project would involve linear construction, Baseline assumes that a comprehensive and conservative list of construction equipment, schedule, work locations, usage, and hauling trip information would be provided by the project team. Baseline will use the most current California Emissions Estimator Model (CalEEMod) to estimate emissions of criteria air pollutants and TACs from off-road construction equipment and on-road vehicles. Health risks associated with DPM emissions during project construction will be assessed based on the results of air dispersion modeling for the nearby sensitive receptors most affected by project construction.

Baseline will also provide a cumulative HRA to include the existing and foreseeable future sources of TACs within 1,000 feet of the existing sensitive receptors, such as highways, major roadways, and stationary sources, in accordance with the BAAQMD's CEQA Guidelines. It is assumed that the City will provide a list of the foreseeable future projects near the project site. The health risks from the cumulative sources of TACs in the project vicinity will be evaluated using the BAAQMD's online air quality analysis tools.

Baseline will include a discussion of the pertinent laws and regulations in the analysis of the project's potential air quality impacts. Baseline will evaluate the project's impacts related to criteria pollutant and TAC emissions, and develop mitigation measures, as needed, to reduce any identified impacts to a less-than-significant level, if feasible.

Task 2c: Greenhouse Gas (GHG) Emissions

Because the project would only result in GHG emissions during construction and the BAAQMD CEQA Guidelines does not recommend a threshold of significance for construction GHG emissions, Baseline will evaluate GHG emissions from project construction qualitatively. Baseline will also evaluate the project's consistency with the Napa County Climate Action Plan (if approved at the time of environmental analysis) and other relevant plans. Napa County and City of St. Helena's measures related to GHG emissions and other pertinent laws, regulations, and policies will be described. Baseline will develop mitigation measures, as needed, to reduce any identified impacts to a less-than-significant level, if feasible.

Task 2d: Noise

The primary noise and vibration issues would be the potential impact upon sensitive receptors related to the construction of the project. This scope assumes that noise measurements will not be needed. The existing noise levels in the project area will be discussed based on the existing information in the St. Helena General Plan Update 2040. Sensitive receptors located in proximity to the project site will be identified based on the desktop review of Google Earth mapping. Noise and vibration impacts associated with proposed construction activities will be evaluated by comparing calculated construction-period noise levels at nearby receptors to applicable thresholds. Baseline will develop mitigation measures, as needed, to reduce any identified impacts to a less-than-significant level, if feasible.

Task 2e: Biological Resources Technical Report

A site visit will be conducted by WRA biologists (one botanist/arborist and one wildlife biologist) to review sensitive habitats and assess conditions for potential presence of special-status plant and wildlife species protected under federal, state, and/or local laws and ordinances. Prior to the site visit, WRA will conduct a background review of relevant information in literature and databases to ascertain if any sensitive biological resources have the potential to be present on-site based on previous occurrences reported in the area.

Background resources that will be reviewed include the Soil Survey of Napa County, and species and habitat specific reviews of databases such as the California Natural Diversity Database

(CNDDDB) and others. During the site visit, WRA staff will observe and note the condition of sensitive habitat areas, such as riparian vegetation, wildlife corridors, and stream habitat that may be special-status species dependent. Similar observations upstream and downstream of the project site will also be made. Special-status species and/or sensitive natural communities that are observed will be recorded and mapped with a full description of location and qualities documented; however, this assessment is not considered a protocol-level survey for plant or wildlife species.

Following the field visit, WRA will prepare a Biological Resource Technical Report (BRT) that provides information on the known or potential use of the site by any special-status species. Potential use will be ranked as low, moderate, or high depending upon the suitability of the habitat or proximity of any known records uncovered in the database search. If any sensitive species are observed, they will be reported in the findings. Any wetlands, streams, or riparian areas observed will be discussed in the report and depicted on an accompanying map. The BRT will include an analysis of potential impacts and provide minimization, mitigation, and avoidance measures to reduce impacts to less-than-significant levels. A final report will be completed that incorporates comments received from the City, and this report can be used for the CEQA review process as well as regulatory agency permit application processing. WRA assumes the BRT will undergo one revision cycle following review by the City.

Task 2f: Aquatic Resources Delineation Map and Data Forms

WRA will perform a wetland delineation to determine and map any areas within the project area that are under the jurisdiction of the U.S. Army Corps of Engineers (Corps) under the Clean Water Act (waters of the United States) or the Regional Water Quality Control Board (RWQCB) under the Porter Cologne Act (waters of the state) and/or California Department of Fish and Wildlife under the Fish and Game Code (stream alteration). During the site visit conducted as part of the Biological Resources Technical Report, soil, plant, and hydrologic indicators will be documented to determine the occurrence and extent of wetland or other jurisdictional areas. WRA will inspect the site for areas showing evidence of an “ordinary high water mark” (i.e., Napa River). WRA will also inspect the site for conditions that may lead to a disclaimer of no jurisdiction by the Corps such as the presence ditches dug on uplands, construction-related wetlands, and/or isolated wetlands, as defined by the Corps.

Following the site visit, WRA staff will review the data collected to determine areas which meet the criteria for jurisdictional features required in the Corps manual. Data forms and a delineation map will be prepared in accordance with the format required by the San Francisco District and will include areas required to be identified based on Corps wetland delineation manuals and applicable regulatory guidance regarding stream identification, as well as areas covered by the recent State Water Resources Control Board dredge and fill policy, which became effective on May 28, 2020.

Task 2g: Arborist Survey and Report

Based on initial review of available aerial photography, there appear to be trees at the location of the storm drain outfall work along the banks of the Napa River. Concurrent to field work as part of the BRT report preparation, WRA’s ISA-Certified Arborist will conduct an arborist survey to inventory trees in the project area and assess potential impacts to trees associated with the project. Each tree surveyed will be given a numbered tree tag for easy identification. The location of each tree will be captured using a handheld GPS unit with sub-meter accuracy. Photographs of trees will be taken to document condition at the time of the survey. Knowing condition and location of trees is helpful to avoid impacts (during design, if possible) which may help to reduce agency permitting effort and mitigation cost.

Following the survey, the arborist will prepare a written report describing the methods of the tree survey and including a table showing the pertinent information for all surveyed trees, as well as a

map showing the location of all surveyed trees. The arborist report will also include a tree preservation/protection plan describing the recommendations for tree removal and/or preservation based upon project plans, and construction-related tree avoidance and protection measures for trees selected for preservation. The plan will classify preservation suitability of surveyed trees based on species, size, structural stability, health, and overall condition ratings collected during the tree survey, and proximity to project improvements and will include best management practices for protecting trees selected for preservation during demolition/construction. WRA will prepare a draft report for review by the City; this scope assumes one revision cycle.

TASK 3: PREPARE DRAFT INITIAL STUDY/MND PER CITY'S COMMENTS

After providing the Administrative Draft Initial Study to the City for review, WRA will address all of the City's comments. WRA will prepare one copy of a Screencheck Draft Initial Study/MND that the City can review to confirm that all comments have been addressed.

TASK 4: PUBLICATION OF THE DRAFT INITIAL STUDY/MND

Upon approval of the Screencheck Draft Initial Study/MND, WRA will reproduce additional copies of the Draft Initial Study/MND for the City's use during the 30-day public review period. Additionally, WRA will coordinate with the City in providing web-ready documents for publication on the City's website. WRA will also produce and circulate the Notice of Intent (NOI), as well as any other CEQA noticing requirements, including the Notice of Completion (NOC) and Notice of Determination (NOD) to the Napa County Clerk and/or State Clearinghouse as required. This proposal assumes the City will assist with a mailing list for the NOI and will pay for the NOI to be posted in the local newspaper (e.g., St. Helena Star).

TASK 5: PREPARE FINAL INITIAL STUDY/MND AND RESPONSE TO COMMENTS

Following completion of the 30-day public review period, WRA will respond to agency and public comments submitted on the Draft Initial Study/MND. The extent of work necessary to complete the Final Initial Study/MND is contingent upon the number and nature of public comments received after the Draft Initial Study/MND is circulated. The Final Initial Study/MND will include the response to comments, any edits required to the Draft IS/MND, and a Mitigation Monitoring and Reporting Program (MMRP). In addition to the kick-off meeting, this scope of work includes attendance at up one public hearing. WRA will file the CEQA NOD with the County Clerk within five working days of project approval; a copy of the NOD will also be submitted to the State Clearinghouse.

TASK 6: REGULATORY PERMIT APPLICATIONS – STORM WATER OUTFALL

The project involves construction of a 60-inch diameter storm water outfall structure on the bank of Napa River within the jurisdictional area of three separate regulatory agencies: the Corps, RWQCB, and CDFW. It is anticipated that the following permit applications will need to be prepared:

- a. **U.S. Army Corps of Engineers (Section 404 Clean Water Act) Nationwide Permit Pre-Construction Notification:** Because construction of the storm drain outfall structure may involve work at and below the ordinary high water (OHW) elevation of the Napa River, this scope includes preparation of a Section 404 permit application required by the Corps. WRA expects that the project should qualify under the Corps Nationwide Permit (NWP) program for outfall structures (NWP 7) and/or minor discharges (NWP 18). The permit application package will address potential impacts to Corps jurisdiction and the necessary permit requirements, including:

- Basic notification requirements as to site location; project description; and type and amount of fill in potentially jurisdictional areas;
- Appropriate plan and cross sectional view figures that show proposed impacts to jurisdictional areas;
- Documentation of how the project has been designed to avoid and minimize impacts to wetlands and waters to the greatest extent feasible, and explanation of why proposed impacts are unavoidable;
- Information to support a determination that the project will not affect cultural resources, based on the project's cultural resources report;
- Delineation map and data sheets prepared under Task 2f; and
- Anticipated schedule for project construction.

A draft of the application will be prepared for City review and comment. Once comments are incorporated into a final permit application package, WRA will submit it to the Corps. WRA will follow the application processing by receiving and answering questions or requests for additional information (moderate amount) from the Corps. WRA will attend a delineation verification site visit with the Corps if requested to discuss the project and review potential impacts to areas within their jurisdiction. Requests for substantial work, such as focused surveys or detailed information requests, would be conducted under a separate scope of work at additional cost.

b. **Regional Water Quality Control Board Section 401 Water Quality Certification**

Application: The RWQCB must certify the use of the NWP and will process a 401 Water Quality Certification application for the project. In addition, any wetlands or waters found not to be waters of the United States will likely be waters of the state and will require a waste discharge permit and mitigation, if impacted by the project. WRA will prepare the required 401 permit application package using the standard application forms and attach information, such as site plans, maps, and biological report that is needed to support application processing. Some additional information which is not part of this scope of work and/or may need to be prepared by others, includes project storm water management plans (LID, low impact development elements), and a habitat mitigation plan. This task also includes preparation of a Watershed Analysis, which is required under the new RWQCB regulations effective May 28, 2020. Additional information that will be required includes:

- A defensible statement will need to be prepared as to why wetland impacts cannot be avoided. WRA will work with the project planner and engineers on documenting avoidance and minimization that has been incorporated into the project and demonstrating that the project is the least environmentally damaging practicable alternative.
- If the project introduces new areas of impervious surface, post-construction stormwater management plans may need to be developed by the project engineers (not included in WRA's Scope of Work) to demonstrate that the project will not affect downstream water quality or quantity. WRA staff will work with the project engineers on these issues; but additional work may be required to make this demonstration satisfactorily to the Board.
- Following issuance of the Water Quality Certification, the City will be required to prepare a California Wetland Tracker form which requires an extensive accounting of project impacts and mitigation. This task includes budget for WRA to prepare the form for the City following receipt of the Water Quality Certification.
- Documentation of CEQA compliance (NOE or NOD)
- A draft of the application will be prepared for City review and comment. Once comments

are incorporated into a final permit application package, WRA will submit it to RWQCB upon authorization from the City to do so and follow processing of the application similar to the Corps. RWQCB permit application fees will be provided by the City and are not included as part of this scope.

c CDFW Section 1600 Lake and Streambed Alteration Agreement (LSAA) Notification:

The CDFW requires any person who may affect the bed or bank of a perennial, intermittent, or ephemeral river, stream, or lake to request a Section 1602 Streambed Alteration Agreement. The Streambed Alteration Agreement notification requires completion of an application form and project environmental questionnaire, and inclusion of supplemental data regarding issues covered in the questionnaire. The CDFW Section 1602 notification package generally includes the following items: a completed notification form, detailed project description with construction details and schedule, cross-section and lateral view of grading and construction planned within the state-regulated streambed, description of temporary and permanent project impacts including type and volume of materials and structures that would be placed in the streambed, discussion of the approvals and certifications being obtained from other federal, state, and local agencies, a description of impact avoidance and minimization measures, mitigation plan, CEQA document (a final CEQA document and Notice of Determination must be submitted prior to permit issuance), and application fee. WRA will work with the City and Project Engineer to compile a list of construction equipment, methodologies, and timelines for submittal to CDFW. The complete application package will be submitted to the CDFW following City review. CDFW permit application fees will be provided by the City and are not included as part of this scope.

WRA will act as the City's agent for the application processes described above. WRA will work with the project team to assure that all information is made available for the application; however, should additional work be needed, WRA will prepare a Scope of Work and budget for that additional work.

TASK 7: MEETINGS AND COMMUNICATION WITH REGULATORY AGENCIES

This task covers meetings with the City and project team as well as negotiations with the regulatory agencies as part of the permit application process. WRA's lead regulatory permitting specialist will be available to attend up to three meetings with the City and regulatory agencies as needed. From time to time, agencies make requests for information that is beyond the bounds of normal expectations for projects of similar size and scope. If this situation arises, WRA will notify the City immediately and discuss the best path forward for the project, including whether or not additional supplemental budget may be necessary.

III. GEOTECHNICAL INVESTIGATION

BKF, through our subconsultant RGH Geotechnical Engineers will prepare a geotechnical investigation of the project site to support the design and document preparation process.

RGH will review selected published geologic data and our previous work in the vicinity of the proposed storm drain. This includes work for the Farmstead Lodging project that is along the first 600 feet or so of the northern side of Mills Lane and the St. Helena Custom Crush facility located at the corner of La Fata Street and Mills Lane. RGH's engineer or geologist will conduct a surficial reconnaissance of the alignment and mark proposed exploration locations in white paint. Underground Service Alert (USA) will then be contacted so that their members can mark their facilities in the exploration areas. As required by Napa County Environmental Management, we will obtain a drilling permit for the borings. In addition, as required by the City of St. Helena, we

will obtain a no fee Encroachment Permit. In association with the Encroachment Permit, we will prepare a Traffic Control Plan (TCP).

Once the sites have been cleared, we will explore the subsurface conditions by drilling six to eight borings using a truck-mounted drill rig. When combined with our existing subsurface information, this will place an exploration

location every 500 to 700 feet. We anticipate the borings will range from 10 to 20 feet in depth. Traffic Control will be provided for work in Mills Lane. Our engineer or geologist will log the borings and obtain bulk and relatively undisturbed samples for visual examination, classification, and laboratory testing. Selected samples representative of the material types encountered will be laboratory tested to determine certain characteristics pertinent to our analysis. These may include moisture content, dry density, shear strength, and classification (Atterberg Limits and percent of silt and clay).

Based on the geologic literature review and analysis of the field and laboratory work, we will develop the following geotechnical information:

1. A brief description of soil and groundwater conditions observed during our study;
2. A discussion of seismic hazards that may affect the proposed alignment; and
3. Specific conclusions and recommendations concerning:
 - a. Primary geotechnical engineering concerns and mitigating measures, as applicable;
 - b. Trench excavation characteristics;
 - c. Lateral forces for shoring design, as applicable;
 - d. Trench backfill requirements; and
 - e. Supplemental geotechnical engineering services.

Upon completion, we will present the results of our study in a written report including summaries of the field and laboratory work. After report submittal, RGH will provide consultation during design regarding the recommendations presented in our report. In addition, RGH will review the geotechnical aspects of the project plans and provide comments, where necessary.

- Deliverables: Signed and sealed geotechnical investigation report in PDF and hardcopy format.

IV. TOPOGRAPHICAL SURVEY & EXISTING UTILITY COORDINATION

BKF will complete field surveys along the anticipated new storm drain alignment, acquiring cross sections at 25 foot intervals along the alignment. In general, the topographic limits will include the physical roadway of Mills Lane from Highway 29 to the Napa River. The topography will include observed surface features such as edge of pavement, trees, utility structures, utility poles, vineyard rows, railroad tracks, curbs, storm drains/culverts, ditches, USA markings, walls and sufficient spot elevations to generate a digital terrain surface model and 1-foot contours. The topographic limits will extend up to 50-feet beyond the limits of the driveway.

BKF will use a combination of GPS and local benchmarks to place the vertical topographic data on the North American Vertical Datum of 1988 (NAVD88) so that it can be accurately correlated to other mapping sources, such as recent FEMA studies and published FIRM panels.

Based on our field visit of the project site, there are USA markings that indicate dry utility crossing throughout the project corridor, but indications were for no sewer or water facilities. BKF will

collect available records from the City of St. Helena, Napa County, Caltrans and the public utilities to obtain utility data to supplement the existing USA markings. If, after collection of topographical and record utility information is mapped, utility locations are undeterminable or inconclusive, BKF will utilize our in-house underground utility locating crews to detect sub-surface utilities within the planned project limits. Our locating crews will use a combination of electromagnetic detection devices and ground penetrating radar (GPR), as applicable.

BKF will conduct a boundary survey to determine right of way and boundary locations. We will inquire with the Napa County Surveyor's office for filed and in-process boundary deeds and maps such as Parcel Maps, Subdivision Maps and Record of Surveys to generate a formal boundary resolution. Should any of our boundary work trigger the provisions of Section 8762 of the Professional Land Surveyor's Act, BKF will file a Record of Survey with the Napa County Surveyor to fulfill our legal and professional obligation. During the course of our boundary survey, we will locate monuments of record for consideration during construction. These monuments will be preserved or

perpetuated if anticipated to be disturbed by construction once the final alignment is determined. Upon completion of construction activities, BKF will reset monuments destroyed by construction. Our in-house survey team will generate base maps including topographic, utility, and boundary information that will be based on existing as-builts, right of way and easement maps as provided by the City. Individual properties within the project area will be identified by tax assessor number and available public records.

BKF will work with the City to notify property owners of the planned survey activities and secure right of entry authorizations where required.

V. COMPREHENSIVE ENGINEERING SERVICES

There are two key engineering elements that will drive the design of the storm drain and associated facilities: Alignment and Hydraulics. The hydraulic design will be driven by both the starting downstream calculated water surface elevation of the Napa River during each design storm event (starting HGL) design and the hydrological characteristics of the tributary watershed.

The starting HGL will be based off recent FEMA Flood Insurance Study (FIS) documents and available hydraulic models of the Napa River watershed. The tributary upstream inlet flows will be calculated by utilizing the 2017 Napa County Road and Street standards (Manual). In general, the process for establishing tributary flows will be by determining the overall watershed, generating sub drainage basins within the overall watershed, then generating tabular chart for each drainage basin containing information such as each's elevation from the most remote point of concentration, rainfall intensity, area of basin and appropriate runoff coefficient (C-Factor), summed to develop 10- and 100-year design discharge.

Once the tributary flows for the 10- and 100-year flows are determined, BKF will input the inlet and outfall data into Hydroflow software to run the hydraulic evaluation for each design event. We understand that the City initially had plans from 1974 to construct the storm drain alignment with a 60-inch pipe collecting roadside ditch runoff from the southwesterly side of Mills Lane. This analysis will show the hydraulic characteristics and the storm drain design size will be adjusted accordingly, if needed, to accommodate the design storm flows.

BKF will perform an analysis to the impacts of the new improvements on "flood events" such as the 100-year and 500- year storm. In accordance with the Manual, the storm drain will be designed to accommodate the 10-year design flows without any hydraulic head on the system, and the 100 year event with hydraulic head contained within the structures. Larger events will overburden the

storm drain system resulting in surface ponding and flooding. Overland release routes of potential ponding locations during large events, as well as in case of damage or impairment to the storm drain system will be analyzed to ensure that the new storm drain system does not have negative effects on adjacent or upstream properties.

In addition to the calculations described above specific to the project, BKF will review available hydrology and hydraulic studies prepared for other significant upstream storm drain main conveyance systems. The comparison of the calculated data in our study to the work performed by previous engineers will provide validation of the storm drain design and also allow the City to identify any major discrepancies in its Citywide storm drain system.

The calculations and methodology described above will be consolidated to generate a Hydrology and Hydraulic Analysis report. The report will be a combination of design criteria definitions, project narrative, summary of findings and supporting calculations. In an effort to demonstrate the deliverable report format for services under this task, we are providing report excerpts on the following pages of previous projects completed by BKF within the Napa River watershed. These are samples of reports from multiple projects to demonstrate our format style and our experience with different types of hydrology & hydraulic analysis. We are happy to share full copies of these reports for review by City staff, if requested.

Please refer to Appendix A for excerpts from some of BKF's work samples that illustrate our engineering services.

VI. PLANS, SPECIFICATIONS AND ESTIMATE (PS&E)

Utilizing the data, studies and comprehensive engineering services described in this proposal, BKF will generate project Plans, Specifications and Engineer's Estimate (PS&E). The objective of this task is to develop the documents to a level necessary for bid and construction of the project. The team will prepare construction documents in accordance with the City's standards for formal submittals at the 35%, 75%, 90%, and 100% level of completeness. Upon approval, the team will include a final 100% set for bidding which will be signed and sealed by the Engineer in responsible charge of the design.

Preliminary Design Documents (35%)

The 35% submittal package will include preliminary plan alignments based on the base mapping prepared and initial hydrology & hydraulic analysis. The 35% plan set will be developed to a level suitable to commence with the CEQA and environmental permitting process. The 35% set will have general plan alignments, preliminary profiles, utility relocations, outfall elevations and identification of storm drainage structures.

The 35% set will also include a preliminary construction cost estimate. The estimate will include an appropriate contingency factor based on the unknowns or items to be resolved identified in the preparation of this submittal package.

Final Design Documents

The 75%, 90% and 100% submittals will each contain the following documents:

Project Plans

The project plans will include the following sheets to provide clear direction to the contractor: title and key map sheet; horizontal layout plan; typical cross sections; drainage plan and profile; utility relocation plan (if necessary); pavement repair plan; construction details; erosion and sediment control plans.

Project Specifications

The team will include the City's front-end specifications into special provisions relevant to the project's features. The special provisions will be prepared in conjunction and coordinated to the project plans; the plans and specifications will constitute the bid and construction documents.

Engineer's Estimate

A detailed Engineer's Opinion of Probable Construction Cost (estimate) and bid schedule will be prepared in Excel format in the format and will include line items for construction inspection and materials testing. Backup data will be provided for lump sum items, as necessary. The engineers estimate will be prepared in a format so that it can easily be converted and correlated to a bid items list. The bid items list will identify the specific line items and measurement quantities for the contractors use in preparing their construction bids.

- Deliverables: Each progress submittal will include hard copies of plans, specifications and estimates. We will additionally provide an electronic version of the submittal in PDF format. Upon approval of the final design documents by City staff, BKF will provide a digital and hardbound signed copy of the documents prepared for the project, including the documents for bid and construction. The final design documents will be delivered in a package entitled Final Engineering Documents for Mills Lane Storm Drain Project.

VII. RIGHT OF WAY SERVICES

BKF, through our sub consultant BRI, will provide the following right of way services to support the City in required acquisition of easement rights and temporary permission to enter private properties. At this time, it is anticipated the project alignment will require one permanent easement acquisition. Since the exact project alignment and right of way acquisition requirements are not confirmed at this time, our fee proposal includes a "per each" cost for consideration:

PERMISSION TO ENTER (PTE) AGREEMENTS

BRI will negotiate and acquire Permission to Enter Agreements (PTE) for any environmental investigations, geotechnical investigations, surveying, or studies that may impact existing City right of way. To expedite this process, BRI will prepare the PTEs with exhibits: Assessor's Parcel Map with locations outlined as well as a letter to each property owner. BRI will mail out the letters (one copy of PTE and AP Map attached to letter) and two copies of PTE and AP Map for owner to sign and return in the self-addressed, stamped envelope. All signed documentation will be submitted to the City and one (1) copy of the fully executed PTE will be provided to the property owner upon approval by the City.

APPRAISAL SERVICES

The Appraisal Reports will be a narrative appraisal report that will be prepared in conformance with and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal

Institute, which fully incorporate the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation, requirements related to the Uniform Relocation Assistance and Real Property Acquisition Act and state and federal statutes. Each appraisal will be prepared based on the understanding that it may ultimately be employed in condemnation proceedings.

APPRAISAL REVIEW SERVICES

BRI has enlisted the expertise of the Sierra West Valuation for independent review. The appraisal and appraisal review teams understand that the appraisal must withstand the scrutiny of review by other agencies. Upon completion of the review, the appraisal and a USPAP Standard 3 and 4 compliant review report will be provided and forwarded to the City for approval of Just Compensation.

ACQUISITION SERVICES

Upon completion of the Appraisals and Approval to Acquire by the City, BRI will develop the contract and conveyance documents necessary to make an offer and transfer title to the City. The acquisition task assumes a settlement by the sixth contact by telephone or e-mail, upon which BRI will deliver a signed right of way contract and signed and acknowledged documents in order to close the transaction. If the property owner provides a counter-offer, BRI staff will prepare a recommendation to the City to accept, reject, or modify the counter-offer.

If negotiations are not successful, a recommendation to the City will be made after impasse has been reached to proceed with Condemnation. BRI's acquisition agents will maintain a parcel diary to document all interactions with property owners and their tenants and will prepare a final report, including transfer of all pertinent correspondence and files to the City.

TITLE AND ESCROW SERVICES

To facilitate the closing of the various right of way transactions, BRI will investigate records, documents, and reports to ascertain history and status of title to property. BRI will also deliver documents and checks to escrow company, review all documents for submission to escrow companies, review title and escrow documents, and apply extensive acquisition experience so that the project acquires good title and property rights necessary for the completion of the project. BRI will coordinate escrow closings and file all applicable forms and documents with the County Assessor's office.

LEGAL DESCRIPTIONS AND PLAT

Upon confirmation of the alignment and acquisition of easement rights, BKF will prepare a legal description and plat to accompany the easement deed. The legal description will provide a metes and bounds description of the property to be encumbered with a graphical plat. The legal description and plat will be prepared under the direction of, and signed by a California Licensed Land Surveyor.

VIII. BIDDING AND CONSTRUCTION SUPPORT

BKF will assist the City through the Bid phase of the project which includes responding to technical inquiries during project bidding period via written addenda. If requested, BKF can assist with bid openings and review of bids to confirm responsiveness relative to the bid documents.

BKF will also provide support to the City for any items requested during construction related to the documentation prepared by the consultant team. Services may include observation of clean water compliance, stormwater management and SMARTS permitting, registration and documentation as needed, respond to contractors Requests for Information (RFI's) and review of contractor submittals. BKF will perform up to five (5) site visits when requested by the City to provide support for RFI responses, unforeseen existing conditions, requested substitutions, final punch list and attendance at a pre-construction meeting.

- Deliverables: Submittal reviews and RFI responses in electronic and hard copy (1) format. RFI responses are anticipated to be a combination of narrative directives to the contractor, 11x17 exhibits and full plan sheets for major revisions. A deliverable package is not included under this task; deliverables will be provided in a timely manner throughout construction. Final compiled documentation of submittals and RFI's will be included with the closeout deliverable described in the As-Built Plans task described below.

IX. AS-BUILT PLANS

Upon the completion of construction, BKF will generate Record Drawings based on contractor redlines, construction

correspondence, RFI responses and field observations.

- Deliverables: As-Built drawings in electronic and hard copy (1) format. Additionally, applicable project documentation will be compiled and provided to the City. The data will be delivered in a package entitled As- Built Plans and Project Closeout for Mills Lane Storm Drain Project.

X. OPTIONAL SERVICE - STORM WATER POLLUTION PREVENTION PLAN (SWPPP)

At this time, it is anticipated that the project will not qualify for coverage under the California Construction General Permit (CGP) for construction phase storm water pollution prevention monitoring. If, as the project design develops it is determined that the project will require coverage under the CGP, BKF can provide QSD Services and prepare a Storm Water Pollution and Prevention Plan (SWPPP). BKF will provide Qualified SWPPP Developer (QSD) services in compliance with the Construction General Permit Order 2009-0009-DWQ as amended by Order 2010-0014-DWQ, administered by the State Water Resources Control Board (SWRCB). We will provide support services to the City's Legally Responsible Person (LRP) to submit Permit Registration Documents (PRDs) to the State's online Storm Water Multiple Application and Report Tracking System (SMARTS) program website. Services under this task will only be performed if deemed necessary and written authorization is provided by the City Public Works Director or official designee.

XI. COMPENSATION

The Consultant will perform these services on a time and materials basis for a not to exceed amount of \$257,357 as detailed in Exhibit B. Any optional items or modifications not outlined in this scope of work are required to be approved in writing by the Public Works Director prior to proceeding.

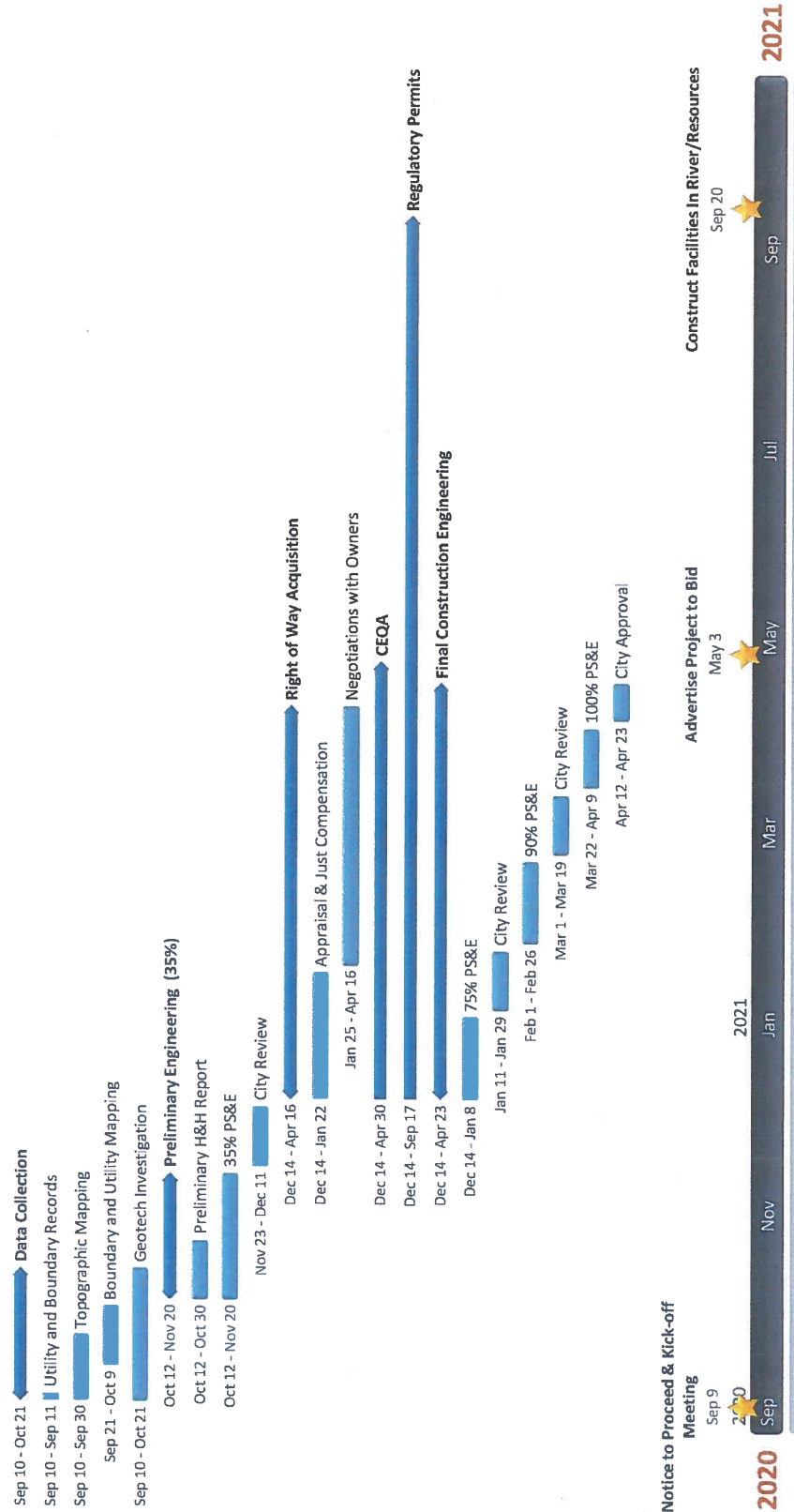


Exhibit A
Page 15 of 15

BKF - R20-02 Mills Lane Storm Drain Improvements

Exhibit B Compensation

Mills Lane SD Rehabilitation Fee Proposal		BKF Engineers										RGN Consultants		WRA		BRI		Total Fee
		Project Manager		Engineer						Total BKF Hours	BKF Fee	Geotechnical Engineer	Environmental	Right of Way				
		Project Executive	Project Manager	SA Project Engineer	Project Engineer	Staff Engineer	Field Crew	Right of Way	Right of Way									
1/30/2020 Published Bidding Dates		\$251	\$209	\$179	\$197	\$137	\$295											
Mills Lane Storm Drain																		
Task 1 Project Management and Coordination																		
a	Kickoff Meeting	4	4					8	\$1,840	\$ 880								\$2,720
b	Regular Meetings	12	12					24	\$5,520									\$5,520
c	General Project Management and QA/QC	16	24					40	\$9,040						\$ 924			\$9,964
Task 1 Project Management and Coordination Subtotal:		32	40	0	0	0	0	72	\$16,392	\$880					\$924			\$18,196
Task 2 Environmental Services																		
1	Kick-Off Meeting, Information Review, and Project Description	2	2					4	\$920		\$ 3,139							\$4,059
2	Prepare CHQA Administrative Draft Initial Study	2	2	4				8	\$1,636		\$ 11,300							\$13,936
2a	Cultural Resources							0	\$0		\$ 9,287							\$9,287
2b	Air Quality							0	\$0		\$ 5,046							\$5,046
2c	Greenhouse Gas Emissions							0	\$0		\$ 3,094							\$3,094
2d	Noise							0	\$0		\$ 4,878							\$4,878
2e	Biological Resources Technical Report							0	\$0		\$ 7,728							\$7,728
2f	Aquatic Resources Delineation Map and Data Forms							0	\$0		\$ 4,190							\$4,190
2g	Archaeol Survey and Report							0	\$0		\$ 3,173							\$3,173
3	Prepare Draft Initial Study/MND per City's Comments	1	2					3	\$669		\$ 4,362							\$5,032
4	Publication of the Draft Initial Study/MND		1					1	\$209		\$ 1,453							\$1,662
5	Prepare Final Initial Study/MND and Response to Comments		1					1	\$209		\$ 1,453							\$1,662
6	Regulatory Permit Applications - Storm Water Outfall		2	2				4	\$776		\$ 5,614							\$6,390
6a	Corps (Section 401 Clean Water Act) Nationwide Permit Pre-Construction Notification							0	\$0		\$ 9,614							\$9,614
6b	RWQCB Section 401 Water Quality Certification Application							0	\$0		\$ 10,801							\$10,801
6c	CDPW Section 1600 Lake and Streambed Alteration Agreement (LSAA) Notification							0	\$0		\$ 9,614							\$9,614
7	Meetings and Communication with Regulatory Agencies	8	8					16	\$3,680		\$ 7,881							\$11,561
Task 2 Environmental Services Subtotal:		13	18	6	0	0	0	37	\$8,099		\$45,602							\$103,719
Task 3 Geotechnical Investigation																		
a	Permits and Utility Clearance							0	\$0	\$ 3,463								\$3,463
b	Exploration							0	\$0	\$ 12,810								\$12,810
c	Lab Testing							0	\$0	\$ 4,092								\$4,092
d	Engineering Analysis & Report							0	\$0	\$ 6,300								\$6,300
e	Consultation During Design							0	\$0	\$ 1,260								\$1,260
f	Geotechnical Plan Review							0	\$0	\$ 630								\$630
Task 3 Geotechnical Investigation Subtotal:		0	0	0	0	0	0	0	\$0	\$25,605								\$25,605
Task 4 Topographical Survey & Existing Utility Coordination																		
a	Utility and Records Request		1		2	4		7	\$1,345									\$1,345
b	Topographic Mapping		1	3		36	24	64	\$12,758									\$12,758
c	Boundary Mapping		2	8		16	8	24	\$6,402									\$6,402
d	Monument Preservation (S)		2	8		16	16	42	\$8,762									\$8,762
Task 4 Topographical Survey & Existing Utility Coordination Subtotal:		0	6	13	2	74	48	149	\$29,267									\$29,267
Task 5 Comprehensive Engineering Services																		
a	Hydrology and Hydraulics Analysis	2	4	26	40			72	\$12,272									\$12,272
b	Draft Hydrology & Hydraulics Report	2	2	4	4	16		28	\$4,456									\$4,456
c	Final Hydrology & Hydraulics Report	1	2	2	2	8		15	\$2,337									\$2,337
Task 5 Comprehensive Engineering Services Subtotal:		5	8	32	46	24	0	115	\$19,065									\$19,065
Task 6 Plans, Specifications and Estimate																		
a	Prepare Preliminary Engineering Plans (35%)	2	6	12		24		44	\$7,192									\$7,192
b	75% Submittal	1	8	8		20		37	\$6,095									\$6,095
c	90% Submittal	1	4	2		16		23	\$3,637									\$3,637
d	100% Submittal	2	2	2		8		14	\$2,374									\$2,374
e	City Review Meetings	8	8					16	\$5,680									\$5,680
Task 6 Plans, Specifications and Estimate Subtotal:		14	28	24	0	68	0	134	\$22,978									\$22,978
Task 7 Right of Way Services																		
a	Permission to Enter Agreements							0	\$0						\$ 3,463			\$3,463
b	Appraisal Services							0	\$0						\$ 4,725			\$4,725
c	Appraisal Review Services							0	\$0						\$ 1,260			\$1,260
d	Acquisition Services							0	\$0						\$ 4,200			\$4,200
e	Easement Services							0	\$0						\$ 1,103			\$1,103
f	Legal Description & Plat (L)	1	2	3		8		14	\$2,302									\$2,302
Task 7 Right of Way Services Subtotal:		1	2	3	0	8	0	14	\$2,302						\$6,561			\$17,855
Task 8 Bidding and Construction																		
a	Bid RFI's and Bid Support	2	4			4		10	\$1,886									\$1,886
b	Construction Submittals	1	2	4		8		15	\$2,481									\$2,481
c	Construction RFI's and Support		4	8		8		20	\$3,364									\$3,364
d	Construction Site Visits	2	6	9		9		26	\$4,600									\$4,600
Task 8 Subtotal:		5	16	21	0	29	0	71	\$12,331						\$0			\$12,331
Task 9 As-Built Drawings and Close-out																		
a	Record Drawings and Close-out	1	2			12		15	\$2,313									\$2,313
b	Construction Submittals	1	2					3	\$669									\$669
Task 9 As-Built Drawings and Close-out Subtotal:		2	4	0	0	12	0	18	\$2,982						\$0			\$2,982
Task 10 SWPPP - Optional Services (only provided with additional authorization from PDW)																		
a	Prepare SWPPP	1	1		10			12	\$2,030									\$2,030
b	RWQCB SMARTS website data entry and certifications	1	1		2			4	\$774									\$774
Task 10 SWPPP - Optional Services (only provided with additional authorization from PDW) Subtotal:		2	2	0	12	0	0	16	\$2,804						\$0			\$2,804
Subtotal Labor Fee										\$ 116,320	\$ 29,440	\$ 95,602	\$ 7,487	\$ 257,857				
BKF Reimbursable Expenses										\$300				\$300				
Total Labor Plus Reimbursable Expenses (Not including Optional Items)										\$116,620	\$29,440	\$95,602	\$7,487	\$257,357				

Optional Services: Not shown but are contingent upon the findings of the Bids of Design.
Additional Right of Way Acquisition and Temporary Construction Easement Subcontractor (BRE)
Preliminary Contractor
Allowance for each follow-up meeting with Commission or Council (1 Council Meeting is included in services above)

Exhibit B
Page 1 of 5

BKF - R20-02 Mills Lane Storm Drain Improvements

BKF ENGINEERS
PROFESSIONAL SERVICES RATE SCHEDULE

JANUARY 1, 2020 – DECEMBER 31, 2020

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
PROJECT MANAGEMENT	
Principal/Vice President	\$251.00
Senior Associate/Vice President	\$225.00
Associate	\$219.00
Senior Project Manager Senior Technical Manager	\$214.00
Project Manager Technical Manager	\$209.00
Engineering Manager Surveying Manager Planning Manager	\$193.00
TECHNICAL STAFF	
Senior Project Engineer Senior Project Surveyor Senior Project Planner	\$179.00
Project Engineer Project Surveyor Project Planner	\$157.00
Design Engineer Staff Surveyor Staff Planner	\$137.00
BIM Specialist I, II, III	\$137.00 - \$157.00 - \$179.00
Technician I, II, III, IV	\$130.00 - \$139.00 - \$152.00 - \$164.00
Drafter I, II, III, IV	\$102.00 - \$112.00 - \$121.00 - \$135.00
FIELD SURVEYING	
Survey Party Chief	\$179.00
Instrumentman	\$154.00
Survey Chainman	\$116.00
Utility Locator I, II, III, IV	\$93.00 - \$132.00 - \$158.00 - \$180.00
Apprentice I, II, III, IV	\$71.00 - \$95.00 - \$105.00 - \$111.00
CONSTRUCTION ADMINISTRATION	
Senior Consultant	\$234.00
Senior Construction Administrator	\$203.00
Resident Engineer	\$151.00
Field Engineer I, II, III	\$137.00 - \$157.00 - \$179.00
ASSISTANTS	
Project Assistant	\$84.00
Engineering Assistant Surveying Assistant Planning Assistant	\$82.00
Clerical Administrative Assistant	\$70.00

Expert witness rates are available upon request.

Subject to the terms of a services agreement:

- Charges for outside services, equipment, materials, and facilities not furnished directly by BKF Engineers will be billed as reimbursable expenses at cost plus 10%. Such charges may include, but shall not be limited to: printing and reproduction services; shipping, delivery, and courier charges; subconsultant fees and expenses; agency fees; insurance; transportation on public carriers; meals and lodging; and consumable materials.
- Allowable mileage will be charged at the prevailing IRS rate per mile.
- Monthly invoices are due within 30 days from invoice date. Interest will be charged at 1.5% per month on past due accounts.



Santa Rosa Office
1305 North Dutton Ave
Santa Rosa, CA 95401
707-544-1072

Napa Office
1041 Jefferson St, Suite 4
Napa, CA 94559
707-252-8105

SCHEDULE OF CHARGES
Effective March 1, 2020

Unless agreed otherwise, work is charged for on a time and expense basis in accordance with the following schedule of charges:

PERSONNEL

Principal	\$235/hour
Associate	\$190/hour
Senior Engineer/Geologist	\$175/hour
Project Engineer/Geologist	\$155/hour
Staff Engineer/Geologist	\$130/hour
Field Engineer	\$120/hour
Field Engineer (Prevailing Wage)	\$145/hour
Graphics	\$90/hour
Report Typing/Reproduction.....	\$70/hour

EQUIPMENT

Slope Inclinometer Instrument	\$150/day
Coring Machine	\$300/day
Specialty Software (i.e. SLOPE/W, EZ-FRISK, VolFlo)	\$50/hour

CONCRETE

Compression Testing - Set of 4 Cylinders	\$130
Each Additional Cylinder Break	\$40
Coring Charge	\$140

OTHER

Travel time is charged at regular rates. Vehicle mileage is charged at the current federal rate. The above rates do not apply to projects receiving public funds subject to California Prevailing Wage law. Hourly rates for those projects will be supplied separately. For court appearance, expert witness testimony, or deposition the charge is \$275 per hour for the principal, associate, and project level professional and \$175 per hour for all others, payable in advance. Four and eight hour minimums apply for court appearance.

Time worked in excess of 8 hours per day and Saturday/night work will be charged at 1.5 times the hourly rate. Time worked in excess of 12 hours per day and Sundays/holidays will be charged at 2 times the hourly rate.

Outside services including laboratory analysis, consultants, subcontractors, equipment not listed above, outside reproduction, aerial photographs, meals, lodging, shipping and special equipment or services not listed above are charged at cost plus 10 percent.



GOVERNMENT & NONPROFIT CLIENT RATE SCHEDULE
Effective: January 1, 2020

PRINCIPAL	\$222-235/hr
PRINCIPAL GEOMORPHOLOGIST	222/hr
ASSOCIATE PRINCIPAL	222/hr
SENIOR ENVIRONMENTAL PLANNER	222/hr
SENIOR ASSOCIATE ENGINEER	222/hr
SENIOR ASSOCIATE LANDSCAPE ARCHITECT	201/hr
CONSERVATION STRATEGIES SENIOR ASSOCIATE	201/hr
SENIOR ASSOCIATE	201-222/hr
ASSOCIATE ENVIRONMENTAL PLANNER	183/hr
ASSOCIATE ENGINEER	183/hr
CONSERVATION STRATEGIES ASSOCIATE	174/hr
ASSOCIATE LANDSCAPE ARCHITECT	178/hr
ASSOCIATE	178/hr
GIS PROFESSIONAL II	167/hr
LANDSCAPE ARCHITECT	155/hr
CONSERVATION STRATEGIES SCIENTIST	146/hr
GIS PROFESSIONAL	144/hr
ENVIRONMENTAL PLANNER I	144/hr
SCIENTIST	144/hr
SENIOR LANDSCAPE DESIGNER	131/hr
CONSERVATION STRATEGIES SENIOR TECHNICIAN	131/hr
GIS SENIOR TECHNICIAN	128/hr
ASSISTANT ENVIRONMENTAL PLANNER II	128/hr
SENIOR TECHNICIAN	128/hr
CONSERVATION STRATEGIES TECHNICIAN	119/hr
GIS TECHNICIAN	115/hr
TECHNICIAN	107/hr
FIELD TECHNICIAN	91-144/hr
PROJECT BIOLOGIST	81-103/hr
RESTORATION FOREMAN	91/hr
RESTORATION TECHNICIAN	70/hr
CLERICAL	78/hr
EXPERT WITNESS	Rate x 1.5

Subject to an annual rate adjustment. Necessary project expenses are billed at cost plus 10%. 7/8/2020

2169-G East Francisco Blvd., San Rafael, CA 94901 (415) 454-8868 tel (415) 454-0129 fax info@wra-ca.com www.wra-ca.com



ASSUMPTIONS

- Preliminary Title Reports will be provided by others
- Fees for additional parcels will range from \$9,000 - \$13,000, depending on the complexity of the assignment. Once the alignment and impacts have been finalized, BRI can provide a complete, not to exceed fee.

BRI 2020 BILLING RATES

Principal Project Manager	\$250/hr.
Senior Project Manager	\$220/hr.
Project Manager	\$195/hr.
Senior Quality Control Auditor	\$175/hr.
Senior Project Controller	\$160/hr.
Quality Control Auditor	\$125/hr.
Project Controller	\$110/hr.
Sr. Designated Member (MAI/SRA/AI-GRS/ARA)	\$225/hr.*
Designated Member (MAI/SRA/AI-GRS/ARA)	\$180/hr.*
Appraiser III	\$165/hr.
Appraiser II	\$140/hr.
Appraiser I	\$110/hr.
Senior Right of Way Specialist	\$170/hr.
Senior Acquisition Agent	\$165/hr.
Acquisition Agent	\$125/hr.
Senior Relocation Agent	\$160/hr.
Relocation Agent	\$145/hr.
Senior Project Coordinator	\$135/hr.
Project Coordinator	\$105/hr.
Expert Land Consultant	\$170/hr.
Managing Land Agent	\$160/hr.
Principal Land Agent	\$140/hr.
Senior Land Agent	\$120/hr.
Land Agent II	\$105/hr.
Land Agent I	\$90/hr.
Administrative Support III	\$ 90/hr.
Researchers	\$ 85/hr.
Administrative Support II	\$ 75/hr.
Administrative Support I	\$ 60/hr.

*NOTE: For court or briefing preparation, depositions, any pre-trial conferences, court appearances, and related activities, the hourly rate is \$450.

STH Contract: FY2021-022-01A

AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT WITH BKF; STH CONTRACT NO: 2021-022
FOR DESIGN SERVICES, CAPITAL IMPROVEMENT PROJECT: R20-02 MILLS LANE
STORM DRAIN FOR AN ADDITIONAL \$25,139 FOR A TOTAL CONTRACT AMOUNT NOT-
TO-EXCEED \$282,496.

This First Amendment to Professional Services Agreement STH Contract: 2021-022 dated September 9, 2020 ("Agreement") is made as of this 23rd day of February, 2021 by and between the City of St. Helena, a municipal corporation ("City"), and BKF. ("Consultant").

RECITALS

- A. On September 9, 2020, the City and Consultant entered into the Agreement for Consultant to provide professional services in connection with the project described as R20-02 Mills Lane Storm Drain; and
- B. The Agreement's current Scope of Services does not include the funds or the additional work for additional professional services associated with environmental permitting and right of way acquisition; and
- C. The additional funding is necessary to allow BKF to provide additional consulting services to the City.

AGREEMENT

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

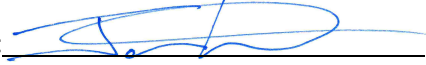
- 1. Section 1. Basic Services
Parties agree to amend Section 1, "Basic Services" of the Agreement to provide additional services, as outlined in Exhibit A, "Scope of Work" attached hereto.
- 2. Section 4. Compensation, is amended to read as follows:
"Total compensation shall not exceed \$282,496.00..."

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

Entered as of the day and year first above stated.

CONSULTANT:

Signatures of Authorized Persons:

By: 

Print Name: Jason Kirchmann

Title: Vice President

CITY OF ST. HELENA
a Municipal Corporation

By: Mark T. Prestwich Digitally signed by Mark T. Prestwich
Date: 2021.02.24 16:55:15 -08'00'

Print Name: Mark T. Prestwich

Title: City Manager

APPROVED AS TO FORM:

Ethan Walsh Digitally signed by: Ethan Walsh
DN: CN = Ethan Walsh email = ethan.walsh@bbklaw.com C = AD
Date: 2021.02.25 08:31:58 -08'00'

Ethan Walsh, City Attorney

ATTEST:

Cindy Tzaopoulos Digitally signed by Cindy Tzaopoulos
Date: 2021.02.25 10:10:34 -08'00'

City Clerk

Attachments:

Exhibit A: "Scope of Work"

Exhibit B: "Compensation"

Exhibit A

"Scope of Work"

BKF have prepared the following fee and scope for the request to amend the original contract for additional professional services associated with environmental permitting and right of way acquisition.

Design Services –

TASK 2: Environmental Services

BKF, on behalf of our environmental sub-consultant WRA, is requesting an increase in the budget associated with Task 2: Environmental Services. At the time the project was scoped, it was anticipated that the project may have impacts to the Army Corps of Engineers (Corps) jurisdictional lands, thereby requiring a 404 permit and triggering the associated Section 7 Consultations with other Federal agencies. Since the development of the design drawings, it has been found that the project can avoid impacts to Corps jurisdiction, which generally aligns with the Ordinal High Water Mark. Despite no current perceived need to obtain a 404 permit, WRA will still need to utilize a portion of the funds originally reserved for the 404 permit task to obtain a No Permit Required letter from the Corps (or a permit determination, if consultation with the Corps results in a request for a 404 permit), which involves coordination between WRA and the Corps to agree upon the limits of their jurisdiction and to respond to requests for information from the agency.

Since we are now under the assumption that the project will likely not trigger a 404 permit, we will have to independently and informally consult with the National Marine Fisheries Service (NMFS) to obtain clearance that the project will not adversely impact listed steelhead trout occurring in the Napa River. As part of this consultation, the Biological Report will need to be bolstered to address the effects to steelhead trout, addressing the endangered species issues. It is the intent of WRA to prepare a defensible biological report that can be accepted by NMFS without the request to go through the Section 10 Consultation process with his Federal agency.

TASK 7: Right of Way Services

BKF, on behalf of our right-of-way sub-consultant BRI, is requesting an increase in the budget associated with Task 7: Right of Way Services. At the time that project was scoped, it was anticipated that only one (1) private parcel would be impacted by the project. Since that time, following a boundary survey conducted by BKF, project impacts to a second parcel have been identified that will require appraisal and acquisition services in addition to the originally scoped parcel. Additionally, BRI has been requested to include the procurement of Preliminary Title Reports for both parcels as part of their services, and is requesting additional reimbursable funds to cover the costs of the Preliminary Title Reports. Upon confirmation of the alignment and acquisition of easement rights, BKF will prepare a

Page 3 of 4

First Amendment to Professional Services Agreement
Consultant: BKF

legal description and plat to accompany the easement deed. The legal description will provide a metes and bounds description of the property to be encumbered with a graphical plat. The legal description and plat will be prepared under the direction of, and signed by a California Licensed Land Surveyor.

The estimated fee for Amendment No. 1 work is \$25,139.

Original Contract	\$257,357
Amendment #1	<u>\$25,139</u>
 Total	 \$282,496

BKF ENGINEERS
PROFESSIONAL SERVICES RATE SCHEDULE

JANUARY 1, 2021 – DECEMBER 31, 2021

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
PROJECT MANAGEMENT	
Principal/Vice President	\$251.00
Senior Associate/Vice President	\$225.00
Associate	\$219.00
Senior Project Manager Senior Technical Manager	\$218.00
Project Manager Technical Manager	\$213.00
Engineering Manager Surveying Manager Planning Manager	\$197.00
TECHNICAL STAFF	
Senior Project Engineer Senior Project Surveyor Senior Project Planner	\$183.00
Project Engineer Project Surveyor Project Planner	\$160.00
Design Engineer Staff Surveyor Staff Planner	\$140.00
BIM Specialist I, II, III	\$140.00 - \$160.00 - \$183.00
Technician I, II, III, IV	\$133.00 - \$142.00 - \$155.00 - \$167.00
Drafter I, II, III, IV	\$104.00 - \$114.00 - \$123.00 - \$138.00
FIELD SURVEYING	
Survey Party Chief	\$182.00
Instrumentman	\$157.00
Survey Chainman	\$117.00
Utility Locator I, II, III, IV	\$95.00 - \$135.00 - \$161.00 - \$184.00
Apprentice I, II, III, IV	\$72.00 - \$97.00 - \$107.00 - \$113.00
CONSTRUCTION ADMINISTRATION	
Senior Consultant	\$239.00
Senior Construction Administrator	\$207.00
Resident Engineer	\$154.00
Field Engineer I, II, III	\$140.00 - \$160.00 - \$183.00
ASSISTANTS	
Project Assistant	\$88.00
Engineering Assistant Surveying Assistant Planning Assistant	\$86.00
Clerical Administrative Assistant	\$74.00

Expert witness rates are available upon request.

Subject to the terms of a professional services agreement:

- Charges for outside services, equipment, materials, and facilities not furnished directly by BKF Engineers will be billed as reimbursable expenses at cost plus 10%. Such charges may include, but shall not be limited to: printing and reproduction services; shipping, delivery, and courier charges; subconsultant fees and expenses; agency fees; insurance; transportation on public carriers; meals and lodging; and consumable materials.
- Allowable mileage will be charged at the prevailing IRS rate per mile.
- Monthly invoices are due within 30 days from invoice date. Interest will be charged at 1.5% per month on past due accounts.

Mills Lane Storm Drain Project

Project No: 02010-R20-02

Category: Streets

Project Location: Mills Lane from State Highway 29 east to the Napa River

Responsible Department:



PROJECT PURPOSE & DESCRIPTION: The Mills Lane Storm Drain improvement project was originally identified by the City and a portion designed in 1974. It was also considered in the City's 2000 Master Plan of Drainage, identified in the City's Storm Drain Impact Fees, as well as the 2005 Highway 29 Specific Plan and the specific plan's program environmental impact report (EIR) prepared in 2003 (SCH #2001082017). The storm drain will be constructed along Mills Lane, which is a City street for most of its length, from its intersection with State Highway 29 east to the Napa River.

NOTES: Resolution 2020-26 - Establishment of Project and initial project budget of \$200,000

Resolution 2020-92 - Increase budget by \$57,357

Resolution 2021-21 - Increase budget by \$25,139

Resolution 2021-___ - Increase budget by \$27,444

EXPENDITURE ACCOUNTS: Fund: 741 Dept: 5014

EXPENDITURES								PROJECT TOTAL
	Total YTD	Rollover Funds	2020-21	2021-22	2022-23	2023-24	2024-25	
3110 - Design		100,000						100,000
3120 - Environmental/Planning		100,000	109,940					209,940
EXPENDITURE TOTALS		200,000	109,940					309,940
FUNDING SOURCES								
742-Storm Drain Impact Fees		200,000	109,940					309,940
FUNDING TOTALS		200,000	109,940					309,940



Report to the City Council
Regular City Council - 11 May 2021

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed approval of a resolution approving:

1. Flying the the Italian flag on the City's ceremonial flag pole during the month of October 2021 for Italian Heritage Month; and
2. Waiving fees for the encroachment permit and Lyman Park Gazebo reservation for the Festa Italiana community celebration to be held on October 2, 2021 from 10:00 am to 5:00 pm; and
3. Authorizing temporary street parking closure on the westside of Railroad Avenue from the Fire House to the end of Lyman Park and the public parking lot between Lyman Park and the Fire House for Festa Italiana event on October 2, 2021 from 10:00 am to 5:00 pm; and
4. Approval of mobile food truck(s) to be parked on Railroad Avenue in the street closure area and wine and beer vendors in Lyman Park during the Festa Italiana event.

CEQA Not a CEQA project
Determination:

Prepared By: Cindy Tzafoopoulos, City Clerk

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Mr. Anthony Micheli first requested the Italian flag be raised on the City's Ceremonial Flag Pole in recognition of October being Italian Heritage month in 2019. In addition to celebrating the Italian flag raising, Mr. Micheli chaired the October 5, 2019 Festa Italiana community event at Lyman Park, sponsored by Sons and Daughters of Italy of America.

The Italian flag was raised in October 2020 recognizing Italian Heritage Month, but no community gathering occurred due to the COVID-19 pandemic.

The City Council's adopted policy P-CC-0001 Outdoor Display of Governmental and Non-Governmental Flags on City Property authorizes the display of non-governmental flags on City property. Per this policy, Council Member Eric Hall formally requested in writing to the City Manager for this matter to be considered at a regular City Council meeting.

DISCUSSION

Mr. Micheli is requesting the Italian flag be flown on the City Ceremonial Flag Pole for the month of October 2021.

In addition, Mr. Micheli is chairing the October 2, 2021, Festa Italiana community event, sponsored by Sons and Daughters of Italy of America at Lyman Park from 10:00 am to 5:00 pm. The community event will start with the Italian National Anthem and vendors such as Italian owned wineries, Italian beer, food truck(s), and other donated food and beverages will be available to the community. All food and beverages will be at no cost to the attendees through donations. Mr. Micheli has requested temporary closure of street parking on the westside of Railroad Avenue from the Fire House to the end of Lyman Park and the public parking lot between Lyman Park and the Fire House for the event. A request was made for the City Manager to waive the encroachment permit fee and the Lyman Park Gazebo rental fee.

All necessary permits including an encroachment permit and Lyman Park reservation form will be provided to the City in a timely manner including all required liability insurance. It is anticipated that all food and beverages will be provided at no cost, via donations, and the event organizer will be responsible for securing an ABC license, if applicable.

FISCAL IMPACT

Fee waiver of the encroachment fee in the amount of \$200 and the Lyman Park Gazebo rental fee in the amount of \$50.

RECOMMENDED ACTION

Staff recommends City Council adopt the attached Resolution.

ATTACHMENTS

[Micheli Italian Day 2021](#)

[Request from Council Member Hall](#)

[Resolution Italian Flag and Festa Italiana Event](#)

[2019-66 Rescinding Resolution 2017-75 and Amending the Policy P-CC-0001 Outdoor Display of Governmental and Non-Governmental Flags on City Property and](#)

[Authorizing a Ceremonial Flag](#)

[Encroachment Permit Application](#)

[St. Helena Picnic Area Reservation](#)

City Manager and City Council Members,

I am requesting the City of St. Helena fly the Italian Flag at city hall main street for the month of October 2021. October is Italian Heritage Month. It is celebrated in many cities across the United States. Italians are the fifth largest ethnic group presently in America. They have contributed to making America the great country it is today.

Here in the Napa Valley if it wasn't for the many Italian and Swiss Italian winery owners that bootlegged wine during Prohibition the wine business would not be what it is today. The mural in our post office honors Italian vineyard heritage.

Along with flying the Italian Flag, I will again be chairman of "Festa Italiana" in Lyman Park on October 2. The event will be sponsored again by Sons and Daughters of Italy in America. The party will be from 10am to 5pm. The event will start with the singing of the Italian National Anthem in Italian. I will ask our Italian and Swiss Italian winery owners to host a free wine tasting. Two years ago we had 24 wineries pouring wine. Hopefully we will roast a pig on site along with food trucks, donated food, pizza, desserts and Peroni beer. It is free event with donations.

We will have music again with the addition of opera singers out of San Francisco we hope. We will also have the Exotic Italian car club out of San Francisco bring up their Italian exotic cars.

Other events include a ravioli dinner on October 16 at the Native Sons Hall at 6pm for 200 people. Then an Italian type movie at the Cameo some time in October depending on Cathy Buck's schedule.

I am asking the city to again to waive all city fees for the use of Lyman Park in support of this effort. I would also request reserved parking on Railroad Ave from the fire house to the end of Lyman Park. Also the parking area between Lyman Park and the fire house to park the Italian Exotic cars.

Thank You,

Anthony Micheli

Cindy Tzaopoulos

From: Mark Prestwich
Sent: Monday, April 26, 2021 3:05 PM
To: Cindy Tzaopoulos
Subject: FW: Italian Day
Attachments: Micheli Italian Day 2021.jpg

Hi Cindy,

Please prepare a staff report and add this to a near-term future agenda. Thank you!

-Mark

From: Eric Hall <EHall@cityofsthelena.org>
Sent: Monday, April 26, 2021 1:53 PM
To: Mark Prestwich <MPrestwich@cityofsthelena.org>
Subject: Italian Day

Mark,

As requested, here is Anthony Micheli's write-up for a staff report for Italian Day 2021.

Thanks.

E

Eric Hall
Council Member, City of St. Helena
ehall@cityofsthelena.org
925-708-2686
www.cityofsthelena.org

CITY OF ST. HELENA

RESOLUTION NO. 2021-

The City of St. Helena City Council Authorizes: 1. Flying the Italian flag on the City's ceremonial flag pole during the month of October 2021 for Italian Heritage Month; and 2. All fees are waived for the encroachment permit and Lyman Park Gazebo reservation for the Festa Italiana community celebration to be held on October 2, 2021 from 10:00 am to 5:00 pm; and 3. Authorizing temporary street parking closure on the westside of Railroad Avenue from the Fire House to the end of Lyman Park and the public parking lot between Lyman Park and the Fire House for Festa Italiana event on October 2, 2021 from 10:00 am to 5:00 pm; and 4. Approval of mobile food truck(s) to be parked on Railroad Avenue in the street closure area and wine and beer vendors in Lyman Park during the Festa Italiana event.

RECITALS

- A. On May 28, 2019, the St. Helena City Council adopted policy P-CC-0001 Outdoor Display of Governmental and Non-Governmental Flags on City Property, which authorizes the display of non-governmental flags on City property.
- B. A request has been made by Mr. Anthony Micheli for the Italian flag to be flown during the month of October 2021 in honor of Italian Heritage Month.
- C. Council Member Hall formally requested in writing to the City Manager for the request to fly the Italian flag be considered by the City Council.
- D. Mr. Micheli is chairing the October 2, 2021 Festa Italiana community event, sponsored by Sons and Daughters of Italy of America at Lyman Park from 10:00 am to 5:00 pm.
- E. The City Council authorizes the City Manager to waive the Encroachment Permit fee of \$200.00 and the \$50.00 Lyman Park Rental Permit fee for the Festa Italiana community event but does not waive the permit requirements and the General Conditions applicable to said permit. The event organizer would also be responsible for securing an ABC license if applicable.
- F. Section 21101(e) of the California Vehicle Code provides the local authorities may, by resolutions, temporarily close a portion of any street for celebrations, parades, local special events, and other purposes when, in the opinion of local authorities

having jurisdiction or a public officer or employee that the local authority designated by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing.

RESOLUTION

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

1. Authorizes a ceremonial flag recognizing Italian Heritage Month during the month of October.
2. The City Council finds that the benefits derived from the temporary closing of street parking for the Festa Italiana community event outweigh the anticipated inconvenience and that the closing is necessary for the safety and protection of persons who are to use that portion of the street and parking lot during the temporary closing.
3. The City Council authorizes closure of the following street parking and parking lot during the hours of the event:
 - The street parking westside of Railroad Avenue from the Fire House to the end of Lyman Park
 - The public parking lot between Lyman Park and the Fire House

Approved at a Regular Meeting of the St. Helena City Council on May 11, 2021, by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Chouteau:	_____
Councilmember Hall:	_____
Councilmember Hardy:	_____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafoopoulos, City Clerk

CITY OF ST. HELENA

RESOLUTION NO. 2019-66

**Rescinding Resolution 2017-75 and Amending the Policy
P-CC-0001 Outdoor Display of Governmental and Non-
Governmental Flags on City Property and Authorizing a
Ceremonial Flag Recognizing LGBTQ Pride Month during
the Month of June**

RECITALS

- A. On June 13, 2017, the St. Helena City Council established a uniform policy to govern the flying of the National, State, and City flags on City-owned properties at half-staff to pay homage to the deceased and to govern the display of non-governmental flags on specified City-owned flagpoles; and
- B. The City Council desires to amend the current policy establishing a more prominent place to display non-governmental flags; and
- C. The more prominent location will be a flag pole installed beside the existing governmental designated flag pole outside of St. Helena City Hall; and
- D. A request has been made for the LGBTQ Pride Month flag to be flown the first half of the month of June and the Transgender flag will be flown the second half of June in recognition of LGBTQ Pride Month.

RESOLUTION

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

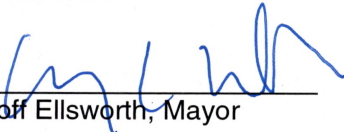
- 1. Approves City Council Policy P-CC-0001 Outdoor Display of Governmental and Non-Governmental Flags on City Property as outlined in the attached Exhibit A; and
- 2. Rescinds Resolution 2017-75; and
- 3. Authorizes a ceremonial flag recognizing LGBTQ Pride Month during the month of June; and
- 4. If any action, subsection, clause or phrase of this Resolution or the policies in Exhibit A shall be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Resolution or of the policy adopted by this Resolution that can be given effect without the invalid provisions; and

5. The City Council finds that the project is exempt from the requirements of CEQA pursuant to section 15303 in that it qualifies for a Class 3 Categorical Exemption.

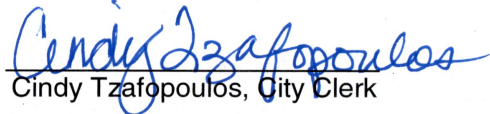
Approved at a Regular Meeting of the St. Helena City Council on May 28, 2019, by the following vote:

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

APPROVED:


Geoff Ellsworth, Mayor

ATTEST:


Cindy Tzaferopoulos, City Clerk





City of St. Helena
Council Policy
 Administration

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

Page 1 of 2

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

I. Purpose, Overview and Scope of this Policy

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

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

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

II. Authority

The City Council has authority to update this policy.

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

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



City of St. Helena
Council Policy
 Administration

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

Page 2 of 2

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

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

ENCROACHMENT PERMIT APPLICATION

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



OFFICE USE ONLY

Encroachment Permit #: _____

Expiration Date: _____

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

Property and Work Description

Site Address: _____

Related Building Permit Number _____ Work/Event Description: _____

DIAGRAM OF PROPOSED ACTIVITY *attach additional sheet if necessary*

Estimated Start Date _____

Estimated Completion Date _____

Property Owner

Owner Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Email: _____ Phone #: _____

Contractor/Applicant

All communication from our office will be made to this person via email

Company Name: _____ Contact Name: _____

Contractor License#: _____ Expires: _____

City of St. Helena Business License #: _____ Expires: _____

Address: _____

City: _____ State: _____ Zip: _____

Email: _____ Phone #: _____

Applicant Check Off List Permit fees are due at the time of application and are NON REFUNDABLE . <i>Incomplete submittals will not be accepted. Encroachment Permit applications are reviewed on a weekly basis. Please allow up to TWO (2) weeks for approval.</i>									
<u>Check Off Major</u> \$500.00 fee paid Proof of Insurance Coverage Copy of Civil Plans for Related Building Permit Traffic Control Plans Site Plans USA Tag # Conditions: _____ _____ Standards Attached: _____ _____ Street Supervisor Approval Signature: _____ Date: _____ Water Supervisor Approval Signature: _____ Date: _____	<u>Check Off Minor</u> \$200.00 fee paid Proof of Insurance Coverage Copy of Civil Plans for Related Building Permit Traffic Control Plans Site Plans								
Minimum Insurance Requirements; <table style="width: 100%;"> <tr> <td style="width: 25%;">General Liability</td> <td>Major Permit 2 Million General Liability/4 million Aggregate</td> </tr> <tr> <td></td> <td>Minor Permit 1 Million General Liability/2 million Aggregate</td> </tr> <tr> <td>Auto Liability</td> <td>Major/Minor Permit 2 Million or Greater per Accident, Bodily Injury or Property Damage</td> </tr> <tr> <td>Workers Comp</td> <td>Major/Minor Permit 2 Million per Injury</td> </tr> </table> <i>Special Circumstances May Arise Which Could Cause Changes to These Guidelines</i> Attach Certificate of Insurance (COI) AND Endorsements The language in the Description section (bottom middle) must state the following: "The City of St. Helena, its agents, officers, officials, employees and volunteers" are named as additionally insured."		General Liability	Major Permit 2 Million General Liability/4 million Aggregate		Minor Permit 1 Million General Liability/2 million Aggregate	Auto Liability	Major/Minor Permit 2 Million or Greater per Accident, Bodily Injury or Property Damage	Workers Comp	Major/Minor Permit 2 Million per Injury
General Liability	Major Permit 2 Million General Liability/4 million Aggregate								
	Minor Permit 1 Million General Liability/2 million Aggregate								
Auto Liability	Major/Minor Permit 2 Million or Greater per Accident, Bodily Injury or Property Damage								
Workers Comp	Major/Minor Permit 2 Million per Injury								
Disclosure Statement NOTICE: This application will expire in 180 days from the date of submission if the permit is not pursued in good faith. The permit will expire if work is not started in 180 days or if work is abandoned for more than 180 days. A request for an extension of time must be submitted, in writing, to the Public Works Department within 180 days of issuance, or 180 days from the last approvable inspection. Permit fees are due at the time of application and are NON REFUNDABLE . Incomplete submittals will not be accepted. I CERTIFY THAT IN THE PERFORMANCE OF THE WORK FOR WHICH THE PERMIT IS ISSUED WILL ADHERE TO THE CITY OF ST. HELENA CITY STANDARDS. I (We) agree to save, indemnify, and hold harmless the City of St. Helena, its Agents, Officers, Officials, Employees, and Volunteers against judgments, costs and expenses which may in any way accrue against said City in consequence of the granting of this permit. Signature: _____ Date: _____ ☐ Owner ☐ Contractor									

GENERAL PERMIT REGULATIONS

NOTE: ALL REQUIRED DOCUMENTS MUST BE SUBMITTED PRIOR TO APPROVAL

1. Work done under this Permit shall be in accordance with the City Standards of the Department of Public Works, State of California, Division of Highways, the Municipal Code and specifications and the provisions enumerated herein.
2. Applicants must obtain all other permits required by other public or private agencies or individuals necessary in order to perform the intended work. If this provision is not complied with, this Permit/Contract shall be null and void.
3. Authorizations for any installation granted by virtue of this permit/contract are revocable at any time.
4. Maintenance of the encroachment is strictly the responsibility of the Permittee.
5. Should construction, reconstruction or maintenance work on the highway be required, any installation authorized by this Permit shall, upon order of the Director of Public Works, be promptly removed or relocated by and at the expense of the Permittee.
6. The Permittee shall provide, erect and maintain all warning signs, lights, barriers or other devices necessary for the protection of the public.
7. During work on city streets at least one 12-foot wide traffic lane shall be open at all times unless otherwise specifically authorized.
8. Existing drainage conditions must be provided for in every instance. Nothing contained herein shall be construed as relieving the Permittee of responsibility.
9. There shall be a minimum of thirty (30) inches of cover over all pipes or conduits installed except as may be specifically authorized by the Permit.
10. Permittee shall notify the Department of Public Works three (3) days prior to the commencement of any work authorized by this Permit.
11. Insurance is required as set forth in the attached document.
12. The Permittee shall obtain a special permission from the Public Works Director if working or operating machinery outside the standard construction hours of 8:00 AM to 5:00 PM, or Sundays and Holidays.



St. Helena Picnic Area Reservation

Please make out checks and send to: St. Helena Public Works Dept.
1480 Main St., St. Helena, Ca. 94574

Picnic Area: _____ Estimated Attendance: _____

Date Requested: _____ Hours: _____

Organization: _____

Details of Intended Activity or Use: _____

Applicants Name: _____

Address: _____

Telephone: _____

Emergency Contact: _____ Telephone: _____

Reservation Fees:

St. Helena Residents:

Crane Park Areas 1-3: \$35.00

Non-Resident:

(1-50 persons) \$65.00
(50-100 persons) \$125.00
(100+ persons) \$200.00

Covered Shelter Area 4: \$100.00

(1-50 persons) \$125.00
(50-100 persons) \$200.00
(100+ persons) \$250.00

Lyman Park Gazebo: \$50.00

\$100.00

Cleaning Deposit: \$50.00

(1-50 persons) \$50.00
(50+ persons) \$100.00

Horse Shoes and volleyball can be rented for an additional fee of \$15.00

Payment Type:	Credit Card ()	Check ()	Cash ()
Credit Card:	VISA ()	MasterCard ()	
Card Number:	_____ Exp. Date: _____ V Code: _____		

Refund Policy: Cleaning deposits will be returned within 2 weeks of use. *Reservation fees are not refundable unless the St. Helena Public Works Department is notified of cancelation 14 days prior to the reservation date. We do not issue refunds due to rain or other bad weather conditions.*

Would you like your refund check mailed ____ or held at City Hall for pickup ____?

Office use only

Deposit Refund Date: _____ **Refunded By:** _____

St. Helena Picnic Area Reservation

**Please make out checks and send to: St. Helena Public Works Dept.
1480 Main St., St. Helena, Ca. 94574**

Park Rules and Regulations:

1. This reservation is for picnic areas only. The park is a public park and cannot be used exclusively by a group.
2. Hours are from 6:00 a.m. to 10:00 p.m.
3. Fires are allowed only in barbecue pits and must be completely out before leaving the picnic area.
4. No firearms or explosives.
5. No Jump Houses.
6. No Water Slides.
7. Dogs must be on a leash.
8. No golf playing.
9. No vehicles or motorcycles beyond the parking lot.
10. Bicycles must be wheeled or pushed by hand over grassy or wooded areas.
11. No radios, amplified music, generators, or other sound producing equipment is allowed.
12. No piñatas allowed.
13. No skate board riding in park or on tennis courts.
14. Bocce Ball courts may be reserved at \$20 per court.

I, the undersigned, as applicant or on behalf of the applicant, signify that the information provided on this application is true and correct and hereby accept full responsibility for any breakage or damage to property or facility, and for department and conduct of those attending the function for which the facility is requested. I agree to indemnify and hold harmless the City of St. Helena and its agents, officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the negligent act or omission of myself, any agent, anyone directly or indirectly by them or anyone for whose acts by them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the City. If permission is granted, I, or my representative agrees to be present during the entire use of the facility. My signature below signifies that I agree to abide by all of the rules and conditions of this application.

Signature _____ Date: _____



Report to the City Council
Regular City Council - 11 May 2021

Agenda Section: CONSENT ITEMS

Subject: Consideration and approval of a resolution approving a Subrecipient Agreement with UpValley Family Centers for a total amount not-to-exceed \$200,000 and authorizing the City Manager to execute a subrecipient agreement upon award of CDBG-CV2 and CV3 grant.

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

On December 18, 2020, the California Department of Housing and Community Development (HCD) announced the availability of approximately \$77.1 million in federal funds for the Community Development Block Grant Coronavirus Response Round 2 and 3 (CDBG-CV2 and CV3) funding for local assistance. Funding for this Notice of Funding Availability (NOFA) is made available pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act signed into law March 27, 2020. This amount includes \$5.9 million of unclaimed funds from tranche one (CV1), plus \$54.4 million of new funds from tranche two (CV2) and \$16.8 million from tranche three (CV3).

Eligible cities and counties may submit applications for CDBG-CV2 and CV3 funds under the NOFA. An allocation of \$271,053 has been made available to the City of St. Helena through an over-the-counter application process. A maximum of three activities, including activities submitted under a previous CV1 application, will be allowed under this application cycle and each activity must expend all funds within 24 months of the contract execution.

The CDBG-CV2 and CV3 Notice of Funding Availability (NOFA) provides funding ONLY for the following Activities, which are narrowly tailored as described in Section II.A and Section II.B of the NOFA:

- Assistance to businesses and microenterprises impacted by COVID-19 stay-at-home orders and shut-downs;
- Public services related to COVID-19 support;
- Facility and infrastructure improvements related to COVID-19 impacts;
- Acquisition and rehabilitation of real property, including housing, to be used in response to COVID-19 impacts.

Activities that involve contracting or partnering with another agency are recommended to have a contract or subrecipient agreement in place at the time the grant funds are awarded.

DISCUSSION

On February 23, 2021, City Council approved a resolution to submit a grant application to CDBG for requesting funding for utility assistance for income qualified households. If the grant is awarded, the City of St. Helena will partner with UpValley Family Centers to administer the program and deliver utility assistance that would meet the requirements of the CDBG program. The program will support local low-to moderate-income households that have been impacted by the pandemic by providing up to three months of utility payment assistance.

To meet the requirements of the CDBG program, the City will need to enter into a subrecipient agreement with CRC. Execution of the Subrecipient Agreement is contingent upon the City receiving the CDBG-CV2 and CV3 funding from HCD. Staff recommends authorizing the City Manager to enter into the subrecipient agreement, so the City is prepared to administer the program if the grant is awarded.

FISCAL IMPACT

If awarded, an approved CDBG-CV2 and CV3 application is 100% grant funded, which allows for up to 13% of the grant allocation to be used for administrative costs.

RECOMMENDED ACTION

Consideration and approval of the attached resolution.

ATTACHMENTS

[Resolution 2021- Authorizing CDBG Subrecipient Agreement Subrecipient Agreement](#)

Attachment 1

CITY OF ST. HELENA

RESOLUTION NO. 2021-

A resolution approving a Subrecipient Agreement with UpValley Family Centers for a total amount not-to-exceed \$200,000 and authorizing the City Manager to execute the Subrecipient Agreement upon award of CDBG-CV1 grant.

RECITALS

- A. The California Department of Housing and Community Development (the "Department") is authorized to allocate Community Development Block Grant (CDBG) Program funds made available from the U.S. Department of Housing and Urban Development ("HUD"); and
- B. On December 18, 2020, the Department issued a Notice of Funding Availability announcing the availability in new federal funds for the Community Development Block Grant Coronavirus Response Round 2 and 3 (CDBG-CV2 and CV3) funding for local assistance. Funding for this Notice of Funding Availability (NOFA) is made available pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act signed into law March 27, 2020; and
- C. The City Council conducted a public hearing on February 23, 2021 to allow for public comments on the proposed CDBG application; and
- D. In response to the December 2020 CDBG-CV2 and CV3 NOFA, the City of St. Helena, has applied to the Department for, and to receive an allocation of, CDBG-CV2 and CV3 funds; and
- E. The City of St. Helena applied for a Public Services- Utility Assistance Program to provide utility payments for qualified households deeply impacted by the COVID 19 Pandemic; and
- F. The City of St. Helena will partner with UpValley Family Centers to administer the Utility Assistance Program; and
- G. The Department requires the City to enter into a Subrecipient Agreement if the grant is awarded; and
- H. The City desires to enter into a Subrecipient Agreement with UpValley Family Centers for the purpose of administering the Utility Assistance Program, which will be funded with CDBG-CV2 and CV3 funds should the grant be awarded to the City.

RESOLUTION

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

1. The City Council approves the Subrecipient Agreement with UpValley Family Centers for a total amount not-to-exceed \$200,000, which will be funded with the CDBG-CV2 and CV3 grant; and
2. The City Manager is hereby authorized to execute a subrecipient agreement upon award of CDBG-CV2 and CV3 grant.

Approved at a Regular Meeting of the St. Helena City Council on May 11, 2021, by the following vote:

Mayor Ellsworth: _____
Vice Mayor Dohring: _____
Councilmember Chouteau: _____
Councilmember Hall: _____
Councilmember Hardy: _____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafoopoulos, City Clerk

**CITY OF ST. HELENA
COMMUNITY DEVELOPMENT BLOCK GRANT
SUBRECIPIENT AGREEMENT**

**AGREEMENT BETWEEN CITY OF ST. HELENA AND
UPVALLEY FAMILY CENTERS**

For Agreement to Provide Public Services to the City of St. Helena, California

This agreement (the "AGREEMENT") is dated _____, 2021, and is made and entered into by the CITY OF ST. HELENA, a California municipal corporation ("CITY") and UPVALLEY FAMILY CENTERS, a California nonprofit public benefit corporation ("SUBRECIPIENT") (collectively, the "PARTIES"), for the purpose of utilizing Community Development Block Grant funds anticipated to be awarded to the CITY for the provision of a Utility Subsistence Program for qualified individuals impacted by the COVID-19 Pandemic.

RECITALS:

WHEREAS, the CITY is applying for 2020 Community Development Block Grant – Coronavirus ("CDBG-CV1") program funding for a Utility Subsistence Program through the California Department of Housing and Community Development (HCD), which received CDBG-CV2/3 funding from the United States Department of Housing and Urban Development ("HUD") pursuant to H.R. 748, known as the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, which provides the CDBG-CV funds to rapidly prepare, prevent and respond to the coronavirus pandemic; and

WHEREAS, the City will utilize the SUBRECIPIENT to carry out eligible public services activities related to the CITY's Utility Subsistence Program if awarded the CDBG-CV2/3 grant funds; and

WHEREAS, the Term of the AGREEMENT is for a period not to exceed 24 months beginning the final date this contract is signed, or until completion of the closeout agreement, whichever occurs first. The term of this AGREEMENT and the provisions herein may be extended to cover any additional time period during which the SUBRECIPIENT remains in control of CDBG funds or other assets, including program income.

WHEREAS, the purpose of this AGREEMENT is to delegate the activities funded by CDBG from the City of St. Helena to the SUBRECIPIENT to provide a Utility Subsistence Program; and

NOW THEREFORE, the recitals above are incorporated herein and the parties agree that:

ARTICLE I: SCOPE OF SERVICES

The SUBRECIPIENT agrees to provide to the CITY eligible services and activities related to the Utility Subsistence Program in accordance with the Community Development Block Grant regulations set forth in 24 CFR Part 570 as amended, the AGREEMENT and as described in Attachment A, Scope of Services, and Attachment B, Program Budget. SUBRECIPIENT explicitly acknowledges and agrees that this AGREEMENT is contingent on CITY receiving the CDBG-CV2/3 funding from HCD, and the CITY shall be entitled to terminate this AGREEMENT immediately and without further notice in the event that the CITY does not receive the anticipated CDBG-CV2/3 funding pursuant to this Agreement. Unless modified in

writing as set forth in Article IV by the parties hereto, the duties of the SUBRECIPIENT shall not be construed to exceed those services and duties specifically set forth in the AGREEMENT.

- A. COMPLIANCE WITH APPROVED SCOPE OF SERVICES. Activities funded under this AGREEMENT will be performed in accordance with the approved Scope of Services as described in Attachment A, the approved Program Budget in Attachment B, the terms of this AGREEMENT, and with the legal and administrative regulations governing federal, state, or other funds used in funding this AGREEMENT, including but not limited to the Standard Agreement for the CDBG-CV2/3 funding to be entered into between the CITY and HCD, and any other assurances or agreement made by the CITY to HCD in connection with the CDBG-CV2/3 funds.
- B. ELIGIBLE ACTIVITIES. The SUBRECIPIENT agrees that activities funded under this AGREEMENT will be in compliance with the eligible and ineligible activities described in the Code of Federal Regulations (CFR) § 570.200 through 570.207 and specified in the Scope of Services in Attachment A.
- C. CDBG NATIONAL OBJECTIVES. All activities funded with CDBG funds must meet one of the CDBG program's National Objectives 1) benefit low- and moderate-income persons; 2) aid in the prevention or elimination of slums or blight; or 3) meet community development needs having a particular urgency, as defined in 24 CFR 570.208. The SUBRECIPIENT will be providing public services that meet the eligible national objectives for the activity as described in Attachment A.

ARTICLE II: RESPONSIBILITIES OF THE SUBRECIPIENT

- A. NOTICE TO PROCEED. SUBRECIPIENT will not begin work on any of the duties and services listed in Article I until execution of the contract. Authorization to proceed on additional services not defined in Article I shall be in the form of an amendment as defined in Article IV.
- B. OWNERSHIP OF DOCUMENTS OR MATERIALS. Upon completion of this AGREEMENT, any documents produced or purchased with Community Development Block Grant Funds, including computer disks, DVDs, or other storage devices, shall become the property of the CITY. CITY will exercise discretion in any reuse of said documents and agrees to hold harmless SUBRECIPIENT for any application of documents for any purpose other than the original intended use.
- C. COMPLIANCE WITH APPLICABLE LOCAL, STATE AND FEDERAL LAW. SUBRECIPIENT shall observe and comply with all currently applicable Federal, State, and local laws, ordinances, and codes, and as amended from time to time.
- D. GENERAL CDBG COMPLIANCE. The SUBRECIPIENT, agrees to comply with the requirements in Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301 – 5321 as amended and the regulations set forth in 24 CFR Part 570 Community Development Block Grants as amended. The SUBRECIPIENT further agrees to utilize funds available under this AGREEMENT to supplement rather than supplant funds otherwise available.
- E. CALIFORNIA WORKERS' COMPENSATION LAW. SUBRECIPIENT, its subcontractors, if any, and all employers working under this AGREEMENT are subject employers under the California Workers' Compensation Law and shall comply with California Labor Code Section 3700, which requires them to provide workers' compensation coverage for all of their subject workers.
- F. TAXPAYER IDENTIFICATION NUMBER. SUBRECIPIENT agrees to complete a Request for Taxpayer Identification Number and Certification (W-9 Form) as a condition of the CITY's obligation to make payment. If the SUBRECIPIENT fails to complete and return the W-9 Form to the CITY, Payment to SUBRECIPIENT may be delayed, or the CITY may, in its discretion, terminate the Contract.

- G. DEBARMENT. The SUBRECIPIENT certifies that neither it, nor its principals or members, is presently debarred suspended, or proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and, that the SUBRECIPIENT shall not knowingly enter into any contract or covered transaction with a person who is similarly debarred or suspended from participation in any project that is Federally funded.

H. ADMINISTRATIVE REQUIREMENTS

1. Accounting and Administrative Standards – The SUBRECIPIENT agrees to comply with 24 CFR 84.21 – 28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. SUBRECIPIENTS must adhere to the uniform requirements for financial management systems, procurement, reports, records and grant closeouts as specified in 24 CFR Part 85 for governmental entities or public agencies; non-profits must adhere to the provisions of 24 CFR Part 84.
2. Cost Principles – Governmental entity and public agency SUBRECIPIENTS shall comply with the requirements and standards for allowable costs in 2 CFR Part 225. Non-Profit SUBRECIPIENTS must comply with the uniform administrative requirements in 2 CFR Part 230 for determining allowable costs. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.
3. Indirect Costs – If indirect costs are charged, the SUBRECIPIENT will develop an indirect cost allocation plan for determining the appropriate share of the SUBRECIPIENT's administrative costs and shall submit such plan to the CITY for approval in a form specified by the CITY.
4. Procurement and Reversion of Assets – The SUBRECIPIENT shall comply with 24 CFR Part 85, 24 CFR Part 84.40 – 48 and with current CITY policies concerning the purchase of equipment or materials and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, equipment, etc.) shall revert to the CITY upon termination of this AGREEMENT. In all cases in which equipment is acquired, in whole or in part with funds under this AGREEMENT is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this AGREEMENT were used to acquire the equipment). Equipment not needed by the SUBRECIPIENT for activities under this AGREEMENT shall be a) transferred to the CITY for the CDBG program or b) retained after compensating the CITY an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.
5. Audits – SUBRECIPIENTS are required to comply with OMB Circular A-133 "Audits of Institutions of State, Local Governments, and Nonprofit Institutions" as applicable. If the SUBRECIPIENT spends \$750,000 or more a fiscal year in Federal Awards, the SUBRECIPIENT hereby agrees to have an annual agency audit conducted in accordance with the OMB Super Circular.
6. Program Income – Program income as defined at 24 CFR 570.500(a) is income received by the SUBRECIPIENT that is generated by activities carried out with CDBG funds made

available under this contract. ***It is the CITY's intent that no program income will be derived or received as a result of the funding being provided under the AGREEMENT.*** In the event that any program income is received by the SUBRECIPIENT, the use of program income by the SUBRECIPIENT shall comply with the requirements set forth in 24 CFR 570.504. All unexpended program income shall be returned to the CITY at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted to the CITY within 30 days.

I. RECORD KEEPING AND REPORTING

1. Records to be Maintained – The SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570 that are pertinent to the activities to be funded under this AGREEMENT. Such records shall include but not be limited to:
 - a. Records providing a full description of each activity undertaken, including compliance with standards for public services in 24 CFR 570.201(e);
 - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program per 24 CFR 570.208;
 - c. Records required to determine the eligibility of activities per 24 CFR 570 Subpart C;
 - d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
 - f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21 – 28; and
 - g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
2. Access to Records – SUBRECIPIENT further agrees that the CITY, HUD, and the Comptroller General of the United States or any of their duly authorized representatives, shall, at any time during normal business hours, as often as deemed necessary, have access to and the right to audit, examine, and reproduce such records and further agrees to include the above provision in all subcontracts. The SUBRECIPIENT shall furnish and cause each of its own subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the CITY, HCD or its agent, HUD or its agent, or other authorized State or Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
3. Records Retention – The SUBRECIPIENT shall maintain all documents and accounting records related to the Project in accordance with generally accepted accounting principles consistently applied, and state and federal law requirements, for a period of not less than four (4) years after termination of all activities funded under this Agreement, or after resolution of all federal audit findings, whichever occurs later. Notwithstanding the above, if any litigation, claim, negotiation, audit exception, monitoring, inspection or other action that involve any of the records described above is pending at the end of the record retention period stated herein, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

4. Beneficiary Data – The following beneficiary data collected shall include, but not be limited to, client name, confirmation of St. Helena residency, income level or other basis for determining eligibility or meeting a National Objective per 24 CFR 570.208, and description of service provided. Demographic data documented for each beneficiary shall include their race and their ethnicity. The City will provide SUBRECIPIENT with a report form that delineates the five (5) race and two (2) ethnicity categories to be reported.
5. Quarterly Reporting – The SUBRECIPIENT shall provide to the City Finance Department, by the 15th day of the month following the end of each calendar quarter a narrative report on the progress of their program/service in meeting the objectives and outcomes noted in the Program Description Attachment A to this AGREEMENT, and summary information for the program's beneficiaries which includes the number of beneficiaries who are low income, very low income, and extremely low income, as well as the number who are not low income, if any; and the race and ethnicity of beneficiaries served in a format provided by the CITY. This report should outline outstanding achievements, as well as problems or issues of concern that have been encountered.
6. Annual Reporting – By [REDACTED], the SUBRECIPIENT shall provide to the City Finance Department an annual full-year report consisting of:
 - a. A compilation of the data provided in the quarterly reports, as outlined in paragraph 5 above;
 - b. A financial accounting of all program/service expenditures for the term of this AGREEMENT, with a reconciliation of actual vs. budgeted expenditures; and
 - c. A narrative report on the Recipient's success in meeting targeted objectives and outcomes, in the format described in paragraph 5 above, but in this case reporting results for the entire year covered by this AGREEMENT. Included in this narrative will be a description of the number of families serviced during the year by the program.
 - d. A completed Recipient race/national origin data form, a copy of which is being provided by the City or an Equal Employment Opportunity Report as is otherwise filed by Recipient.
7. Project Monitoring – The CITY will monitor the performance of the SUBRECIPIENT against the goals and performance standards identified in this AGREEMENT to include on-site monitoring visits. Any deficiencies noted in the monitoring reports must be fully cleared by the SUBRECIPIENT within 30 days after receipt by the SUBRECIPIENT. Failure of the SUBRECIPIENT to comply with the above monitoring requirements will constitute a violation of this contract and may result in the withholding of future payments.
8. Close-outs – The SUBRECIPIENT's obligation to the CITY shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the CITY), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this AGREEMENT, shall remain in effect during and period that the SUBRECIPIENT has control over CDBG funds, including program income.
9. Copyright – If this contract results in any copyrightable material or inventions, the CITY and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable

license to reproduce, publish or otherwise use and authorize others to use, the work or materials for governmental purposes.

J. NON-DISCRIMINATION/CIVIL RIGHTS.

1. Equal Employment Opportunity. In connection with the execution of this AGREEMENT, SUBRECIPIENT shall not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, age, sexual orientation, gender, gender identity and gender expression as protected categories specifically and expressively in that category, physical handicap, medical condition, marital status, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship.
2. Nondiscrimination Civil Rights Act of 1964. SUBRECIPIENT will comply with all federal regulations relative to nondiscrimination to federally assisted programs.
3. Solicitations for Subcontractors including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations, made by SUBRECIPIENT for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by SUBRECIPIENT of SUBRECIPIENT's obligations under this AGREEMENT and the regulations relative to nondiscrimination.

K. AFFIRMATIVE ACTION.

1. Equal Opportunity/Affirmative Action. The SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of the SUBRECIPIENT, state that it is an Equal Opportunity or Affirmative Action employer.
2. Women- and Minority-Owned Businesses (W/MBE). The SUBRECIPIENT will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises as defined in Title 49 Code of Federal Regulations Part 23, and as it may be amended, the maximum practicable opportunity to participate in the performance of contracts and subcontracts awarded through the CITY's Community Development Block Grant Program. As used in this AGREEMENT, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The SUBRECIPIENT may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

L. CONDUCT. The SUBRECIPIENT and all employees and subcontractors shall comply with the following laws:

1. Conflict of Interest. The SUBRECIPIENT agrees to abide by the provisions of 24 CFR 84.42 and 570.611 for non-profit agencies and 24 CFR part 85.36 for government and public agencies, which include (but not limited to) the following:
 - a. The SUBRECIPIENT shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. The standards of conduct must include penalties and sanctions for violating these provisions by its employees, agents, or officers.
 - b. No employee, officer, or agent of the SUBRECIPIENT shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
 - c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or AGREEMENT with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the CITY, the SUBRECIPIENT, or designated public agency.
 - d. Furthermore, the program shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this certification.
2. Lobbying. The SUBRECIPIENT hereby certifies that no Federal appropriated funds have been paid or will be paid, by or behalf of it, to any person for influencing or attempting to influence and officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or Cooperative AGREEMENT;

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative AGREEMENT, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for any subcontracts or sub-awards and that all SUBRECIPIENTS certify and disclose accordingly.

3. Hatch Act. The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this AGREEMENT, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
 4. Religious Activities. The SUBRECIPIENT agrees that it will carry out each activities in compliance with 24 CFR 570.200(j) which prohibits the use of CDBG funds for inherently religious activities.
- M. ENVIRONMENTAL CONDITIONS. The SUBRECIPIENT shall carry out each activity in compliance with Federal laws and regulations described in 24 CFR 570 Subpart K, except that the SUBRECIPIENT does not assume the CITY's environmental review responsibilities described in 24 CFR Part 570.604; and for initiating the review process under the provisions of 24 CFR Part 52. In addition, the SUBRECIPIENT agrees to comply with the following Federal laws as they apply to the performance of this AGREEMENT.
1. Clean Air Act, 42 U.S.C., 7401 *et seq.*
 2. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308.
 3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended (Ambient Air Quality Standards).

ARTICLE III: RESPONSIBILITIES OF THE CITY

- A. AUTHORIZATION TO PROCEED. CITY shall authorize SUBRECIPIENT upon execution of the contract to start work on any of the services listed in Article I.
- B. ACCESS TO RECORDS, FACILITIES, AND PROPERTY. CITY shall comply with reasonable requests from SUBRECIPIENT for inspection or access to CITY's records, facilities, and properties.
- C. TIMELY REVIEW. CITY shall examine all reports and other documents presented by SUBRECIPIENT, obtain advice of an attorney, insurance counselor, accountant, auditor, and other SUBRECIPIENTS as CITY deems appropriate for such examination and render in writing decisions pertaining thereto in a timely manner so as not to unreasonably delay the services of SUBRECIPIENT.
- D. MONITORING. The CITY will monitor the performance of the SUBRECIPIENT against goals and performance standards identified in this AGREEMENT to include, if necessary, on-site monitoring visits. Substandard performance as determined by the CITY will constitute noncompliance with this AGREEMENT. If successful action to correct each substandard performance is not taken by the SUBRECIPIENT within a reasonable time after being notified by the CITY, AGREEMENT suspension or termination procedures will be initiated as described in Article X of this AGREEMENT.

ARTICLE IV: MODIFICATIONS

CITY or SUBRECIPIENT shall not make modifications in this AGREEMENT or in Attachment A, Scope of Services, or Attachment B, Program Budget, except in writing as an amendment to the AGREEMENT. Modifications shall be agreed to by both parties, with scope of work, schedule, and compensation to be

negotiated at the time the modification is proposed by either party. Modifications that do not meet these requirements shall not be binding, and no further compensation will be allowed for any work performed.

ARTICLE V: COMPENSATION

The CITY shall reimburse the SUBRECIPIENT **not to exceed** \$200,000 for eligible program and administrative expenses incurred to provide the programs and services as described in Attachment A, Scope of Services, and outlined in the approved Program Budget, described in Attachment B, upon determining satisfactory performance of eligible activities described in Article I of this AGREEMENT.

- A. **PAYMENT PROCEDURES.** Payments will be made to the SUBRECIPIENT quarterly, as necessary, during the period of this AGREEMENT on a reimbursement basis. Prior to release of any payment, and by the 15th day of each quarter's final month, SUBRECIPIENT shall present to the CITY's designee, Mandy Kellogg, Finance Manager, Finance Department, a billing statement requesting payment and certifying that services have been provided in compliance with the terms of this AGREEMENT and that the incurred costs for which reimbursement is sought constitute eligible expenditures under this AGREEMENT. No Payment to the SUBRECIPIENT will be released without the CITY having first received such billing statement and all required supporting documentation.
- B. **ELIGIBLE EXPENSES.** All items of cost for which SUBRECIPIENT seeks reimbursement from the CITY must be contained in the Program Budget that is Attachment B to this AGREEMENT and must be eligible costs that comply with the cost principles as specified in Article III. Any amendments to the approved Program Budget must be both requested and approved in writing.
- C. **INDIRECT COSTS.** If indirect costs are charged, the SUBRECIPIENT will develop an indirect cost allocation plan for determining the SUBRECIPIENT's appropriate share of administrative costs and shall submit such plan to the CITY for approval, in a form specified by the CITY, prior to executing this contract.
- D. **USE OF FUNDS.** Funds provided to the SUBRECIPIENT under this AGREEMENT shall be used only for the provision of the services described in the Scope of Services in Attachment A. Any funds paid to SUBRECIPIENT and found subsequently not to have been used or needed for said services, shall be returned to the CITY immediately.
- E. **PROCUREMENT.** The SUBRECIPIENT shall comply with 24 CFR Part 85, 24 CFR Part 84.40-48 and with CITY policies concerning the purchase of equipment or materials and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, equipment, etc.) shall revert to the CITY upon termination of this AGREEMENT.
- F. **REVERSION OF ASSETS.** Equipment purchased all or in part with CDBG funds if sold, the SUBRECIPIENT shall return proceeds to the CITY. If costs were shared, pro-rate the amount of CDBG funds to be returned to the CITY. Excess unused equipment purchased with CDBG funds must be returned to the CITY or the SUBRECIPIENT shall pay the CITY the current fair market value for retained equipment less the percentage of non-CDBG funds used to acquire the equipment.

ARTICLE VI: INDEMNIFICATION

SUBRECIPIENT agrees to indemnify, defend, and harmless the CITY, its agents, officers and employees, from and against any and all liability, claims, suits, loss, damages, costs, and expenses arising out of or resulting from violation of any portion of this AGREEMENT and, or the negligent or intentional acts, errors, or omissions of SUBRECIPIENT, its officers, employees, or agents.

ARTICLE VII: INSURANCE

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

- A. **MINIMUM SCOPE OF INSURANCE.** Coverage shall be at least as broad as:
 - 1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
 - 2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
 - 3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- B. **MINIMUM LIMITS OF INSURANCE.** SUBRECIPIENT shall maintain limits no less than:
 - 1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - 2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
 - 3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- C. **PROFESSIONAL LIABILITY INSURANCE.** When SUBRECIPIENT under this AGREEMENT is duly licensed under California Business and Professions Code as an architect, landscape architect, environmental engineer or other professional engineer, or land surveyor ("design professional"), SUBRECIPIENT shall maintain at least \$2,000,000 of professional liability insurance. When SUBRECIPIENT is not a design professional, SUBRECIPIENT shall maintain at least \$1,000,000 of professional liability insurance combined single limit for each occurrence, insuring against professional errors and omissions in the services performed by SUBRECIPIENT under this AGREEMENT, including, without limitation, claims for negligence, misrepresentation, violation of good faith and fair dealing, and inaccurate advise arising out of, resulting from, or in connection with services performed by SUBRECIPIENT under this AGREEMENT.
- D. **EXCESS LIMITS.** If SUBRECIPIENT maintains higher limits than the minimums shown above, CITY requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.
- E. **PRIMARY COVERAGE.** For any claims related to this contract the SUBRECIPIENT's insurance coverage shall be primary insurance as respects to CITY, its officers, officials, employees, and

volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of SUBRECIPIENT's insurance and shall not contribute with it.

- F. DEDUCTIBLE AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions of \$25,000 or greater must be declared to and approved by the CITY.
- G. OTHER INSURANCE PROVISIONS. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - 1. The CITY, its agent, officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of work or operations performed by the SUBRECIPIENT or SUBRECIPIENT's subconsultants; or automobile owned, leased, hired or borrowed by the SUBRECIPIENT.
 - 2. For any claims related to SUBRECIPIENT's conduct while performing the work of this project, the SUBRECIPIENT's insurance coverage shall be primary insurance as respects the CITY, its agents, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its agents, officers, officials, employees, or volunteers shall be excess of the SUBRECIPIENT's insurance and shall not contribute with it.
 - 3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY.
 - 4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.
- H. WAIVER OF SUBROGATION. SUBRECIPIENT's commercial general liability, automobile liability, workers' compensation, and employer's liability policies shall be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the CITY, its agents, officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the work performed by the named insured for the CITY.
- I. THE ACCEPTABILITY OF INSURERS. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the CITY.
- J. VERIFICATION OF COVERAGE. SUBRECIPIENT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the CITY or on forms that conform to CITY requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

ARTICLE VIII: ASSIGNMENT

This AGREEMENT is to be binding upon the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other. No assignment of this AGREEMENT shall be effective until the assignee assumes in writing the obligations of the assigning party and delivers such written assumption to the other original party to this AGREEMENT.

Use of subcontractors by SUBRECIPIENT or subsidiary or affiliate firms of SUBRECIPIENT for technical or professional services shall not be considered an assignment of a portion of this AGREEMENT, and

SUBRECIPIENT shall remain fully responsible for the work performed, whether such performance is by SUBRECIPIENT or subcontractors. No subcontractors shall be used without the written approval of CITY.

Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CITY and SUBRECIPIENT.

ARTICLE IX: INTEGRATION

These terms and conditions and the AGREEMENT to which they are attached represent the entire understanding of CITY and SUBRECIPIENT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The AGREEMENT may not be modified or altered except in writing as specified in Article II.

ARTICLE X: TERMINATION OF AGREEMENT

- A. TERMINATION WITHOUT CAUSE – This AGREEMENT may be terminated in whole or in part at any time by either party giving the other party thirty (30) days’ written notice in writing. The reasons and basis for termination shall be set forth in the written notice in compliance with the provisions of CDBG Regulations, in particular CFR 85.44.

In the event CITY terminates this AGREEMENT, CITY’s City Manager may give the written notice subject to subsequent ratification by the City Council of the CITY at the next regular meeting of such body at which a quorum duly authorized to act is present, or at a special meeting duly called and held.

- B. TERMINATION FOR CAUSE – CITY may immediately terminate this AGREEMENT upon the termination, suspension, discontinuation, or substantial reduction in HUD CDBG funding for this AGREEMENT’s activity.

The CITY may terminate this AGREEMENT if SUBRECIPIENT fails to comply with the terms of this AGREEMENT. Noncompliance with the terms of this AGREEMENT includes, without limitation, non-performance, slow performance, or substandard performance such as failure to provide substantially all the services described in Attachment A of this AGREEMENT, or the failure to substantially meet or fulfill the accomplishment goals set forth in Attachment A of this AGREEMENT.

If CITY decides to terminate this AGREEMENT after a full evaluation of all circumstances has been completed, SUBRECIPIENT shall, upon written request, have the right to an appeal process. A copy of the appeal process will be attached to any termination notice.

Either party may terminate this AGREEMENT if for any reason the timely completion of the work/services to be provided under this AGREEMENT is rendered improbable, infeasible, or impossible.

Either party may terminate this AGREEMENT for non-performance by the other party of any material provision of this AGREEMENT.

- C. REPAYMENT OF FUNDS BY SUBRECIPIENT – In the event this AGREEMENT is terminated, as provided in this section, SUBRECIPIENT shall immediately return to CITY any and all unexpended and unencumbered CDBG funds. Further, SUBRECIPIENT shall comply with the provisions of the section of this AGREEMENT relating to Reversion of Assets.
- D. ADDITIONAL PAYMENT AFTER NOTICE OF TERMINATION AT DISCRETION OF CITY – In the event of early termination of the AGREEMENT by either party without cause, at CITY's sole discretion, SUBRECIPIENT may be compensated for all services rendered through the date of notice of termination and necessarily incurred costs performed in good faith in accordance with the terms of this AGREEMENT that have been previously eligible for reimbursement, to the extent that CDBG funds are available from HUD.

In the event of early termination of the AGREEMENT by CITY for cause (but not due to the non-performance or breach by SUBRECIPIENT), at CITY's sole discretion, SUBRECIPIENT may be compensated for all services rendered through the date of termination and necessarily incurred costs performed in good faith in accordance with the terms of this AGREEMENT that have been previously eligible for reimbursement, to the extent that CDBG funds are available from HUD.

ARTICLE XI: CONFLICTS OF INTEREST AND ANTI-FRAUD AND ANTICORRUPTION POLICIES

1. SUBRECIPIENT covenants that neither it, nor any officer or principal of its organization, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder SUBRECIPIENT's performance of services under this AGREEMENT. SUBRECIPIENT further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the CITY. SUBRECIPIENT agrees to at all times avoid conflicts with the interests of CITY in the performance of this AGREEMENT.
2. CITY understands and acknowledges that SUBRECIPIENT is, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related Services for other governmental agencies and private parties. SUBRECIPIENT is aware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.
3. SUBRECIPIENT understands and acknowledges CITY maintains an anti-fraud and anti-corruption policy to protect the CITY, its operations, and its employees from and against financial risks, operational breaches, and unethical, fraudulent and corrupt activities. SUBRECIPIENT represents and warrants that SUBRECIPIENT, its subcontractor(s) / subconsultant(s) and their respective employees providing services pursuant to the AGREEMENT are (1) in good standing; (2) have not been previously investigated, convicted, or debarred for fraudulent or corrupt activities; (3) will not participate in fraudulent or corrupt activities, and (4) will take steps to ensure that its employees and subcontractor(s) / subconsultant(s) employees do not participate in any fraudulent or corrupt activities. SUBRECIPIENT acknowledges and agrees further that it has a duty to and will report to CITY any information or incident(s) about possible fraudulent or corrupt activities SUBRECIPIENT may discover, and will cooperate in any fraud or corruption investigation conducted, with respect to SUBRECIPIENT's service provided pursuant to this AGREEMENT.

ARTICLE XII: SEVERABILITY

If any provision of this AGREEMENT is held invalid, the remainder of the AGREEMENT shall not be affected thereby, and all other parts of this AGREEMENT shall nevertheless be in full force and effect.

ARTICLE XIII: WAIVER

The CITY's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the CITY to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

ARTICLE XIV: ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the CITY and the SUBRECIPIENT for the use of CDBG funds received under this AGREEMENT and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the CITY and the SUBRECIPIENT with respect to this AGREEMENT.

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

SUBRECIPIENT:

CITY:

By: _____

By: _____

Name: _____

Name: Mark T. Prestwich

Title: _____

Title: City Manager

Approved as to Form:

By: _____

Name: Ethan Walsh

Title: City Attorney

Attachment A

Scope of Services for Public Service Activities
UpValley Family Centers of Napa County & City of St. Helena
Utilities Assistance Program

The intended use of the funds is to support households directly financially impacted by COVID-19 with utilities payment assistance. Individuals or families who receive financial assistance must reside in the City of St. Helena.

UpValley Family Center's (UVFC's) Utility Assistance Program will support local low-to-moderate income households by providing up to three months' of utilities payment assistance to include gas, electric, water, garbage, phone and/or internet bills.

A. Principle Tasks to be performed by UVFC:

1. Promote the Utilities Assistance Program and provide information about eligibility requirements to local St. Helena residents in English and Spanish.
2. Screen individuals/households for eligibility, and explain program rules and requirements. Households must demonstrate they meet the criteria below to qualify for the assistance:
 - a) Resident of St. Helena
 - b) Directly financially impacted by COVID-19
 - c) Gross household income must be below 80% of Napa County's Median Income.
3. Payment: Upon completion of the application and confirmation of eligibility, utilities assistance payments will be made directly to the utility company. Assistance for late fees will not be included.

UpValley Family Centers of Napa County
 City of St. Helena Utility Assistance
 June 2021 to April 2023

	Total City of SH Utility Assistance
Personnel	
Case Manager I	\$ 22,000.00
Case Managers Seniors	\$ 6,000.00
Subtotal personnel	\$ 28,000.00
Benefits and payroll taxes	\$ 7,000.00
Total personnel	\$ 35,000.00
Direct Expenses	
Direct Aid	\$ 140,000.00
Total direct expenses	\$ 140,000.00
Administration expenses	\$ 25,000.00
Total	\$ 200,000.00



Report to the City Council
Regular City Council - 11 May 2021

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed approval of a resolution rescinding resolution 2016-47 and adopting the City of St. Helena's new Council Vision and Council Mission

CEQA Determination: Not a CEQA project

Prepared By: Cindy Tzaopoulos, City Clerk

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

At the March 4, 2021 Goal Setting Special City Council meeting, Vice Mayor Dohring and Council Member Hall agreed to collaborate on reviewing and updating the City's Vision and Mission Statements for Council's consideration.

During the the April 1, 2021 follow-up Goal Setting Special City Council meeting, Vice Mayor Dohring reported on the proposed updates to the Council Vision and Council Mission. It was the consensus of the City Council to bring the final version before the City Council for consideration and adoption.

FISCAL IMPACT

None

RECOMMENDED ACTION

Approve of a resolution rescinding resolution 2016-47 and adopting the City of St. Helena's updated Council Vision and Council Mission

ATTACHMENTS

[Vision and Mission Statement](#)

[Vision and Mission Statement \(PJD Revisions March 16 2021\) Redline
Council Vision and Council Mission - Resolution](#)

City of St. Helena

Council Vision

St. Helena strives to be a diverse, inclusive, family-friendly, economically and environmentally sustainable community which prudently manages all of its resources, continues to improve its infrastructure, ensures its water security, provides a full range of housing, business, cultural and recreational opportunities and cherishes its historic, small-town character, beautiful natural environment and high quality of life.

Council Mission

The City of St. Helena is dedicated to serving its citizens by:

- Promoting a culture of equity, diversity and inclusion
- Supporting thriving families and ensuring the health and wellbeing of our youth
- Ensuring our long-term economic sustainability and focusing on new and diverse sources of revenue
- Preventing, preparing for, and mitigating fire and other local emergencies
- Improving and maintaining City infrastructure
- Updating our water management policies to ensure an adequate water supply
- Responding innovatively to climate change challenges and adopting environmentally sustainable best practices
- Preserving our historic, small-town, rural character
- Expanding recreational, active transportation and cultural opportunities
- Facilitating innovative, well-designed housing for residents of all backgrounds, ages and income levels
- Encouraging full civic participation and ongoing communication
- Strengthening regional collaboration with other public entities and building partnerships with local service providers and stakeholders

Vision and Mission Statements adopted by the City of St. Helena City Council on May ____, 2021, Resolution No.

_____.

City of St. Helena

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Council Vision Statement

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The City of St. Helena will strive to be a diverse, inclusive, family-friendly, economically and environmentally sustainable, and continue to be a family-friendly, diverse and safe community which prudently manages all of 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 cherishes its historic, small-town character, beautiful natural environment and high quality of life.

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Council Mission Statement

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The City of St. Helena is dedicated to serving the needs and desires of our its citizens by:

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- Promoting a culture of equity, diversity and inclusion
- Supporting thriving families and ensuring the health and wellbeing of our youth
- Maintaining and improving Ensuring our long-term short and long-term economic sustainability and focusing on new and diverse sources of revenue
- Offering excellent professional services to all customers Preventing, preparing for, and mitigating fire and other local emergencies
- Establishing, improving and maintaining City infrastructure
- Updating our water management policies and ensuring an adequate water supply
- Maintaining and encouraging an Responding innovatively to climate change challenges and adopting environmentally sustainable best community practices

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Vision and Mission Statements adopted by the City of St. Helena City Council on April April 12, 2016 2021, Resolution No. 2016-47.

- Preserving ~~and embracing the our~~ historic, small-town, rural character ~~of St Helena~~
- Expanding ~~and improving recreational, active transportation services and facilities~~ and cultural opportunities
- ~~Facilitating Encouraging a wide range of~~ innovative, well-designed housing ~~available~~ for residents of all ~~backgrounds,~~ ages and income levels
- ~~Encouraging Facilitating~~ full civic participation and ongoing communication
- Strengthening ~~regional collaboration with other public entities and building partnerships with the private, non profit and public sectors~~local service providers and stakeholders

Vision and Mission Statements adopted by the City of St. Helena City Council on ~~April April 12~~, ~~2016~~2021, Resolution No. ~~2016 47~~_____.

CITY OF ST. HELENA

RESOLUTION NO. 2021-

**Resolution rescinding resolution 2016-47 and adopting the
City of St. Helena's new Council Vision and Council Mission**

RECITALS

- A. On February 22, 2000 the City Council adopted resolution 2000-28 approving the current mission statement which is: *"We will conduct city affairs on behalf of our citizens using an open and creative process"; and*
- B. On April 12, 2016, the City Council approved resolution 2016-47 approving the City's new Vision and Mission Statements; and
- C. At the March 4, 2021 Goal Setting special City Council meeting Vice Mayor Dohring and Council Member Hall agreed to collaborate on bringing forward a new vision and mission statement for the community; and
- D. The new Council vision for the City of St. Helena is:

St. Helena strives to be a diverse, inclusive, family-friendly, economically and environmentally sustainable community which prudently manages all of its resources, continues to improve its infrastructure, ensures its water security, provides a full range of housing, business, cultural and recreational opportunities and cherishes its historic, small-town character, beautiful natural environment and high quality of life.

- E. The new Council Mission for the City of St. Helena is:

The City of St. Helena is dedicated to serving its citizens by:

- Promoting a culture of equity, diversity and inclusion
- Supporting thriving families and ensuring the health and wellbeing of our youth
- Ensuring our long-term economic sustainability and focusing on new and diverse sources of revenue
- Preventing, preparing for, and mitigating fire and other local emergencies
- Improving and maintaining City infrastructure
- Updating our water management policies to ensure an adequate water supply
- Responding innovatively to climate change challenges and adopting environmentally sustainable best practices
- Preserving our historic, small-town, rural character

- Expanding recreational, active transportation and cultural opportunities
- Facilitating innovative, well-designed housing for residents of all backgrounds, ages and income levels
- Encouraging full civic participation and ongoing communication
- Strengthening regional collaboration with other public entities and building partnerships with local service providers and stakeholders

RESOLUTION

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

1. The City Council rescinds resolution 2016-47; and
2. The City Council adopts the new Council vision and Council mission.

Approved at a Regular Meeting of the St. Helena City Council on May 11, 2021, by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Chouteau:	_____
Councilmember Hall:	_____
Councilmember Hardy:	_____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk



Report to the City Council
Regular City Council - 11 May 2021

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed approval of a resolution rescinding resolution 2019-18 and re-establishing Rules of Procedure for the Conduct of Council Meetings and re-establishing City Council Standards of Conduct

CEQA Determination: Not a CEQA project

Prepared By: Cindy Tzaopoulos, City Clerk

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

At the March 4, 2021 Goal Setting Special City Council meeting, Vice Mayor Dohring and Council Member Hall agreed to collaborate on reviewing and updating the City's Vision and Mission Statements. At the April 1, 2021 follow-up Goal Setting Special City Council meeting, Vice Mayor Dohring reported on the proposed updates to the Council Vision and Council Mission. It was the consensus of the City Council to present the final version at a future City Council Meeting for formal consideration and adoption.

The new Council Vision and Council Mission are proposed for adoption at the May 11, 2021 Regular City Council meeting. The City Council Rules of Procedure for the Conduct of Council Meetings and Standards of Conduct have been updated to include the new Council Vision and Council Mission language.

FISCAL IMPACT

None

RECOMMENDED ACTION

Adopt a resolution rescinding resolution 2019-18 and re-establishing Rules of Procedure for the Conduct of Council Meetings & re-establishing City Council standards of Conduct

ATTACHMENTS

[2020 Rules of Procedure and Conduct Resolution-5.11.21](#)

[2020 Rules of Procedure and Conduct-Final for 5.11.21 Exhibit A - Redlined](#)

[2020 Rules of Procedure and Conduct-Final for 5.11.21 Exhibit A - Clean](#)

[Rosenberg's Rules of Order Simple Parliamentary Procedures for the 21st Century](#)

[Proposed Council Vision and Council Mission](#)

CITY OF ST. HELENA

RESOLUTION NO. 2021-

**RESCINDING RESOLUTION NO. 2019-18
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; and
- D. WHEREAS, on May 11, 2021 the City Council adopted a new Council Vision and Council Mission; and
- E. The City Council Rules of Procedure for the Conduct of Council Meetings & Standards of Conduct have been updated to include the new Council Vision and Council Mission.

RESOLUTION

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

- 1. Resolution No. 2019-18 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 May 11, 2021, by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Chouteau:	_____
Councilmember Hall:	_____
Councilmember Hardy:	_____

APPROVED:

ATTEST:

Geoff Ellsworth , Mayor

Cindy Tzaopoulos, 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 City Council ~~Mission Statement~~

Council Vision Statement

St. Helena strives to be a diverse, inclusive, family-friendly, economically and environmentally sustainable community which prudently manages all of its resources, continues to improve its infrastructure, ensures its water security, provides a full range of housing, business, cultural and

~~recreational opportunities and cherishes its historic, small-town character, beautiful natural environment and high quality of life. 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.~~

Council Mission Statement

The City of St. Helena is dedicated to serving its citizens by:

- Promoting a culture of equity, diversity and inclusion
- Supporting thriving families and ensuring the health and wellbeing of our youth
- Ensuring our long-term economic sustainability and focusing on new and diverse sources of revenue
- Preventing, preparing for, and mitigating fire and other local emergencies
- Improving and maintaining City infrastructure
- Updating our water management policies to ensure an adequate water supply
- Responding innovatively to climate change challenges and adopting environmentally sustainable best practices
- Preserving our historic, small-town, rural character
- Expanding recreational, active transportation and cultural opportunities
- Facilitating innovative, well-designed housing for residents of all backgrounds, ages and income levels
- Encouraging full civic participation and ongoing communication
- Strengthening regional collaboration with other public entities and building partnerships with local service providers and stakeholders

~~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 20~~14~~~~6~~-__47, dated May 11, 2021~~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 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 City Council Mission

Council Vision

St. Helena strives to be a diverse, inclusive, family-friendly, economically and environmentally sustainable community which prudently manages all of its resources, continues to improve its infrastructure, ensures its water security, provides a full range of housing, business, cultural and

recreational opportunities and cherishes its historic, small-town character, beautiful natural environment and high quality of life.

Council Mission

The City of St. Helena is dedicated to serving its citizens by:

- Promoting a culture of equity, diversity and inclusion
- Supporting thriving families and ensuring the health and wellbeing of our youth
- Ensuring our long-term economic sustainability and focusing on new and diverse sources of revenue
- Preventing, preparing for, and mitigating fire and other local emergencies
- Improving and maintaining City infrastructure
- Updating our water management policies to ensure an adequate water supply
- Responding innovatively to climate change challenges and adopting environmentally sustainable best practices
- Preserving our historic, small-town, rural character
- Expanding recreational, active transportation and cultural opportunities
- Facilitating innovative, well-designed housing for residents of all backgrounds, ages and income levels
- Encouraging full civic participation and ongoing communication
- Strengthening regional collaboration with other public entities and building partnerships with local service providers and stakeholders

(See Resolution Number 2021-__, dated May 11, 2021.)

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



MISSION:

To restore and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

VISION:

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About *Western City* Magazine

Western City is the League of California Cities' monthly magazine. *Western City* provides lively, interdisciplinary analyses of issues affecting local governance. Its goal is to offer immediately practical ideas, information and bigger-picture policy issues and trends. For more information, visit www.westerncity.com.

"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.

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.

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.

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. ■

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City of St. Helena

Council Vision

St. Helena strives to be a diverse, inclusive, family-friendly, economically and environmentally sustainable community which prudently manages all of its resources, continues to improve its infrastructure, ensures its water security, provides a full range of housing, business, cultural and recreational opportunities and cherishes its historic, small-town character, beautiful natural environment and high quality of life.

Council Mission

The City of St. Helena is dedicated to serving its citizens by:

- Promoting a culture of equity, diversity and inclusion
- Supporting thriving families and ensuring the health and wellbeing of our youth
- Ensuring our long-term economic sustainability and focusing on new and diverse sources of revenue
- Preventing, preparing for, and mitigating fire and other local emergencies
- Improving and maintaining City infrastructure
- Updating our water management policies to ensure an adequate water supply
- Responding innovatively to climate change challenges and adopting environmentally sustainable best practices
- Preserving our historic, small-town, rural character
- Expanding recreational, active transportation and cultural opportunities
- Facilitating innovative, well-designed housing for residents of all backgrounds, ages and income levels
- Encouraging full civic participation and ongoing communication
- Strengthening regional collaboration with other public entities and building partnerships with local service providers and stakeholders

Vision and Mission Statements adopted by the City of St. Helena City Council on May ____, 2021, Resolution No.

_____.



Report to the City Council
Regular City Council - 11 May 2021

Agenda Section: CONSENT ITEMS

Subject: Fiscal Year 2020-21 3rd Quarter Finance Report and Consideration of a Resolution Approving Budget Adjustments for Fiscal Year 2020-21

CEQA Not a CEQA project
Determination:

Prepared By: April Mitts, Finance Director

Reviewed By: Mark T. Prestwich, City Manager

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Municipal Code Title 2, §2.24.030 states the Director of Finance shall deliver to the City Manager and to the Council at a regularly scheduled Council Meeting a budget report showing the budget status at the end of the preceding quarter.

After conducting a review of the status of the City's budget as of March 31, 2021, this report is presented to provide an overview of revenues and expenses as they relate to various funds. The City has traditionally amended its budget during the year as new and updated information becomes available, or at various times during the year to appropriate funds for expenses that were not anticipated at the time the budget was adopted.

Staff has prepared the following for Council:

1. Third Quarter (Q3) staff report for Fiscal Year (FY) 2020-21. This report is a summary of transactions from July 1, 2020 through March 31, 2021
2. Recommended Budget Adjustments
3. Summary of St. Helena CARES Low Income Subsidy and Water Leak Adjustments for Q3 FY 2020-21
4. FY 2020-21 Q3 List of Checks over \$50,000 (Attachment 1)
5. FY 2020-21 Q3 Balance of All Funds (Attachment 2)

6. FY 2020-21 Q3 Revenue and Expense Summaries - General, Water, and Wastewater Funds (Attachments 3-8)

DISCUSSION

The intent of this report is to highlight the conclusions of the Q3 budget analysis, while focusing on the funds over which the City Council has discretion. The report is broken down into four different Fund Types - General, Water, Wastewater, and Other Funds. The Net Position Tables for the General Fund, Water Fund, and Wastewater Fund include recommended adjustments.

Information presented below reflects transactions posted through March 31, 2021. Additional details for the General Fund, Water Fund, and Wastewater Fund are provided as Attachments 3-8.

GENERAL FUND

General Fund Revenues - 03/31/21 Balances and Recommended Budget Adjustments

General Fund revenue received from July 1, 2020 through March 31, 2021 for Fiscal Year (FY) 2020-21 is \$8,722,426 or 60%. Comparatively, at the same point last year FY 2019-20 Q3, \$9,829,460 or 63% of General Fund revenues had been collected. General Fund revenue is divided into the following categories:

1. Property Tax
2. Sales Tax
3. Transient Occupancy Tax (TOT)
4. Other Taxes
5. Charges for Service
6. Fines and Forfeits
7. Licenses and Permits
8. Development Fees
9. Intergovernmental
10. Interest and Rents
11. Miscellaneous

The primary General Fund revenues include Property Tax, Sales Tax, and TOT.

Due to COVID-19 shelter-at-home orders, which have now been put into place twice, FY 21 projections for both Sales and TOT remain conservative and staff is closely monitoring revenue trends. Attachment 3(a) provides a summary of the estimated vs. actuals for these two categories. Sales tax revenues for march will be available on or around May 22, 2021 and March TOT returns are not due until April 30, 2021.

Although Sales Tax is outperforming estimates, staff is not recommending an adjustment at this time due to the uncertainties of the COVID environment such as vaccinations, a new COVID strain, possible future shelter-at-home orders, whether the budgeted Sales Tax and TOT revenue increases anticipated through the end of FY 2020-21 will

materialize, and a recent notice by the California Department of Tax and Fee Administration (CDTFA) regarding sales tax distributions. TOT and CDTFA are further discussed below.

CDTFA/Amazon - Recently the City received notice from the California Department of Tax and Fee Administration (CDTFA) regarding the local tax paid by Amazon. The CDTFA recently completed their review of Amazon's business structure, updating their Sales and Use Tax registration to include multiple distribution warehouses. This review also examined how the local tax should be sourced which possibly will affect the local tax currently being reported by destination through countywide pools. Essentially, the taxes collected would normally be paid to a County pool in which the item was delivered, then distributed each quarter to the individual jurisdiction (City) based on a formula. The update to Amazon's Sales and Use Tax registration would change and the sales tax collected would go to the pool in which the distribution warehouse is located and not for where the goods are delivered. The City has been consulting with Muniservices, the City's sales tax consultants, on the potential impacts for the City. This decision will not affect revenues received through the City's half-cent Transactions & Use Tax (Measure D) Amazon contributions and will only affect those revenues being collected by the countywide pool. Muniservices has not been able to get an impact estimate from either CDTFA or Amazon; however, they think it might mean around a 50% decrease in the countywide pool, which is then distributed, by formula, to each City within the County. Based on the last four completed quarters, this would equate to an estimated revenue loss of approximately \$25,000 annually (CY 2019 Q4 - 2020 Q3 data). The Amazon returns for CY 2020 Q4 are currently under review and may be amended allowing the change in distribution to be applied in CY 2020 Q4 (October, November, and December). If this is allowed, it may affect the cash received in CY 2020 Q4 through the county pool. Muniservices remains in close contact with the CDTFA and Amazon and will continue provide updates as more information is available.

TOT - TOT revenues outperformed estimates in July through November 2020; however, the second shelter-at-home order, beginning in December 2020, has resulted in a decrease in TOT collected from December 2020 through February 2021 leading to underperformance of TOT revenue estimates during that timeframe. As stated above, the March 2021 TOT returns are not due until April 30, 2021; at that point the City will have a better indicator of performance once the shelter-at-home orders were lifted at the end of January as well as the County of Napa moving up into less restrictive tiers in FY 2020-21 Q4. It is also important to note the City's estimated TOT is based on a percentage of the prior year revenues and increases incrementally as the year progresses. During FY 2020-21 Q4, it is estimated 75% of prior (per-COVID) year revenues are collected which equates to \$252,947 per month, or \$758,840 for the quarter, which is just short of double what the City has collected during the first eight months of FY 2020-21.

Recommended Revenue Increase - Contributions from Government - While Sales Tax and TOT adjustments are not being recommended; staff is recommending a revenue increase of \$575,000 in FY 2020-21 to account for the American Rescue Plan Funding

allocated for the City of St. Helena. President Joe Biden signed the American Rescue Plan Act (ARP Act) into law on March 11, 2021. The \$1.9 trillion spending package is designed to support the distribution of vaccines and accelerate the post-COVID-19 economic recovery. The ARP Act includes \$350 billion in funding for state and local governments. While the total allocation for the City of St. Helena is \$1.15 million, the ARP Act designates these funds will be received in two allocations. Both allocations will be distributed from the federal level to the State of California, then from the State to St. Helena. The City anticipates the first payment will be received approximately 60 days from the date the legislation was signed, which will be around mid-May 2021, but could be as late as August 2021. The legislation directs that no sooner than one year later is when the second half of the funds will be received.

The recommended revenue increase is for the first half of the funds only - a total of \$575,000. Governmental funds (e.g. the General Fund) are required to use the modified accrual basis of accounting. Under the modified accrual basis revenues are recognized when they become available and measurable. While the total amount is measurable, it is not considered available. Under governmental accounting, revenues are considered available if they are collected within 60 days after the year end which would be August 30, 2021. Due to the rules of governmental accounting, the City is not able to accrue the entire amount in the current fiscal year. The second installment will be included as revenue in the FY 2021-22 proposed budget.

Staff recommends a revenue budget increase of \$575,000 in FY 2020-21 to 101-3461-0000 *Contributions from Government*

General Fund Expenses - 03/31/21 Balances and Recommended Budget Adjustments

General Fund expenses through March 31, 2021 are \$10,716,926. Spending is at 69% of the adopted amount for the year with 31% available. Spending for the previous year FY 2019-20 Q3 was at 66% with 34% available. Attachment 4 provides a summary of expenditures by Department through FY 2020-21 Q3. The higher than anticipated expenses are due to COVID-19 related expenses as well as expenses related to response to the LNU Fire, Glass Fire, and Fire Department Strike Teams.

Staff is recommending two budget increases which will affect the General Fund. Each of the recommendations in Table 1 will be split between multiple funds.

Table 1 - General Fund Expense Increase Recommendations

Account	Description/Notes	General Fund Amount
101-4300-2145	Additional Costs to Complete the City's User Fee Study Total increase \$3,000 split between 101/561/571	1,000
101-4300-2145	Grant Assistance	20,000

	Total increase of \$40,000 split between 101/561	
	Total Recommended Increase	21,000

Table 2 - Approved General Fund Budget Adjustments/Use of Reserves since July 1, 2020

CC Meeting Dates	Item	Amount
8/11/20 and 1/26/21	Sewer Lateral Loan Program - not-to-exceed	405,000
8/25/20	Emergency Clearing WTP - LNU Fire	51,025
1/26/21	Funding for the City's 2023-2031 6th Cycle Housing Element Update	49,012
2/9/21	Hiring HR Manager position in advance of the retirement of the HR/IT Director	28,000
2/23/21	Mid-Year Budget Review - Operating Expenses	576,240
2/23/21	Mid-Year Budget Review - Emergency Related Expenses	2,680,362
	Total	3,789,639

Table 3 - General Fund Estimated Net Position 6/30/2021

Ending Fund Balance @ 6/30/2020		\$7,134,663	Net Position %
Estimated Revenue @ 6/30/2021*	\$15,267,959		
Estimated Expenses @ 6/30/2021**	(\$16,953,279)		
Purchase Order Rollovers***	(435,315)		
Use of Reserves	(\$2,120,635)		
Estimated Unassigned Net Position		\$5,014,028	29%

**Total expenses include previously approved budget adjustments and recommended adjustments

***Rollover Purchase Orders from FY 2019-20 are expenses that were budgeted and encumbered in FY 2019-20, but were not expended by June 30, 2020

WATER FUND - 3/31/21 Balances and Recommended Budget Adjustments

Water Enterprise revenue received is \$4,576,880, or 67% of the estimated total revenues for FY 2020-21 through March 31, 2021. This is comparable to the percentage of revenues collected at the same time last year. Revenues are on target for FY 2020-21. Attachment 5 provides details of Water Fund revenues.

Water expenditures through March 31, 2021 are \$3,586,049. Overall Water Fund spending is at 54% of the adjusted amount for the year with 46% available. The high amount for Non-Departmental is attributed to the PERS Unfunded Liability payments made in Q1 and the high amount of Attorney costs are due to litigation expenses. Attachment 6 provides a summary of spending by department for FY 2020-21 Q3 for the Water Fund. While spending for the Water Fund is on track, staff is recommending the

following budget adjustments due to unforeseen expenses and increased costs due to Phase II/III Water Regulation implementation. While unknown at this time, it is anticipated the Phase II/III implementation costs will be recovered through the imposition of penalties for water use in excess of monthly allocation.

Table 4 - Water Fund Expenditure Increase Recommendations

Account	Description/Notes	Water Fund Amount
561-4300-2145	Additional Costs to Complete the City's User Fee Study Total increase \$3,000 split between 101/561/571	1,000
561-4300-2145	Grant Assistance Total increase of \$40,000 split between 101/561	20,000
561-5000-2145	Phase II/III Water Regulation Implementation Outreach/Analysis/Staffing for Implementation	100,000
	Total Recommended Increase	121,000

Table 4 - Approved General Fund Budget Adjustments/Use of Reserves since July 1, 2020

CC Meeting Dates	Item	Amount
2/23/21	Mid-Year Budget Review	75,000
3/23/21	OTS Agreement - Temporary Water Treatment Operations	210,000
4/27/21	O'Conner Environmental Agreement	205,000
	Total	490,000

Table 5 - Water Fund Estimated Fund Balance 6/30/2021

Estimated Ending Fund Balance @ 6/30/2020		\$5,157,757	Fund Balance %
Estimated Revenue @ 6/30/2021	\$6,848,229		
Estimated Expenses @ 6/30/2021**	(\$6,848,229)		
Purchase Order Rollovers***	(82,721)		
Transfer Out to Capital	(540,000)		
Use of Fund Balance	(\$732,521)		
Estimated Net Position		\$4,425,236	59%

**Total expenses include previously approved budget adjustments and recommended adjustments

***Rollover Purchase Orders from FY 2019-20 are expenses that were budgeted and encumbered in FY 2019-20, but were not expended by June 30, 2020

WASTEWATER FUND - 3/31/21 Balances and Recommended Budget Adjustments

Wastewater Fund revenue received is \$2,273,225 or 67% of the estimated total revenues for FY 2020-21 through March 31, 2021. This is comparable to the percentage of revenues collected at the same time last year. Revenues are on target for FY 2020-21. Attachment 7 provides details for Wastewater Fund revenues.

Wastewater expenses through March 31, 2021 are \$1,741,814. Overall Wastewater spending is at 58% for the fiscal year. The high amount for Non-Departmental is attributed to the PERS Unfunded Liability payments made in Q1. Attachment 8 provides a summary of spending by Department for FY 2020-21 Q3 for the Wastewater Fund.

While spending for the Wastewater Fund is on track, staff is recommending the following budget adjustments due to unforeseen expenses.

Table 6 - Wastewater Fund Expenditure Increase Recommendations

Account	Description	Notes	Wastewater Fund Amount
571-4300-2145	Other Contract Services	Additional Costs to Complete the City's User Fee Study Total increase \$3,000 split between 101/561/571	1,000

Table 7 - Approved Wastewater Fund Budget Adjustments/Use of Reserves since July 1, 2020

CC Meeting Dates	Item	Amount
2/23/21	Mid-Year Budget Review	21,740
4/27/21	OTS Agreement - WWTP Temporary Assistance	58,620
	Total	80,360

Table 8 - Wastewater Fund Estimated Net Position 6/30/21

Ending Fund Balance @ 6/30/2020		\$4,186,917*	Net Position %
Estimated Revenue @ 6/30/2021	\$3,376,372		
Estimated Expenses @ 6/30/2021**	(\$2,822,186)		
Rollover Purchase Orders***	(\$101,762)		
Transfer Out to Capital	(520,000)		
Use of Fund Balance	(67,576)		
Estimated Net Position		\$4,119,341*	150%

*Balance includes \$1.15 million settlement not yet transferred to the Wastewater CIP fund. Once transfer is complete the estimated net position is 100%.

**Total expenses include previously approved budget adjustments and recommended adjustments

***Rollover Purchase Orders from FY 2019-20 are expenses that were budgeted and encumbered in FY 2019-20, but were not expended by June 30, 2020

Water and Wastewater Funds - Aging Report

Although this section is not part of the regular quarterly report, staff feels the aging report for the utility systems is important to review due to the COVID-19 emergency. Revenues for both the water and wastewater systems are recognized as soon as they are earned as opposed to when they are collected. Therefore, when the bi-monthly utility bill is processed the revenues are recorded in the financial software system. Over the year, staff has seen an increase in the number of past due accounts. It can not be determined the exact cause; however, it is believed to be due to the ongoing financial hardships created by COVID-19. Table 9 provides a summary of the past due amounts compared to the same time the previous year.

Table 9 - Water and Wastewater Aging Report

Year	30-60 days	60-90 days	90-120 days	Over 120 days
03/31/20	5,006	14,085	9,994	97,446
03/31/21	1,048	81,982	2,543	236,259

OTHER FUNDS **EXPENSES**

Budget increases are being recommended as follows:

Table 10 - Other Funds Expenditure Increase Recommendations

Account	Description/Notes	Other Funds Amount
4300-2145	Additional Costs to Complete the Impact Fee Study Total increase \$3,000 split between Impact Fee Funds - \$500 per fund	3,000

St. Helena CARES Low Income Subsidy

The St. Helena CARES Subsidy (CARES) program currently has 107 participants. This is an increase in seven participants since the Q3 report. The subsidy for FY2020-21 Q3 is \$14,688. Funds for this program are allocated through the annual budget process. The adopted FY 2020-21 budget programmed \$60,000 for CARES. With the current number of participants, staff estimates one additional household can participate in the program. The total CARES contribution through March 31, 2021 is \$40,725 with \$19,275 remaining for FY 2020-21.

Leak Adjustment Subsidy

There were no leak adjustments in FY 2020-21 Q3. On July 1, 2020, Phase I Water regulations took place. Under these regulations Leak Adjustments are not permitted.

FY 2020-21 Q3 Checks over \$50,000

Per staff recommendations on April 10, 2015, and as adopted by Fiscal Policy P-FI-0016, Attachment 1 provides an account of all check over \$50,000 issued in FY 2020-21 Q3.

FISCAL IMPACT

The fiscal impact for the recommended budget adjustments are summarized below:

Fund	Revenue	Expense
<i>General Fund</i>		
Revenue Increase	575,000	
Expense Increase		21,000
<i>Water Fund</i>		
Expense Increase		121,000
<i>Wastewater Fund</i>		
Expense Increase		1,000
<i>Impact Fee Funds</i>		
Expense Increase		3,000

RECOMMENDED ACTION

Staff recommends the City Council approve the attached Resolution Approving Budget Adjustments for FY 2020-21.

ATTACHMENTS

[Attachment 1 - Checks over \\$50,000](#)

[Attachment 2 - Fund Balance Estimates at 03.31.21](#)

[Attachment 3 - General Fund Revenue Worksheet Historical by Type Q3](#)

[Attachment 3\(a\) - Projected vs. Actual Sales and TOT](#)

[Attachment 4 - FY 2020-21 Q3 General Fund Expenses](#)

[Attachment 5 - FY 2020-21 Q3 Water Fund Revenues](#)

[Attachment 6 - FY 2020-21 Q3 Water Expenditures](#)

[Attachment 7 - FY 2020-21 Q3 Wastewater Revenues](#)

[Attachment 8 - FY 2020-21 Q3 Wastewater Expenditures](#)

[Attachment 9 - Q3 Budget Adjustments](#)

Accounts Payable

Checks by Date - Summary by Check Date

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Check No	Vendor No	Vendor Name	Check Date	Check Amount
110925	NAP05	Westamerica Bank	01/06/2021	60,688.83
Total for 1/6/2021:				60,688.83
111015	MCCULL	McCullough Construction, Inc.	01/20/2021	138,155.82
111020	REMIF	REMIF	01/20/2021	87,361.50
111024	MCCULL	McCullough Construction, Inc.	01/20/2021	100,000.00
111027	REMIF	REMIF	01/20/2021	58,598.08
Total for 1/20/2021:				384,115.40
111040	NATIONST	National Storage Tank, Inc.	01/27/2021	69,813.74
111051	NAP05	Westamerica Bank	01/27/2021	67,707.91
Total for 1/27/2021:				137,521.65
111068	NAP05	Westamerica Bank	01/29/2021	64,720.20
Total for 1/29/2021:				64,720.20
111058	KAISER	Kaiser Foundation Health Plan, Inc.	02/03/2021	54,542.76
Total for 2/3/2021:				54,542.76
111098	HYDROSCI	HydroScience Engineers	02/08/2021	233,597.92
111180	REMIF	REMIF	02/08/2021	61,851.72
Total for 2/8/2021:				295,449.64
111202	EWKI	EKI Environment & Water Inc.	02/17/2021	52,679.83
111226	RESTORAT	Restoration Management Company	02/17/2021	398,353.76
111233	NAP05	Westamerica Bank	02/17/2021	68,567.47
Total for 2/17/2021:				519,601.06
111289	KAISER	Kaiser Foundation Health Plan, Inc.	02/24/2021	54,542.76
Total for 2/24/2021:				54,542.76
111354	BKF	BKF	02/26/2021	70,349.93
111358	CHASE	Chase	02/26/2021	65,546.91
111412	NAP05	Westamerica Bank	02/26/2021	65,872.71
Total for 2/26/2021:				201,769.55
111418	NATIONST	National Storage Tank, Inc.	03/04/2021	128,608.24

Check No	Vendor No	Vendor Name	Check Date	Check Amount
Total for 3/4/2021:				128,608.24
111462	NATIONST	National Storage Tank, Inc.	03/10/2021	51,443.29
Total for 3/10/2021:				51,443.29
111516	WILMING	Wilmington Trust NA	03/17/2021	98,874.88
Total for 3/17/2021:				98,874.88
111522	NAP05	Westamerica Bank	03/18/2021	87,379.29
Total for 3/18/2021:				87,379.29
111525	GONNEV	Gonneville Inc	03/22/2021	98,883.10
Total for 3/22/2021:				98,883.10
111530	KAISER	Kaiser Foundation Health Plan, Inc.	03/24/2021	51,590.06
111533	REMIF	REMIF	03/24/2021	61,851.72
111584	/HELMER	Helmer & Sons, Inc	03/24/2021	158,397.80
Total for 3/24/2021:				271,839.58
Report Total (26 checks):				2,509,980.23

Fund	Description	Estimated Balance at 03/31/21	Estimated Balance Without Long-term Receivables at 12/31/2020
101	General Fund	4,495,478	3,899,008
209	HOME Grant	446,919	62,965
211	EPA Grant	-	-
212	Dept. of Homeland Security	327	327
213	GVS Grant	273	273
216	Public Safety Impact	525,195	463,862
218	Public Library Foundation	1,296	1,296
219	CLSA State Library	2,088	2,088
222	Park Bond Act	222	222
223	Skate Park Lighting	1	1
224	Public Safety (COPS)	275,000	275,000
225	Gas Tax 215	25,778	25,778
226	Gas Tax 216	15,898	15,898
227	Gas Tax 2107	25,137	25,137
228	Gas Tax 21075	10,511	10,511
229	Gas Tax 2103	95,762	95,762
230	RMRA	83,473	83,473
235	Measure A	79,300	79,300
237	Emergency Flood Relief	172,380	172,380
238	Police Training Development	26,194	26,194
240	Measure T	1,610,215	1,610,215
241	Measure T - Class I Trails	167,604	167,604
277	Prop 56	20,718	20,718
278	BSCC Grant	2,560	2,560
279	Asset Forfeiture	54,634	54,634
283	Tree City	242,666	242,666
286	Bocce	48,940	48,940
287	Harvest Festival	1,569	1,569
288	Fourth of July	3,619	3,619
289	Recreation Program	45,809	45,809
291	SB-1186 State Fees	19,432	19,432
295	NOAA	2,680	2,680
329	Stabo Land Conservation	36,907	36,907
375	Murray Public Safety	15,620	15,620
380	Friends and Foundation	35,778	35,778
381	Ryan Trust	3,717	3,717
382	Martin Trust	4,365	4,365
384	Tweed Library	751,245	751,245
420	1996 GO Bonds	12,361	12,361
443	South St. Helena Drainage	29,783	29,783
561	Water Enterprise	8,525,843	8,525,843
562	1977 Water Bond	60,230	60,230
571	Wastewater Enterprise	3,162,446	3,162,446

Fund	Description	Estimated Balance at 03/31/21	Estimated Balance Without Long-term Receivables at 12/31/2020
572	Wastewater Bond	25,418	25,418
581	IS Retiree Health	116,935	116,935
582	IS Garage	48,238	48,238
592	Equipment Replacement	225,965	225,965
593	Fire Dept. Capital Equipment	595,745	595,745
700	Flood Control Capital	108,673	108,673
713	Civic Improvement Impact	720,570	720,570
733	City-wide Capital Project	984,398	984,398
734	Park Impact	999,295	999,295
740	Traffic Mitigation Impact	2,734,871	2,734,871
741	Street Capital Improvement	425,740	425,740
742	Drainage Impact	791,493	791,493
743	TDA Grant	-	-
745	Parking In-Lieu	577,623	577,623
751	Affordable Housing	331,056	331,056
752	Measure E	219,712	219,712
763	Water Capital Project	729,876	729,876
764	Water Impact	353,911	353,911
773	Wastewater Capital Project	1,574,949	1,574,949
774	Wastewater Impact	647,270	647,270

Nonspendable = Resources that cannot be spent either because the underlying resources are not in spendable form or because the government is legally or contractually required to maintain the resource intact.

Restricted = Resources subject to externally enforceable constraints.

Assigned = Resources that are set aside by the government for a particular purpose.

Unassigned = Resources that are not categorized as nonspendable, restricted, committed or assigned.

Unrestricted Net Position = Difference between total net position and net investment in capital assets and restricted net position.

GF Revenue Update

Account	Description	Actual 2018	Actual 2019	Actual FY 2020	Adopted FY 2021	Adjusted FY 2021	Q3 FY 2021	% Collected Q3 2021
Property Taxes								
101-30-10-00-00	Property Tax-Secured	3,616,167	3,940,490	4,109,646	4,131,967	4,254,296	2,894,852	
101-30-11-00-00	ERAF Shift to State	200,292	342,386	309,857	-	400,795	465,733	
101-30-20-00-00	Property Tax-Unsecured	121,534	125,292	127,427	110,275	155,958	22,261	
101-30-30-00-00	Prior Year Property Tax	1,160	1,035	964	600	600	2,936	
101-30-90-00-00	Real Property Transfer Tax	82,829	83,805	67,964	110,000	110,000	95,144	
101-32-05-00-00	In Lieu VLF	681,160	726,626	776,392	752,058	752,058	407,288	
101-32-20-00-00	Homeowner Property Tax	15,352	15,555	15,260	17,057	17,057	6,671	
Property Taxes		4,718,495	5,235,189	5,407,511	5,121,956	5,690,764	3,894,885	68%
Sales Tax								
101-30-40-00-00	Retail Sales/Use Tax	2,950,480	3,159,579	2,822,979	1,559,500	1,559,500	1,789,427	
101-30-42-00-00	Public Safety Sales Tax	71,117	61,687	66,742	60,848	60,848	51,036	
101-30-43-00-00	Sales Tax In Lieu	-	-	-	-	-	-	
101-30-44-00-00	Measure D	1,726,923	1,743,519	1,650,599	880,200	880,200	1,065,687	
Sales Tax		4,748,520	4,964,784	4,540,321	2,500,548	2,500,548	2,906,150	116%
Transient Occupancy Taxes								
101-30-50-00-00	Transient Occupancy Tax	2,841,607	3,296,741	2,470,808	1,237,500	1,237,500	666,010	
101-30-51-00-00	Transient Tax Penalty	21,973	64,084	11,154	8,859	8,859	2,850	
Transient Occupancy Taxes		2,863,580	3,360,825	2,481,962	1,246,359	1,246,359	668,860	54%
Other Taxes								
101-30-60-00-00	Franchise Tax	215,346	209,872	215,623	212,930	212,930	81,220	
Other Taxes		215,346	209,872	215,623	212,930	212,930	81,220	38%
Charges for Service								
101-30-61-00-00	Comcast PEG Access Fees	23,133	22,698	22,528	22,500	22,500	16,290	
101-30-75-00-00	Fire Inspection Fees	605	1,100	-	-	-	1,375	
101-31-21-00-00	Building Inspection Fees	-	-	-	-	-	-	
101-31-22-00-00	Building Admin Fees	-	-	-	-	-	-	
101-31-23-00-00	Other Fire Fees	8	2,850	-	-	-	2,850	
101-33-10-00-00	Planning Fees	(5,703)	-	-	-	-	-	
101-33-30-00-00	Sales Of Maps/Publications	163	210	59	150	150	108	
101-33-50-00-00	Police Services	24,457	33,439	19,168	30,000	30,000	1,904	
101-33-51-00-00	Animal Control Services	-	-	-	-	-	-	
101-33-60-00-00	Administrative Fees	7,515	-	-	-	-	-	
101-33-70-00-00	Planning Fees	16,508	(53,936)	-	-	-	6,000	
101-33-80-00-00	Engineering Fees	7,710	1,800	675	1,800	1,800	-	
101-33-90-00-00	Street/Sidewalk/Curb Repair	-	-	-	-	-	-	
Charges for Service		74,395	8,161	42,430	54,450	54,450	28,527	52%
Fines and Forfeits								
101-31-40-00-00	Vehicle Code Fines	29,160	28,136	22,446	27,583	27,583	18,007	
101-31-50-00-00	Other Police Fines	40,613	36,260	24,821	28,279	28,279	3,877	
101-31-55-00-00	A/R Late Penalty	4,427	3,959	215	500	500	73	
101-33-63-00-00	Civil Penalties	106,778	149,264	92,700	45,000	45,000	-	
101-34-20-00-00	Library Fines & Fees	6,032	4,087	86	-	-	-	
Fines and Forfeits		187,010	221,705	140,267	101,362	101,362	21,957	22%
Licenses and Permits								
101-30-70-00-00	Application & Permit Fees	10,915	5,475	4,250	5,500	5,500	2,350	
101-30-80-00-00	Business License	152,551	156,715	155,021	154,896	154,896	139,116	
101-30-81-00-00	Business License Penalty	756	1,555	798	1,332	1,332	467	
101-31-20-00-00	Building Permits	492,301	482,404	552,044	291,696	391,696	368,264	
101-33-15-00-00	Short Term Rental Permit	31,500	15,750	31,500	17,500	17,500	11,250	
101-33-74-00-00	Planning App & Permit Fees	235,830	180,329	85,429	100,000	100,000	70,200	
101-33-84-00-00	Public Works App & Permit Fees	38,500	39,300	41,175	37,132	37,132	40,250	
101-33-86-00-00	Well Permit Fee	1,300	2,600	2,600	1,300	1,300	-	
Licenses and Permits		963,653	884,127	872,817	609,356	709,356	631,897	89%
Development Fees								
101-33-81-00-00	Public Works Land & Dev Fees	20,325	25,600	19,360	20,325	20,325	15,200	
Development Fees		20,325	25,600	19,360	20,325	20,325	15,200	75%
Intergovernmental								
101-32-10-00-00	Motor Vehicle In-Lieu	(3,176)	2,937	-	3,130	3,130	-	
101-32-40-00-00	Highway Maintenance	-	0	-	-	-	-	

GF Revenue Update

Account	Description	Actual	Actual	Actual	Adopted	Adjusted	Q3	% Collected
		2018	2019	FY 2020	FY 2021	FY 2021	FY 2021	Q3 2021
101-32-70-00-00	County Fire Contract	48,855	48,855	48,855	48,855	48,855	57,710	
101-32-80-00-00	Emergency Relief	301,210	269,490	120,930		2,511,921	194,090	
101-34-61-49-00	Contrib from Gov - Police		9,221	8,484	-	-	8,484	
101-34-71-00-00	Reimb State Mandated Costs	7,965	4,538	1,647	2,040	2,040	1,647	
101-34-73-00-00	Other State Revenue	7	18	1,355			13	
101-34-75-00-00	Restitution	9,775	181,227	200			25	
101-36-80-00-00	Library Abatement	4,842	3,877	3,302	3,709	3,709	4,483	
101-38-00-80-00	Restitution Revenue		0	-			-	
101-38-70-00-00	Allocation from Other Agency		1,948	-			-	
Intergovernmental		369,478	522,112	184,773	57,734	2,569,655	266,453	10%
Interest and Rents								
101-31-70-00-00	Investment Earnings	(41,299)	262,296	215,290	70,000	70,000	-	
101-34-76-00-00	Cash Overage/Shortage	(0)	22	61			-	
101-31-75-00-00	Interest Income	4,834	(93)	-			-	
101-36-10-00-00	Rental Income	214,450	153,805	89,101	70,350	70,350	64,224	
101-36-12-00-00	Rec Programs Facility Rental		865	-			-	
101-36-11-00-00	Tennis Court Rentals	1,425	1,225	750	1,425	1,425	-	
Interest and Rents		179,410	418,120	305,202	141,775	141,775	64,224	45%
Miscellaneous								
101-33-20-00-00	Legal Cost Recovery	10,683	32,726	-	10,000	10,000	-	
101-33-21-00-00	Storm Drain Cost Recovery		-	-			-	
101-33-40-00-00	Other Filing/Certification Fee	163	-	200	165	165	-	
101-33-85-00-00	Public Wks Violation/Repair Fe		20	-			-	
101-34-21-00-00	TRB Library Revenue	20,000	5,475	-			-	
101-34-22-00-00	Library Copies	3,277	2,946	1,585	3,030	3,030	-	
101-34-23-00-00	Library Lost Material	313	617	500	500	500	-	
101-34-24-00-00	Library Room Rental	110	305	150	354	354	-	
101-34-31-00-00	Donations		0	300			-	
101-34-31-48-00	Donations - Fire Department						4,000	
101-34-31-49-00	Donations - Police Department						1,500	
101-34-51-00-00	Sale of Capital Assets	18,137	1,155	3,795	-	-	4,427	
101-34-60-00-00	Contributions from non-govt	87,500	0	-			-	
101-34-61-00-00	Contributions from Government		0	-	75,000	235,000	74,984	
101-34-61-46-00	Contributions from Gov - Library	5,883	0	2,000			-	
101-34-68-00-00	TID Admin Fee		0	-			-	
101-34-70-00-00	Other Revenue	25,166	123,934	41,033	55,000	55,000	32,121	
101-34-70-22-47	Other Revenue - Jingle			4,389	14,000	14,000	-	
101-34-70-47-00	Other Revenue - Recreation			-	120,000	70,000	26,020	
101-34-70-47-01	Other Revenue			-	20,000	20,000	-	
101-34-74-00-00	Insurance Refund		0	1,244			-	
101-39-98-00-00	Operating Transfers In	3,574	15,319	5,367	822,387	822,387	-	
Miscellaneous		174,805	182,495	60,562	1,120,436	1,230,436	143,052	12%
TOTALS		14,515,018	16,032,990	14,270,828	11,187,231	14,477,960	8,722,426	60%

SALES TAX AND TOT									
	FISCAL YEAR 2020-21								
	July	August	September	October	November	December	January	February	March
Sales Tax	30% of Prior Year Revenues			45% of Prior Year Revenues			54% of Prior Year Revenues		
Estimated	86,964	86,964	86,964	111,121	111,121	111,121	133,345	133,345	133,345
Actual	274,498	252,408	118,185	204,620	178,547	196,858	225,262	200,630	
Difference	187,534	165,444	31,221	93,499	67,426	85,737	91,917	67,285	(133,345)
Public Safety Sales Tax 101-3042									
Estimated	-	5,568	5,182	5,070	6,558	4,995	5,116	7,587	5,096
Actual	10,129	5,611	5,362	5,286	6,543	5,590	5,506	7,010	
Difference	10,129	43	180	216	(15)	595	390	(577)	(5,096)
Measure D	30% of Prior Year Revenues			40% of Prior Year Revenues			50% of Prior Year Revenues		
Estimated	49,083	49,083	49,083	62,718	62,718	62,718	75,261	75,261	75,261
Actual	149,948	166,051	75,016	147,871	143,922	113,276	113,084	117,391	
Difference	100,865	116,968	25,933	85,153	81,204	50,558	37,823	42,130	(75,261)
TOT	10% of Prior Year Revenues			20% of Prior Year Revenues			40% of Prior Year Revenues		
Estimated	33,234	33,234	33,234	52,291	52,291	52,291	76,952	76,952	76,952
Actual	96,157	111,656	92,656	97,784	91,273	31,450	10,673	50,862	2,902
Penalties 101-3051	-	87	347	691	-	880	101		
Difference	62,923	78,508	59,768	46,184	38,982	(19,960)	(66,179)	(26,090)	(74,050)
Collection over/(under) estimates	361,451	360,963	117,102	225,052	187,597	116,930	63,950	82,748	(287,752)

General Ledger Quarterly Budget Report GF Expenses



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Period 01 - 09
Fiscal Year 2021

Description	Adopted Budget	Encumbered	Adjusted Budget	YTD Spent	Available Budget	% of Budget Available
Non Departmental	1,487,004.00	569,882.93	4,251,370.12	2,485,829.12	1,195,658.07	28.12
Council	359,272.00	29,376.40	405,094.75	130,001.96	245,716.39	60.66
Administration	938,675.00	66,640.74	1,025,399.62	719,382.63	239,376.25	23.34
Finance	381,921.00	51,883.22	432,356.48	279,995.47	100,477.79	23.24
Attorney	311,000.00	0.00	311,000.00	122,646.52	188,353.48	60.56
PlanningBuilding	1,171,809.00	196,921.96	1,470,994.21	733,139.50	540,932.75	36.77
Library	944,201.00	34,765.46	937,301.00	706,036.49	196,499.05	20.96
Parks & Recreation	785,816.00	0.00	785,816.00	408,494.68	377,321.32	48.02
Fire	1,414,558.00	9,647.70	2,043,458.00	1,647,880.11	385,930.19	18.89
Police	2,885,802.00	30,295.85	2,921,902.00	2,149,214.88	742,391.27	25.41
Public Works	2,492,005.00	164,695.56	2,574,526.58	1,334,304.16	1,075,526.86	41.78
Grand Total	13,172,063.00	1,154,109.82	17,159,218.76	10,716,925.52	5,288,183.42	0.3082

General Ledger Quarterly Budget Report Water Revenues



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Period 01 - 09
Fiscal Year 2021

Account Number	Description	Adopted Budget	Adjusted Budget	YTD Received	Uncollected
561	Water Enterprise				
561-38-10-00-00	Water Revenue	-1,500.00	-1,500.00	-547.79	-952.21
561-38-10-00-01	Residential-Inside CL	-3,023,455.00	-3,023,455.00	-2,184,079.93	-839,375.07
561-38-10-00-50	Residential-Outside CL	-568,035.00	-568,035.00	-350,806.14	-217,228.86
561-38-10-01-00	Multi-Dwelling-Inside CL	-719,590.00	-719,590.00	-491,688.47	-227,901.53
561-38-10-01-50	Multi Dwelling-Outside CL	-20,478.00	-20,478.00	-10,525.43	-9,952.57
561-38-10-10-00	General Commercial-Inside CL	-2,145,372.00	-2,145,372.00	-1,365,640.68	-779,731.32
561-38-10-17-00	Landscape Meter	-209,320.00	-209,320.00	-146,829.84	-62,490.16
561-38-10-99-10	Fire Service-Inside CL	-25,262.00	-25,262.00	-31,015.88	5,753.88
561-38-10-99-20	Fire Service-Outside CL	-12,967.00	-12,967.00	-7,965.64	-5,001.36
561-38-10-99-50	Finance Charges	-25,000.00	-25,000.00	1,037.92	-26,037.92
10	SB2 Planning Grant	-6,750,979.00	-6,750,979.00	-4,588,061.88	-2,162,917.12
561-38-40-00-00	Property Rentals	-8,400.00	-8,400.00	0.00	-8,400.00
40	Property Rentals	-8,400.00	-8,400.00	0.00	-8,400.00
561-34-51-00-00	Sale Of Capital Asset	0.00	0.00	-892.26	892.26
51	Sale Of Capital Asset	0.00	0.00	-892.26	892.26
561-38-60-00-00	Water Meter Install Fee	-5,500.00	-5,500.00	-4,397.60	-1,102.40
60	Water Meter Install Fee	-5,500.00	-5,500.00	-4,397.60	-1,102.40
561-31-70-00-00	Investment Earnings	-50,000.00	-50,000.00	0.00	-50,000.00
561-34-70-00-00	Other Revenue	-8,500.00	-8,500.00	-1,119.00	-7,381.00
561-38-70-00-00	CARE Subsidy	-22,700.00	-22,700.00	17,890.47	-40,590.47
70	CARE Subsidy	-81,200.00	-81,200.00	16,771.47	-97,971.47
561-33-80-00-00	Engineering Fees	-1,000.00	-1,000.00	0.00	-1,000.00
80	Engineering Fees	-1,000.00	-1,000.00	0.00	-1,000.00
561-33-83-00-00	Raw Water Permit Fees	-1,000.00	-1,000.00	-300.00	-700.00
83	Raw Water Permit Fees	-1,000.00	-1,000.00	-300.00	-700.00
561-33-87-00-00	Backflow Testing & Insp Fees	-150.00	-150.00	0.00	-150.00
87	Backflow Testing & Insp Fees	-150.00	-150.00	0.00	-150.00
Grand Total		-6,848,229.00	-6,848,229.00	-4,576,880.27	-2,271,348.73

<u>Account Number</u>	<u>Description</u>	<u>Adopted Budget</u>	<u>Adjusted Budget</u>	<u>YTD Received</u>	<u>Uncollected</u>
		<u> </u>	<u> </u>	<u> </u>	<u> </u>
		<u> </u>	<u> </u>	<u> </u>	<u> </u>

General Ledger Quarterly Budget Report Water Expenditures



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Period 01 - 09
Fiscal Year 2021

Description	Adopted Budget	Encumbered	Adjusted Budget	YTD Spent	Available Budget	% of Budget Available
Non Departmental	1,272,346.00	43,000.00	1,316,106.00	1,105,949.12	167,156.88	12.70
Council	20,119.00	0.00	19,619.00	12,251.89	7,367.11	37.55
Administration	272,443.00	20,734.74	287,826.62	200,533.05	66,558.83	23.12
Finance	321,814.00	10,403.32	334,914.32	225,543.71	98,967.29	29.55
Attorney	130,000.00	0.00	155,000.00	125,814.50	29,185.50	18.83
Public Works	4,705,159.00	105,752.70	4,798,067.81	1,915,956.38	2,776,358.73	57.86
Grand Total	6,721,881.00	179,890.76	6,911,533.75	3,586,048.65	3,145,594.34	0.4551

General Ledger Quarterly Budget Report WW Revenues



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Period 01 - 09
Fiscal Year 2021

Account Number	Description	Adopted Budget	Adjusted Budget	YTD Received	Uncollected
571-31-70-00-00	Investment Earnings	-20,000.00	-20,000.00	0.00	-20,000.00
31	SEWER ENTER. INVESTMENT EARNIN	-20,000.00	-20,000.00	0.00	-20,000.00
571-34-51-00-00	Sale of Capital Assets	0.00	0.00	-15,613.49	15,613.49
571-34-70-00-00	Other Revenue	-9,600.00	-9,600.00	-12,445.50	2,845.50
571-34-80-00-00	Annexation Fees	-2,600.00	-2,600.00	-7,634.52	5,034.52
34	SEWER ENTER. OTHER REVENUE	-12,200.00	-12,200.00	-35,693.51	23,493.51
571-35-00-00-00	Residential	-1,472,369.00	-1,472,369.00	-1,107,391.11	-364,977.89
571-35-00-01-00	Multiple Dwelling	-216,912.00	-216,912.00	-201,927.71	-14,984.29
571-35-00-03-00	Laundromat	-14,531.00	-14,531.00	-10,090.08	-4,440.92
571-35-00-10-00	General Commercial	-1,251,227.00	-1,251,227.00	-769,583.43	-481,643.57
571-35-00-11-00	Restaurants	-130,036.00	-130,036.00	-57,143.61	-72,892.39
571-35-00-12-00	Service Station	-3,213.00	-3,213.00	-2,957.38	-255.62
571-35-00-14-00	Motels-No Food Service	-135,765.00	-135,765.00	-45,657.77	-90,107.23
571-35-00-15-00	Supermarkets	-17,935.00	-17,935.00	-8,672.44	-9,262.56
571-35-00-18-00	Mixed Retail-Plus Food Service	-19,463.00	-19,463.00	-10,789.84	-8,673.16
571-35-00-20-00	Industrial	-20,523.00	-20,523.00	-11,784.65	-8,738.35
571-35-00-30-00	Libraries & Schools	-37,773.00	-37,773.00	-22,402.20	-15,370.80
571-35-00-60-60	Car Wash	-2,123.00	-2,123.00	-1,242.87	-880.13
35	SEWER ENTER. SEWER-RESIDENTIAL	-3,321,870.00	-3,321,870.00	-2,249,643.09	-1,072,226.91
571-38-10-99-50	Finance Charges	-18,500.00	-18,500.00	657.02	-19,157.02
571-38-65-00-00	Sewer Connection Fee	-1,300.00	-1,300.00	-1,300.00	0.00
571-38-70-00-00	CARE Subsidy	-2,500.00	-2,500.00	12,754.42	-15,254.42
38	Dept	-22,300.00	-22,300.00	12,111.44	-34,411.44
571	Sewer Enterprise	-3,376,370.00	-3,376,370.00	-2,273,225.16	-1,103,144.84
Grand Total		<u>-3,376,370.00</u>	<u>-3,376,370.00</u>	<u>-2,273,225.16</u>	<u>-1,103,144.84</u>

General Ledger Quarterly Budget Report Wastewater Expenditures



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Period 01 - 09
Fiscal Year 2021

Description	Adopted Budget	Encumbered	Adjusted	YTD Spent	Available Budget	% of Budget Available
Non Departmental	500,477.00	43,000.00	544,237.00	422,140.33	79,096.67	14.53
Council	20,119.00	0.00	18,859.00	12,251.77	6,607.23	35.03
Administration	191,369.00	17,367.09	204,733.12	140,276.70	47,089.33	23.00
Finance	262,840.00	9,699.54	274,680.29	184,638.83	80,341.92	29.25
Attorney	25,000.00	0.00	25,000.00	2,170.69	22,829.31	91.32
Public Works	2,261,657.00	178,457.86	2,335,846.48	980,336.17	1,177,052.45	50.39
Grand Total	3,261,462.00	248,524.49	3,403,355.89	1,741,814.49	1,413,016.91	0.4152

CITY OF ST. HELENA**RESOLUTION NO. 2021-____****RESOLUTION APPROVING FY 2020-21 BUDGET ADJUSTMENTS TO THE GENERAL FUND, WATER FUND, WASTEWATER FUND, AND IMPACT FEE FUNDS.****RECITALS**

- A. The City has traditionally amended its budget during the year as new and updated information becomes available; and
- B. It is necessary to increase revenue and expense projections the General Fund, Water Fund, Wastewater Fund, and Impact Fee Funds.

RESOLUTION

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

1. Adoption of this resolution is not subject to CEQA; and
2. Authorizes budget adjustments to the following:

Fund	Account	Revenue	Expense
General Fund	101-3461-0000	575,000	
General Fund	101-4300-2145		21,000
Water Fund	561-4300-2145		121,000
Wastewater Fund	571-4300-2145		1,000
Public Safety Impact	216-4300-2145		500
Civic Impact	713-4300-2145		500
Water Impact	764-4300-2145		500
Wastewater Impact	774-4300-2145		500
Traffic Mitigation	740-4300-2145		500
Storm Drain Impact	742-4300-2145		500

3. Authorize use of General Fund Unassigned Reserves, Water and Wastewater Fund Balances, and Impact Fee Fund Balances for the budget increases.

Approved at a Regular Meeting of the St. Helena City Council on May 11, 2021, by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Chouteau:	_____
Councilmember Hall:	_____
Councilmember Hardy:	_____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk



Report to the City Council
Regular City Council - 11 May 2021

Agenda Section: OLD BUSINESS

Subject: Review and Discussion of City's Proposed Diversity, Equity, and Inclusion Strategy

CEQA Determination: Not a CEQA project

Prepared By: Preya Nixon, Asst. to the City Manager

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The City of St. Helena and the City Council is committed to diversity, equity, and inclusion; including social justice. Racial and social justice issues are at the forefront of this country following the violent murder of George Floyd and countless others that have impacted marginalized communities and black, indigenous, and people of color (BIPOC).

At the September 22, 2020 City Council meeting, the Council directed staff to bring forward a resolution declaring discrimination and racism as a public health threats and to present options for the community to listen, learn, and heal by sharing experiences and then to create a roadmap to move forward.

At the October 22, 2020 City Council meeting, the City Council adopted Resolution 2020-105: Affirming that Discrimination and Systemic Racism Constitute A Public Health Crisis Causing Disparities in Mental Wellbeing, Language Access, Housing, Economic Development, Health, and Criminal Justice Experience, and Reaffirming Its Commitment to Advancing Justice, Equity, Diversity, and Inclusion in the City.

DISCUSSION

Discrimination and systemic/institutional racism manifest in distinct ways across many social intersections including race, gender, gender expression, gender identity, sexual orientation, class, disability, immigration status, and age. This collectively reinforces the

racial divides within the country and communities and has an impact on the quality of life and access to services and resources for those impacted. A study issued in 2011 by PolicyLink and The California Endowment concludes that race, “remains our deepest fissure, compounding disadvantage and perpetuating it across generations.”

The St. Helena City Council recognizes that discrimination and racism unfairly disadvantage specific individuals and communities which leads to unfairly creating advantages for other individuals and communities. They sap the strength of the whole society through the waste of human resources, at a time when our collective prosperity depends upon the equitable access to opportunity for every resident regardless of background.

How Will We Get This Important Work Done?

Standing up for Change

Any type of change requires time and patience. Speaking up and having your voice heard can be difficult, especially when you may be one of the few people who look like you. So, we must explore effective ways to enable all of our community members to stand up for what they believe and advocate for lasting change. And to make this change last, we must make waves, not necessarily a tsunami.

The following list of actions are recommended to take to address racial equity and social justice in the community. The ideas presented come from community feedback from City Council meetings in August 2020 as a response to the Black Lives Matter Movement, small group sessions, and the Community Digital Roundtable held on December 3, 2020, along with best practices in diversity and inclusion in municipal government. This is a living list that includes listening and dialogue. The items are categorized as long, midterm and short term. Because this is a living list, some of these items may change in terms of timing, but it does not diminish their importance. Short term is designated as something that can get started within the next three months. Mid term would be from six months to a year and long term references initiatives that may take more than a year.

Information surrounding scope and timing regarding the proposed Diversity, Equity and Inclusion Committee will be brought forward at a future City Council meeting.

Staff is seeking feedback from the Council on these items.

Action	Status	Internal/External	Area of Focus	Long/Mid/Short
The City Council adopted Resolution 2020-105: Affirming that Discrimination and Systemic Racism Constitute A Public	Completed; September 2020	Both	Formally stating a commitment to social justice	N/A

Health Crisis Causing Disparities in Mental Wellbeing, Language Access, Housing, Economic Development, Health, and Criminal Justice Experience, and Reaffirming Its Commitment to Advancing Justice, Equity, Diversity, and Inclusion in the City.				
Host a series of listening sessions with facilitators to advance an effective dialogue on race-related issues.	Completed; November 2020	External	Listening	Short
Convene a Digital Community Roundtable: A Conversation About Diversity, Equity, and Inclusion in St. Helena	Completed; December 2020	External	Listening	Short
Convene a Digital Community Roundtable: A Conversation About Diversity, Equity, and Inclusion in St. Helena	Completed; December 2020	External	Listening	Short
Offer live Spanish interpretation for Regular and Special City Council meetings and Regular	Ongoing	External	Language Access	Short

Planning Commission meetings.				
Consider revising the City's vision and mission statement to include the commitment to diversity and inclusion, and take action by amending the vision statement via resolution.	In Progress, expected completion is May 11, 2021	Internal	Policy	Short
Council Resolution authorizing the LGBTQ and Transgender ceremonial flag during Pride Month	Ongoing; Original Council action was taken on 6/13/2017	External	LGBTQ	Short
Proclamation Celebrating Black History Month	Ongoing; A Council Proclamation was made on 2/9/2021	External	Black History Month	Short
Increase and enhance community outreach from the Police Department	Police Department	External	Police/Community Relations	Ongoing
Conduct a training with CircleUp Education (CUE) specifically for the Police Department. The Police Department is required to hold training; the most recent training they received was an LGBTQ+ focused training in early April 2021.	City Manager's Office/Police Department	Internal	Training	Short
Work with Wappo Tribe to honor and acknowledge the	Wappo Tribe	External	Acknowledgement of history	Mid

history of the tribe at Wappo Park.				
Update the City Website to acknowledge and celebrate indigenous peoples that lived in the area predating City incorporation. Use this language on any City communication that discusses history.	Work with Suscol Tribe	External	Acknowledgement of history	Mid
Create an (honest) historical plaque about St. Helena's Chinatown	Various community members	External	Acknowledgement of history	Mid
Hold an LGBTQ+ Listening Session	Work with Ian Posadas, LGBTQ+ Connection/Rainbow Action Network (RAN)	External	LGBTQ+/Gender Identity/Expression	Mid
Create a Diversity, Equity and Inclusion Committee: This scope would include recommendations and discussion on DEI in St. Helena based on the following suggested topics: •Housing •LGBTQ/Gender Expression/Identity •Community Engagement •Acknowledgement of history •Racial Justice	City Manager's Office With support from CircleUp Education	External	Community Engagement/Diversity Strategy	Short

This Committee would be a new Brown Act body, following the City Council appointment process with a youth representative. The City would launch a robust recruiting process to ensure diverse applicants of all backgrounds apply. This committee would be run out of the City Manager's Office, with the Inclusion Manager serving as the primary staff liaison. However, various staff members from City Departments will be involved with this committee to provide a connection between the Community and staff.				
Commission an Internal Diversity and Inclusion Audit which would include a review and evaluation of the City's internal policies, procedures, training and practices for	City Manager's Office	Internal	Workforce Diversity Strategy	Mid

creating a diverse talent pipeline. This process would be contracted out with an outside firm.				
Conduct a Workplace Bias and Discrimination Survey administered through CircleUp Education for City Staff.	City Manager's Office	Internal	Bias Awareness	Mid
Include an equity component in the Nonprofit Grant Category- require those applying for the City's Grant program to identify equity measures and impact.	City Manager's Office	External	Policy	Mid
Join the Government Alliance on Race and Equity (GARE)-to learn and share best practices of social justice in local government.	City Manager's Office	Both		Short

FISCAL IMPACT

Current FY 2020/21: At the March 23, 2021 City Council meeting, the City Council, adopted a budget adjustment to include \$10,000 for continued diversity and inclusion awareness training from 101-4100- 2140.

Staff is recommending for FY 2021/22 that an additional \$45,000 be allocated to advance initiatives including supporting the proposed DEI committee. This will come forward for formal consideration at the May 13, 2021 Budget Workshop.

RECOMMENDED ACTION

Provide direction and feedback to the City Manager.



Report to the City Council
Regular City Council - 11 May 2021

Agenda Section: OLD BUSINESS

Subject: Review and Proposed Adoption of the City of St. Helena City Council Three Year Goals 2021-22 Workplan

CEQA Determination: Not a CEQA project

Prepared By: Mark T. Prestwich, City Manager

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Since 2017 the City Council has established three-year citywide organizational goals and priorities for the coming year.

On March 4, 2021, the City Council held a workshop and discussed the development of the citywide goals and fiscal year 2021-22 workplan objectives. At the April 1, 2021 follow-up City Council workshop, the City Council provided feedback and reviewed goal dates/tasks to ensure a realistic timeframe.

DISCUSSION

The attached updated draft three-year goals and 2021 workplan prioritizes tasks, assigns responsibility to various initiatives, and provides a means of providing periodic status report on progress.

FISCAL IMPACT

The fiscal impact associated with workplace tasks varies depending on the task.

RECOMMENDED ACTION

Adopt citywide three-year goals and 2021 workplan.

ATTACHMENTS

[2021 Workplan Goals Status May 11](#)

Council Approved Three-Year Goals and Draft 2020 Work Plan

	WHO	WHAT	NOTES	PROJECT STATUS	FY 2021-22 TARGET COMPLETION				ESTIMATED STAFFING HOURS
				% Complete	Q1	Q2	Q3	Q4	
GOAL 1	Improve and Maintain Safe and Reliable City Infrastructure with a Commitment to Environmental Stewardship, Public Health, and Public Safety								
A	Police Chief	Complete Glass Fire After Action Report to improve emergency preparedness for future events.	In Progress	65%		X			240
B	City Engineer	Adoption of Integrated Utility Master Plan Findings/Recommendations.	Preliminary Council presentation held July 30, 2020.	95%		X			80
C	City Engineer	Complete analysis of St. Helena Vine Trail route options and facilitate Council decision making on preferred route.	Discussed with ATSC in October 2020; Next discussion planned with City Council.	90%		X			40
D	City Engineer + GHD	Complete Phase I - Citywide Active Transportation Plan/Safe Routes to School Plan (Madrona/Spring St. Pedestrian Improvements).		15%		X			100
E	City Engineer	Construct Spring Street Bike Lanes.	Design is complete and scheduled for construction early summer 2021.	95%		X			20
F	City Engineer + Acting PW Director	Create a Comprehensive Water Security Framework to manage initiatives	Draft completed and under review by departments	10%			X		160
G	City Engineer + City Attorney	Complete conservation easement for Flood Control Project.	Currently under review by Public Works and legal. Anticipate a resolution will go to the Council in mid-summer.	50%			X		80
H	City Attorney (Lead) + City Engineer	Prepare Draft Water Will Serve Policy for City Council Review.		20%			X		160
I	Chief of Police	Develop emergency evacuation plan and procedures.	Working with Napa County / County funded Program	10%			X		160
J	City Engineer + Operations Manager	Complete Public Works Standards Update.	Standards are developed; staff needs to conduct an internal review.	75%				X	180
K	City Engineer + GHD	Complete Phase II - Citywide Safe Routes to School (SR2S) analysis.	Contract amendment for GHD approved and work is just starting.	0%				X	120

	WHO	WHAT	NOTES	PROJECT STATUS		FY 2021-22 TARGET COMPLETION				ESTIMATED STAFFING HOURS
				% Complete		Q1	Q2	Q3	Q4	
GOAL 2	Stabilize, Maintain and Improve Access to Housing									
A	Planning Director (Lead) + City Manager + CM Hall + CM Hardy	Consider and synthesize stakeholder housing recommendations and recommend short and long-term housing initiatives to the City Council, including advancing the use of one or more of city-owned parcels (including Adams Street) for affordable housing.	Council working group to consider revenue options when analyzing housing options for Adams Street parcel.	0%			X			80
B	Planning Director (Lead) + Lise Wise Consulting	Complete Zoning Code update.	Schedule may be adjusted depending on scope of comments and revisions requested by the Zoning Code Subcommittee.	40%			X			450
C	Planning Director (Lead) + Finance Director	Update Housing Impact Fees for workforce housing and consider updates to inclusionary housing ordinance.	Recommendations for updates to IHO ordinance will be folded into the zoning code update.	0%			X			90
D	Planning Director (Lead) + Mintier Harnish	Advance work on General Plan Housing Element Update		0%					X	500

	WHO	WHAT	NOTES	PROJECT STATUS	FY 2021-22 TARGET COMPLETION				ESTIMATED STAFFING HOURS
				% Complete	Q1	Q2	Q3	Q4	
GOAL 3	Enhance Organizational Performance, Communications, and Commit to Full Public Participation and Regional Collaboration								
A	City Manager + Assistant to the City Manager	Consider recommendations to governing language presented by Parks & Recreation Commission and ATSC.	Both ATSC and the PRC have created subcommittees to evaluate governing language.	20%	X				160
B	City Manager + Assistant to the City Manager	Identify and advance internal and community social justice, diversity and inclusion initiatives.	Staff is currently reviewing an action framework.	10%	X				160
C	City Manager	Provide quarterly updates on workplan status/completed tasks; enhance City website for community communication purposes.	Updates will be provided at the completion of each quarter.	0%		X			160
D	Police Chief + City Attorney	Review and consider updates to Police Policies to ensure alignment with core City values.		0%		X			160
E	HR/IT Director + City Manager	Prepare/present to the City Council an employee succession plan and/or strategy to help retain employees and minimize turnover costs.	Next steps include reviewing draft succession plan with City Manager	75%		X			24
F	Planning Director (Lead) + Vice Mayor Dohring	Prepare/present citywide design guidelines to the Planning Commission for adoption.	The new draft zoning code includes some design illustrations and multi-family objective standards have been drafted as part of the new code.	60%			X		350
G	Chief of Police	Implement State and Federal DOJ mandated reporting system, radio encryption system, and software/training.	Napa County agencies implementing at same time. Currently waiting on all agencies to catch up.	75%				X	TBD

	WHO	WHAT	NOTES	PROJECT STATUS	FY 2021-22 TARGET COMPLETION				ESTIMATED STAFFING HOURS
				% Complete	Q1	Q2	Q3	Q4	
GOAL 4	Ensure Long-Term Economic Sustainability while Safeguarding St. Helena's Unique Culture & Quality of Life								
A	Finance Director	Complete Impact Fee Study and Cost Allocation Plan (including inclusionary fees and housing fees) for City Council adoption.		90%		X			60
B	City Manager (Lead) + Finance Director + Mayor Ellsworth + Vice Mayor Dohring	Prepare financing and revenue options for City Council review and consideration to address City Infrastructure deficiencies.		0%		X			60
C	Planning Director (Lead) + Parks & Recreation Commission + City Engineer	Advance progress on development of walking trails	The Trails Committee meets monthly and is making progress towards developing a draft trails/ pedestrian plan for City Council consideration.	15%			X		150
D	Business Liaison + City Manager + CM Chouteau + CM Hall	Prepare and implement COVID Business Recovery Plan & Continuity Strategy for Phase 1 Downtown Streetscape Project.		0%			X		60
E	Planning Director (Lead) + CM Chouteau + CM Hall	Develop marketing collateral for prospective tenants and prioritize targeted business types.		5%			X		TBD
F	Parks & Recreation Director (Lead) + Parks & Recreation Commission	Prioritize General Plan "Parks & Recreation" Chapter action items with appropriate staff and Parks & Recreation Commission feedback into short (1-2 years) and long-term (3-5 year) actionable tasks; advance short-term tasks.	Ad Hoc Subcommittee is currently reviewing	50%				X	30
G	Planning Director (Lead) + City Engineer	Develop Parklet's Policy for City Council review and consideration.	Time has been focused on other public space activation opportunities as directed by City Council in March 2021	0%				X	60
H	TBD	Initiate pedestrian activation of Money Way beginning with garbage/recycling consolidation.	Next steps include a site visit and agreement with the County to get reimbursed for items as part of the scope of the grant.	0%				X	120

	WHO	WHAT	NOTES	PROJECT STATUS		FY 2021-22 TARGET COMPLETION				ESTIMATED STAFFING HOURS
				% Complete		Q1	Q2	Q3	Q4	
GOAL 5	Support Thriving Families and Enhance the Safety, Well-Being, and Healthy Development of our Youth									
A	Assistant to the City Manager + Vice Mayor Dohring and Council Member Chouteau	Redwood Forest Expansion: In coordination with Paul Asmuth, determine opportunities to include youth during the planting of the redwood trees. Connect with Biology teacher Lisa Luhn to tie in an educational component.		0%		X				20
B	Assistant to the Manager City + Vice Mayor Dohring and Council Member Chouteau	The Council will designate two to three Youth Representatives to speak once every two months at City Council meetings. These individuals would a) provide an update on youth related issues in the community and b) act as a liaison to youth when feedback is requested on City Council matters.		0%		X				60
C	Assistant to the City Manager + Vice Mayor Dohring and Council Member Chouteau	Distribute Youth Survey to High School and Middle School to receive direct feedback from the youth.	The survey has been created; ad hoc committee is reviewing.	10%		X				20
D	Finance Manager	Prepare and submit \$500,000 CDBG grant in partnership with Aldea Children & Family Services to support delivery of youth and family mental health services.		75%		X				12
E	Assistant to the Manager City + Vice Mayor Dohring and Council Member Chouteau	Create a Diversity, Equity and Inclusion Committee with a seat for a youth member to identify recommendations to ensure a more socially diverse and inclusive community.		0%				X		200
F	Assistant to the Manager City + Vice Mayor Dohring and Council Member Chouteau	Consider refining the Nonprofit Grant Criteria to specifically state that a grant will be awarded to a nonprofit that supports thriving families and enhances the safety, wellbeing and healthy development of youth and related issues.		0%				X		10

Council Approved Three-Year Goals and Draft 2020 Work Plan

	WHO	WHAT	NOTES	PROJECT STATUS	FY 2021-22 TARGET COMPLETION				ESTIMATED STAFFING HOURS
				% Complete	Q1	Q2	Q3	Q4	
GOAL 6	SUPPORT INITIATIVES THAT RESPOND TO AND PLAN FOR CLIMATE CHANGE								
A	Planning Director (Lead) + ATSC + Planning Commission	Prioritize General Plan "Climate Action" Chapter action items with appropriate staff and Planning Commission/ATSC Committee feedback into short (1-2 years) and long-term (3-5 year) actionable tasks.	ATSC has reviewed these items. Next step is to bring forward at a future City Council meeting	20%		X			60
B	Assistant to the City Manager + PW Operations Manager	Development of an Integrated Pest Management Policy.	Staff is currently drafting a policy and anticipates bringing this to ATSC at a future meeting in Spring 2021.	10%		X			60
C	Assistant to the City Manager + City Engineer + City Attorney	Coordinate expansion of Redwood Forest at Waste Water Treatment Plant.	Staff is working with the City Attorney to develop a short term agreement for work to begin and is concurrently researching a longer term agreement.	10%		X			120
D	City Engineer + Water Consultant	Advance the City's public trust commitments to water and climate change.	Council adopted protocols for Stonebridge Wells on 4/27/2021.	10%		X			TBD
E	Assistant to the City Manager + Planning and Building Director	Consider joining countywide Joint Powers Agreement (JPA) to support, coordinate, and advance regional climate action initiatives.	Approved 4/13/2021.	100%		X			60
F	NVTA/Planning Director	Develop and adopt VMT thresholds in accordance with State law.	Staff continues to work closely with NVTA staff on this topic.	10%			X		70
G	Assistant to the City Manager + City Manager + PW Operations Manager	Consider alternatives to Gas Leaf Blowers		0%				X	TBD

	WHO	WHAT	NOTES	PROJECT STATUS	FY 2021-22 TARGET COMPLETION				ESTIMATED STAFFING HOURS
				% Complete	Q1	Q2	Q3	Q4	
OTHER									
A	Assistant to the City Manager (Lead) + Recreation Supervisor + City Manager	Coordinate tenant improvements and relocation of City Hall and Police operations to Napa Valley College Upper Valley Campus.		5%		x			400



Report to the City Council
Regular City Council - 11 May 2021

Agenda Section: NEW BUSINESS

Subject: Consideration and approval of:

(1) A Resolution approving the following:

- (A) Loan Agreement with Our Town St. Helena (OTSH) for the purchase of 723 Hunt Avenue;**
- (B) Promissory Note for a Forgivable Loan with OTSH for the Purchase of 723 Hunt Avenue;**
- (C) Regulatory Agreement with OTSH for 723 Hunt Avenue;**
- (D) Deed Restriction for 723 Hunt Avenue; and**
- (E) Authorizing the City Manager to execute all necessary documents in connection with the Loan for the purchase of 723 Hunt Avenue.**

(2) A Resolution authorizing temporary, short-term use of Affordable Housing Trust Funds in an amount not-to-exceed \$1,410,000.00 for the Purchase of 723 Hunt Avenue.

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

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.

On January 21, 2020, HUD issued a Notice of Funding Availability (NOFA) announcing the availability of 2019 and 2020 funds under the CDBG program (the "NOFA").

Our Town St. Helena (OTSH) had identified an opportunity to acquire an existing 4-unit rental property at 723 Hunt Avenue (Christine Apartments) in St. Helena. The building has been 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 at or below 80% of Area Median Income (AMI), remain in the building after the completion of the sale until the tenants choose to vacate their respective units, at which time the units will be rented to income-qualified tenants in accordance with the Regulatory Agreement. 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.

On March 10, 2020, the City Council conducted a public hearing and at this meeting, the City Council approved, via Resolution 2020-16 (Attachment 1), an application for funding and the execution of a grant agreement and any amendments thereto from the 2019-2020 funding year of the CDGB program. Resolution 2020-16 authorized the City to apply for a Multifamily Single-Family Housing Acquisition and Rehabilitation funds to acquire a 4-unit rental property at 723 Hunt Avenue in St. Helena to be managed with a 55-year deed restriction for affordable housing available to income qualified St. Helena residents. The application for the acquisition of this property is \$1.5 million; \$1.4 million for the purchase and \$100,000 for City- and OTSH-incurred costs related to the purchase and closing.

DISCUSSION

On May 26, 2020, the City submitted the application to HUD for CDBG funds for 723 Hunt Avenue. The intent is if the City is awarded the grant of CDBG funds for this project, the City will then award a grant of CDBG Funds to OTSH, to administer the acquisition of the four unit property.

Since the time the grant was submitted, City staff and OTSH have been meeting with representatives from the California Department of Housing and Community Development (HCD), who support this project. Through these meetings a general task list and timeline has been developed with a requirement to close escrow by June 30, 2021. The normal process for CDBG grant-funded acquisitions is in the form of a reimbursement. OTSH is requesting, once the grant is awarded and the City executes HCD's Standard Agreement authorizing the transfer of the funds from HCD to the City, the City utilize Affordable Housing Trust Fund (AHTF) proceeds in the amount of \$1.4 million for the purchase of the property, which will result in a short-term deficit to the AHTF. These funds will be reimbursed to the City by HCD as part of the CDBG grant award. The current balance of the Affordable Housing Trust Fund (Fund 751) is \$319,388, of this amount, \$217,316 has been designated, via Council resolution, for other affordable housing projects leaving an available balance of \$102,072. The current available balance in Measure E Funds (Fund 752) is \$224,821. The utilization of \$1.4 million from either of these funds will bring the

fund balance into the negative; however, this is allowable as funds from CDBG will be received within 60 days of the close of the City's Fiscal Year.

Award of CDBG funding is contingent on having the following documents in place for 723 Hunt Avenue, St. Helena, CA:

(1) Loan Agreement with OTSH

- Loan Agreement for \$1,400,000 to OTSH
- Zero percent interest
- 55-year term with affordable housing deed restriction (CDBG funding requires deed restriction for 5 years)
- Promissory Note, Regulatory Agreement, and Deed of Trust are incorporated as exhibits to the Loan Agreement

(2) Promissory Note for a Loan with OTSH for the Purchase of the Property

- Evidence a debt owed by OTSH to the City. Both OTSH and the City will sign the loan agreement (which contains more extensive clauses than the Promissory Note), and only OTSH will sign the Promissory Note
- Provided that OTSH is not in default under the Loan Agreement or Promissory Note, the debt is forgiven at the end of the 55 year term

(3) Regulatory Agreement with OTSH

- Obligation by OTSH to the City to rent the four units to eligible households whose gross annual income does not exceed 80% of Area Median Income
- The existing tenants will be permitted to stay in the units. In the event that they vacate a unit, OTSH will ensure that the subsequent tenants will meet the income qualifications
- Ensures the property is used for affordable housing purposes only

(4) Deed of Trust

- Establishes a security interest in the Property for the benefit of the City (who has made the Loan to OTSH)
- In the event of a default under the Promissory Note or Loan Agreement, the City has the ability to enforce its remedies under the deed of trust, including but not limited to foreclosure on the Property

A draft of the four documents are provided as Attachments 2 through 5; final documents are pending attorney review.

Approval of CDBG funds is contingent upon the execution of the four documents being presented. Because of this, staff recommends City Council authorize the four attached documents.

Escrow is to be closed by June 30, 2021. OTSH currently does not have the \$1.4 million available to cover the costs up front for the purchase of the property, which will be

reimbursed by HCD. OTSH is requesting the City utilize Affordable Housing Trust Funds in an amount of \$1.4 million for the purchase of the property which, in turn, will be reimbursed within 60 days of the City submitting a reimbursement request to HCD. It is estimated the reimbursement request will be submitted within 15-days of close of escrow with a full reimbursement of no more than 75 days.

The escrow process, for the purchase of the property, will not start until all applicable grant agreements are signed, which awards the full requested funding for this project. City staff has confirmed with HCD that the signing of the applicable grant agreements guarantees funding for this project.

Additionally, staff has reached out to HCD regarding additional funding methods, including directly wiring funds to the OTSH escrow account for the purchase of the property. After consultation with HCD, staff learned this is not HCD's preferred method for two primary reasons:

1. For this grant, HCD is the grantor, the City is the lender, and OTSH is the buyer. HCD, as the grantor, would not normally provide funds directly to the buyer (OTSH) or the seller (the current owners of 723 Hunt Avenue) and would provide funds to the City to disburse to the buyer.
2. HCD expressed concerns regarding added steps and workload that would be created for both HCD and the City if the disbursement were made to the OTSH escrow account versus directly to the City.

Based on the information provided by HCD, staff recommends short-term utilization of Affordable Housing Trust Funds for the purchase of the property which would be reimbursed within 75 days of disbursement.

FISCAL IMPACT

The fiscal impact for approval of the attached resolution is use of Affordable Housing Trust Funds in the amount of \$1.4 million.

These funds will be reimbursed to the City by HCD as part of the CDBG funding. The current balance of the Affordable Housing Trust Fund (Fund 751) is \$319,388, of this amount, \$217,316 has been designated, via Council resolution, for other affordable housing projects leaving an available balance of \$102,072. The current available balance in Measure E Funds (Fund 752) is \$224,821. The utilization of \$1.4 million from either of these funds will bring the fund balance into the negative; however, this is allowable as funds from CDBG are recorded as a short-term receivable and is classified as an asset as the funds will be received within 60 days of the close of the City's Fiscal Year.

RECOMMENDED ACTION

Staff recommends approval of the attached resolution.

ATTACHMENTS

[Attachment 1 - 2020-16 Grant Agreement of the State Community Development Block Grant \(CDBG\) Program](#)

[Attachment 2 - OTSH Loan Agreement 723 Hunt Ave Final](#)

[Attachment 3 - OTSH Promissory Note 723 Hunt Final](#)

[Attachment 4 - Regulatory Agreement 723 Hunt Final](#)

[Attachment 5 - Deed of Trust 723 Hunt Final](#)

[Attachment 6 - Resolution - OTSH Documents](#)

[Attachment 7 - Resolution - Temporary Use of Housing Trust Funds](#)

CITY OF ST. HELENA

RESOLUTION NO. 2020-16

A RESOLUTION APPROVING AN APPLICATION FOR FUNDING AND THE EXECUTION OF A GRANT AGREEMENT AND ANY AMENDMENTS THERETO FROM THE 2019-2020 FUNDING YEAR OF THE STATE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

RECITALS

- A. The California Department of Housing and Community Development (the "Department") is authorized to allocate Community Development Block Grant (CDBG) Program funds made available from the U.S. Department of Housing and Urban Development ("HUD"); and
- B. On January 21, 2020 the Department issued a Notice of Funding Availability announcing the availability of 2019 and 2020 funds under the CDBG program (the "NOFA"); and
- C. The City Council conducted a public hearing on March 10, 2020 to allow for public comments on the proposed CDBG application; and
- D. In response to the 2019-2020 NOFA, the City of St. Helena (the "Applicant"), wishes to apply to the Department for, and receive an allocation of, CDBG funds; and
- E. The City of St. Helena will apply for Multifamily Single-Family Housing Acquisition and Rehabilitation funds to acquire a 4-unit rental property at 723 Hunt Avenue in St. Helena to be managed with a 55-year deed restriction for affordable housing available to income qualified St. Helena residents; and
- F. The City of St. Helena will apply for Public Improvement Project funds to remove an existing pump station structure and update both the external structure as well as addressing internal operations and odor control located on 1758 Crinella Drive, St. Helena at the far end of the Stephen C. McCullagh Park.
- G. The City of St. Helena will apply for Housing Rehabilitation-Single Family Residential Program funds to continue the funding of the Owner-Occupied Rehabilitation (OOR) Program. The OOR Program will be operated the requirements in the Housing Rehabilitation Assistance Program

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena (Applicant) hereby resolves as follows:

1. The City Council of St. Helena has reviewed and hereby approves one or more application(s) in the aggregate amount not to exceed \$3,500,000 for the following CDBG activities, pursuant to the January 2020 CDBG NOFA:

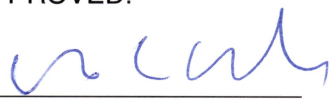
Multifamily Single-Family Housing Acquisition and Rehabilitation	\$ 1,700,000
Public Improvement Project – Pump Station Upgrade	\$ 1,000,000
Housing Rehabilitation Program – Single Family Residential	\$ 300,000

2. The City acknowledges compliance with state and federal public participation requirements in the development of this application.
3. The City hereby authorizes and directs the City Manager to sign this application and act on the City's behalf in all matters pertaining to this application.
4. If the application is approved, the City Manager is authorized to enter into and sign the grant agreement and any subsequent amendments thereto with the State of California for the purposes of this grant.
5. If the application is approved, the City Manager is authorized to sign Funds Requests and other required reporting forms.
6. Approve the Housing Rehabilitation Assistance Program Guidelines attached as Exhibit "A", which the City will operate the Housing Rehabilitation under.

Approved at a Regular Meeting of the St. Helena City Council on March 10, 2020, 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:


Kamille Garcia, Deputy City Clerk



CITY OF ST. HELENA
AFFORDABLE HOUSING TRUST FUND LOAN AGREEMENT

This Affordable Housing Trust Fund Loan Agreement is made and entered into effective as of this ____ day of _____, 2021, by and between the City of St. Helena, a California municipal corporation (“**Lender**”), having a mailing address of 1572 Railroad Avenue, St. Helena, California 94574, and Our Town St Helena, a California non-profit public benefit corporation (“**Borrower**”), having a mailing address of P.O. Box 94, St. Helena, California 94574 (hereinafter, the “**Loan Agreement**”). Lender and Borrower are sometime referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

The Borrower has applied for a loan from Lender’s Affordable Housing Trust Fund to acquire real property located at 723 Hunt Avenue, St. Helena, California and more particularly described in **Exhibit A** attached hereto and made a part hereof (hereinafter, the “**Property**”). The Property is comprised of on legal parcel with Assessor Parcel No. 009-062-013 (hereinafter, the “**Parcel**”).

In consideration of the mutual promises undertaken herein, the Parties mutually agree as follows:

1. *Effective Date and Term.*

This Loan Agreement shall be effective as of the date executed by Lender as indicated in the signature block below (the “**Effective Date**”), and shall continue thereafter until the Principal Amount has been paid in full to Lender.

2. *Loan Terms*

Lender agrees to make a loan to Borrower from its Affordable Housing Trust Fund (hereinafter, the “**Loan**”), in the principal sum of One Million, Four Hundred Thousand Dollars, hereinafter, the “**Principal Amount**”. The Loan shall have a term of 55 years from the Escrow Closing Date and all unpaid sums of the Principal Amount shall become immediately due and payable 55 years from the Escrow Closing Date.

Borrower agrees to execute a promissory note in the amount of the Principal Amount bearing interest at the rate of zero percent (0%) per annum (hereinafter, the “**Promissory Note**”), in the form attached hereto as **Exhibit B** attached hereto and made a part hereof.

3. *Security*

The Promissory Note shall be secured by a deed of trust (hereinafter, the “**Deed of Trust**”), in the form attached hereto as **Exhibit C** and made a part hereof, which shall be recorded against the Property in the Official Records of Napa County.

4. *Loan Documents*

Collectively, the agreements, instruments, certificates, opinions, and other documents governing, evidencing, securing, related to, executed, or delivered in connection with the Loan, including without limitation, this Loan Agreement, Promissory Note, Deed of Trust, Regulatory Agreement, Budget, and escrow instructions of the Parties are hereinafter referred to as the “**Loan Documents**”.

5. *Purpose of Loan*

The purpose of the Loan is for the acquisition of the Property. In no event shall any portion of the Loan be used by Borrower to develop the Property.

6. *Conditions Precedent to Disbursement of Loan*

The proceeds of the Loan shall be disbursed to the Borrower in a single advance. The Loan shall be disbursed by a date no later than _____, 2021 (“**Escrow Closing Date**”), or such other date agreed to by Lender but in no event beyond June 30, 2021 (“**Outside Escrow Closing Date**”), Provided that the obligation of the Lender to make the Loan shall be subject to the fulfillment and satisfaction by the Borrower of all of the conditions set forth in this Loan Agreement and the following:

(a) Borrower shall have provided to the Lender an ALTA Extended Coverage Lender's Policy with such endorsements as the Lender may require, issued by a title insurance company acceptable to the Lender, in an amount equal to the Principal Amount, and in a form and content satisfactory to the Lender insuring that the Lender's Deed of Trust on the Property is, or will be upon its recordation be, a valid first priority lien on the Property free and clear of all defects, liens, encumbrances, and exceptions except as to those approved by the City Manager and/or City Attorney of Lender.

(b) Unless waived by Lender in writing, Borrower shall deliver to Lender the insurance policies or evidence thereof as described in the Deed of Trust;

(c) There shall not exist on the Escrow Closing Date a condition which would constitute an Event of Default under this Agreement;

(d) Each of the representations and warranties of the Borrower set forth in Section 7 shall be true and correct;

(e) Prior to, or currently with, the Escrow Closing Date, the Borrower shall have executed, and acknowledges as appropriate, all of the Loan Documents; and

(f) Borrower has taken all necessary action to approve the Loan and the transactions contemplated under this Loan Agreement, that the Loan, the Loan Agreement, and each of the Loan Documents, are properly executed and acknowledged by the Borrower and each evidences a valid, lawful and binding obligation of the Borrower, and such other matters as required by the Lender.

(g) Lender has signed the requisite Community Development Block Grant (CDBG) agreements with the California Department of Housing and Community Development for the grant funding anticipated to serve as the ultimate funding source for the Loan. The parties acknowledge that such grant funding will be provided to the Lender on a

reimbursement basis, and the Lender is not required to receive such funding prior to disbursement of funds pursuant to this Loan.

Provided that all of the aforementioned conditions have been satisfied, the Lender shall disburse the sum of \$1,400,000.00 into Escrow on or before the Escrow Closing Date.

7. *Representations and Warranties of Borrower*

Borrower represents and warrants to Lender, as of the date of this Loan Agreement and at all times, that any balance of the Loan is outstanding:

(a) Borrower is and shall maintain during the period of time when any Principal Amount of the Loan may remain outstanding its status as a California non-profit public benefit corporation, duly organized and existing and authorized to transact business in California and the Borrower has previously qualified as a 501 (c)(3) tax exempt entity under applicable federal tax laws;

(b) the corporate charter and by-laws of the Borrower authorize the Borrower to enter into this Loan Agreement and to undertake the affordable housing preservation, operation contemplated hereunder, and the governing board and membership of the Borrower has previously taken all action necessary to authorize the execution of this Loan Agreement by the Borrower;

(c) the Borrower is qualified to undertake and complete the affordable housing preservation and operation contemplated under this Loan Agreement;

(d) the Borrower has conducted a due diligence inquiry and investigation of the environmental condition of the Property relating to the potential presence of Hazardous Substances and the use thereon of Hazardous Substances and based upon such inquiry, the Borrower represents to Lender that as of the Escrow Closing Date, the Borrower is unaware of any adverse environmental conditions relating to the presence or potential presence of Hazardous Substances in, on, under or upon the Property;

(e) no litigation, claim, investigation, administrative proceeding, or similar action (including those for unpaid taxes) against Borrower is pending or threatened and no other event has occurred which may materially adversely affect Borrower's financial condition, or the Property;

(f) Borrower has, as of the Escrow Closing Date, good and marketable title to the Property free and clear of all defects, liens, and encumbrances, excepting only liens for taxes, assessment, or governmental charges or levies not yet delinquent or payable without penalty or interest and such liens and encumbrances as may be approved in writing by the Lender prior to the Escrow Closing Date.

(g) no tenant in lawful possession of the Property shall be in arrears in its rental obligation to the Borrower unless Borrower has initiated reasonable measures acceptable to Lender to correct such arrearage in rent, and each rental agreement is in full force and effect without any other default by the renter unless Borrower has initiated reasonable measures to obtain the cure of any such other default;

(h) the information set forth in the Budget, attached hereto as **Exhibit D** and made a part hereof, generally describes the proposed housing preservation activities to be undertaken by the Borrower, and such Budget provides that the Loan is to be used solely to acquire the Project. The Borrower shall not materially alter or modify the programs set forth in the Budget without consent of the Lender;

(i) Borrower is not in default under any other loans or obligations which it may have;

(j) Borrower understands and agrees that the Lender is relying upon the above representations and warranties in extending the Loan to Borrower. Borrower further agrees that the foregoing representations and warranties shall be continuing in nature and shall remain in full force and effect until such time as the Loan and Promissory Note shall be paid in full, or until the Loan Agreement is terminated, whichever is the last to occur.

8. *Affirmative Covenants of Borrower*

Borrower covenants and agrees with Lender that while this Loan Agreement is in effect, Borrower will:

(a) promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower;

(b) maintain its books and records in accordance with generally accepted accounting principles, applied on a consistent basis and permit the Lender to examine and audit Borrower's books and records at all reasonable times;

(c) furnish such additional information and statements, list of assets and liabilities, agings of receivables and payables, inventory schedules, budgets, forecasts, tax returns, and other reports with respect to Borrower's financial condition and business operations which the Lender may request from time to time;

(d) comply with all laws, ordinances, and regulations, now or hereafter in effect of governmental authorities applicable to the use or occupancy of the Property including without limitation "Environmental Laws" as defined below. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in the Lender's sole opinion, the Lender's interests in the Property are not jeopardized. The Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect the Lender's interest;

(e) use the proceeds of the Loan solely for the purposes of acquiring the Property;

(f) pay and discharge when due all of Borrower's other indebtedness, obligations, and claims (exclusive of the Deed of Trust) which, if unpaid, might become a lien or charge upon the Property, including the RCAC [Loan](#); provided, however, that Borrower shall not be required to pay and discharge any such indebtedness, obligation, or claim so long as (1) its legality is being contested by Borrower in good faith by appropriate proceedings, (2) the indebtedness, obligation, or claim does not become a lien or charge upon any of the Property, and (3) Borrower shall have established on its books adequate reserves with respect to the amount contested in accordance with generally accepted accounting practices;

(g) perform and comply with all terms, conditions, and provisions set forth in this Loan Agreement and in all other instruments and agreements between Borrower and Lender, including without limitation the Promissory Note, Deed of Trust, Affordable Housing Agreement

and Subordination Agreement, and any other party. Borrower shall notify Lender immediately in writing of any default in connection with any such agreement;

(h) make, execute, and deliver to Lender such security agreements, instruments, documents, and other agreements reasonably necessary to document and secure the Loan and to perfect the security interest of the Lender in the Property;

(i) maintain and undertake any improvements to the Property in a good and workman like manner. Borrower shall provide Lender with written confirmation that it is in compliance with this covenant annually, until this Loan Agreement is terminated.

9. *Negative Covenants*

Borrower covenants and agrees with Lender that while this Loan Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

(a) **Indebtedness and Liens.** (1) Incur or assume indebtedness for borrowed money, including capital leases, (2) sell, transfer, mortgage, assign, pledge, or lease any of the Property (except for leases of the existing residential dwelling units on the Property to income qualified tenants in accordance with the Regulatory Agreement), (3) grant a security interest in, or encumber any of Borrower's assets, or (4) sell with recourse any of Borrower's accounts.

(b) **Continuity of Operations.** (1) engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change ownership, change its name, dissolve or transfer or sell any property or assets out of the ordinary course of business, or (3) make any distribution with respect to any capital account, whether by reduction of capital or otherwise.

(c) **Loans, Acquisitions and Guaranties.** (1) loan, invest in or advance money or assets to third-parties, (2) purchase, create or acquire any interest in any other enterprise or entity, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business.

(d) **Liens.** Create or allow to be created any lien or charge upon the Property, except for lien and charge in favor of Lender

(e) **Hazardous Substances.** Use, store, dispose of or release, or permit the use, storage, disposal or release, of any Hazardous Substance in, on, under or about the Property, except to the extent the same is in strict compliance with all applicable Environmental Laws. For purposes of this Loan Agreement, "Hazardous Substance," shall mean (1) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws (defined below) as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or "EP toxicity" and (2) any petroleum product, natural gas, natural gas liquids, liquified natural gas and synthetic gas usable for fuel (or mixtures of natural gas such as synthetic gas) which is not stored in a motor vehicle for use in the regular course of operation of such motor vehicle. For purposes of this Loan Agreement, "Environmental Laws" shall mean any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environmental regulation of any Hazardous Substance, including, without limitation, the Comprehensive Environmental Response, Compensation, and

Liability Act of 1980 (42 U.S.C. Sections 9601, et seq.) ("CERCLA") and the applicable provisions of the California Health and Safety Code and the California Water Code, all as heretofore or hereafter amended from time to time.

10. *Other Financing*

The Loan shall be secured by the Deed of Trust recorded against the Property. No other deeds of trust or liens shall be recorded against the Property at the Escrow Closing Date. Borrower certifies that no other liens, including mechanic liens, are or will be recorded against the Property without the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

11. *Subordination*

The lien of the Regulatory Agreement, in the form attached hereto as **Exhibit F**, shall not be subordinated to any lien on the Property.

12. *Prepayment Rights*

Borrower may prepay the Loan either in whole or in part without penalty. However, Borrower must provide Lender with written notice at least five (5) days prior to prepayment.

13. *Limitations of this Loan Agreement.*

This Loan Agreement shall not obligate Lender, acting in its regulatory capacity, to approve any particular development application submitted by Borrower for the Property. By execution of this Loan Agreement, Lender is not committing itself to, or agreeing to, undertake any other act or activity requiring the subsequent independent exercise of discretion by the Lender. Execution of this Loan Agreement by Lender is merely an agreement to loan money to Borrower for the acquisition of the Property, which action is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines Section 15310, which exempts "mortgages for the purchase of existing structures where the loan will not be used for new construction". Accordingly, Lender reserves for subsequent action the final discretion and approval regarding any development application for the Property.

14. *Regulatory Agreement*

Borrower shall cause to be recorded the Regulatory Agreement which shall affect Borrower's title in the Property. The Regulatory Agreement contains certain affordable rental housing regulatory and affordability covenants which shall run with the land and the Property for a term of up to fifty-five (55) years following its recordation. The text of the Regulatory Agreement is incorporated into this Loan Agreement by this reference. During the term of this Loan Agreement, any amendment of the Regulatory Agreement shall be subject to the prior written approval of the Lender.

The Regulatory Agreement provides for the rental of the four residential units located on the Property at an Affordable Rent to a Low Income Household, as defined and as more particularly set forth in the Regulatory Agreement..

15. *No Joint Venture*

Nothing in this Loan Agreement shall be construed to constitute the creation of a partnership or joint venture between Lender and Borrower. The Lender is not an agent or representative of Borrower and the Borrower is not an agent or representative of Lender. This Loan Agreement does not create a contractual relationship with and shall not be construed to benefit or bind the Lender in any way with or create any contractual duties by Lender to any contractor, subcontractor, materialman, laborer, or any other person retained or hired by Borrower.

16. *Default*

On the occurrence of any Event of Default, the Lender, at its sole election, may declare all sums advanced upon the Loan to be immediately due and payable, with interest at the rate not to exceed five percent (5%) from the Escrow Closing Date until paid in full, and may proceed at once, without notice to Borrower, to exercise all rights and remedies provided in the Promissory Note, Deed of Trust or as otherwise provided by law to secure payment in full of all monies due Lender. Each of the following occurrences shall constitute an Event of Default:

- (a) Failure to comply with any term or condition provided herein;
- (b) Failure of Borrower to comply with any term or condition provided in the Promissory Note, Deed of Trust and/or Regulatory Agreement;
- (c) Borrower's default on any existing lien secured by the Property;
- (d) Submission or making of any report, statement, warranty, or representation by Borrower or agent in its behalf to Lender in connection with the financial assistance awarded hereunder which is false, incomplete, incorrect or misleading;
- (e) Borrower's tax-exempt status is revoked, and Borrower has exhausted all remedies and appeals relating thereto;
- (f) Any deterioration, loss, theft, substantial damage, destruction, or depreciation in the value or market price of the Property securing the Loan, that causes the Property in the judgment of Lender to become unsatisfactory as to character or value;
- (g) The recording of any mechanics' lien or any judgment against the Borrower or the issuance or entry of any attachment against the Property and not discharged or dismissed within thirty (30) days from date of entry thereof;
- (h) The Borrower becoming insolvent or bankrupt or being unable or admitting in writing its inability to pay its debts as they mature or making a general assignment for the benefit of or entering into any composition or arrangement with creditors;
- (i) Proceedings for the appointment of a receiver, trustee, or liquidator of the assets of the Borrower or a substantial part thereof, being authorized or instituted by or against the Borrower;
- (j) Proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law or any jurisdiction being authorized or instituted against the Borrower;

(k) Borrower's failure to pay when due any and all amounts due under this Loan Agreement and Promissory Note;

(l) Borrower ceases to be the legal owner of the Property; or

(m) Borrower commits or permits any illegal act to be conducted on the Property.

17. *Severability*

All provisions and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any competent court of law, this Loan Agreement shall be interpreted as if such invalid provisions and covenants were not contained herein, and all remaining provisions not affected by said ruling shall remain in full force and effect.

18. *Indemnity; Hold Harmless*

Borrower agrees to defend, indemnify and hold Lender harmless under this Loan Agreement as follows:

(a) **General Indemnity.** Borrower shall indemnify, defend with counsel selected by the Lender, protect and hold the Lender, and its officials, officers, employees, agents and successors, harmless from and against any and all claims, losses, liabilities, fines, penalties, damages, actions, judgments, costs and expenses (including attorneys' fees and expenses) asserted against them, or any of them, by any person, entity, or governmental body, arising out of or in connection with the use, operation or ownership of the Property by the Borrower or its agents, employees, tenants or permittees. The Lender shall be entitled to appear in any action or proceeding to defend itself against such claims, and all costs incurred by the Lender in connection with such defense, including attorneys' fees, shall be paid by Borrower to the Lender. Borrower shall not be required to indemnify, protect, defend, or hold harmless Lender from and against any claims, losses, liabilities, fines, penalties, damages, actions, judgments, costs and expenses (including attorneys' fees and expenses) arising out of the negligent acts or omissions of Lender, and its officials, officers, employees, agents and successors.

(b) **Special Environmental Indemnity.** Borrower shall indemnify, defend with counsel selected by the Lender, protect and hold harmless the Lender, and its officials, officers, employees, agents and successors (collectively, "Indemnified Parties" or singularly, "Indemnified Party") from and against all claims, damages (including without limitation, special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal and administrative proceedings, interest, fines, charges, penalties and expenses (including without limitation (1) attorney's, engineer's, consultant's and expert witness fees and costs incurred in defending against any of the foregoing or in enforcing this indemnity and (2) any diminution in the value of the Property) of any kind whatsoever paid, incurred or suffered by any Indemnified Party, or asserted against the Property, directly or indirectly arising from or attributable to (i) any breach by the Borrower of any of its agreements, representations or warranties set forth in Section 7(d) or Section 9(e), or (ii) any repair, cleanup, remediation, detoxification, closure or preparation and implementation of any plan therefor undertaken by any Indemnified Party concerning Hazardous Substances on, under or about any of the Property. The foregoing indemnity shall apply whether acts of any Indemnified Party are undertaken because of proceedings initiated by any federal, state or other government authority or by any private persons(s). The foregoing indemnity is intended by the parties to be an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364.

(c) Special Covenant to Give Notice to Lender. The Borrower shall promptly give the Lender (i) a copy of any notice, correspondence or information the Borrower receives from any federal, state or other government authority regarding Hazardous Substances on, under or about the Property or regarding any actions, instituted, completed or threatened by any such governmental authority concerning Hazardous Substances which affect or may affect the Property, (ii) written notice of any knowledge or information the Borrower obtains regarding Hazardous Substances on, under or about the Property or expenses or losses incurred or expected to be incurred by the Borrower, third party or any government agency to study, assess, contain or remove any Hazardous Substances on, under or about the Property for which expense or loss the Borrower may be liable or for which a lien may be imposed on the Property, and (iii) written notice of all claims made or threatened by any third party (other than government authority) against the Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Substance.

19. *Successors and Assigns*

All warranties, representations, and covenants made by Borrower in this Loan Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Loan Agreement shall be considered to have been relied upon by Lender and will survive the making of the Loan and delivery to Lender of the Loan Documents, regardless of any investigation made by Lender. All warranties, representations, and covenants made by Borrower in this Loan Agreement shall bind its successors and assigns and shall inure to the benefit of Lender, and its successors and assigns. Borrower shall not, however, have the right to assign its rights under this Loan Agreement or any interest therein, without the prior written consent of Lender.

20. *Waiver*

The Lender shall not be deemed to have waived any rights under this Loan Agreement or the Loan Documents, either orally or by a course of conduct, but only if such waiver is given in writing and signed by the Lender. No delay or omission on the part of the Lender in exercising any right shall operate as waiver of such right or any other right. A waiver by Lender of a provision of this Loan Agreement or the Loan Documents shall not prejudice or constitute a waiver of the right of Lender otherwise to thereafter demand strict compliance with that provision or any other provision of this Loan Agreement or the Loan Documents. No prior waiver by Lender shall constitute a waiver of any of the rights of the Lender or of any obligations of Borrower as to any future transactions. Whenever the consent of Lender is required under this Loan Agreement or Loan Documents, the granting of such consent by Lender in any instance shall not constitute continuing consent in subsequent instances where such consent is required, and in all cases, such consent may be granted or withheld in the sole discretion of Lender.

21. *Notices*

All notices, requests, demands and other communications required or permitted to be given under the terms of this Loan Agreement by one party to the other shall be in writing addressed to the recipient party's Notice Address set forth below and shall be deemed to have been duly given or made (a) if delivered personally (including by commercial courier or delivery service) to the party's Notice Address, then as of the date delivered (or if delivery is refused, on presentation), or (b) if mailed by certified mail to the party's Notice Address, postage prepaid and return receipt requested, then at the time received at the party's Notice Address as evidenced by the return receipt, or (c) if

mailed by first class mail to the party's Notice address, postage prepaid, then on the third (3rd) business day following deposit in the United States Mail. Any party may change its Notice Address by a notice given in the foregoing form and manner. The Notice Addresses of the parties are:

TO LENDER:

City of St. Helena
1572 Railroad Avenue
St. Helena, California 94574
Attn.: Mark T. Prestwich, City Manager
(707) 967-2792

TO BORROWER:

Our Town St. Helena
P.O. Box 94
St. Helena, California 94574
Attn.: Jen La Liberte, Executive Director
(707) 812 9839

22. *Scope of Agreement*

This Loan Agreement and any supplement attached hereto sets forth the entire understanding of the Parties. No modification or waiver of any provision of this Loan Agreement shall be effective unless the same shall be in writing, and signed by the Parties hereto. The transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State of California. Venue for any proceeding to enforce or interpret the terms of any of the Loan Documents shall be in Superior Court of the County of Napa.

23. *Acceptance*

All obligations of Lender hereunder shall terminate and be of no further force and effect, if the Loan is not closed on or before the Outside Escrow Closing Date, unless otherwise agreed to in writing by Lender.

24. *Counterparts*

This Loan Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute but one and the same instrument.

25. *Discrimination Prohibited*

The Borrower covenants and agrees that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability in the use, operation, occupation, lease, sublease, transfer or sale of the Property, nor shall the Borrower, or any third party related to the Borrower establish or permit any such practice of discrimination or segregation to occur on the Property in connection with the selection, location, number or occupancy of residents in any of the residential dwelling units on the Property.

IN WITNESS WHEREOF, Borrower and Lender have executed this Loan Agreement as of the dates set forth below and effective as of the date executed by Lender.

Borrower's Acceptance:

***Our Town St. Helena, a California
non-profit public benefit corporation***

Steve Goldfarb
Board President

Date:_____

Lender's Acceptance:

***City of St. Helena, a California
municipal corporation***

Mark T. Prestwich
City Manager

Date:_____

“Effective Date”

Exhibit A – Property Legal Description

Exhibit B – Promissory Note

Exhibit C – Deed of Trust

Exhibit D – Budget

Exhibit E – Regulatory Agreement

PROMISSORY NOTE

MAY ____, 2021

ST. HELENA, California

\$1,400,000

FOR VALUE RECEIVED, the undersigned, OUR TOWN ST. HELENA, a California non-profit public benefit corporation, organized under the laws of the State of California, whose mailing address is P.O. Box 94, St. Helena, CA 94574 (hereinafter known as "Maker"), promises to pay to the City of Saint Helena, a California municipal corporation (hereinafter known as the "Payee"), at 1572 Railroad Avenue, in St. Helena, CA 94574, or as directed otherwise in writing by Payee, the principal sum of One Million, Four Hundred Thousand and 00/100 Dollars (\$1,400,000.00) (the "Principal Amount"), in lawful money of the United States of America, on the following terms and conditions:

1. Term and Lump Sum Payment. The entire Principal Amount of this Promissory Note (hereinafter, the "Note"), and all other amounts due and owing from Maker to Payee pursuant to the terms of this Note and the Loan Documents, shall be immediately due and payable to Payee upon an Event of Default as set forth in the Loan Agreement between Maker and Payee of even date herewith (the "Maturity Date"). Provided there is no existing Event of Default, upon the 55th anniversary of the date of this Note Payee shall forgive the balance of this Note if any.

2. Prepayment. Maker shall have the right to prepay any portion of the Principal Amount owing under this Note at any time without penalty. However, Maker shall provide Payee with written notice at least five (5) days prior to prepayment.

3. Security. The repayment of the Principal Amount due under this Note shall be secured by that certain Deed of Trust, signed this same date by Maker for the benefit of Payee, whereby Maker assigns to Payee a security interest in the property located at 723 Hunt Avenue, St. Helena, CA as collateral for repayment of this Note.

4. Interest. No interest shall accrue on the Principal Amount during the term of this Note.

5. Default Interest. If any portion of the Principal Amount due under this Note shall not be paid on the Maturity Date, Maker will be charged five percent (5%) simple interest on said amount from the date of this Note until paid in full ("Default Interest"). Nothing herein shall preclude Payee, in the exercise of its reasonable discretion, from waiving all or any portion of the Default Interest.

6. Miscellaneous.

All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Documents, as defined in the Loan Agreement, are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set

forth herein and Maker covenants and agrees to keep and perform them, or cause them to be kept and performed, strictly in accordance with their terms.

On the occurrence of any Event of Default, as set forth in the Loan Agreement, Payee, at its sole election, may declare the Principal Amount evidenced by this Note, and all other amounts due and owing from Maker to Payee pursuant to the terms of the Loan Documents, to be immediately due and payable and may proceed at once without further notice to enforce this Note according to law.

No delay or failure of Payee in the exercise of any right or remedy hereunder or under the Loan Documents, as defined in the Loan Agreement, shall affect any such right or remedy, and no action taken or omitted by Payee shall be deemed a waiver of any right or remedy. Neither the agreement of a late payment charge or increased interest after default shall prevent Lender from exercising its rights and remedies under this Note, or the other Loan Documents.

Each maker, endorser, surety, and guarantor of this Note hereby severally waives demand, protest, presentment, notice of nonpayment, notice of protest and diligence in bringing suit against any party and does hereby consent that time of payment of all or any part of the Principal Amount may be extended from time to time by the Payee hereof without notice.

Any notice to the Payee shall be given as stated in the Loan Agreement.

If this Note is placed with an attorney for collection, for suit, or bankruptcy proceedings, Maker agrees to pay all collection costs, court costs, and the expenses incurred, including reasonable attorney's fees at trial, on appeal and in bankruptcy proceedings.

Payee or any other holder hereof may freely sell, assign, transfer or otherwise dispose of this Note and Maker hereby consents and agrees that any subsequent holder of this Note shall have all of the rights of Payee provided herein.

This Note shall be construed and enforced in accordance with the laws of the State of California.

MAKER:

OUR TOWN ST. HELENA, a California non-profit public benefit corporation

BY: _____
Steve Goldfarb, its President

Dated: _____, 2021

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of St. Helena
1572 Railroad Avenue
St. Helena, Ca 94574
Attention: City Clerk

*EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE § 27383*

Space above this line for Recorder's use

REGULATORY AGREEMENT

This Regulatory Agreement ("**Agreement**") is entered into effective as of _____, 2021 ("**Effective Date**"), by and between the CITY OF ST. HELENA, a California municipal corporation ("**City**") and our OUR TOWN ST. HELENA, a California non-profit public benefit corporation ("**Declarant**"). City and Declarant are sometimes referred to herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. City and Declarant are parties to a Loan Agreement dated _____, 2021, ("**Loan Agreement**") setting forth the terms and conditions of a Loan provided by City from its Affordable Housing Trust Fund to Declarant for the acquisition of 723 Hunt Avenue, St. Helena, Napa County, California, as more particularly described in **Attachment A** attached hereto and incorporated herein ("**Property**"). The Property is comprised of a legal parcel identified as the Assessor Parcel No. 009-062-013.

B. The Loan Agreement requires, among other things, that upon acquisition of the Property by Declarant, the Parties shall enter into this Agreement to obligate Declarant to rent the four residential units located on the Property to Eligible Households whose gross annual income does not exceed 80% of Area Median Income.

C. The Loan Agreement requires recordation of this Agreement against the Property concurrently with recordation of the Grant Deed transferring the property from the seller to Declarant in order to appropriately condition the use of the existing four residential units on the Property in a manner consistent with the expenditure of Housing Trust Funds.

D. In accordance with the Loan Agreement, City and Declarant now desire to enter into and record this Agreement to ensure that the Property is used for affordable housing purposes as set forth herein.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Incorporation of Recitals; Intent of Agreement.** The Parties acknowledge the truth of the foregoing Recitals, which are incorporated into this Agreement by this reference. The purpose of this Agreement is to provide notice of the occupancy and affordability requirements that apply to the four residential units on the Property. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Declarant and Declarant's successors and assigns.

2. **Definitions.** As used in this Agreement, the following terms shall have the meanings set forth in this Section 2.

"Actual Household Size" means the actual number of persons in the applicable household.

"Adjusted for Family Size Appropriate for the Unit" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code.

"Affordable Rent" means a monthly rent that does not exceed:

For Low-Income Households, the product of 30 percent times 80 percent of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto, less a reasonable utility allowance and other fees and charges required to be paid by tenants on a non-optional basis.

"Affordable Units" means the existing four residential units.

"Agreement" means this Regulatory Agreement.

"Annual Report" is defined in Section 4.

"Area Median Income" or "AMI" means the median income for Napa County, California, adjusted for Actual Household Size, as determined by the U.S. Department of Housing and Urban Development ("HUD") pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development ("HCD") in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

"City" means the City of St. Helena, a California municipal corporation.

"Declarant" means Old Town St. Helena, a California non-profit public benefit corporation.

“Deed of Trust” means the deed of trust transferring the property from the sellers to the Declarant,

“Effective Date” means the date set forth in the introductory paragraph of this Agreement.

“Eligible Household” means a Low-Income Household.

“Low-Income Household” means households whose gross annual income, adjusted for family size, does not exceed eighty percent (80%) of Area Median Income for Napa County.

"Management Agreement" is defined in Section 5.

"Occupant" shall mean a person over the age of three (3) years who occupies an Affordable Unit for more than fourteen (14) days or more during a one-month period month.

“Party” means City or Declarant.

“Parties” means City and Declarant.

“Property” is defined in Recital A.

"Property Manager" is defined in Section 5.

3. Use and Affordability Restrictions. Declarant hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the use and operation of affordable housing in compliance with the requirements set forth in this Agreement. Until the date which is up to fifty-five (55) years following the date on which this Agreement is recorded in the official records of Napa County, each of the four Affordable Units shall be occupied or held available for occupancy by a Low Income Household at an Affordable Rent. To the extent not in violation of state or federal law fair housing law, Declarant shall give preference in the rental of Affordable Units to Eligible Households with one or more Occupants employed within the City of St. Helena.

3.1.1 No less than one Occupant shall be allowed per bedroom and no more than two Occupants shall be allowed per bedroom plus one. Notwithstanding the foregoing, the existing tenants of the property will remain in their units and as units are vacated and re-released, all new tenants will meet the requirements of this Regulatory Agreement.

3.1.2 Not more than once per year, Declarant may adjust rents in occupied Affordable Units to the level allowed for the family size appropriate to the unit. Declarant may adjust the rent upon vacancy of an Affordable Unit to the level allowed for the family size appropriate to the unit. Declarant must notify the lessee of an Affordable Unit in writing of any increase in such monthly rent at least sixty (60) days in advance of the effective rent adjustment date, and a copy of any such notification shall be sent to City simultaneously. The Declarant shall report any rent increase(s) to the City in the Annual Report, including: (1) the rent adjustment for each Affordable Unit; (2) the new rental amount for each Affordable Unit; (3) the effective date

of the adjustment for each Affordable Unit; and (4) a copy of the written notice provided to the lessee of the Affordable Unit. Failure to provide the notice and reporting required shall be considered a default by Declarant under this Agreement.

3.1.3 The determination of a status as an Eligible Household shall be made by Declarant prior to initial occupancy of the Affordable Unit by such household. The income of all Occupants residing in the Affordable Unit shall be considered for purposes of calculating the household income. Declarant shall not discriminate against prospective lessee's of an Affordable Unit with qualified Public Housing Authority Section 8 certificates or vouchers who are otherwise qualified. In the Annual Report, the Declarant shall report any changes in the Occupants of any Affordable Unit to the City that are known by the Declarant, including the name(s) and household size(s) of the Occupant(s) vacating the Affordable Unit(s) during the reporting period, and, if the Affordable Unit(s) has/have been reoccupied, the name, household size and income of the new Occupant(s) occupying the Affordable Unit(s).

3.1.4 Immediately prior to the first anniversary date of the lease commencement of an Affordable Unit by an Eligible Household, and on each anniversary date thereafter, Declarant shall re-certify the income of the Occupant(s) of such Affordable Unit by obtaining a completed Occupant income certification based upon the current income of each Occupant of the Affordable Unit and Declarant shall take all reasonable steps to verify with reliable documentation the income and household size of the Occupant(s). All documentation obtained by Declarant in connection with the annual Occupant income certification shall be retained by Declarant for three (3) calendar years.

4. Reporting Requirements. The Declarant shall submit to City annual reports ("**Annual Report**") which shall include all reporting required under this Agreement from the date of the previous Annual Report and include the following:

- A. A cover letter to the City describing the status of compliance with this Agreement, including any problems experienced during the reporting period, and any recommendations to address problems and enhance compliance;
- B. Income certifications or re-certifications, for each Eligible Household of an Affordable Unit. The Annual Report shall be accompanied by an income certification worksheet in a format and containing information reasonably required by City.

Upon receipt of the Annual Report, the City may request additional information to confirm compliance with this Agreement. In the event the City requests such information, the Declarant shall promptly supply such information to City in the format requested by City. Declarant shall maintain all necessary documents, books and records, including property and financial records, in accordance with requirements prescribed by City with respect to all matters covered by this Agreement for a period of three (3) years following the date of submittal of the Annual Report to which such documents, books or records relate. Upon request for examination by City, Declarant, at any time during normal business hours and upon reasonable notice, shall make available at the Property (or at another location within the City of St. Helena) all material records with respect to

matters covered by the Agreement. Declarant shall permit City, at City's expense, to audit, examine, copy, and make excerpts or transcripts from such records.

5. Management of Affordable Units. If Declarant enters into a separate property management agreement ("**Management Agreement**") with a property management company or other organization in order to manage the Affordable Units (including leasing, property management, maintenance and repair services, and reporting obligations) and ensure that Declarant's obligations under this Agreement with respect to the Affordable Units are satisfied ("**Property Manager**"), Declarant shall comply with this Section 5. Property Manager shall have at least five (5) years' experience in the operation and management of similar size rental housing developments, and at least three (3) years' experience in the operation and management of rental housing developments containing below-market-rate units, without any record of material violations of discrimination restrictions or other applicable laws. No less than sixty (60) calendar days prior to hiring any Property Manager or executing any amendment to a Management Agreement, Declarant shall provide documentation to the City as is reasonably necessary to evaluate the proposed Property Manager's experience and qualifications or revisions to a Management Agreement. No Property Manager shall be hired, or Management Agreement signed or amended, without City's prior approval thereof, which shall not be unreasonably withheld or delayed. For the term of this Agreement, any change in Property Manager or amendment to the Management Agreement shall comply with the requirements of this Section 5 and any material amendment shall require the prior written approval of City, which shall not be unreasonably withheld or delayed.

6. Remedies for Breach. Upon any default under this Agreement by Declarant or by Declarant's successors or assigns, City may seek specific performance of the terms hereof, and may enjoin acts that may be in violation of this Agreement. Failure by City to enforce any provision contained herein shall not be deemed a waiver of the right to do so as to any continuing, subsequent, or other violation. This Section is not intended to limit City's ability to exercise any applicable remedy available to City pursuant to this Agreement or the Loan Agreement. All remedies available to City shall be cumulative and not exclusive.

7. Binding on Successors in Interest; Provisions Run with the Land. The Property, and each and every portion thereof, shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, covenants, conditions and restrictions set forth in this Agreement, all of which shall run with the land, shall constitute equitable servitudes, shall be binding on all parties having or acquiring any right, title or interest in such Property or portion thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of City and its successors and assigns. It is the intent of the Parties that this Agreement shall satisfy the requirements of California Civil Code Section 1468.

Without limiting the foregoing, the Parties hereby declare that it is their express intent that the covenants, restrictions and conditions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon Declarant's successors in title to the Property. Each and every contract, deed, ground lease, or other instrument affecting or conveying the Property shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other

instrument. Declarant agrees for itself and for its successors and assigns that if a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property in favor of City.

8. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Napa County concurrently with and immediately prior to recordation of the Deed of Trust securing the Loan provided pursuant to the Loan Agreement. Declarant hereby represents warrants and covenants that with the exception of easements of record, absent the written consent of City, this Agreement shall not be subordinated in priority to any lease, ground lease, security agreement, deed of trust, mortgage, lien, encumbrance, or other interest in the Property.

9. Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall, however, be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice of such violation to the holders of record of any mortgages or deeds of trust encumbering the Property.

10. Estoppel Certificate. At any time during the term hereof, City, Declarant or any party then owning an interest in the Property may request an estoppel certificate from the other party attesting to such party's compliance with the terms and provisions of this Agreement. A party making a request for an estoppel certificate shall provide Declarant or City, as applicable, with all documentation reasonably necessary for Declarant or City to form an opinion as to compliance or non-compliance with the provisions hereof. After receiving such a request and the necessary supporting documentation, Declarant or City, as applicable, shall respond, in writing, within thirty (30) calendar days following the date of receipt and shall either confirm compliance with the terms and provisions of this Agreement or shall state in reasonable detail any alleged failure to comply and the steps necessary to cure such lack of compliance.

11. Indemnification. Declarant hereby covenants and agrees that it shall indemnify, defend with counsel reasonably acceptable to City and hold City and its elected and appointed officials, representatives, officers, agents and employees harmless from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with the approval of this Agreement; (b) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with the implementation or enforcement of this Agreement; (c) any and all claims arising from an act or omission of Declarant or any of its shareholders, partners, members, principals, officials, officers, employees, representatives, agents, contractors or subcontractors in connection with this Agreement or the Property; (d) any and all claims arising out of or related to the operation, use, occupancy, maintenance or ownership of the Property, including compliance with the laws, ordinances, rules and regulations of City pursuant to this Agreement; and (e) all reasonable costs, attorney fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; provided, however, that this provision shall not require Declarant to indemnify City from any claims, costs, fees expenses or liabilities arising from the gross negligence or willful misconduct of the City. In the event any action or proceeding is brought against the City or any of its elected and appointed officials,

representatives, officers, agents and employees, with respect to which indemnity may be sought hereunder, Declarant, upon receipt of written notice from City, shall assume the investigation and defense thereof, including the employment of counsel approved by the City and the payment of all expenses related thereto.

12. Miscellaneous.

12.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by each of the Parties or their respective successors in interest.

12.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

12.3 Notices. All notices, requests, demands and other communications required or permitted to be given under the terms of this Agreement by one party to the other shall be in writing addressed to the recipient party's address set forth below and shall be deemed to have been duly given or made (a) if delivered personally (including by commercial courier or delivery service) to the party's address, then as of the date delivered (or if delivery is refused, on presentation), or (b) if mailed by certified mail to the party's address, postage prepaid and return receipt requested, then at the time received at the party's address as evidenced by the return receipt, or (c) if mailed by first class mail to the party's address, postage prepaid, then on the third (3rd) business day following deposit in the United States Mail. Any party may change its address for the receipt of notices by giving notice to the other party in the foregoing form and manner. The addresses of the parties are:

TO CITY:

City of St. Helena
1572 Railroad Avenue
St. Helena, California 94574
Attn.: City Manager
(707) 968-2744 ext: 500

TO DECLARANT:

Our Town St. Helena
P.O. Box 94
St. Helena, California 94574
Attn.: Jennifer La Liberte
(707) 812 89839

12.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and shall take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

12.5 Parties Not Co-Venturers; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Declarant and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Declarant or to any third party with respect to the Property.

12.6 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of St. Helena shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

12.7 Time is of the Essence. Time is of the essence in the performance of this Agreement.

12.8 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Napa County, California or in the Federal District Court for the Northern District of California.

12.9 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

12.10 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

12.11 Entire Agreement. This Agreement, together with the Loan Agreement and the Loan Documents referred to in the Loan Agreement, contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto.

12.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Regulatory Agreement as of the date first written above.

CITY:

CITY OF ST. HELENA, a
California municipal corporation

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

ATTEST:

Cindy Tzafopoulos, City Clerk

APPROVED AS TO FORM:

Ethan Walsh, City Attorney

DECLARANT:

OUR TOWN ST. HELENA,
a California non-profit public benefit corporation

By: _____
Name: Steve Goldfarb
Its: Board President

By: _____
Name: Jennifer La
Liberte
Its: Executive Director

ACKNOWLEDGEMENTS

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 _____ (Seal) _____

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 _____ (Seal) _____

RECITAL A

PROPERTY

[Legal description to be inserted.]

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of St. Helena
1572 Railroad Avenue
St. Helena, Ca 94574
Attention: City Clerk

*EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE § 27383*

Space above this line for Recorder's use

DEED OF TRUST

This deed of trust and assignment of rents made _____, 2021, herein called "Deed of Trust", between Our Town St. Helena, a California nonprofit public benefit corporation, herein called "Trustor", whose mailing address is Post Office Box 94, St. Helena, California 94574, and Placer Title Company, herein called "Trustee", whose address is 5 Financial Plaza, Suite 205, Napa, California 94558, and the City of St Helena, a California municipal corporation "Lender", having a mailing address of 1572 Railroad Avenue, St. Helena, California 94574

WITNESSETH: That Trustor, for the purpose of securing:

- (a) The payment of that certain promissory note of even date herewith in the principal sum of One million, four hundred thousand and no cents (\$1,400,000.00), herein called "Note"; together with interest thereon payable to Beneficiary, or order, with final payment, if not sooner paid, due and payable upon the 55th anniversary of the date of close of escrow and to secure payment of any and all extensions or renewals of the Note, which extensions or renewals shall be optional with the Beneficiary, but at the Beneficiary's option may be made by new notes or otherwise, and at, before or after maturity, and for all of which this security instrument shall stand as a continuing security until paid;
- (b) Performance of each agreement of Trustor incorporated by reference or herein contained;
- (c) The Note secured hereby evidences an acquisition loan and provides for advances; advances under said Note are conditional in accordance with the terms and conditions of a Loan Agreement of even date between Trustor and Beneficiary which is incorporated hereby by reference, herein called "Loan Agreement";
- (d) The payment of all sums of money with interest which may be paid out or advanced by, or may otherwise be due to Trustee or Beneficiary under any provision of this Deed of Trust;
- (e) Payment of such further sums as the record owner of the subject property may hereafter borrow from Beneficiary, its successors or assigns when said borrowing is evidenced by a promissory note or notes reciting that it or they are so secured;
- (f) Performance and discharge of each and every obligation, covenant and agreement of Trustor herein contained and in any and all pledge agreements, supplemental agreement(s), or other instruments of security executed by Trustor as of even date herewith or at any time subsequent to the date hereof for the purpose of further securing any indebtedness hereby secured, or any part thereof, or any further advancement or further or

additional loans of any sums hereafter made by Beneficiary or any successor of Beneficiary holding this Note, to Trustor or any successor of Trustor owning the real property described herein during the continuance of these trusts and secured hereby, or for the purpose of supplementing or amending this Deed of Trust or any instrument secured hereby; and

- (g) Performance under the Loan Agreement of even date herewith executed by Trustor.

Hereby irrevocably grants, transfers and assigns to Trustee in trust with power of sale, all of Trustor's interest, together with leases, issues, profits and income, subject however to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such property income, and any and all interest hereafter acquired by Trustor, in that certain real property, in the City of St. Helena, County of Napa, State of California described as follows:

See Exhibit A attached hereto and made a part hereof

Commonly known as 723 Hunt Avenue, St. Helena, CA

Together with all buildings, improvements and tenements now or hereafter erected on the property, and all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, rents (subject, however, to the assignment of rents to Beneficiary herein), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, furniture, pictures, antennas, trees and plants; all of which, including replacements and additions thereto, shall be deemed to be and remain apart of the real property covered by this Deed of Trust; and all of the foregoing, together with said property are herein referred to as the "Property".

Trustor covenants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant, convey and assign the Property, and that Trustor will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Property.

Uniform Covenants: Trustor and Beneficiary covenant and agree as follows:

1. *Application of Payments:* Trustor shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any late charges provided in the Note and all other sums secured by this Deed of Trust. Unless applicable law provides otherwise, all payments received by Beneficiary from Trustor under the Note or this Deed of Trust shall be applied by Beneficiary in the following order of priority: (a) any fees that may be due; (b) interest payable on the Note; (c) principal on the Note; (d) interest payable on advances; and (e) any other sums secured by this instrument in such order as Beneficiary, at Beneficiary's option, may determine.
2. *Charges; Liens:* Trustor agrees to pay, and to submit to Beneficiary evidence of payment: (a) at least ten (10) days before delinquency, all taxes and assessments affecting the Property,

including assessments on appurtenant water stock, without permitting any improvement bond to issue for any special assessment for public improvements; (b) at least ten (10) days before delinquency, all rents, assessments and charges for water appurtenant to or used in connection with the Property; (c) when due, all encumbrances, charges and liens, with interest, on the Property, or any part thereof, which are, or appear to Beneficiary to be, prior to or superior hereto; (d) when due, the claims of all persons supplying labor or materials or equipment to or in connection with the Property; and (e) upon demand, all costs, fees, charges and expenses of this trust, whether or not described herein. Should Trustor fail to pay when due any of these items, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the Note secured hereby, shall be added to and become a part of the debt secured in this Deed of Trust.

3. *Hazard Insurance*: Trustor shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Beneficiary against loss by fire, flood, hazards included within the term "extended coverage", rent loss and such other hazards, casualties, liabilities against bodily injury death or property damage and contingencies as Beneficiary shall require and in such amounts and for such periods as Beneficiary shall require, naming Beneficiary as loss payee. All premiums on insurance policies shall be paid by Trustor making payment, when due, directly to the carrier.

All insurance policies and renewals thereof shall be in a form acceptable to Beneficiary and shall include a standard mortgage clause in favor of and in form acceptable to Beneficiary. Beneficiary shall have the right to hold the policies, and Trustor shall promptly furnish to Beneficiary all renewal notices and all receipts of paid premiums. At least thirty (30) days prior to the expiration date of a policy, Trustor shall deliver to Beneficiary a renewal policy in form satisfactory to Beneficiary.

In the event of loss, Trustor shall give immediate written notice to the insurance carrier and to Beneficiary. Trustor hereby authorizes and empowers Beneficiary as attorney-in-fact for Trustor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this paragraph shall require Beneficiary to incur any expense or take any action hereunder. Trustor further authorizes Beneficiary, at Beneficiary's option, (a) to hold the balance of such proceeds to be used to reimburse Trustor for the cost of reconstruction or repair of the Property, or (b) to apply the balance of such proceeds to the payment of the sums secured by this Deed of Trust, whether or not then due, in the order of application.

If the insurance proceeds are held by Beneficiary to reimburse Trustor for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Beneficiary may approve in writing. Beneficiary may, at Beneficiary's option, condition disbursement of said proceeds on Beneficiary's approval of such plans and specifications of an architect satisfactory to Beneficiary, contractors' cost estimates, architects' certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Beneficiary may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Deed of Trust, any such application of proceeds to principal shall not extend or postpone the due dates of installments or change the amount of such installments. Such application or release shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

4. *Liability Insurance.* Trustor will maintain comprehensive general liability insurance covering the legal liability of Trustor against claims for bodily injury, death, or property damage occurring on, in, or about the Property with coverage of One Million Dollars (\$1,000,000.00) combined single limit, and naming Beneficiary an additional insured.
 - 4.1. *Insurance Survey.* During the last thirty (30) days of every third year computed from the date hereof, Trustor will have an insurance survey of the Property made. Trustor shall at these times obtain such additional coverage or make such increased in the amounts of existing coverage as may be requested by Beneficiary on the basis of such survey.
 - 4.2. *General Provisions.* All policies of insurance required to be maintained by Trustor pursuant to paragraph 3 and 4 hereof shall be in form and substance and with companies acceptable to Beneficiary. Beneficiary retains the discretion to increase the amount of the required coverage, require insurance against additional risks, or withdraw approval of any insurance company at any time. Trustor shall obtain renewals of any policies which expire and deliver evidence of such renewals (or, if requested by Beneficiary, the original policy) to Beneficiary no later than ten (10) days prior to the expiration date of the policy being replaced. Should any of the above described policies be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. Notwithstanding any of the foregoing, neither Trustee nor Beneficiary shall be responsible for any such insurance or for the collection of any insurance moneys, or for any insolvency of any insurer or insurance underwriter. Any and all unexpired insurance shall inure to the benefit of and pass to the purchaser of the Property at any Trustee's or sheriff's sale held hereunder.
5. *Late Payment; Partial Payment:* The acceptance by Beneficiary of any payment less than the amount then due shall be deemed an acceptance on account only, and shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due or of Beneficiary's right either to require prompt payment of all sums then due or to declare default. The acceptance by Beneficiary of payment of any sum secured hereby after its due date shall not constitute a waiver of the right of Beneficiary either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay. No waiver of any default shall be a waiver of any preceding or succeeding default of any kind, nor shall the consent to any transaction or occurrence be a consent to, or a waiver of the right to require a consent to, any other transaction or occurrence, whether or not similar in nature.
6. *Appear and Defend:* Trustor agrees to appear in and defend any action or proceeding purporting to affect the security hereof, the Property or the rights or powers of Beneficiary and/or Trustee. Beneficiary, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may appear in and defend any such action or proceeding and may make any compromise or settlement thereof. Trustor agrees to pay all costs and expenses of Beneficiary and Trustee, including costs of evidence of title and attorneys' fees in a reasonable sum, at trial, on appeal and in bankruptcy proceedings, in any such action or proceeding in which Beneficiary may appear, irrespective of whether the interest of Beneficiary in the Property is directly questioned by such action or proceeding or whether Trustor appears or defends, including any action for the condemnation or partition of the Property, and in any action or proceeding instituted by Beneficiary to protect or enforce the security of this Deed of Trust or the obligations secured hereby, including a suit by Beneficiary to foreclose this Deed of Trust.

7. *Hazardous Waste:* To Trustor's best knowledge and after due and diligent inquiry, Trustor represents and warrants that neither Trustor nor any previous owner or user of the Property has used, generated, stored or disposed of above, in, on, under or around the Property any hazardous substance and that there is not now, nor have there ever been tanks or facilities on, under or at the Property which contaminated materials, which if known to be present in solid or ground water, would require cleanup, removal or some other remedial action under any federal, state or local law or regulation. Trustor hereby covenants and agrees that Trustor will not conduct, permit or authorize the generation, transportation, storage, treatment or disposal at the Property of any hazardous substance, and neither Trustor or any agent, servant or employee shall generate, store, bury or dispose of any hazardous substance on or in a location that will adversely affect the Property. Trustor shall promptly and diligently comply with all requirements of federal, state or local laws, statutes, ordinances or regulation, or court or administrative orders or decrees, or private agreements pertaining to hazardous substances.
8. *Condition of Property:* Trustor agrees to keep the Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of laws; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.
9. *Use of Property:* Unless required by applicable law or unless Beneficiary has otherwise agreed in writing, Trustor shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed as described in the Loan Agreement. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Property without Beneficiary's prior written consent. Trustor shall comply with all laws of applicable governmental entities with respect to the property.
10. *Protection of Beneficiary's Security:* If Trust fails to perform the covenants and agreements contained in this Deed of Trust, the Note and/or Loan Agreement, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Beneficiary therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Beneficiary or Trustee at Beneficiary's option and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof may make such appearances, disburse such sums and take such action as Beneficiary deems necessary, in its sole discretion, to protect Beneficiary's interest, including, but not limited to, (a) disbursement of attorney's fees, (b) entry upon the Property to make repairs, and (c) procurement of satisfactory insurance as provided in paragraphs 3 and 4 hereof.

Any amount disbursed by Beneficiary pursuant to this paragraph, with interest thereon, shall become additional indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the Note. Trustor hereby covenants and agrees that Beneficiary shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this paragraph shall require Beneficiary to incur any expense or take any action

hereunder.

11. *Inspection:* Beneficiary may either in person or by agent enter the Property, including the building and improvements thereon, for the purpose of inspecting same.
12. *Books and Records:* Trustor shall keep and maintain at all times at Trustor's address stated above, or such other place as Beneficiary may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operations of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Beneficiary. Upon Beneficiary's request, Trustor shall furnish to Beneficiary, within one hundred and eighty (180) days after the end of each fiscal year of Trustor, a balance sheet, a statement of income and expenses of the Property, and a statement of changes in financial position, each in reasonable detail and certified by Trustor and, if Beneficiary shall require, by an independent certified public accountant.
13. *Condemnation:* Trustor shall promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, and Trustor shall appear in and prosecute any such action or proceeding unless otherwise directed by Beneficiary in writing. Trustor authorizes Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Beneficiary.

Trustor authorizes Beneficiary to apply such awards, payments, proceeds or damages, after the deduction of Beneficiary's expenses incurred in the collection of such amounts, at Beneficiary's option, to restoration or repair of the Property or to payment of the sums secured by this Deed of Trust, whether or not then due, in the order of application set in paragraph 1 hereof, with the balance, if any, to Trustor. Unless Trustor and Beneficiary otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments change the amount of such installments. Trustor agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Beneficiary may require.
14. *Forbearance by Beneficiary Not a Waiver:* Any forbearance by Beneficiary in exercising any rights or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Beneficiary of payment of any sum secured by this Deed of Trust after the due date of such payment shall not be a waiver of Beneficiary's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.
15. *Remedies Cumulative:* Each remedy provided in this Deed of Trust is distinct and cumulative to all other rights or remedies under this Deed of Trust or afforded by law or

equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

16. *Acceleration in Case of Trustor's Insolvency:* If Trustor shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Trustor shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Trustor, or if Trustor shall be adjudged a bankrupt, or if a Trustor or receiver shall be appointed for Trustor or Trustor's Property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Trustor shall make an assignment for the benefit of Trustor's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Trustor's assets and such seizure is not discharged within ten (10) days, then Beneficiary may, at Beneficiary's option, declare all of the sums secured by this Deed of Trust to be immediately due and payable without prior notice to Trustor, and Beneficiary may invoke any remedies permitted by paragraph 24 of this Deed of Trust. Any attorney's fees and other expenses incurred by Beneficiary in connection with Trustor's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Trustor secured by this Deed of Trust pursuant to paragraph 10 hereof.

17. *Transfer of Property:* The financial stability of Trustor (and of those persons or entities having a direct or beneficial interest in Trustor if it is a corporation or partnership) are a substantial and material consideration to Beneficiary in its agreement to make the loan to Trustor evidenced by the Note. Trustor understands that a transfer of Property may significantly and materially alter and reduce Beneficiary's security for the Note. Therefore, in order to induce Beneficiary to make the loan secured hereby, Trustor agrees that, in the event of any transfer of Property without the prior written consent of Beneficiary, Beneficiary shall have the absolute right at its option, to declare all sums secured hereby immediately due and payable. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to the Deed of Trust, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained hereon. Such assumption shall not, however, release Trustor, maker or any Guarantor of the Note from any liability thereunder unless Beneficiary releases Trustor, maker or Guarantor in writing. As used herein, "transfer" includes the sale, agreement to sell, transfer or conveyance of the Property, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise or the lease of all or substantially all of the Property. "Transfer" shall also include the transfer, assignment or conveyance, beneficially or legal, of (i) fifty percent (50%) of the voting stock of Trustor, if Trustor is a corporation, and/or (ii) fifty percent (50%) of the aggregate partnership interest of Trustor, if Trustor is a partnership.

If Beneficiary exercises the option to require immediate payment in full, Beneficiary shall give Trustor notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which Trustor must pay all sums secured by this Deed of Trust. If Trustor fails to pay these sums prior to the expiration of this period Beneficiary may invoke any remedies permitted herein, without further notice or demand on Trustor.

18. *Notices:* All notices, including any notice or notices of any default or sale pursuant to such default, hereunder, and any other statement, demands, requests, consents, approvals,

authorizations, agreements and designations under this Deed of Trust shall be in writing and, unless otherwise provided herein or by law, shall be sufficiently given and served if delivered personally or sent by mail, postage prepaid, and addressed as follows:

To Beneficiary at its principal office for the transaction of business;
 To Trustee at its principal office for the transaction of business;
 To Trustor at its principal office address as shown in this Deed of Trust.

19. *Successors and Assigns:* The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assigns of Beneficiary and Trustor, subject to the provisions of paragraph 17 hereof. All covenants and agreements of Trustor shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Beneficiary may act through its employees, agents or independent contractors as authorized by Beneficiary. The caption and heading of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
20. *Waiver of Statute of Limitations:* Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured by this Deed of Trust.
21. *Waiver of Marshalling:* Notwithstanding the existence of any other security interests in the Property held by Beneficiary or by any other party, Beneficiary shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Trustor, any party who consents to this Deed of Trust and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.
23. *Assignment of Rents:* As additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of this trust, to collect the rents, issues and profits of the Property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any obligation hereunder, to collect and retain such rents, issues and profits but not before they become due and payable. Upon any such default, Beneficiary may, at any time without notice, either in person, by agent, or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of the Property or any part thereof; in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same less costs and expenses of operation and collection, including reasonable attorneys' fees upon any indebtedness secured hereby in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
24. *Acceleration; Remedies:* Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any obligation hereunder, or upon default under any prior lien

or encumbrance on all or any part of the Property, Beneficiary may declare the entire indebtedness secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Property, which notice Trustee shall cause to be filed for record. Beneficiary shall also deposit with Trustee this Deed of Trust, the note or notes secured hereby and all documents evidencing indebtedness secured hereby. Upon any such default, whether or not Beneficiary so declares the entire indebtedness secured hereby immediately due and payable, or threatened default, Beneficiary may employ counsel in order to determine and enforce Beneficiary's rights and Trustor's obligations under this Deed of Trust, the note or notes secured hereby, and any other instruments of security securing any indebtedness secured hereby; and in connection with such employment of counsel, Beneficiary may pay his reasonable fees.

After the lapse of such time as may then be required by law following the recordation of such notice of default and election to sell, the notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as Trustee may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement.

Trustee shall deliver to the purchaser its deed conveying the Property so sold, but without warranty. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. All Property securing the indebtedness secured hereby, including any shares of corporate stock, may be sold as a unit or in such order as Trustee shall determine, Trustor hereby waiving the provisions of Section 694 of the Code of Civil Procedure of California. Beneficiary may at its option foreclose upon any shares of corporate stock securing the indebtedness secured hereby by independent pledge sale, Trustor hereby waiving demand and notice of such sale. Any person, including Trustor, Trustee or Beneficiary, may purchase at any sale hereunder. After deducting all costs, fees and expenses of Trustee and of this trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: (a) all sums expended under the terms hereof, not then repaid, with interest from the date of expenditure at the rate specified in the Note; (b) all other indebtedness then secured hereby; and (c) the remainder, if any, to the person or persons legally entitled thereto.

Trustee and Beneficiary, and each of them, shall be entitled to enforce payment or performance of any obligation secured hereby and to exercise all rights and powers under this Deed of Trust or under any other agreement or any laws now or hereafter in force, notwithstanding some or all of the obligations secured hereby are now or shall hereafter be otherwise secured, whether by mortgage, Deed of Trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other power herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their uncontrolled discretion determine.

25. *Fraud:* Trustor has made certain representations and disclosures in order to induce Beneficiary to make the loan evidenced by the Note or notes secured hereby, and if Trustor

has made any material misrepresentation or failed to disclose any material fact, Beneficiary may declare the entire indebtedness secured hereby immediately due and payable.

26. *Trustee:* At any time, or from time to time, without liability therefor and without notice, upon written request from Beneficiary and presentation of this Deed of Trust and the Note or notes secured hereby for endorsement, and without affecting the liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Property in securing the full amount of the indebtedness then or thereafter secured hereby or the rights or powers of Beneficiary or Trustee with respect to the remainder of the Property, Trustee may (but shall not be obligated so to do): (a) reconvey all or any part of the Property; (b) consent in writing to the making of any map or plat thereof; or (c) join in granting any easement or creating any restriction thereon.
27. *Reimbursement of Costs:* Trustor agrees to pay: (a) the amount demanded by Beneficiary, not to exceed the maximum allowed by law therefor at the time such request is made, for each statement requested by Trustor, or on his behalf, regarding the indebtedness secured hereby; and (b) the charges of Beneficiary for any other service rendered Trustor, or on his behalf, connected with this Deed of Trust or the indebtedness secured hereby including the delivery to an escrow holder of a request for full or partial reconveyance of this Deed of Trust, transmitting to an escrow holder moneys secured hereby, changing its records pertaining to this Deed of Trust and indebtedness secured hereby, to show a new owner of the Property, and replacing an existing policy of insurance held by Beneficiary hereunder with another such policy.
28. *Reconveyance:* Upon written request of Beneficiary stating that the entire indebtedness secured hereby has been paid, and upon surrender to Trustee of this Deed of Trust and the Note or notes secured hereby for cancellation and retention and upon payment of Trustee's fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto". Such reconveyance shall operate as a reassignment of rents, issues and profits hereinafter assigned to Beneficiary.
29. *Substitution of Trustee:* Beneficiary or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustee, Trustor and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee. Trustee is not obligated to notify any party hereto of pending sales under any other Deed of Trust or of any action or proceeding in which Trustor, Trustee and Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.
30. *Future Advances /Modifications:* Upon request of Trustor, Beneficiary, at Beneficiary's option as long as this Deed of Trust secures indebtedness held by Beneficiary, may make future advances to Trustor. Such future advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

From time to time, Beneficiary may, at Beneficiary's option, without giving notice to or obtaining the consent of Trustor, Trustor's successors or assigns or of any junior lienholder or guarantors, without liability on Beneficiary's part and notwithstanding Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, extend the time for payment of said indebtedness or any part thereof, reduce the payment thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from the lien of this instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in the extension or subordination agreement and agree in writing with Trustor to modify the rate of interest or period of amortization of the Note or change the amount of installments payable thereunder. Any action taken by Beneficiary pursuant to the terms of this paragraph shall not affect the obligation of Trustor or Trustor's successors or assigns to pay the sums secured by this Deed of Trust and to observe the covenants of Trustor contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Property. Trustor shall pay Beneficiary a reasonable service charge, together with such title insurance premiums and attorneys' fees as maybe incurred at Beneficiary's option, for any such action if taken at Trustor's request.

31. *Governing Laws; Severability:* This Deed of Trust shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. In the event of any inconsistency among or between the documents evidencing the Note secured by this Deed of Trust the order of precedence shall be: (1) Deed of Trust, (2) Promissory Note and (3) Loan Agreement.
32. *Changes:* This Deed of Trust cannot be changed except by agreement in writing signed by the parties against whom enforcement of the change is sought.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust and has caused the same to be executed by its representative s hereunto due authorized as of _____, 2021.

Our Town St. Helena,

a California nonprofit public benefit corporation

By: _____
Steve Goldfarb
President

END OF DOCUMENT

EXHIBIT "A" LEGAL DESCRIPTION

The land described herein is situated in the State of California, County of Napa, City of Saint Helena, described as follows:

CITY OF ST. HELENA

RESOLUTION NO. 2021-

A RESOLUTION AUTHORIZING THE FOLLOWING: (A) LOAN AGREEMENT WITH OUR TOWN ST. HELENA (OTSH) FOR THE PURCHASE OF 723 HUNT AVENUE; (B) PROMISSORY NOTE FOR A DEFERRED LOAN WITH OTSH FOR THE PURCHASE OF 723 HUNT AVENUE; (C) REGULATORY AGREEMENT WITH OTSH FOR 723 HUNT AVENUE; (D) DEED RESTRICTION FOR 723 HUNT AVENUE; AND (E) AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY AGREEMENTS RELATED TO 723 HUNT AVENUE

RECITALS

- A. 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 and blight; and
- B. On January 21, 2020, HUD issued a Notice of Funding Availability (NOFA) announcing the availability of 2019 and 2020 funds under the CDBG program (the "NOFA"); and
- C. Our Town St. Helena (OTSH) had identified an opportunity to acquire an existing 4-unit rental property at 723 Hunt Avenue (Christine Apartments) in St. Helena; and
- D. The City Council conducted a public hearing on March 10, 2020 to allow for public comments on the proposed CDBG application and the City Council approved, via Resolution 2020-16 (Attachment 1), an application for funding and the execution of a grant agreement and any amendments thereto from the 2019-2020 funding year of the CDGB program; and
- E. Resolution 2020-16 authorized the City to apply for a Multifamily Single-Family Housing Acquisition and Rehabilitation funds to acquire a 4-unit rental property at 723 Hunt Avenue in St. Helena to be managed with a 55-year deed restriction for affordable housing available to income qualified St. Helena residents. The application for the acquisition of this property is \$1.5 million; \$1.4 million for the purchase and \$100,000 for City- and OTSH-incurred costs related to the purchase and closing; and
- F. On May 26, 2020, the City submitted the application to HUD for CDBG funds for 723 Hunt Avenue. The intent is if the City is awarded the grant of CDBG funds for this project, the City will then award a grant of CDBG Funds to OTSH (Grantee), to

administer the acquisition of the four unit property located at 723 Hunt Avenue in St. Helena; and

- G. Award of CDBG funding is contingent on having the following documents in place: (1) Loan Agreement with OTSH for the purchase of the property, (2) Promissory Note for a loan with OTSH for the purchase of the property, (3) Regulatory Agreement with OTSH; and (4) Deed of Trust; and
- H. Approval of CDBG funds is contingent upon the execution of the four above documents; and
- I. The City desires to execute the documents allowing grant funding from CDBG as well as allow OTSH the ability to purchase the affordable housing site.

RESOLUTION

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

- 1. Authorizes the execution of a Loan Agreement with Our Town St. Helena for the purchase of 723 Hunt Avenue; and
- 2. Authorizes the execution of a Promissory Note for a deferred loan with Our Town St. Helena for the purchase of 723 Hunt Avenue; and
- 3. Authorizes the execution of a Regulatory Agreement with Our Town St. Helena for 723 Hunt Avenue; and
- 4. Authorizes the execution of a Deed Restriction for 723 Hunt Avenue; and
- 5. The City Manager is hereby authorized to execute all necessary agreements related to 723 Hunt Avenue.

Approved at a Regular Meeting of the St. Helena City Council on May 11, 2021, by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Chouteau:	_____
Councilmember Hall:	_____
Councilmember Hardy:	_____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

CITY OF ST. HELENA

RESOLUTION NO. 2021-

A RESOLUTION AUTHORIZING TEMPORARY, SHORT-TERM USE OF AFFORDABLE HOUSING TRUST FUNDS IN AN AMOUNT NOT-TO-EXCEED \$1,400,000 FOR THE PURCHASE OF 723 HUNT AVENUE

RECITALS

- A. 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 and blight; and
- B. On January 21, 2020, HUD issued a Notice of Funding Availability (NOFA) announcing the availability of 2019 and 2020 funds under the CDBG program (the "NOFA"); and
- C. Our Town St. Helena (OTSH) had identified an opportunity to acquire an existing 4-unit rental property at 723 Hunt Avenue (Christine Apartments) in St. Helena; and
- D. The City Council conducted a public hearing on March 10, 2020 to allow for public comments on the proposed CDBG application and the City Council approved, via Resolution 2020-16, an application for funding and the execution of a grant agreement and any amendments thereto from the 2019-2020 funding year of the CDGB program; and
- E. Resolution 2020-16 authorized the City to apply for a Multifamily Single-Family Housing Acquisition and Rehabilitation funds to acquire a 4-unit rental property at 723 Hunt Avenue in St. Helena to be managed with a 55-year deed restriction for affordable housing available to income qualified St. Helena residents. The application for the acquisition of this property is \$1.5 million; \$1.4 million for the purchase and \$100,000 for City- and OTSH-incurred costs related to the purchase and closing; and
- F. On May 26, 2020, the City submitted the application to HUD for CDBG funds for 723 Hunt Avenue. The intent is if the City is awarded the grant of CDBG funds for this project, the City will then award a grant of CDBG Funds to OTSH (Grantee), to administer the acquisition of the four unit property located at 723 Hunt Avenue in St. Helena; and
- G. Funds from the California Department of Housing and Community Development (HCD) for the CDBG funds are received on a reimbursement basis; and

- H. Escrow for the purchase of this property is to be closed by June 30, 2021; and
- I. OTSH currently does not have the \$1,400,000 available to cover the costs up front for the purchase of the property, which will be reimbursed by HCD, and has requested the City utilize Affordable Housing Trust Funds in an amount of \$1,400,000 for the purchase of the property; and
- J. The funds utilized will be reimbursed to the City by HCD within 75 days of the close of escrow; and
- K. To continue support of the City's goal to stabilize, maintain, and improve access to housing the City desires to authorize temporary, short-term use of Affordable Housing Trust Funds for the purchase of 723 Hunt Avenue.

RESOLUTION

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

1. Authorizes the temporary, short-term use of Affordable Housing Trust Funds in an amount not-to-exceed \$1,400,000 for the purchase of 723 Hunt Avenue.

Approved at a Regular Meeting of the St. Helena City Council on May 11, 2021, by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Chouteau:	_____
Councilmember Hall:	_____
Councilmember Hardy:	_____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafopoulos, City Clerk