City of St. Helena
Regular City Council Meeting
Tuesday, August 24, 2021 @ 6:00 PM
Published: Friday, August 20, 2021 3:49 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@cityofsthelena.org. All public comments must be emailed by 4:00 PM prior to the meeting. Emailed public comments will not be read out loud but will be publicly available and attached to the on-line City Council agenda.

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/87634830993
Or One tap mobile :
US: +16699006833,,87634830993# or +13462487799,,87634830993#
Or Telephone:
Dial(for higher quality, dial a number based on your current location):
US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099
Meeting ID: 876 3483 0993
International numbers available: https://us02web.zoom.us/u/kOVDNGaSv

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Ciudad de Santa Helena Reunión Especial del Ayuntamiento 24 **de agosto** 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**. Todos los comentarios públicos se harán públicos y se adjuntarán a la agenda y no se leerán en voz alta. Todos los comentarios públicos que se reciban después de las 4:00 PM se adjuntarán a la agenda al díasiguiente.**

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 PARTICIPACIÓNPÚBLICA. 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.

Habrá traducción en español durante la junta
Haga clic en el enlace a continuación para participar en la reunión:
https://us02web.zoom.us/j/87634830993
O por iPhone one-tap:
US: +16699006833,,87634830993# or +13462487799,,87634830993#
O por Teléfono: Marque(para mejor calidad, marque número basado en su ubicaciónactual):
US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099
ID de la Reunión: ID: 876 3483 0993
International numbers available: https://us02web.zoom.us/u/kOVDNGaSv

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1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE
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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 17 - 25
Connie Wilson. Public Comment
Connie Wilson. Public Comment. Addendum
Pam Starr. Public Comment
Nancy Dervin. Public Comment
Gayle Davies. Public comment

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. COVID Update Presentation by Dr. Karen Relucio, Deputy Director of HHSA - Public Health Officer
BOS COVID-19 Update Presentation 8.24.2021

8. STAFF BRIEFING

8.1. Wastewater Financing Update
Prepared By: April Mitts, Administrative Services Director

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 a resolution authorizing Amendment #1 to STH Contract: FY 2020-031 Housing Trust Fund Loan Agreement dated September 10, 2019 between the City of St. Helena and Our Town St. Helena authorizing a 90-day extension to the loan term and authorizing the City Manager to execute the necessary documentation for the extension. 27 - 77

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

Section 15310 of State CEQA Guidelines which exempts the approval of mortgages of the purchase of existing structures where the loan will not be used for new construction.
Prepared By: Mandy Kellogg, Asst. Administrative Services Director
Recommendation:
Approve the attached Resolution.
Staff Report - Pdf

9.2. Consideration and proposed adoption of a Resolution approving a Professional Service Agreement with Coastland Civil Engineering, Inc. (Coastland) for the R19-79 Year 2 Pavement Restoration project in an amount not to exceed $99,781 and authorizing the City Manager to execute the agreement. 79 - 124

CEQA Determination: Exempt from the requirements of CEQA pursuant to Section 15301, Class 1, which exempts the operation, leasing, or minor alteration of existing facilities
Prepared By: Edrees Argand, Assistant Engineer
Recommendation:
Staff recommends City Council adopt a Resolution approving a Professional Services Agreement with Coastland Civil Engineering, Inc. for the R19-79 Year 2 Pavement Restoration Project in an amount not to exceed $99,781 and authorizing the City Manager to execute the agreement.
Staff Report - Pdf

9.3. Consideration and proposed adoption of a resolution authorizing the City Manager or designee to execute Amendment No. 4 to the City of Napa Water Supply Agreement (City of Napa Agreement No. 9381; and City of St Helena Agreement No. 2006-131) allowing for an additional 114 AF of Undelivered Water over the next five fiscal years. 125 - 134

CEQA Determination: Not a CEQA project
Prepared By: Martin Beltran, Management Analyst
Recommendation:
Adopt the attached resolution authorizing City Manager or designee to execute Amendment No. 4 to the City of Napa Water Supply Agreement (City of Napa Agreement No. 9381; and City of St Helena Agreement No. 2006-131) allowing for an additional 114 AF of Undelivered Water over the next five fiscal years in substantially the form included with the agenda for a regular meeting at which this Resolution was approved, and submit to minor edits as approved by the City Manager in consultation with the City Attorney.
Staff Report - Pdf

9.4. Consideration of a Resolution authorizing: (1) Amendment #3 to STH Contract: FY2021-042 with Raftelis for continued support in the implementation of, and updates to, the City's water allocations as well as future water shortage policy considerations during declared water shortage emergencies for an additional $89,655 for a total not-to-exceed amount of $124,655; (2) Amendment #1 to STH Contract: FY2021-074 with Raftelis for continued Drought Outreach for an additional $19,980 for a total not-to-exceed amount of $46,960; and (3) a budget increase 135 - 151

of $134,635 to 561-5000-2130 for the costs of these amendments and costs associated with the Operational Technical Services agreement and use of water fund balance.

CEQA Determination: Not a CEQA project
Prepared By: April Mitts, Administrative Services Director
Recommendation:
Staff recommends City Council approve the attached resolution.

Staff Report - Pdf
Jennifer Oliver. Public Comment

9.5. Consideration of a Resolution Authorizing: (1) Amendment #3 to a Professional Services Agreement with Willdan Financial Services for the amount of $6,045, with a total contract not-to-exceed $108,435, to Complete the Commercial Linkage Fee Analysis Related to the Affordable Housing Impact Fee Portion of the Development Impact Fee Study; and (2) a budget increase of $6,045 to 751-4300-2145 and use of fund balance of the same. 153 - 162

CEQA Determination: Not a CEQA project
Prepared By: Mandy Kellogg, Asst. Administrative Services Director
Recommendation:
Recommendation of Approval of the Resolution.

Staff Report - Pdf

9.6. Consideration of Approval of Property Use Agreement Between the City of St. Helena and The Boy Scouts of America Regarding Scout Hall at 1515 Railroad Avenue (APN 009-192-009-000) 163 - 240

CEQA Determination: Not a CEQA project
Prepared By: Mark T. Prestwich, City Manager
Recommendation:
Adopt a resolution authorizing City Manager to execute Property Use Agreement with The Boy Scouts of America Regarding Scout Hall at 1515 Railroad Avenue (APN 009-192-009-000).

Staff Report - Pdf
Jan Darter. Public Comment. Anna Chouteau
Jan Darter. Public Comment. Eric Hall
Jan Darter. Public Comment. Geoff Ellsworth
Jan Darter. Public Comment. Lester Hardy
Jan Darter. Public Comment. Paul Dohring
Jan Darter. Public Comment
Melissa Staid. Public Comment
Sara Cakebread. Public Comment
Allison Birdwell. Public Comment
Ann Sorenson. Public Comment
Carl Ericson. Public Comment
James Sweeney. Public Comment
Chris Lynch. Public Comment
Duane Dappen. Public Comment
Peter Collins. Public Comment

Jim Sweeney. Public Comment
Angus Cleland. Public Comment
Clare Sweeney. Public Comment
Meg Ryan. Public Comment
Ana Martinez. Public Comment. Scout Hall
Brendan Sweeney. Public Comment. Scout Hall
Caroline Cakebread. Public Comment. Scout Hall
Cindy and Kelly Crane. Public Comment. Scout Hall
Gregory DeLucca. Public Comment. Scout Hall
Molly Bjorkman. Public Comment. Scout Hall
Norma Ferriz. Public Comment. Scout Hall
Sue Pressler. Public Comment. Scout Hall
Evan Massaro. Public Comment. Scout Hall
Rosalba Sepulveda. Public Comment. Scout Hall
Russell Gold. Public Comment. Scout Hall

9.7. Consideration and Proposed Approval of a Resolution Authorizing an Agreement with Sutter Home Winery, Inc. for Alternative Measurement of Wastewater Discharge 241 - 258

CEQA Determination: Not a "project" as defined in Section 15378(a) subject to CEQA; further, even if deemed a "project" subject to CEQA, exempt from CEQA under the common sense exemption set forth in Section 15061 (b)(3), in that it can be seen with certainty that the proposed action will have no impact on the environment.
Prepared By: Mark T. Prestwich, City Manager
Recommendation:
Adopt Resolution authorizing an Agreement with Sutter Home Winery, Inc. for an alternate measurement of wastewater discharge.
Staff Report - Pdf

10. PUBLIC HEARINGS

10.1. None

11. OLD BUSINESS

11.1. None

12. NEW BUSINESS

12.1. Discussion and Direction on Establishing Water Conservation Program with Flume and Water Conservation Incentives. 259 - 273

CEQA Determination: Not a CEQA project
Prepared By: Martin Beltran, Management Analyst
Recommendation:
Provide direction to the City Manager on Establishing Water Conservation Program with Flume and Water Conservation Incentives
Staff Report - Pdf
Nancy Dervin. Public Comment.

12.2. Review and Discussion of Draft St. Helena Business Recovery Strategy 275 - 287

CEQA Determination: Exempt
Prepared By: Mark T. Prestwich, City Manager
Recommendation:
Review, discuss, and provide direction to the City Manager.

Staff Report - Pdf

12.3. Designation of voting delegates and the City Council to review proposed resolutions for consideration at the League of California Cities Annual Conference business meeting and provide voting direction to the voting delegate and alternate voting delegates 289 - 333

CEQA Determination: Not a CEQA project
Prepared By: Cindy Tzafopoulos, City Clerk
Recommendation:
Staff recommends for the City Council to designate a voting delegate and alternates. Staff also recommends for Council to discuss and consider the proposed resolution and provide direction to the City's voting delegates for participation at the League of California Cities virtual Annual Business Meeting and General Assembly on Friday, September 24, 2021 at 12:30 p.m.

Staff Report - Pdf

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

13.1.

September City Council Meetings: **9/14 (Staff reports due 8/20)** **9/28 (Staff reports due 9/10)**
Presentation
9/14 Proposed Hunter Subdivision Project Applicant presentation
STAFF BRIEFING:
September - Update on Waste Water Treatment Plant Upgrade Project (report every other month)
CONSENT:
9/14 Award of contract for Public Opinion research
9/14 4th Qtr Update
9/14 Grant Update
PH or OLD / NEW BUSINESS:
9/14 PH Consideration and approval of a Resolution of the City Council of the City of St. Helena setting a Public Hearing for 6:00 p.m., Tuesday, September 14, 2021 to Consider Objections to the Proposed Annexation of Territory, known as 1386 Community Drive, St. Helena, CA. 94574 (APN 009-432-025), into the St. Helena Municipal Sewer District No. 1, MSD Annexation No. 140.
9/14 PH Consideration and approval of a Resolution of the City Council of the City of St. Helena setting a Public Hearing for 6:00 p.m., Tuesday, September 14, 2021, to Consider Objections to the Proposed Annexation of Territory, known as 1000 Mills Lane, St Helena, CA (APN 009-070-049, 009-070-052, 009-070-053, and 009-070-054), into the St. Helena Municipal Sewer District No. 1, MSD Annexation No. 141.

9/28 OB Review and Proposed Adoption of the City of St. Helena City Council Three Year Goals 2021-22 Workplan
9/14 Rosebud Lane agreement
9/14 Review of FY 21/22 general fund revenue forecast
9/14 CalPERS performance review
9/14 Budget update and review of add back list
<u>October City Council Meetings</u>: **10/12 (Staff reports due 9/24)** **10/25 (Staff reports due 10/8)**
Presentation
October – Sexual Violence Awareness Proclamation

14. ADJOURNMENT

The next Regular City Council meeting is scheduled for September 14, 2021, at 6:00 p.m.

I do hereby certify that a copy of the foregoing agenda was posted on the City website on August 20, 2021.

Cindy Tzafopoulos

Cindy Tzafopoulos, 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 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
The easiest way to provide public comment is to email your public comment. Public comments may be emailed to 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-
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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/

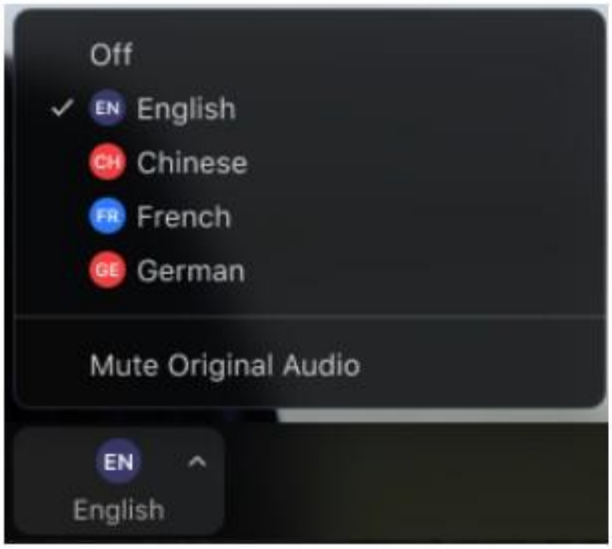
El enlace web de ZOOM, la identificación de la reunión y el número de teléfono se enumerarán en la parte superior de la Agenda de la reunión del Ayuntamiento. Se le pedirá que ingrese la ID de la reunión, pero no habrá contraseña ni ID de participante.

Cómo escuchar la interpretación de un idioma

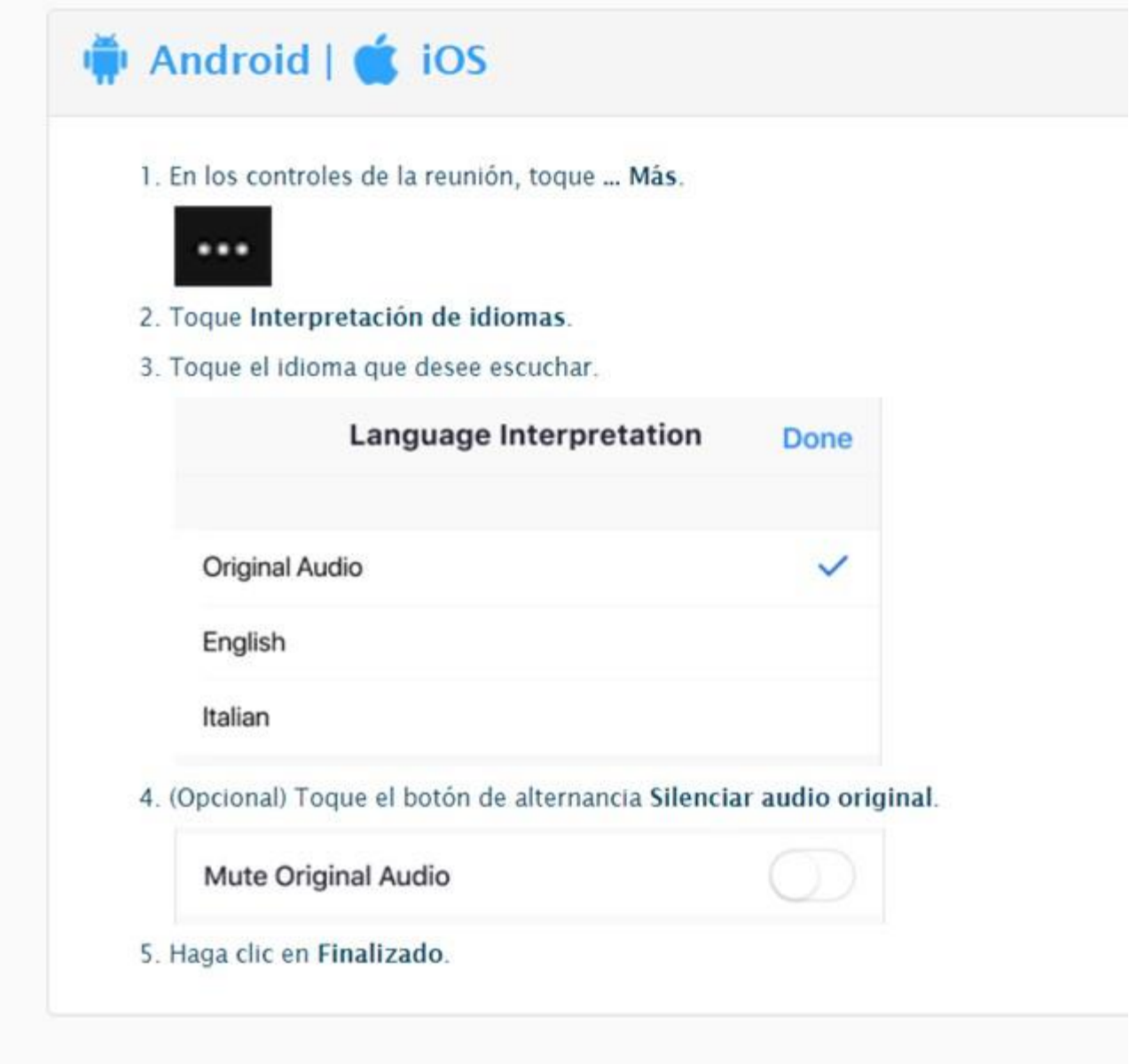
Windows | macOS

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

2. Haga clic en el idioma que desee escuchar.



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



Cómo ver o escuchar las reuniones del Consejo:

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

Vea la reunión del Consejo uniéndose a la reunión Zoom:

1. **Por computadora, tableta o teléfono:**

a. Antes de unirse a la reunión virtual del Ayuntamiento, le recomendamos que descargue la aplicación Zoom. Para registrarse en su propia cuenta gratuita, visite zoom.us/signup e ingrese su dirección de correo electrónico. Recibirá un correo electrónico de Zoom (no-reply@zoom.us) . En este correo electrónico, haga clic en Activar cuenta.
b. Si ha iniciado sesión en su cuenta, ingrese la ID de la reunión que figura en la Agenda del Ayuntamiento. Si no ha creado una cuenta, vaya a: https://zoom.us/join e ingrese la ID de la reunión

c. Seleccione si desea conectar audio y / o video y toque Unirse a la reunión. re. Para obtener instrucciones específicas para su dispositivo, vaya a: https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting

2. **Escuche solo por teléfono:**

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

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

1. Envíe un comentario público por adelantado a publiccomment@cityofsthelena.org
La forma más fácil de proporcionar comentarios públicos es enviar su comentario público por correo electrónico. Los comentarios públicos pueden enviarse por correo electrónico a publiccomment@cityofsthelena.org.Incluya en la línea de asunto "COMENTARIO AL CONSEJO y el PUNTO DEL PROGRAMA". Cualquier comentario público debe presentarse a más tardar 2 horas antes de la reunión programada y se incluirá como un archivo adjunto a la agenda. Todos los comentarios públicos se harán públicos y se adjuntarán al articulo 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 permisio.

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

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

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

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

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

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

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

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

From: Connie Wilson
To: Public Comment
Subject: [External] Public Comment for August 24, 2020 from Neighborhoods Opposing Pacaso Encroachment
Date: Saturday, August 21, 2021 11:17:27 AM

Dear Mayor and City Council,

We are writing about the challenges facing our community from short term rentals, fractional ownerships, timeshares and other types of transient occupancy uses, as well as a general concern for the well-being of our town over the long run.

1. As the number of second homes in St. Helena increases, so do negative impacts on our neighborhoods. Managed homes, such as those sold by Pacaso, require excessive amounts of services (housekeeping, gardeners, pool services, traffic) on a potential weekly basis. All of this impacts our neighborhoods at a far greater extent than permanent residents or even second home owners.

2. The general consensus is that these type of commercial vacation properties contribute to the hollowing out of our neighborhoods. We realize we cannot stop the sales of homes to second home buyers, but the City must implement measures that can help mitigate negative impacts by transient occupants and lack of transparency and accountability. To ensure that the safe, quiet enjoyment of the community is shared by all, we are proposing a number of regulations to keep our town livable.

    a. **Safety** – First and foremost, we need to ensure the safety of all our residents, most especially our children.
        i. Require that the "manager" or owner of transient occupancy properties provide a list of all the owners' names and contact information to the city and ensure that the public may access this list. The reasons for this are many:
            1. Crime - Studies show that transient occupancy in a neighborhood raises the likelihood of crime. If residents don't know who "lives" there, we can't check the predator registry to make sure our children are not at risk. The buyers/neighbors should be held accountable to Meagan's Law. Parents have the right to know where all registered offenders are located, whether close to their home or anywhere in the City.
            2. Cars – We are very concerned about the extra traffic that will be generated by multiple users.
            3. Gifting – The names of anyone gifted time who is not an owner must be registered with the city.

b. **Noise** – Establish a good neighbor ordinance that puts fines on violations of night-time disturbance. Make it easier to prove and enforce than the current language in the code. For managed and short-term rental residential properties, a large deposit should be required and will be automatically forfeited in the event of a violation. The amount of the deposit and fine goes up with each violation. The deposit can be returned on a successful appeal.

c. **Parking** - Develop a neighborhood parking ordinance for daytime (construction) and nighttime parking.
Impose parking restrictions on any block where one or more residents requests it. Grant 2 on-street parking stickers per house. Parking stickers must be affixed to a car. Towing and fines apply for any vehicle without a sticker from 10:00pm – 6:00am.

d. Lights – We need a dark sky policy allowing only necessary downlighting. Several Pacaso houses have had obtrusive lighting 24/7.

e. Water – Homes owned as LLCs are allocated only one person's worth of water since there is only one "owner"-- the LLC.

f. Enforcement – The City needs to step up enforcement of the noise ordinance and provide transparency to residents.

g. **Fire Evacuation –** To ensure safe evacuations, the City needs to know who is at each managed residence at all times.

h. **Local Contact –** Each managed property must always have a local (in-town) contact for a variety of reasons, including related to all the issues above.

Thank you so much for your leadership in this effort.

Clare Barr, Susan McWilliams, Connie Wilson
Representing St. Helena members of NOPE (Neighborhoods Opposing Pacaso Encroachment)

From: Connie Wilson
To: Public Comment
Subject: [External] Addendum to public letter for August 24 City Council letter.
Date: Tuesday, August 24, 2021 9:56:32 AM

I wish to add the following signatures to the Neighbors Opposing Pacaso Encroachment (NOPE) letter to be added to the agenda this evening, August 24. The additional signatures are:
Larry Vermeulen, Gayle Davies, Amy Caldarola, Michael Caldarola, Leslie Stanton and Mari Jansdotter.

Thank you very much.

Connie Wilson
Susan McWilliams
Clare Barr

From: Pam Starr
To: Public Comment
Cc: Cindy Tzafopoulos
Subject: [External] public comment for city councel 8.23.21 pam starr
Date: Monday, August 23, 2021 3:17:59 PM
Attachments: image003.png

Hello City of St Helena
Please include the following public comment for city council 8/24/21
My name is Pam Starr and I am co-owner and president of Crocker & Starr Winery located on Dowdell Lane. I am expressing my concern for the lack of pedestrian connectivity throughout St Helena. As a business owner, we have no way for visitors and residents to easily and safely travel between the El Bonita/Harvest Inn area (St Helena South) and the center of St Helena. I feel very strongly that creating connections for pedestrians in the southern part of our city from the east and west side of Hwy 29/main street and encouraging active transportation in these areas will make a huge impact on our city's business recovery. Most of St Helena's sales tax comes from businesses residing outside of the three blocks between Pine and Mitchell. Though I do not have the statistics of the number of injuries per year of pedestrians trying to cross Hwy29 eastside to westside and visa versa, I am witness to this event on a regular basis.
Thank you for considering my concerns. Pam Starr

Pam Starr
Owner/Founding Winemaker
pam@crockerstarr.com 707-967-9111

Carnivus Maximus MMXXI

JOIN US FOR
THE GRANDEST CELEBRATION IN NAPA...
Sunday, September 5th, 2021
Voted one of the
"Top Ten Must-Attend Harvest Parties"...
Tickets On Sale NOW!

August 24, 2021

Dear City Council,

Existing litigation with Pacaso does not preclude the City from taking steps to create ordinances to manage documented negative impacts several types of time-shared properties have in our community and particularly our residential neighborhoods. Nor should litigation prevent our local police department from actively enforcing laws currently on the books.

Put yourselves in the shoes of those currently being subjected to excessive noise, egregious lighting, obstructive parking, random people coming and going, and more. And what about the impact on our water resources?

Our middle class is undeniably under siege. Our housing stock is depleted and what little that is available is at prices most families can ill afford. We must do everything we can to protect and support what is left of our residential neighborhoods.

You have a group of people engaged in the battle for our residential neighborhoods and working hard to produce solutions. I urge you to consider the recommendations submitted by our local NOPE (Neighborhoods Opposing Pacaso Encroachment) and commit yourselves to, and ask our police department to support, taking immediate action to mitigate the challenges at hand.

Sincerely,

Nancy Dervin

Public comment, City Council meeting, 8-24-21

I have previously written a letter to our city attorney, Mr. Walsh, that was cc'd to our mayor, vice mayor, city council and city manager. I am pleased to have received acknowledgement from Mr. Dohring, Ms. Choteau, and Mayor Ellsworth and feel confident that the others have likewise taken seriously this concern I offer. Today, my goal is to reach another set of ears, the community members attending this meeting, as well as to advocate for the amendment of our city code relating to safety.

I worked for a few years as a Child Advocate at the Sexual Assault Resource Agency in Charlottesville, VA, ending in 2018. My jurisdiction included 5 counties and one city. I was directly involved in dozens of child sexual assault/abuse/trafficking cases and participated in hundreds of case reviews. My professional partners were Detectives, District Attorneys (called Commonwealth Attorneys there), medical examiners, Social Services and other child welfare services. My continuous trainings were highly specialized and were often delivered by Homeland Security. There were occasions when I had the responsibility of making initial reports directly to the FBI, often after not getting sufficient response from local law enforcement when they refused to involve FBI themselves (which did result in arrests and convictions).

These crimes are very invisible. The community doesn't hear about them and is therefore unaware of the prevalence of child sex crimes. Perpetrators are often incredibly clever, especially when well-resourced. They are masters at being right under our noses, unseen, whether they are coaching local sports or are involved in a multi-state trafficking ring. In either and in additional scenarios, all communities are at risk.

The constructs of Pacaso homes are very ideal for pedophiles to have the ability to be invisible. With Pacaso buyers we are disarmed from using molester identification/locator tools typically available to us such as the Megan's Law Registry. The location of Pacaso homes in St Helena are proximate to all of our public schools. This should be a primary concern for everyone. We have no ability to know who these buyers or their guests are. Aside from danger to our local children, these homes can be ideal locations for trafficking Jeffrey Epstein style. Those kinds of rings are far more prevalent than anyone realizes. Homeland Security can provide you with some very shocking data. The tall hedges and fences provide great privacy at these homes.

I am very grateful for your committed efforts to hold fractional ownership business models in violation of our zoning ordinances. They do not belong in neighborhoods. For the seeable future, and perhaps forever, our community is stuck with Pacaso. I urge our city government to amend code so that we can hold Pacaso buyers AND ALL OTHER persons of short term occupancy and second-home owners to a standard of transparency that allows for greater security of our children, and piece of mind for parents.

Thank you

Report to the City Council
Regular City Council - 24 Aug 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and proposed approval of a resolution authorizing Amendment #1 to STH Contract: FY 2020-031 Housing Trust Fund Loan Agreement dated September 10, 2019 between the City of St. Helena and Our Town St. Helena authorizing a 90-day extension to the loan term and authorizing the City Manager to execute the necessary documentation for the extension.**

CEQA Determination: **Approval of a resolution amending the Loan Agreement for the acquisition of 963 Pope Street is governed by Section 15310 of State CEQA Guidelines which exempts the approval of mortgages of the purchase of existing structures where the loan will not be used for new construction.**

Prepared By: Mandy Kellogg, Asst. Administrative Services Director

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On August 27, 2019, the City Council authorized a loan from the Affordable Housing Trust Fund to Our Town St. Helena (OTSH) to assist with the acquisition of a property located at 963 Pope Street. The purchase price of the property was $850,000 for a 0.29-acre lot, zoned medium-density residential, with a 2-bedroom 1-bath house located near the front portion of the property. The property will be used solely for the use, operation, and development of affordable housing by constructing four additional units on the back half of the property for moderate-to low-income rental tenants.

The City and OTSH entered into STH Contract: FY 2020-031 Housing Trust Fund Loan Agreement dated September 10, 2019, in the amount of $450,000 with zero percent interest (Attached). The loan has a term of twenty-four (24) months and all unpaid sums

of the principal amount shall become immediately due and payable upon the second anniversary date of the promissory note, September 10, 2021.

DISCUSSION

Our Town St. Helena (OTSH) has contacted the City to discuss modifications to the original $450,000 promissory note which is due and payable by September 10, 2021. Due to timing of the loan repayment, staff recommends providing OTSH with a 90-day extension to the loan term which will provide additional time for OTSH and the City to evaluate loan options for City Council consideration.

FISCAL IMPACT

Not applicable.

RECOMMENDED ACTION

Approve the attached Resolution.

ATTACHMENTS

STH Contract FY2020-031 Our Town St. Helena Housing Trust Fund
Resolution Extension of OTSH Loan Term
OTSH Amendment #1 963 Pope Avenue

STH CONTRACT: FY 2020-031

CITY OF ST. HELENA
HOUSING TRUST FUND REVISED LOAN AGREEMENT

This Housing Trust Fund Revised Loan Agreement is made and entered into effective as of this ____ day of September, 2019, by and between the City of St. Helena, a California municipal corporation ("**Lender**"), having a mailing address of 1480 Main Street, St. Helena, California 94574, and Our Town St Helena, a California non-profit public benefit corporation ("**Borrower**"), having a mailing address of P.O. Box 94, St. Helena, California 94574 (hereinafter, the "**Loan Agreement**"). Lender and Borrower are sometime referred to herein individually as a "**Party**" and collectively as the "**Parties**".

The Borrower has applied for a loan from Lender's Housing Trust Fund to acquire real property located at 963 Pope Street, St. Helena, California and more particularly described in **Exhibit A** attached hereto and made a part hereof (hereinafter, the "**Property**"). The Property is comprised of two legal parcels identified as Assessor Parcel No. 009-090-013-000 (hereinafter, the "**Tract One Parcel**"), and Assessor Parcel Nos. 009-090-012-000 (hereinafter, the "**Tract Two Parcel**").

In consideration of the mutual promises undertaken herein, the Parties mutually agree as follows:

1. *Effective Date and Term.*

This Loan Agreement shall be effective as of the date executed by Lender as indicated in the signature block below (the "**Effective Date**"), and shall continue thereafter until the Principal Amount, and all other amounts due and owing from Borrower pursuant to the terms of the Loan Documents, has been paid in full to Lender.

2. *Loan Terms*

Lender agrees to make a loan to Borrower from its Housing Trust Fund (hereinafter, the "**Loan**"), in the principal sum of Four Hundred Fifty Thousand Dollars and 00/100 Dollars ($450,000.00)(hereinafter, the "**Principal Amount**"). Borrower agrees to execute a promissory note in the amount of the Principal Amount bearing interest at the rate of zero percent (0%) per annum (hereinafter, the "**Promissory Note**"), in the form attached hereto as **Exhibit B** attached hereto and made a part hereof. The Loan shall have a term of twenty four (24) months and all unpaid sums of the Principal Amount shall become immediately due and payable upon the second (2nd) anniversary of the date of the Promissory Note .

3. *Security*

The Promissory Note shall be secured by a deed of trust (hereinafter, the "**Deed of Trust**"), in the form attached hereto as **Exhibit C** attached hereto and made a part hereof, pursuant to which Borrower will provide Lender a junior lien position behind Rural Community Assistance Corporation, a California non-profit public benefit corporation ("**RCAC**"), which will maintain a senior lien in the Property.

4. *Loan Documents*

Collectively, the agreements, instruments, certificates, opinions and other documents governing, evidencing, securing, related to, executed or delivered in connection with the Loan, including without limitation, this Loan Agreement, Promissory Note, Deed of Trust, Subordination Agreement, Affordable Housing Agreement, Budget and escrow instructions of the Parties are hereinafter referred to as the "**Loan Documents**".

5. *Purpose of Loan*

The purpose of the Loan is for the acquisition of the Property. In no event shall any portion of the Loan be used by Borrower to develop the Property.

6. *Conditions Precedent to Disbursement of Loan*

The proceeds of the Loan shall be disbursed to the Borrower in a single advance. The Loan shall be disbursed by a date no later than September 3, 2019 ("**Escrow Closing Date**"), or such other date agreed to by Lender but in no event beyond September 30, 2019 ("**Outside Escrow Closing Date**"). The obligation of the Lender to make the Loan shall be subject to the fulfillment and satisfaction by the Borrower of all of the conditions set forth in this Loan Agreement and the following:

(a) Borrower shall have provided to the Lender an ALTA Extended Coverage Lender's Policy with such endorsements as the Lender may require, issued by a title insurance company acceptable to the Lender, in an amount equal to the Principal Amount, and in a form and content satisfactory to the Lender insuring that the Lender's Deed of Trust on the Property is, or will be upon its recordation be, a valid second priority lien on the Property free and clear of all defects, liens, encumbrances, and exceptions except as to those approved by the City Manager and/or City Attorney of Lender, including the first lien of RCAC in the maximum amount of Five hundred forty four thousand and 00/100 Dollars ($544,000.00) ("RCAC Loan");

(b) Unless waived by Lender in writing, Borrower shall deliver to Lender the insurance policies or evidence thereof as described in the Deed of Trust;

(c) There shall not exist on the Escrow Closing Date a condition which would constitute an Event of Default under this Agreement;

(d) Each of the representations and warranties of the Borrower set forth in Section 7 shall be true and correct;

(e) Prior to or currently with the Escrow Closing Date, the Borrower shall have executed, and acknowledges as appropriate, all of the Loan Documents;

(f) Borrower has taken all necessary action to approve the Loan and the transactions contemplated under this Loan Agreement, that the Loan, the Loan Agreement and each of the Loan Documents, are properly executed and acknowledged by the Borrower and each evidences a valid, lawful and binding obligation of the Borrower, and such other matters as required by the Lender; and

(g) all conditions precedent to the disbursement of the RCAC Loan (other

than the disbursement of the City Loan) have been satisfied.

Provided that all of the aforementioned conditions have been satisfied, the Lender shall disburse the sum of $450,000.00 on or before the Escrow Closing Date.

7. *Representations and Warranties of Borrower*

Borrower represents and warrants to Lender, as of the date of this Loan Agreement and at all times that any balance of the Loan is outstanding:

(a) Borrower is and shall maintain during the period of time when any Principal Amount of the Loan may remain outstanding its status as a California non-profit public benefit corporation, duly organized and existing and authorized to transact business in California and the Borrower has previously qualified as a 501 (c)(3) tax exempt entity under applicable federal tax laws;

(b) the corporate charter and by-laws of the Borrower authorize the Borrower to enter into this Loan Agreement and to undertake the affordable housing preservation, operation and development activities contemplated hereunder, and the governing board and membership of the Borrower has previously taken all action necessary to authorize the execution of this Loan Agreement by the Borrower;

(c) the Borrower is qualified to undertake and complete the affordable housing preservation, operation and development activities contemplated under this Loan Agreement;

(d) the Borrower has conducted a due diligence inquiry and investigation of the environmental condition of the Property relating to the potential presence of Hazardous Substances and the use thereon of Hazardous Substances and based upon such inquiry, the Borrower represents to Lender that as of the Escrow Closing Date, the Borrower is unaware of any adverse environmental conditions relating to the presence or potential presence of Hazardous Substances in, on, under or upon the Property;

(e) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened and no other event has occurred which may materially adversely affect Borrower's financial condition, or the Property;

(f) Borrower has, as of the Escrow Closing Date, good and marketable title to the Property free and clear of all defects, liens, and encumbrances, excepting only liens for taxes, assessment, or governmental charges or levies not yet delinquent or payable without penalty or interest and such liens and encumbrances as may be approved in writing by the Lender prior to the Escrow Closing Date, including the RCAC Loan;

(g) no tenant in lawful possession of the Property shall be in arrears in its rental obligation to the Borrower unless Borrower has initiated reasonable measures acceptable to Lender to correct such arrearage in rent, and each rental agreement is in full force and effect without any other default by the renter unless Borrower has initiated reasonable measures to obtain the cure of any such other default;

(h) the information set forth in the Budget, attached hereto as **Exhibit D** and made a part hereof, generally describes the proposed housing improvements and activities to be undertaken by the Borrower, and such Budget provides that the Loan is to be used solely to acquire the Project. The Borrower shall not materially alter or modify the programs set forth in the Budget without consent of the Lender;

(i) Borrower is not in default under any other loans or obligations which it may have;

(j) Borrower understands and agrees that the Lender is relying upon the above representations and warranties in extending the Loan to Borrower. Borrower further agrees that the foregoing representations and warranties shall be continuing in nature and shall remain in full force and effect until such time as the Loan and Promissory Note shall be paid in full, or until the Loan Agreement is terminated, whichever is the last to occur.

8. *Affirmative Covenants of Borrower*

Borrower covenants and agrees with Lender that while this Loan Agreement is in effect, Borrower will:

(a) promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower;

(b) maintain its books and records in accordance with generally accepted accounting principles, applied on a consistent basis and permit the Lender to examine and audit Borrower's books and records at all reasonable times;

(c) furnish such additional information and statements, list of assets and liabilities, agings of receivables and payables, inventory schedules, budgets, forecasts, tax returns, and other reports with respect to Borrower's financial condition and business operations which the Lender may request from time to time;

(d) comply with all laws, ordinances, and regulations, now or hereafter in effect of governmental authorities applicable to the use or occupancy of the Property including without limitation "Environmental Laws" as defined below. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in the Lender's sole opinion, the Lender's interests in the Property are not jeopardized. The Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect the Lender's interest;

(e) use the proceeds of the Loan solely for the purposes of acquiring the Property;

(f) pay and discharge when due all of Borrower's other indebtedness, obligations, and claims (exclusive of the Deed of Trust) which, if unpaid, might become a lien or charge upon the Property, including the RCAC Loan; provided, however, that Borrower shall not be required to pay and discharge any such indebtedness, obligation, or

claim so long as (1) its legality is being contested by Borrower in good faith by appropriate proceedings, (2) the indebtedness, obligation, or claim does not become a lien or charge upon any of the Property, and (3) Borrower shall have established on its books adequate reserves with respect to the amount contested in accordance with generally accepted accounting practices;

(g) perform and comply with all terms, conditions, and provisions set forth in this Loan Agreement and in all other instruments and agreements between Borrower and Lender, including without limitation the Promissory Note, Deed of Trust, Affordable Housing Agreement and Subordination Agreement, and in all other loan documents now or hereafter existing between Borrower and RCAC, and any other party. Borrower shall notify Lender immediately in writing of any default in connection with any such agreement;

(h) make, execute, and deliver to Lender such security agreements, instruments, documents, and other agreements reasonably necessary to document and secure the Loan and to perfect the security interest of the Lender in the Property;

(i) maintain and undertake any improvements to the Property in a good and workman-like manner;

(j) to promptly rent the existing residential unit on the Tract One Parcel of the Property in accordance with the Affordable Housing Agreement and use the proceeds realized by the rental of the existing residential unit on the Tract One Parcel of the Property for the development of affordable residential units on the Property.

Borrower shall provide Lender with written confirmation that it is in compliance with this covenant annually, until this Loan Agreement is terminated.

9. *Negative Covenants*

Borrower covenants and agrees with Lender that while this Loan Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

(a) Indebtedness and Liens. (1) Incur or assume indebtedness for borrowed money, including capital leases, (2) sell, transfer, mortgage, assign, pledge, or lease any of the Property (except for leases of the existing residential dwelling unit on the Tract One Parcel of the Property to income qualified tenants in accordance with the Affordable Housing Covenant), (3) grant a security interest in, or encumber any of Borrower's assets, or (4) sell with recourse any of Borrower's accounts.

(b) Continuity of Operations. (1) engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change ownership, change its name, dissolve or transfer or sell any property or assets out of the ordinary course of business, or (3) make any distribution with respect to any capital account, whether by reduction of capital or otherwise.

(c) Loans, Acquisitions and Guaranties. (1) loan, invest in or advance money or assets to third-parties, (2) purchase, create or acquire any interest in any other

enterprise or entity, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business.

(d) Liens. Create or allow to be created any lien or charge upon the Property, except for liens and charges in favor of Lender and RCAC.

(e) Hazardous Substances. Use, store, dispose of or release, or permit the use, storage, disposal or release, of any Hazardous Substance in, on, under or about the Property, except to the extent the same is in strict compliance with all applicable Environmental Laws. For purposes of this Loan Agreement, "Hazardous Substance," shall mean (1) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws (defined below) as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or. any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or "EP toxicity" and (2) any petroleum product, natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel (or mixtures of natural gas such as synthetic gas) which is not stored in a motor vehicle for use in the regular course of operation of such motor vehicle. For purposes of this Loan Agreement, "Environmental Laws" shall mean any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environmental regulation of any Hazardous Substance, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sections 9601, et seq.) ("CERCLA") and the applicable provisions of the California Health and Safety Code and the California Water Code, all as heretofore or hereafter amended from time to time.

10. *Other Financing*

The Loan shall be secured by the Deed of Trust recorded against the Property and junior in lien priority to the senior lien deed of trust to be held by RCAC. No other deeds of trust or liens shall be recorded against the Property at the Escrow Closing Date. Borrower certifies that no other liens, including mechanic liens, are or will be recorded against the Property without the prior written consent of Lender, which consent may be withheld in Lender's sole discretion. Further, Borrower shall not increase the amount of the lien of the deed of trust held by RCAC without the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

11. *Subordination*

Lender will subordinate the lien of its Deed of Trust and the lien of the Affordable Housing Agreement, in the form attached hereto as **Exhibit F**, to the lien of the senior lender, RCAC, as more particularly set forth in the Subordination Agreement attached hereto as **Exhibit E**.

12. *Prepayment Rights*

Borrower may prepay the Loan either in whole or in part without penalty. However, Borrower must provide Lender with written notice at least five (5) days prior to prepayment.

13. *Limitations of this Loan Agreement.*

This Loan Agreement shall not obligate Lender, acting in its regulatory capacity, to approve any particular development application submitted by Borrower for the Property. By execution of this Loan Agreement, Lender is not committing itself to, or agreeing to, undertake any other act or activity requiring the subsequent independent exercise of discretion by the Lender. Execution of this Loan Agreement by Lender is merely an agreement to loan money to Borrower for the acquisition of the Property, which action is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines Section 15310, which exempts "mortgages for the purchase of existing structures where the loan will not be used for new construction". Accordingly, Lender and Borrower agree that Lender reserves to itself complete discretion in accordance with law in connection with any development application submitted by Borrower for the Property.

14. Affordable Housing Agreement

Borrower shall cause to be recorded the Affordable Housing Agreement which shall affect Borrower's title in the Property. The Affordable Housing Agreement contains certain affordable rental housing regulatory and affordability covenants which shall run with the land and the Property for a term of fifty five (55) years following its recordation. The text of the Affordable Housing Agreement is incorporated into this Loan Agreement by this reference. During the term of this Loan Agreement, any amendment of the Affordable Housing Agreement shall be subject to the prior written approval of the Lender.

The Affordable Housing Agreement provides for (i) the rental of the existing residential unit located on the Tract One Parcel of the Property at an Affordable Rent to a Low Income Household, and (ii) any new residential units developed on the Property to be rented at an Affordable Rent to Low Income Households.

15. *No Joint Venture*

Nothing in this Loan Agreement shall be construed to constitute the creation of a partnership or joint venture between Lender and Borrower. The Lender is not an agent or representative of Borrower and the Borrower is not an agent or representative of Lender. This Loan Agreement does not create a contractual relationship with and shall not be construed to benefit or bind the Lender in any way with or create any contractual duties by Lender to any contractor, subcontractor, materialman, laborer, or any other person retained or hired by Borrower.

16. *Default*

On the occurrence of any Event of Default, the Lender, at its sole election, may declare all sums advanced upon the Loan to be immediately due and payable, with simple interest at the rate of five percent (5%) per annum from the Escrow Closing Date until paid in full

("**Default Interest**"), and may proceed at once, without notice to Borrower, to exercise all rights and remedies provided in the Promissory Note, Deed of Trust or as otherwise provided by law to secure payment in full of all monies due Lender. Nothing herein shall preclude Lender, in the exercise of its reasonable discretion, from waiving all or any portion of the Default Interest. Each of the following occurrences shall constitute an Event of Default:

(a) Failure to comply with any term or condition provided herein;

(b) Failure of Borrower to comply with any term or condition provided in the Promissory Note, Deed of Trust, Subordination Agreement, and/or Affordable Housing Agreement;

(c) Borrower's default on any existing lien secured by the Property, including the RCAC loan or any subsequent lien on the Property;

(d) Submission or making of any report, statement, warranty, or representation by Borrower or agent in its behalf to Lender in connection with the financial assistance awarded hereunder which is false, incomplete, incorrect or misleading;

(e) Borrower's tax-exempt status is revoked, and Borrower has exhausted all remedies and appeals relating thereto;

(f) Any deterioration, loss, theft, substantial damage, destruction or depreciation in the value or market price of the Property securing the Loan, that causes the Property in the judgment of Lender to become unsatisfactory as to character or value;

(g) The recording of any mechanics' lien or any judgment against the Borrower or the issuance or entry of any attachment against the Property and not discharged or dismissed within thirty (30) days from date of entry thereof;

(h) The Borrower becoming insolvent or bankrupt or being unable or admitting in writing its inability to pay its debts as they mature or making a general assignment for the benefit of or entering into any composition or arrangement with creditors;

(i) Proceedings for the appointment of a receiver, trustee, or liquidator of the assets of the Borrower or a substantial part thereof, being authorized or instituted by or against the Borrower;

(j) Proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law or any jurisdiction being authorized or instituted against the Borrower;

(k) Borrower's failure to pay when due any and all amounts due under this Loan Agreement and Promissory Note;

(l) Borrower ceases to be the legal owner of the Property; or

(m) Borrower commits or permits any illegal act to be conducted on the Property.

17. *Severability*

All provisions and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any competent court of law, this Loan Agreement shall be interpreted as if such invalid provisions and covenants were not contained herein, and all remaining provisions not affected by said ruling shall remain in full force and effect.

18. *Indemnity; Hold Harmless*

Borrower agrees to defend, indemnify and hold Lender harmless under this Loan Agreement as follows:

(a) General Indemnity. Borrower shall indemnify, defend with counsel selected by the Lender, protect and hold the Lender, and its officials, officers, employees, agents and successors, harmless from and against any and all claims, losses, liabilities, fines, penalties, damages, actions, judgments, costs and expenses (including attorneys' fees and expenses) asserted against them, or any of them, by any person, entity, or governmental body, arising out of or in connection with the use, operation or ownership of the Property by the Borrower or its agents, employees, tenants or permittees. The Lender shall be entitled to appear in any action or proceeding to defend itself against such claims, and all costs incurred by the Lender in connection with such defense, including attorneys' fees, shall be paid by Borrower to the Lender. Borrower shall not be required to indemnify, protect, defend, or hold harmless Lender from and against any claims, losses, liabilities, fines, penalties, damages, actions, judgments, costs and expenses (including attorneys' fees and expenses) arising out of the negligent acts or omissions of Lender, and its officials, officers, employees, agents and successors.

(b) Special Environmental Indemnity. Borrower shall indemnify, defend with counsel selected by the Lender, protect and hold harmless the Lender, and its officials, officers, employees, agents and successors (collectively, "Indemnified Parties" or singularly, "Indemnified Party") from and against all claims, damages (including without limitation, special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal and administrative proceedings, interest, fines, charges, penalties and expenses (including without limitation (1) attorney's, engineer's, consultant's and expert witness fees and costs incurred in defending against any of the foregoing or in enforcing this indemnity and (2) any diminution in the value of the Property) of any kind whatsoever paid, incurred or suffered by any Indemnified Party, or asserted against the Property, directly or indirectly arising from or attributable to (i) any breach by the Borrower of any of its agreements, representations or warranties set forth in Section 7(d) or Section 9(e), or (ii) any repair, cleanup, remediation, detoxification, closure or preparation and implementation of any plan therefor undertaken by any Indemnified Party concerning Hazardous Substances on, under or about any of the Property. The foregoing indemnity shall apply whether acts of any Indemnified Party are undertaken because of proceedings initiated by any federal, state or other government authority or by any private persons(s). The foregoing indemnity is intended by the parties to be an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364.

(c) Special Covenant to Give Notice to Lender. The Borrower shall promptly give the Lender (i) a copy of any notice, correspondence or information the Borrower

receives from any federal, state or other government authority regarding Hazardous Substances on, under or about the Property or regarding any actions, instituted, completed or threatened by any such governmental authority concerning Hazardous Substances which affect or may affect the Property, (ii) written notice of any knowledge or information the Borrower obtains regarding Hazardous Substances on, under or about the Property or expenses or losses incurred or expected to be incurred by the Borrower, third party or any government agency to study, assess, contain or remove any Hazardous Substances on, under or about the Property for which expense or loss the Borrower may be liable or for which a lien may be imposed on the Property, and (iii) written notice of all claims made or threatened by any third party (other than government authority) against the Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Substance.

19. *Successors and Assigns*

All warranties, representations, and covenants made by Borrower in this Loan Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Loan Agreement shall be considered to have been relied upon by Lender and will survive the making of the Loan and delivery to Lender of the Loan Documents, regardless of any investigation made by Lender. All warranties, representations, and covenants made by Borrower in this Loan Agreement shall bind its successors and assigns and shall inure to the benefit of Lender, and its successors and assigns. Borrower shall not, however, have the right to assign its rights under this Loan Agreement or any interest therein, without the prior written consent of Lender.

20. *Waiver*

The Lender shall not be deemed to have waived any rights under this Loan Agreement or the Loan Documents, either orally or by a course of conduct, but only if such waiver is given in writing and signed by the Lender. No delay or omission on the part of the Lender in exercising any right shall operate as waiver of such right or any other right. A waiver by Lender of a provision of this Loan Agreement or the Loan Documents shall not prejudice or constitute a waiver of the right of Lender otherwise to thereafter demand strict compliance with that provision or any other provision of this Loan Agreement or the Loan Documents. No prior waiver by Lender shall constitute a waiver of any of the rights of the Lender or of any obligations of Borrower as to any future transactions. Whenever the consent of Lender is required under this Loan Agreement or Loan Documents, the granting of such consent by Lender in any instance shall not constitute continuing consent in subsequent instances where such consent is required, and in all cases, such consent may be granted or withheld in the sole discretion of Lender.

21. *Notices*

All notices, requests, demands and other communications required or permitted to be given under the terms of this Loan Agreement by one party to the other shall be in writing addressed to the recipient party's Notice Address set forth below and shall be deemed to have been duly given or made (a) if delivered personally (including by commercial courier or delivery service) to the party's Notice Address, then as of the date delivered (or if delivery is refused, on presentation), or (b) if mailed by certified mail to the party's Notice Address, postage prepaid and return receipt requested, then at the time received at

the party's Notice Address as evidenced by the return receipt, or (c) if mailed by first class mail to the party's Notice address, postage prepaid, then on the third (3rd) business day following deposit in the United States Mail. Any party may change its Notice Address by a notice given in the foregoing form and manner. The Notice Addresses of the parties are:

TO LENDER:

City of St. Helena
1480 Main Street
St. Helena, California 94574
Attn.: City Manager
(707) 968-2744 ext. 500

TO BORROWER:

Our Town St. Helena
P.O. Box 94
St. Helena, California 94574
Attn.: Mary Stephenson
(707) 849-2583

22. *Scope of Agreement*

This Loan Agreement and any supplement attached hereto sets forth the entire understanding of the Parties. No modification or waiver of any provision of this Loan Agreement shall be effective unless the same shall be in writing, and signed by the Parties hereto. The transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State of California. Venue for any proceeding to enforce or interpret the terms of any of the Loan Documents shall be in Superior Court of the County of Napa.

23. *Acceptance*

All obligations of Lender hereunder shall terminate and be of no further force and effect, if the Loan is not closed on or before the Outside Escrow Closing Date, unless otherwise agreed to in writing by Lender.

24. *Counterparts*

This Loan Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute but one and the same instrument.

25. *Discrimination Prohibited*

The Borrower covenants and agrees that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability in the use, operation, occupation, lease, sublease, transfer or sale of the Property,

nor shall the Borrower, or any third party related to the Borrower establish or permit any such practice of discrimination or segregation to occur on the Property in connection with the selection, location, number or occupancy of residents in any of the residential dwelling units on the Property.

IN WITNESS WHEREOF, Borrower and Lender have executed this Loan Agreement as of the dates set forth below and effective as of the date executed by Lender.

Borrower's Acceptance:

Our Town St. Helena, a California non-profit public benefit corporation

Date: 9/10/2019

Mary Stephenson
Board President

Lender's Acceptance:

City of St. Helena, a California municipal corporation

Date: 9-10-2019
"Effective Date"

Mark Prestwich
City Manager

ATTEST:

By: (for Cindy Tzafopoulos)
Cindy Tzafopoulos
City Clerk

APPROVED AS TO FORM:

By:
Michael G. Biddle
City Attorney

Exhibit A – Property Legal Description

Exhibit B – Promissory Note

Exhibit C – Deed of Trust

Exhibit D – Budget

Exhibit E - Subordination Agreement

Exhibit F – Affordable Housing Agreement

EXHIBIT A

The land described herein is situated in the State of California, County of Napa, City of Saint Helena, described as follows:

TRACT ONE:
PARCEL ONE:
Commencing at the most Western corner of a lot heretofore conveyed by George Chase and wife to one Mrs. F. M. Woodward, by Deed recorded December 12,1884, in Volume 35 of Deeds, at page 387, Napa County Records; thence running along the South Westerly line of lot so conveyed to Mrs. F. M. Woodward, South 38 degrees 30' East 150 feet; thence South 51 degrees 30' West parallel with Pope Street and 150 feet distant therefrom, 60 feet; thence North 38 degrees 30' West 150 feet to the Southeasterly line of Pope Street; thence along said Southeasterly line of Pope Street North 51° 30' East 60 feet to the point of commencement.

APN: 009-090-013

PARCEL TWO:
A non-exclusive easement for drainage pipe as granted to Wyatt H. Ensminger, et al in the document recorded October 19, 1956 in Book 526 at page 149 of Official Records.

TRACT TWO:
Commencing at a point on the Southeastern line of Pope Street, distant thereon South 51 degrees 30 minutes West 60.0 feet from the most Western corner of a lot heretofore conveyed by George Chase and wife to one Mrs. F. M. Woodward, by Deed recorded December 12,1884, in Volume 35 of Deeds at page 387, Napa County Records; thence running South 38 degrees 30 minutes East 150.0 feet; thence South 51 degrees 30 minutes West 25.0 feet; thence North 38 degrees 30 minutes West 150.0 feet to the Southeastern line of Pope Street; thence along said Southeastern line of Pope Street North 51 degrees 30 minutes East 25.0 feet to the point of commencement.

APN: 009-090-012

EXHIBIT B

PROMISSORY NOTE

SEPTEMBER ___, 2019 ST. HELENA, California $450,000

FOR VALUE RECEIVED, the undersigned, OUR TOWN ST. HELENA, a California non-profit public benefit corporation, organized under the laws of the State of California, whose mailing address is P.O. Box 94, St. Helena, CA 94574 (hereinafter known as "Maker"), promises to pay to the City of Saint Helena, a California municipal corporation (hereinafter known as the "Payee"), at 1480 Main Street, in St. Helena, CA 94574, or as directed otherwise in writing by Payee, the principal sum of Four Hundred Fifty Thousand and 00/100 Dollars ($450,000.00) (the "Principal Amount"), in lawful money of the United States of America, on the following terms and conditions:

1. Term and Lump Sum Payment. The entire Principal Amount of this Promissory Note (hereinafter, the "Note"), and all other amounts due and owing from Maker to Payee pursuant to the terms of this Note and the Loan Documents, shall be immediately due and payable to Payee upon the earlier of (i) the second (2nd) anniversary of the date of this Note or (ii) upon an Event of Default as set forth in the Loan Agreement between Maker and Payee of even date herewith (the "Maturity Date").

2. Prepayment. Maker shall have the right to prepay any portion of the Principal Amount owing under this Note at any time without penalty. However, Maker shall provide Payee with written notice at least five (5) days prior to prepayment.

3. Security. The repayment of the Principal Amount due under this Note shall be secured by that certain Deed of Trust, signed this same date by Maker and Payee, whereby Maker assigns to Payee a security interest in the property located at 963 Pope Street, St. Helena, CA as collateral for repayment of this Note.

4. Interest. No interest shall accrue on the Principal Amount during the term of this Note.

5. Default Interest. If any portion of the Principal Amount due under this Note shall not be paid on the Maturity Date, Maker will be charged five percent (5%) simple interest on said amount from the date of this Note until paid in full ("Default Interest"). Nothing herein shall preclude Payee, in the exercise of its reasonable discretion, from waiving all or any portion of the Default Interest.

6. Miscellaneous.

All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Documents, as defined in the Loan Agreement, are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein and Maker covenants and agrees to keep and perform them, or cause them to be kept and performed, strictly in accordance with their terms.

On the occurrence of any Event of Default, as set forth in the Loan Agreement, Payee, at its sole election, may declare the Principal Amount evidenced by this Note, and all other amounts due and owing from Maker to Payee pursuant to the terms of the Loan Documents, to be immediately due and payable and may proceed at once without further notice to enforce this Note according to law.

No delay or failure of Payee in the exercise of any right or remedy hereunder or under the Loan Documents, as defined in the Loan Agreement, shall affect any such right or remedy, and no action taken or omitted by Payee shall be deemed a waiver of any right or remedy. Neither the agreement of a late payment charge or increased interest after default shall prevent Lender from exercising its rights and remedies under this Note, or the other Loan Documents.

Each maker, endorser, surety, and guarantor of this Note hereby severally waives demand, protest, presentment, notice of nonpayment, notice of protest and diligence in bringing suit against any party and does hereby consent that time of payment of all or any part of the Principal Amount may be extended from time to time by the Payee hereof without notice.

Any notice to the Payee shall be given as stated in the Loan Agreement.

If this Note is placed with an attorney for collection, for suit, or bankruptcy proceedings, Maker agrees to pay all collection costs, court costs, and the expenses incurred, including reasonable attorney's fees at trial, on appeal and in bankruptcy proceedings.

Payee or any other holder hereof may freely sell, assign, transfer or otherwise dispose of this Note and Maker hereby consents and agrees that any subsequent holder of this Note shall have all of the rights of Payee provided herein.

This Note shall be construed and enforced in accordance with the laws of the State of California.

MAKER:

OUR TOWN ST. HELENA, a California non-profit public benefit corporation

BY: _____
Mary M. Stephenson, its President

Dated: _____, 2019

EXHIBIT C

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

Mary M. Stephenson
c/o Our Town St. Helena
2683 Chablis Court
St. Helena, CA 94574

Exempt from recording fees per Government Code §27383 and Building Homes & Jobs Trust Fund Fee per Government Code §27388.1(a)(2)(D)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST

This DEED OF TRUST is made this __ day of September, 2019 between OUR TOWN ST. HELENA, a California non-profit public benefit corporation ("Trustor") whose mailing address is P.O. Box 94, St. Helena, CA 94574, the CITY OF ST. HELENA, a California municipal corporation ("Beneficiary"), whose mailing address is 1480 Main Street, St. Helena, CA 94574, and _____ ("Trustee"), whose mailing address is _____.

Trustor irrevocably grants, transfers and assigns to Trustee in Trust, with Power of Sale that Property located at 963 Pope Street in the City of St. Helena, County of Napa, State of California, having Assessor's Parcel Numbers 009-090-012-000 and 009-090-013-000 (the "Property") and more particularly described in the legal description attached hereto as **Attachment "A"** and incorporated herein.

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the purpose of securing (1) payment of the sum of $450,000.00 according to the terms of a Loan Agreement and Promissory Note of even date herewith made by Trustor, payable to order of Beneficiary, and any extensions or renewals thereof; (2) the performance of each agreement of Trustor as set forth in the Loan Agreement and the Promissory Note; and (3) payment of additional sums thereon which may hereafter be loaned to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

A. To protect the security of this Deed of Trust, and with respect to the Property above described, Trustor agrees:

1) To keep said Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor

performed and materials furnished therefor; to comply with all laws affecting said Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said Property in violation of the law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said Property may be reasonably necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

4) To pay at least ten days before delinquency all taxes and assessments affecting said Property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby, any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award of damages in connection with any condemnation for public use of or injury to said Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him or her in the same manner and with the same effect as above provided for disposition or proceeds of fire or other insurance.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his or her right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability of trust therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said Promissory Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may re-convey any part of said Property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said Promissory Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall re-convey, without warranty, the Property then held hereunder. The recitals in such re-conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such re-conveyance may be described as "the person or persons legally entitled thereto."

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said Property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said Property or any part thereof, in his or her own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, including the Promissory Note and Loan Agreement, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said Promissory Note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee without demand on Trustor, shall sell said Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of Napa County where said Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

8) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Promissory Note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

9) The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obliged to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge thereof does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to it at its address hereunder set forth. .

Our Town St. Helena, a California non-profit public benefit corporation
P.O. Box 94
St. Helena, CA 94574

_____

By: Mary Stephenson, President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2019 _____
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

ATTACHMENT A

PROPERTY

[Legal description to be inserted.]

EXHIBIT D

BORROWER'S CERTIFICATION OF SOURCES AND USES

Rural Community Assistance Corporation
Proposed Sources and Use of Project Funds Template

Uses

Lien Position	Total Costs	Lender 1 RCAC	Lender 2 City	Borrower's Funds
Acquisition	850,000	400,000	450,000	
Pre-purchase (Phase I- asbestos/lead)	4,650	4,650		
Predev expenses for 4-plex	100,000	100,000		
Closing Costs	3,500	3,500		
Loan Fee	5,439	5,439		
Interest Reserves 1/	30,000	30,000		
Doc Fee	300	300		
TOTALS	$ 993,889	$ 543,889	$ 450,000	$ -

Rent	$1,900.00	1900/momth restricted at 80% AMI
Utiliies	100	
Taxes, Insurance	250	(assumes welfare tax exemptoni)
Mtn.	100	
Mgmt fee	250	
Net	$1,200.00 x 24= $28,800	

EXHIBIT E

Recording Requested By: Rural Community Assistance Corporation 3120 Freeboard Drive, Suite 201 West Sacramento, CA 95691	
And When Recorded Mail To: Rural Community Assistance Corporation 3120 Freeboard Drive, Suite 201 West Sacramento, CA 95691 Loan No: _____ **Exempt from recording fees per Government Code §27383 and Building Homes & Jobs Trust Fund Fee per Government Code §27388.1(a)(2)(D)**	Space above this line for Recorder's Use

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE LIEN OF THE CITY DEED OF TRUST AND THE LIEN OF THE AFFORDABLE HOUSING AGREEMENT BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE LENDER DEED OF TRUST (ALL AS HEREINAFTER DEFINED).

This Subordination Agreement ("Agreement") is made as of September ___, 2019, by and between the City of St. Helena, a California municipal corporation ("City"), Rural Community Assistance Corporation, a California nonprofit public benefit corporation ("Lender"), and Our Town St. Helena, a California nonprofit public benefit corporation ("Borrower").

WITNESSETH

WHEREAS, Borrower has entered into a purchase agreement to acquire certain real property located at 963 Pope Street, St. Helena, California, which property is more particularly described in Attachment A attached hereto and by this reference made a part hereof, (hereinafter, the "Property"), with the intent to develop affordable rental residential units; and

WHEREAS, in accordance with a Loan Agreement between City and Borrower dated September ___ 2019 ("City Loan Agreement"), Borrower has executed, or is about to execute a Deed of Trust, to secure a City Promissory Note in the principal amount of Four hundred fifty thousand dollars ($450,000) in favor of the City ("City Loan"), recorded on September ___, 2019, as Document No. _____ (hereinafter, the "City Deed of Trust"); and

WHEREAS, it is a condition of said City Loan Agreement between City and Borrower, that Borrower execute that certain Affordable Housing Agreement, recorded on ____ September, 2019, as Document No. _____ (hereinafter, the "Affordable Housing Agreement"); and

WHEREAS, in accordance with a Loan Agreement between Lender and Borrower dated September ___, 2019 ("Lender Loan Agreement"), Borrower has executed, or is about to execute a Deed of Trust, to secure a Lender Promissory Note in the principal amount of Five hundred forty three thousand,

eight hundred and eighty nine dollars ($543,889) in favor of the Lender ("Lender Loan"), recorded concurrently herewith on September ___, 2019, as Document No. ____ (hereinafter, the "Lender Deed of Trust"); and

WHEREAS, it is a condition precedent to obtaining said Lender Loan that said Lender Deed of Trust shall unconditionally be and remain at all times a lien or charge upon the Property, prior and superior to the lien or charge of the City Deed of Trust and Affordable Housing Agreement; and

WHEREAS, Lender is willing to make said Lender Loan provided the Lender Deed of Trust securing the same is a lien or charge upon the above described Property prior and superior to the lien or charge of the City Deed of Trust and Affordable Housing Agreement and provided that City will specifically and unconditionally subordinate the lien or charge of the City Deed of Trust and Affordable Housing Agreement to the lien or charge of the Lender Deed of Trust in favor of Lender, subject to the terms of this Agreement; and

WHEREAS, City is willing to subordinate the lien or charge of the City Deed of Trust and Affordable Housing Agreement to the lien or charge of the Lender Deed of Trust; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender and City make such loans to Borrower, and City is willing that the Lender Deed of Trust securing the same shall, when recorded, constitute a lien or charge upon said Property which is unconditionally prior and superior to the lien or charge of the City Deed of Trust and the Affordable Housing Agreement.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Lender and City to enter into the City Loan Agreement and Lender Loan Agreement, the parties hereto declare, understand and agree:

1. That the Lender Deed of Trust securing the Lender Loan as well as all other obligations recited therein as being secured thereby, and any renewals or extensions thereof, unconditionally shall be and remain at all times a lien or charge upon the Property prior and superior to the lien or charge of the City Deed of Trust and Affordable Housing Agreement;

2. That Lender would not enter into the Lender Loan Agreement without this Agreement;

3. That City would not enter into the City Loan Agreement without this Agreement;

4. That this Agreement shall be the whole and only agreement with regard to the subordination of the City Deed of Trust and Affordable Housing Agreement in favor of the Lender Deed of Trust, and this Agreement shall supersede and cancel, but only insofar as would affect the priority between the City Deed of Trust, Affordable Housing Agreement and the Lender Deed of Trust, any prior agreement as to such subordination, including but not limited to, those provisions, if any, contained in the City Deed of Trust, Affordable Housing Agreement or Lender Deed of Trust which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

City declares, agrees and acknowledges that:

1. It consents to and accepts all provisions of the Lender Loan Agreement, Lender Promissory Note and Lender Deed of Trust ("Lender Loan Documents");

2. It intentionally subordinates the lien or charge of the City Deed of Trust and Affordable Housing Agreement in favor of the Lender Deed of Trust, as to the City Loan Agreement and City Loan as well as all other obligations recited therein as being secured thereby, and understands that in reliance upon and in consideration of this subordination, specific monetary and other obligations are being made and will be entered into which would not be made or entered into but for Lender's reliance upon this subordination.

Lender declares, agrees and acknowledges that:

1. It consents to and accepts all provisions of the City Loan Agreement, City Promissory Note, City Deed of Trust and Affordable Housing Agreement ("City Loan Documents").

The parties hereto further agree:

1. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original, and all of which counterparts taken together shall constitute one agreement; and

2. This Agreement will be governed by or construed in accordance with the laws of the State of California and federal law, where applicable.

3. Each party hereto shall give the other party 60 days' notice prior to issuing a notice of default under each of the City Deed of Trust, Lender Deed of Trust or Affordable Housing Agreement (hereinafter, a "Recorded Item"), and shall have the right to cure a default on any Recorded Item at any time prior to a foreclosure sale under that Recorded Item. Lender also acknowledges and agrees to work with the City to provide a reasonable extended notice period for cure of Borrower's default, if any, to provide for payment in full of Lenders Loan with assignment to the City, if requested; and

4. Lender shall not advance to Borrower further sums under the term of the Lender Loan Agreement, nor modify the terms of the Lender Loan Documents to increase the amount of or extend the maturity date of the Lender Loan, without the City's prior written consent, which consent may be granted or withheld by City in its sole discretion.

5. Lender shall provide City certified copies of executed, and where appropriate, acknowledged and recorded, Lender Loan Documents. City shall provide Lender certified copies of executed, and where appropriate, acknowledged and recorded, City Loan Documents.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Our Town St. Helena
a California nonprofit public benefit corporation

By: _____
Mary Stephenson
Board President

City of St. Helena
a California municipal corporation

By: _____
Mark Prestwich
City Manager

ATTEST:

By:_____
Cindy Tzafopoulos
City Clerk

APPROVED AS TO FORM:

By: _____
Michael G. Biddle
City Attorney

Rural Community Assistance Corporation,
a California nonprofit public benefit corporation

By: _____
XXXXXXX
Loan Fund Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2019 _____
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2019 _____
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2019 _____
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

ATTACHMENT A

PROPERTY

[Legal description to be inserted.]

EXHIBIT F

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of St. Helena
1480 Main Street
St. Helena, Ca 94574
Attention: City Clerk

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE § 27383

Exempt from recording fees per Government Code and Building Homes & Jobs Trust Fund Fee per Government Code §27388.1(a)(2)(D)

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AFFORDABLE HOUSING AGREEMENT

This Affordable Housing Agreement ("**Agreement**") is entered into effective as of _____, 2019 ("**Effective Date**"), by and between the CITY OF ST. HELENA, a California municipal corporation ("**City**") and our OUR TOWN ST. HELENA, a California non-profit public benefit corporation ("**Declarant**"). City and Declarant are sometimes referred to herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. City and Declarant are parties to a Loan Agreement dated _____, 2019, ("**Loan Agreement**") setting forth the terms and conditions of a loan provided by City from its Housing Trust Fund to Declarant for the acquisition of 963 Pope Street, St. Helena, Napa County, California, as more particularly described in **Attachment A** attached hereto and incorporated herein ("**Property**"). The Property is comprised of two legal parcels identified as the "**Tract One Parcel**" (Assessor Parcel No. 009-090-013-000) and the "**Tract Two Parcel**" (Assessor Parcel No. 009-090-012-000).

B. The Loan Agreement requires, among other things, that upon acquisition of the Property by Declarant, the Parties shall enter into this Agreement to obligate Declarant to (a) rent the existing residential unit located on the Tract One Parcel (the "**Existing Residential Unit**") at an Affordable Rent to a Low Income Household, and (b) if Declarant subsequently seeks and obtains all land use entitlements necessary to develop additional residential units ("**Future Residential Units**") on the Property, and thereafter proceeds to develop and construct said Future Residential Units on the Property ("**Future Housing Project**"), Declarant shall rent the Future Residential Units constructed pursuant to a Future Housing Project at an Affordable Rent to Eligible Households whose gross annual income does not exceed 120% of Area Median Income.

C. The Loan Agreement requires recordation of this Agreement against the Property concurrently with recordation of the Deed of Trust securing the loan provided pursuant to the Loan Agreement in order to appropriately condition the use of the Existing Residential Unit and development of Future Residential Units, if any, on the Property in a manner consistent with the expenditure of Housing Trust Funds.

D. In accordance with the Loan Agreement, City and Declarant now desire to enter into and record this Agreement to ensure that the Property is used and developed for affordable housing purposes as set forth herein.

E. City and Declarant acknowledge that if prior to expiration of the term of this Agreement, Declarant does seek and obtain land use entitlements necessary to develop a Future Housing Project on the Property, and thereafter proceeds to develop and construct Future Residential Units on the Property, this Agreement will be replaced by a more detailed affordable housing regulatory agreement ("**Regulatory Agreement**") to be entered into by City and the Declarant prior to commencement of construction of a Future Housing Project on the Property.

F. Declarant acknowledges that nothing contained in this Agreement shall preclude the Regulatory Agreement from requiring the rental of the Existing Residential Unit or Future Residential Units constructed pursuant to a Future Housing Project at an Affordable Rent to Eligible Households whose gross annual income is less than 120% of Area Median Income.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. Incorporation of Recitals; Intent of Agreement. The Parties acknowledge the truth of the foregoing Recitals, which are incorporated into this Agreement by this reference. The purpose of this Agreement is to provide notice of the development, occupancy and affordability requirements that apply to the Existing Residential Unit on the Tract One Parcel and any Future Housing Project that may be developed on the Property. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Declarant and Declarant's successors and assigns.

2. Definitions. As used in this Agreement, the following terms shall have the meanings set forth in this Section 2.

"**Actual Household Size**" means the actual number of persons in the applicable household.

"**Adjusted for Family Size Appropriate for the Unit**" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules associated with Affordable Housing Project financing sources.

"**Affordable Rent**" means a monthly rent that does not exceed:

(1) For Extremely Low-Income Households the product of 30 percent times 30 percent of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto, less a reasonable utility allowance and other fees and charges required to be paid by tenants on a non-optional basis.

(2) For Very Low-Income Households, the product of 30 percent times 50 percent of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto, less a reasonable utility allowance and other fees and charges required to be paid by tenants on a non-optional basis.

(3) For Low-Income Households, the product of 30 percent times 60 percent of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto, less a reasonable utility allowance and other fees and charges required to be paid by tenants on a non-optional basis.

(4) For Moderate -Income Households, the product of 30 percent times 110 percent of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto, less a reasonable utility allowance and other fees and charges required to be paid by tenants on a non-optional basis.

"**Affordable Units**" means the Existing Residential Unit and any Future Residential Units.

"**Agreement**" means this Affordable Housing Agreement.

"**Annual Report**" is defined in Section 4.

"**Area Median Income**" **or** "**AMI**" means the median income for Napa County, California, adjusted for Actual Household Size, as determined by the U.S. Department of Housing and Urban Development ("HUD") pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development ("HCD") in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

"**City**" means the City of St. Helena, a California municipal corporation.

"**Declarant**" means Old Town St. Helena, a California non-profit public benefit corporation.

"**Deed of Trust**" means the deed of trust by and between Declarant, as Trustor, and City, as Beneficiary, securing a loan of four hundred fifty thousand and 00/100 dollars ($450,000.00) provided by City to Declarant pursuant to the Loan Agreement, and recorded in the official records of Napa County on _____, 2019, at Document No._____.

"**Effective Date**" means the date set forth in the introductory paragraph of this Agreement.

"**Eligible Household**" means a Moderate-Income Household, Low-Income Household, Very Low-Income Household or Extremely Low-Income Household.

"**Existing Residential Unit**" is defined in Recital B.

"**Extremely Low-Income Household**" means households whose gross annual income, adjusted for family size, does not exceed thirty percent (30%) of Area Median Income for Napa County.

"**Future Housing Project**" is defined in Recital B.

"**Future Residential Units**" is defined in Recital B.

"**Loan Agreement**" is defined in Recital A.

"**Low-Income Household**" means households whose gross annual income, adjusted for family size, does not exceed eighty percent (80%) of Area Median Income for Napa County.

"**Management Agreement**" is defined in Section 5.

"**Moderate Income Household**" means households whose gross annual income, adjusted for family size, does not exceed one hundred twenty percent (120%) of Area Median Income for Napa County.

"**Occupant**" shall mean a person over the age of three (3) years who occupies an Affordable Unit for more than fourteen (14) days or more during a one-month period month.

"**Party**" means City or Declarant.

"**Parties**" means City and Declarant.

"**Property**" is defined in Recital A.

"**Property Manager**" is defined in Section 5.

"**Regulatory Agreement**" is defined in Recital E.

"**Tract One Parcel**" is defined in Recital A.

"**Tract Two Parcel**" is defined in Recital A.

"**Very Low-Income Household**" means households whose gross annual income, adjusted for family size, does not exceed fifty percent (50%) of Area Median Income for Napa County.

3. Development, Use and Affordability Restrictions. Declarant hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the use, operation and development of affordable housing in compliance with the requirements set forth in this Agreement. Until the date which is fifty-five (55) years following the date on which this Agreement is recorded in the official records of Napa County, (i) the Existing Residential Unit shall be occupied or held available for occupancy by a Low Income Household at an Affordable Rent, and (ii) any Future Residential Units on the Property shall be occupied or held available for occupancy by Eligible Households and shall be rented at an Affordable Rent. To the extent not in violation of state or federal law fair housing law, Declarant shall give preference in the rental of Affordable Units to Eligible Households with one or more Occupants employed within the City of St. Helena.

3.1.1 In the Affordable Units, no less than one Occupant shall be allowed per bedroom and no more than two Occupants shall be allowed per bedroom. A studio shall count as a one-bedroom for the purposes of these occupancy requirements. If no Eligible Households apply within sixty (60 days) of an Affordable Unit being available that meet these occupancy standards, the City shall, upon request of Declarant, grant exceptions to the occupancy standards.

3.1.2 Not more than once per year, Declarant may adjust rents in occupied Affordable Units to the level allowed for the family size appropriate to the unit. Declarant may adjust the rent upon vacancy of an Affordable Unit to the level allowed for the family size appropriate to the unit. Declarant must notify the lessee of an Affordable Unit in writing of any increase in such monthly rent at least sixty (60) days in advance of the effective rent adjustment date, and a copy of any such notification shall be sent to City simultaneously. The Declarant shall report any rent increase(s) to the City in the Annual Report, including: (1) the rent adjustment for each Affordable Unit; (2) the new rental amount for each Affordable Unit; (3) the effective date of the adjustment for each Affordable Unit; and (4) a copy of the written notice provided to the lessee of the Affordable Unit. Failure to provide the notice and reporting required shall be considered a default by Declarant under this Agreement.

3.1.3 The determination of a status as an Eligible Household shall be made by Declarant prior to initial occupancy of the Affordable Unit by such household. The income of all Occupants residing in the Affordable Unit shall be considered for purposes of calculating the household income. Declarant shall not discriminate against prospective lessee's of an Affordable Unit with qualified Public Housing Authority Section 8 certificates or vouchers who are otherwise qualified. In the Annual Report, the Declarant shall report any changes in the Occupants of any Affordable Unit to the City that are known by the Declarant, including the name(s) and household size(s) of the Occupant(s) vacating the Affordable Unit(s) during the reporting period, and, if the Affordable Unit(s) has/have been reoccupied, the name, household size and income of the new Occupant(s) occupying the Affordable Unit(s).

3.1.4 Immediately prior to the first anniversary date of the lease commencement of an Affordable Unit by an Eligible Household, and on each anniversary date thereafter, Declarant shall re-certify the income of the Occupant(s) of such Affordable Unit by obtaining a completed Occupant income certification based upon the current income of each Occupant of the Affordable Unit and Declarant shall take all reasonable steps to verify with reliable documentation the income and household size of the Occupant(s). All documentation obtained by Declarant in connection with the annual Occupant income certification shall be retained by Declarant for three (3) calendar years.

4. Reporting Requirements. Declarant shall submit to City annual reports ("**Annual Report**") which shall include all reporting required under this Agreement from the date of the previous Annual Report and include the following:

A. A cover letter to the City describing the status of compliance with this Agreement, including any problems experienced during the reporting period, and any recommendations to address problems and enhance compliance;

B. Income certifications or re-certifications, for each Eligible Household of an Affordable Unit. The Annual Report shall be accompanied by an income certification worksheet in a format and containing information reasonably required by

City, which at a minimum, shall include the following with respect to each of the Affordable Units:

a. Address of Affordable Unit;
b. Number of bedrooms and bathrooms in Affordable Unit;
c. Floor Plan of Affordable Unit, with room designations and dimensions;
d. Name of head of Eligible Household;
e. The number of Occupant(s) in the Eligible Household and their age;
f. Initial lease commencement date;
g. Eligible Household income limit applicable to Affordable Unit at initial lease commencement date; and at recertification date (if applicable);
h. Gross income of Eligible Household at lease commencement date; and at recertification date (if applicable);
i. Affordable Rent applicable to Affordable Unit;
j. Reasonable Utility Allowance calculation by Declarant;
k. Reasonable Utility Allowance applicable to Affordable Unit;
l. Section 8 Assistance (if applicable);
m. Rent Paid by Eligible Household;
n. Rent as a percentage of Eligible Household's Income;
o. Next Recertification Date; and
p. Move out date (if applicable).

Upon receipt of the Annual Report, the City may request additional information to confirm compliance with this Agreement. In the event the City requests such information, the Declarant shall promptly supply such information to City in the format requested by City. Declarant shall maintain all necessary documents, books and records, including property and financial records, in accordance with requirements prescribed by City with respect to all matters covered by this Agreement for a period of three (3) years following the date of submittal of the Annual Report to which such documents, books or records relate. Upon request for examination by City, Declarant, at any time during normal business hours and upon reasonable notice, shall make available at the Property (or at another location within the City of St. Helena) all material records with respect to matters covered by the Agreement. Declarant shall permit City, at City's expense, to audit, examine, copy, and make excerpts or transcripts from such records.

5. Management Of Affordable Units. If Declarant enters into a separate property management agreement ("**Management Agreement**") with a property management company or other organization in order to manage the Affordable Units (including leasing, property management, maintenance and repair services, and reporting obligations) and ensure that Declarant's obligations under this Agreement with respect to the Affordable Units are satisfied ("**Property Manager**"), Declarant shall comply with this Section 5. Property Manager shall have at least five (5) years' experience in the operation and management of similar size rental housing developments, and at least three (3) years' experience in the operation and management of rental housing developments containing below-market-rate units, without any record of material violations of discrimination restrictions or other applicable laws. No less than sixty (60) calendar days prior to hiring any Property Manager or executing any amendment to a Management Agreement, Declarant shall provide documentation to the City as is reasonably necessary to evaluate the proposed Property Manager's experience and qualifications or revisions to a Management Agreement. No Property Manager shall be hired, or Management Agreement signed or amended, without City's prior approval thereof, which shall not be unreasonably withheld or delayed. For the term of this Agreement, any

change in Property Manager or amendment to the Management Agreement shall comply with the requirements of this Section 5 and any material amendment shall require the prior written approval of City, which shall not be unreasonably withheld or delayed.

6. Remedies for Breach. Upon any default under this Agreement by Declarant or by Declarant's successors or assigns, City may seek specific performance of the terms hereof, and may enjoin acts that may be in violation of this Agreement. Failure by City to enforce any provision contained herein shall not be deemed a waiver of the right to do so as to any continuing, subsequent, or other violation. This Section is not intended to limit City's ability to exercise any applicable remedy available to City pursuant to this Agreement or the Loan Agreement. All remedies available to City shall be cumulative and not exclusive.

7. Binding on Successors in Interest; Provisions Run With the Land. The Property, and each and every portion thereof, shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, covenants, conditions and restrictions set forth in this Agreement, all of which shall run with the land, shall constitute equitable servitudes, shall be binding on all parties having or acquiring any right, title or interest in such Property or portion thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of City and its successors and assigns. It is the intent of the Parties that this Agreement shall satisfy the requirements of California Civil Code Section 1468.

Without limiting the foregoing, the Parties hereby declare that it is their express intent that the covenants, restrictions and conditions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon Declarant's successors in title to the Property. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property, Existing Residential Unit, or, if developed, the Future Residential Units pursuant to the Future Housing Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. Declarant agrees for itself and for its successors and assigns that if a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property in favor of City.

8. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Napa County concurrently with and immediately following recordation of the Deed of Trust securing the Loan provided pursuant to the Loan Agreement. Declarant hereby represents warrants and covenants that with the exception of easements of record, absent the written consent of City, this Agreement shall not be subordinated in priority to any lease, ground lease, security agreement, deed of trust, mortgage, lien, encumbrance, or other interest in the Property.

9. Release and Discharge. Upon the earlier of (i) expiration of this Agreement, or (ii) execution and recordation of a Regulatory Agreement between City and Declarant in connection with a Future Housing Project, which Regulatory Agreement encumbers the Existing Residential Unit on the Tract One Parcel, City and Declarant, will execute and record appropriate instruments to release and discharge this Agreement. Declarant acknowledges that nothing contained in this Agreement shall preclude the Regulatory Agreement from requiring the rental of the Existing Residential Unit or Future Residential Units constructed pursuant to a Future Housing Project at an Affordable Rent to Eligible Households whose gross annual income is less than 120% of Area Median Income.

10. Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall, however, be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice of such violation to the holders of record of any mortgages or deeds of trust encumbering the Property.

11. Estoppel Certificate. At any time during the term hereof, City, Declarant or any party then owning an interest in the Property may request an estoppel certificate from the other party attesting to such party's compliance with the terms and provisions of this Agreement. A party making a request for an estoppel certificate shall provide Declarant or City, as applicable, with all documentation reasonably necessary for Declarant or City to form an opinion as to compliance or non-compliance with the provisions hereof. After receiving such a request and the necessary supporting documentation, Declarant or City, as applicable, shall respond, in writing, within thirty (30) calendar days following the date of receipt and shall either confirm compliance with the terms and provisions of this Agreement or shall state in reasonable detail any alleged failure to comply and the steps necessary to cure such lack of compliance.

12. Indemnification. Declarant hereby covenants and agrees that it shall indemnify, defend with counsel reasonably acceptable to City and hold City and its elected and appointed officials, representatives, officers, agents and employees harmless from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with the approval of this Agreement; (b) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with the implementation or enforcement of this Agreement; (c) any and all claims arising from an act or omission of Declarant or any of its shareholders, partners, members, principals, officials, officers, employees, representatives, agents, contractors or subcontractors in connection with this Agreement or the Property; (d) any and all claims arising out of or related to the operation, use, occupancy, maintenance or ownership of the Property, including compliance with the laws, ordinances, rules and regulations of City pursuant to this Agreement; and (e) all reasonable costs, attorney fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; provided, however, that this provision shall not require Declarant to indemnify City from any claims, costs, fees expenses or liabilities arising from the gross negligence or willful misconduct of the City. In the event any action or proceeding is brought against the City or any of its elected and appointed officials, representatives, officers, agents and employees, with respect to which indemnity may be sought hereunder, Declarant, upon receipt of written notice from City, shall assume the investigation and defense thereof, including the employment of counsel approved by the City and the payment of all expenses related thereto.

13. Miscellaneous.

13.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by each of the Parties or their respective successors in interest.

13.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance of any provision of this

Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

13.3 Notices. All notices, requests, demands and other communications required or permitted to be given under the terms of this Agreement by one party to the other shall be in writing addressed to the recipient party's address set forth below and shall be deemed to have been duly given or made (a) if delivered personally (including by commercial courier or delivery service) to the party's address, then as of the date delivered (or if delivery is refused, on presentation), or (b) if mailed by certified mail to the party's address, postage prepaid and return receipt requested, then at the time received at the party's address as evidenced by the return receipt, or (c) if mailed by first class mail to the party's address, postage prepaid, then on the third (3rd) business day following deposit in the United States Mail. Any party may change its address for the receipt of notices by giving notice to the other party in the foregoing form and manner. The addresses of the parties are:

TO CITY:

City of St. Helena
1480 Main Street
St. Helena, California 94574
Attn.: City Manager
(707) 968-2744 ext: 500

TO DECLARANT:

Our Town St. Helena
P.O. Box 94
St. Helena, California 94574
Attn.: Mary Stephenson
(707) 849-2583

13.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and shall take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

13.5 Parties Not Co-Venturers; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Declarant and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Declarant or to any third party with respect to the Property.

13.6 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of St. Helena shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

13.7 Time is of the Essence. Time is of the essence in the performance of this Agreement.

13.8 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Napa County, California or in the Federal District Court for the Northern District of California.

13.9 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

13.10 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

13.11 Entire Agreement. This Agreement, together with the Loan Agreement and the Loan Documents referred to in the Loan Agreement, contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto.

13.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Agreement as of the date first written above.

CITY:

CITY OF ST. HELENA, a
California municipal corporation

By: _____
Name: Mark Prestwich
Its: City Manager

ATTEST:

_____
Cindy Tzafopoulos, City Clerk

APPROVED AS TO FORM:

_____
Michael G. Biddle, City Attorney

DECLARANT:

OUR TOWN ST. HELENA,
a California non-profit public benefit corporation

By: _____
Name: Mary Stephenson
Its: Board President

By: _____
Name: _____
Its: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2019 _____
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2019 _____
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

ATTACHMENT A

PROPERTY

[Legal description to be inserted.]

OAK #4849-8088-4130 v5

CITY OF ST. HELENA

RESOLUTION NO. 2021-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA AUTHORIZING: AMENDMENT #1 TO STH CONTRACT: FY2020-031 HOUSING TRUST FUND LOAN AGREEMENT WITH OUR TOWN ST. HELENA AUTHORIZING A 90-DAY EXTENTION TO THE LOAN TERM AND AUTHORIZING THE CITY MANAGER TO EXECUTED THE NECESSARY DOCUMENTATION FOR THIS AMENDMENT.

WHEREAS, on August 27, 2019, the City Council authorized a loan from the Affordable Housing Trust Fund to Our Town St. Helena (OTSH) to assist with the acquisition of a property located at 963 Pope Street. The purchase price of the property was $850,000 for a 0.29-acre lot, zoned medium-density residential, with a 2-bedroom 1-bath house located near the front portion of the property. The property will be used solely for the use, operation, and development of affordable housing by constructing four additional units on the back half of the property for moderate-to low-income rental tenants; and

WHEREAS, the City and OTSH entered into a Housing Trust Fund Loan Agreement dated September 10, 2019, in the amount of $450,000 with zero percent interest. The loan has a term of twenty-four (24) months and all unpaid sums of the principal amount shall become immediately due and payable upon the second anniversary date of the promissory note, September 10, 2021; and

WHEREAS, Our Town St. Helena (OTSH) has contacted the City to discuss modifications to the original $450,000 promissory note which is due and payable by September 10, 2021; and

WHEREAS, Due to timing of the loan repayment, the City is providing OTSH with a 90-day extension to the loan term which will provide additional time for OTSH and the City to evaluate loan options for City Council consideration.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. HELENA AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The City Council of the City of St. Helena hereby approves Amendment #1 to STH Contract: FY 2020-031 Housing Trust Fund Loan Agreement dated September 10, 2019 between the City of St. Helena and Our Town St. Helena authorizing a 90-day extension to the loan term.

SECTION 3. The City Council authorizes the City Manager to execute the necessary documentation for the extension.

Approved at a Regular Meeting of the St. Helena City Council on August 24, 2021, by the following vote:

Mayor Geoff Ellsworth: ____

Vice Mayor Paul Dohring: ____

Council Member Anna Chouteau: ____

Council Member Lester Hardy: ____

Council Member Eric Hall: ____

APPROVED:

_____
Geoff Ellsworth, Mayor

ATTEST:

_____
Cindy Tzafopoulos, City Clerk

AMENDMENT #1
TO STH CONTRACT: FY2020-031 HOUSING TRUST FUND LOAN AGREEMENT DATED SEPTEMBER 10, 2019 BETWEEN THE CITY OF ST. HELENA AND OUR TOWN ST. HELENA EXTENDING THE LOAN TERM BY 90-DAYS

This First Amendment to STH Contract: FY2020-031 Housing Trust Fund Loan Agreement with Our Town St. Helena dated September 19, 2019 ("Loan Agreement") is made as of this ____ day or _____, 2021 by and between the City of St. Helena and Our Town St. Helena.

RECITALS

A. On September 10, 2019, the City entered into a Loan Agreement with Our Town St. Helena to assist with the acquisition of a property located at 963 Pope Street. The purchase price of the property was $850,000 for a 0.29-acre lot, zoned medium-density residential, with a 2-bedroom 1-bath house located near the front portion of the property. The property will be used solely for the use, operation, and development of affordable housing by constructing four additional units on the back half of the property for moderate-to low-income rental tenants; and

B. The Agreement has a term of twenty-four (24) months and all unpaid sums of the principal amount shall become immediately due and payable upon the second anniversary date of the promissory note; and

C. City and OTSH desire to amend the Agreement to extend the term on the loan by 90-days for a total loan term of twenty-seven (27) months.

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. Borrower and Lender hereby agree that the Term of the Loan as set forth in Section 2 of the Loan Agreement and Section 1 of the Promissory Note is extended by a period of ninety (90) days. The Maturity Date for the Loan is therefore amended to be December 9, 2021.

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

Entered as of the day and year first above stated.

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.

OUR TOWN ST. HELENA:

Signatures of Authorized Persons:

By: _____

Print Name:_____

Title: _____

CITY OF ST. HELENA
a Municipal Corporation

By:_____

Print Name: Mark T. Prestwich
Title: City Manager

APPROVED AS TO FORM:

_____
Ethan Walsh, City Attorney

ATTEST:

_____
City Clerk

Report to the City Council
Regular City Council - 24 Aug 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and proposed adoption of a Resolution approving a Professional Service Agreement with Coastland Civil Engineering, Inc. (Coastland) for the R19-79 Year 2 Pavement Restoration project in an amount not to exceed $99,781 and authorizing the City Manager to execute the agreement.**

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

Prepared By: Edrees Argand, Assistant Engineer

Reviewed By: Mark Rincon-Ibarra, Public Works Director and City Engineer

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The City of St. Helena is responsible for the maintenance of public streets within the City limits. On May 28, 2019, City Council adopted the FY 2019-20 Five-Year Capital Improvement Program (CIP) which included Pavement Restoration Project, R19-79. CIP R19-79 was included in the FY 2020-21 CIP project list adopted by City Council on June 9, 2020 and is included in the current FY 2021-22 CIP project list adopted by City Council on June 8, 2021. CIP R19-79 is broken down into two phases, Year 1 and Year 2. Each year includes both design and maintenance (construction) of the existing streets which may include curb ramp upgrades, as needed. Year 1 of the Pavement Restoration project was completed in 2019 and Year 2 paving was deferred until FY 2021-22 due to the projected financial implications of COVID-19 on the City's revenues in FY 2020-21.

Year 2 includes: constructing full-depth asphalt concrete repairs, pavement grinding, asphalt concrete overlays, traffic striping, crosswalk markings, sidewalk replacement, valley gutters replacement, curb and gutter repairs, ADA curb ramp upgrades, and installing signage when applicable. It is important to note that maintenance does not

expand or increase the existing street capacity. The intent of the project is to improve the condition of critical streets within the City of St. Helena and improve pedestrian and planned bicycle facilities when feasible.

On July 27, 2021, City Council awarded the Year 2 Pavement Restoration Project, Capital Improvement Project R19-79 to Argonaut Constructors in the amount of $804,825.75. The City of St. Helena requires construction management and inspection services in order to support delivery of a high-quality, cost-effective project.

DISCUSSION

Coastland performed construction management and inspection service for the Capital Improvement Project R19-79 Year 1 Pavement Restoration and was asked to provide a proposal for construction management and inspection services for Year 2. In accordance with SHMC Title 3, Article 4, Section 3.04.320 *Award of professional service contracts based on competence*, City staff has determined Coastland has the appropriate construction management and inspection experience required to ensure that construction of the R19-79 Year 2 Pavement Restoration project is performed in compliance with City requirements and standards and the project plans and specifications. In addition, Coastland is an approved contractor through the City's Master Professional Services Agreement (MPSA) list established by the City Council on July 23, 2019 via Resolution No. 2019-87 and have demonstrated a level of experience, competence, and staffing necessary to perform the work satisfactorily.

The construction management and inspection services will include a pre-construction meeting, pre-construction site visit and documentation, project start-up, daily field inspections and documentation, progress meetings, status reports and documentation, construction management, cost and schedule management, public relations and notifications, post-construction meeting, and project closeout.

FISCAL IMPACT

The annual Pavement Restoration Project, CIP Project No. R19-79 is included in the May 2021 adopted five-year Capital Improvement Program (Attachment 2) for Fiscal Years 2021-22. The total construction management costs allocated for Fiscal Year 2021-22 is $155,000. Coastland's total contract is for an amount not to exceed $99,781; this includes a 10% contingency ($9,071) for unforeseen circumstances.

City funds budgeted for this project include General Fund (Measure T/RMRA MOE), Gas Tax, Gas Tax (RMRA/SB1), Measure T, and Streets Capital Improvement (Grant OBAG II).

RECOMMENDED ACTION

Staff recommends City Council adopt a Resolution approving a Professional Services Agreement with Coastland Civil Engineering, Inc. for the R19-79 Year 2 Pavement Restoration Project in an amount not to exceed $99,781 and authorizing the City Manager to execute the agreement.

ATTACHMENTS

Attachment 1: R19-79 Year 2 Resolution
Attachment 2: R19-79 Year 2 Budget FY 2021-22
Attachment 3: R19-79 Year 2 Professional Service Agreement

CITY OF ST. HELENA

RESOLUTION NO. 2021-

Approving a Professional Service Agreement with Coastland Civil Engineering, Inc. (Coastland) for the R19-79 Year 2 Pavement Restoration project in an amount not to exceed $99,781 and authorizing the City Manager to execute the agreement.

A. On July 27, 2021, the City of St. Helena Council (1) awarded the Year 2 Pavement Restoration Project, Capital Improvement Project R19-79 to Argonaut Constructors in the amount of $804,825.75, (2) authorized the City Manager to execute a construction contract with Argonaut Constructors, (3) authorized the Director of Public Works to approve change orders not to exceed 15% of the contract account, (4) and determined the project to be exempt from the requirements of the California Environmental Quality Act (CEQA).

B. The City of St. Helena requires construction management and inspection services in order to produce a high-quality, cost-effective project; and

C. Coastland was asked to provide a proposal for construction management and inspection services. Coastland previously performed construction management and inspection service for the Capital Improvement Project R19-79 Year 1 Pavement Restoration; and

D. City Staff had determined Coastland has the appropriate construction management and inspection experience required to ensure that construction of the R19-79 Year 2 Pavement Restoration project is performed in compliance with City requirements and standards, and the project plans and specifications; and

E. A total of $155,000 is included in the R19-79 Year 2 project for construction management in the City Council adopted five-year Capital Improvement Program (CIP) for Fiscal Year 2021/2022; and

F. The proposal from Coastland is $99,781 which is within the construction management phase in Fiscal Year 2021/2022; and

G. Sufficient funding for the construction management is available in the total approved project budget for Fiscal Year 2021/2022.

RESOLUTION

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

1. Approving a Professional Service Agreement with Coastland Civil Engineering, Inc. for the R19-79 Year 2 Pavement Restoration project in an amount not to exceed $99,781 and authorizing the City Manager to execute the agreement.

Approved at a Regular Meeting of the St. Helena City Council on August 24, 2021 by the following vote:

Mayor Ellsworth: _____

Vice Mayor Dohring: _____

Councilmember Chouteau: _____

Councilmember Hardy: _____

Councilmember Hall: _____

APPROVED:	ATTEST:
_____	_____
Geoff Ellsworth, Mayor	Cindy Tzafopoulous, City Clerk

Pavement Restoration FY 19 Design/FY 22 Construction

Project No: R19-79

Category: Streets

Project Location: St. Helena, CA 94574

Responsible Department:

PROJECT PURPOSE & DESCRIPTION: Rehabilitate streets throughout the City with various surface treatments (i.e. slurry seal, micro-surface, and overlay). Curb ramp upgrades may be part of projects as needed. Council approved a five-year list of streets on February 13, 2018.

Construction for Year 2 paving deferred to FY 22.

EXPENDITURE ACCOUNTS:

Fund: 741 **Dept**: 5014

EXPENDITURES	Total YTD 05/11/21		2021-22	2022-23	2023-24	2024-25	2025-26	PROJECT TOTAL
3110 - Design	120,939		5,000					125,939
3150 - Construction Management	48,126		155,000					203,126
3160 - Construction Contract	837,389		939,000					1,776,389
3170 - Contingency			94,000					94,000
EXPENDITURE TOTALS	1,006,454		1,193,000					2,199,454
FUNDING SOURCES								
101-General Fund - Measure T/RMRA MOE	410,188		300,000					710,188
230-Gas Tax			150,000					150,000
230-Gas Tax - RMRA/SB1			300,000					300,000
240-Measure T	564,455		443,000					1,007,455
741-Streets Capital Improvement - Grant OBAG II	31,811							31,811
FUNDING TOTALS	1,006,454		1,193,000					2,199,454

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on _____, 2021 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Coastland Civil Engineering, Inc. (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as construction management and inspection services for the R19-79 Year 2 Pavement Restoration project.

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 A, "Compensation" attached hereto and made a part hereof. Total compensation shall not exceed $99,781 unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories if applicable: labor (by sub-category), travel, materials, equipment, supplies, subconsultant contracts, and miscellaneous expenses. Each original invoice furnished shall

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

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

SECTION 5 – STANDARD OF PERFORMANCE

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

B. In order to induce 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: $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 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 advise 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 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 l964. Consultant will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

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

SECTION 16 – COMPLIANCE WITH CALIFORNIA LABOR CODE REQUIREMENTS

A. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is

$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

B. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

C. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

SECTION 17 – 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 18 – 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-entites 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 19 – 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 20 – 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
1572 Railroad Avenue
St. Helena, California 94574

To Consultant: Coastland Civil Engineering, Inc.
1400 Neotomas Avenue
Santa Rosa, California 95405

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 21 – 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 22 – 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 23 – 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 24 – 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 25 – 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 26 – 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 27 – 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 28 – 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 29 – 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 30 – 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 31 – 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 32 – 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: _____ Heidi E. Utterback
Name: John Wanger Heidi E. Utterback
Title: CEO Corp. Secretary

City:

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

Approved as to Form:

By: _____
Name: Ethan Walsh
Title: City Attorney

Exhibit A

Scope of Work

R19-79 Year 2 Pavement Restoration

City of St. Helena

PROJECT UNDERSTANDING

The R19-79 Year 2 Pavement Restoration Project (Project) includes: Selective demolition; constructing full depth asphalt concrete repairs; pavement grinding; placement of paving reinforcement fabric; asphalt concrete overlays; traffic striping and markers; crosswalk markings; sidewalk replacement; valley gutters replacement; curb and gutter repairs; ADA curb ramp upgrades; and resetting survey monuments, valve boxes, manhole frames and covers. Activities in support of construction will include, public outreach, vehicle, and pedestrian traffic controls, locating existing utilities by potholing, housekeeping, construction staking and survey, erosion control and water pollution control. The Construction Contract was awarded to Argonaut Constructors on July 27, 2021.

SCOPE OF WORK

Coastland's overall approach to performing Construction Management and Inspection focuses on teaming with City forces to produce a high quality, cost effective project. Our Construction Manager and Inspector will keep the City informed regarding costs, changes, public relations, and construction progress. We will coordinate closely with the City and the property owners for the entire project duration. From the onset of the project, we will establish the lines of communication and decision making roles with all project stakeholders. Based on our understanding of the project our scope of services is as follows:

TASK 1 – PRE-CONSTRUCTION MEETING

Immediately following the Notice to Proceed, our Construction Manager will schedule and administer the pre-construction meeting. During this meeting we will establish lines of communication and decision making roles with all project stakeholders. We will also discuss safety requirements, responsibilities of the project team members, working hours, quality control procedures, submittal requirements, project schedule, change order and potential claim procedures, and safety procedures.

Coastland will be responsible for generating pre-construction meeting invitations including the meeting agenda. Agenda items include lines of communication, public relations, safety, submittals, change procedures, payments, progress schedules, contract time, requests for information, and other applicable items. Coastland will prepare and distribute meeting minutes to all parties.

Following the pre-construction meeting, Coastland will continue to work with the City team, contractor, and Coastland's design team to ensure that all project issues are addressed promptly and that the City's best interests are considered at all times.

TASK 2 – PRE-CONSTRUCTION SITE VISIT AND DOCUMENTATION
Coastland will take pre-construction digital photos of the construction site with special attention given to sensitive areas including any private residences and businesses adjacent to the project. Documenting the site prior to construction will help mitigate possible disputes between the City, contractor, and property owners within or adjacent to the project limits. These photos will be logged and filed with the project files.

TASK 3 – PROJECT START-UP
Coastland will assemble project files in accordance with the City's standard format. Coastland utilizes a centralized system for document control to create, store, organize, track, and link all project information. Our digital record-keeping will ensure the constant flow of documentation to a form that quickly and easily identifies trends and critical issues and will help keep the project moving as it helps document the work.

TASK 4 - DAILY FIELD INSPECTIONS AND DOCUMENTATION
A critical aspect of our services is maintaining close communication with City staff to ensure scheduling goals are met. To help maintain close communication, Coastland's inspector will be accessible to the City at all times at the project site and through the use of email and cellular phones. Coastland's on-site inspector will examine all construction activities to ensure that the contract work adheres to the contract documents, City standards and the established schedule.

We will maintain records and provide documentation of the work in the form of daily reports, weekly summary of construction activities, deficiency lists, and progress photographs of construction activities. Daily reports will describe the contractor's level of effort, specific work being done, started, or finished, and relevant points raised by the contractor that may require consideration and response. We also document proposed change orders and claims, important conversations, safety issues or accidents, extra work in progress, materials testing performed, information for "as-built" drawings, quantities for progress payments, environmental concerns, and hazardous materials.

Coastland will provide a digital photo logbook of construction activities, progress, and areas of concern or interest. The photo log will be compiled on a portable storage device (USB drive) and will identify the location and date of each photo. The log will be maintained through the duration of the project to assure continuity from one week to the next and will be submitted to the City at the close of the project.

Coastland will continually review the specifications and plans to ensure the work is of good quality and meets the requirements of the contract documents. Coastland will immediately report any deviation from the approved contract documents.

Our inspector will identify actual and potential problems and provide solutions. We will maintain daily documentation and resolve issues by proposing field changes and avoid any delays.

Our inspector will review the Contractor's traffic control plan to make certain that access is maintained during construction.

In summary, our Inspector's responsibilities include***:***

- Represent the City in ensuring that the terms of the construction contract are followed throughout the term of the project.
- Participate in regular meetings called by the Construction Manager.
- Protect the interest of the City.
- Daily inspection of the contractor's work for conformance to the contract documents, codes, regulations, and City standards.
- Prepare and submit daily inspection reports that document all job site activities.
- Serve as a daily contact for the contractor as to performance of the construction.
- Respond promptly to City requests.
- Verify construction material quantities.
- Monitor traffic control procedures.
- Distribute notifications to impacted public regarding the status of construction.
- Document construction activities with photographs and maintain a photo log.
- Respond to calls from the public promptly and log any complaints in a timely manner.
- Work overtime as needed to assure presence on site during all construction activities.
- Document and maintain complete field files containing construction period correspondences, changes, discussions with contractor, memos, reports, and other pertinent items.

TASK 5 – PROGRESS MEETINGS

Coastland will conduct weekly coordination and progress meetings to focus on completed and upcoming work, any construction delays, schedule updates, proposed changes, change orders, contractor's questions, public relations, safety, and other concerns that are identified by a project team member. We will work to foster honest, open communication at these weekly meetings which will help in timely resolution of any disputes and/or potential claims.

TASK 6 – STATUS REPORTS AND DOCUMENTATION

Task 6a – Reports

Complete and accurate record keeping will be an essential component of this project. We will ensure project documents and certified payroll are complete and correct sub-contractors are used. We will keep the City informed and document all construction issues with the following:

- Weekly Statement of Working Days
- Progress Meeting Minutes
- Field Directive Log
- Change order tracking
- Regular phone calls and e-mails

Task 6b – Submittal Management

Coastland will coordinate all submittals and monitor the status of the submittals to assure the contractor provides timely response. At the pre-construction conference, we will provide the contractor with a log of all required submittals and due dates. Submittals will be stamped, logged, and distributed to the designer for complete review and approval. Submittals will be filed

numerically, and approved copies will be distributed to the City, project members, and the contractor.

Task 6c – Requests for Information (RFI)
Coastland will receive and log all Requests for Information (RFI's) from the contractor, and forward the RFI to the designer. Coastland will track the status of all RFI's by generating a weekly RFI log that lists the "Ball-in-court" status, description, and if an RFI results in a potential change order.

Task 6d – Change Order Management
In the event that a change order is required, Coastland will negotiate the changes with the contractor and prepare documentation. All changes will be approved by the contractor, Coastland, and the City prior to starting work on the change. With the City's approval, Coastland can negotiate with the contractor to produce the best construction method for the change at the lowest cost. If a change order requires input from the design engineer, our Construction Manager will coordinate with them to ensure it is reviewed. A Change Order Log will be created that will show Change Order number, description, status, approved date, start and completion dates and cost.

TASK 7 – CONSTRUCTION MANAGEMENT
Our goal is to ensure that construction and contract administration are performed in compliance with City requirements and standards, and the project plans and specifications. To accomplish this goal, our Construction Manager will manage the day-to-day construction activities with the contractor. He will be accessible to the City at all times. The Construction Manager will be responsible for keeping the City informed of the progress of the project, changes that may be needed, pay estimate input and releasing information to the public. In addition, our Construction Manager will complete all contract administration documentation in a timely, accurate and orderly fashion.

In summary, our Construction Manager's responsibilities include***:***

- Continuous communication and coordination with the contractor through regular progress meetings.
- Review and routing of project submittals and RFIs.
- Prepare project pay estimates and maintain records associated with the project's federal funding requirements.
- Accept work performed or, if work is rejected, work with contractor to correct construction errors.
- Prepare and approve Contract Change Orders.
- Provide claims management.
- Monitor permit and environmental compliance.
- Confirm labor compliance.
- Develop a project punch list and make recommendations for project acceptance.
- Prepare As-Built plans.
- Maintain an up-to-date construction file containing all records associated with the construction of the project.

TASK 8 – COST AND SCHEDULE MANAGEMENT
Coastland will continually review the construction progress and perform field measurements and quantity calculations. Each month, Coastland will provide accurate calculations for all work items completed and accepted to provide progress payment recommendations to the City. Coastland

will review the contractor's progress pay estimate request and schedule of values to assess if they are reasonable, and will compare this to the field measurements and quantity calculations. We will continually monitor project costs and keep the City informed regularly.

Coastland will review the contractor's construction schedule for accuracy, reasonableness, and will verify that it meets the project schedule, order of work, and contract requirements. Progress schedules will be reviewed weekly to ensure the contractor is meeting the critical dates. If the contractor fails to meet critical dates, it will immediately be brought to his attention and remedies to get back on schedule will be accomplished. Schedule updates may be required once a month or more. We will negotiate any time extensions for the contractor due to change orders, weather, or other delays. Coastland will also maintain an as-built progress schedule.

TASK 9 - PUBLIC RELATIONS AND NOTIFICATIONS

Coastland will ensure every effort is made to keep residents and businesses informed of construction progress and minimize disruptions due to limited access and excessive noise. Our Construction Manager will proactively meet with property owners prior to and during construction to address any concerns from those affected by the project.

We will monitor traffic control and flagging procedures to ensure construction proceeds smoothly and public impact is minimized. There may be traffic delays during peak traffic periods. Accordingly, we will keep all residents and businesses informed on construction status and impacts through the use of message boards and notification letters. Our Construction Manager will also make introductions to the affected properties and provide his 24-hour contact phone number as appropriate. Coastland will ensure that Contractor provides advanced notice to residents and businesses, as required by the specifications, regarding roadwork and lane closures.

Coastland will log and respond to questions and concerns from the public in a timely manner and will record the contractor's activities as they relate to public safety and public convenience.

Additionally, our inspector will accurately document pre-construction conditions with a photo log to verify the project area is restored to its original form following construction.

TASK 10 – POST-CONSTRUCTION MEETING

Following completion of the work, Coastland will organize and conduct the post-construction meeting. The meeting will document all requirements necessary for final closeout and payment, and confirm all contract obligations have been met. Recommendations for improvement will be made and incorporated into future projects. The results of the meeting will be summarized in meeting minutes.

TASK 11 – PROJECT CLOSEOUT

Coastland will verify completion of punch list items, issue notice of completion, prepare recommendations for final acceptance of the project, review as-builts for accuracy and completeness, prepare and recommend final payment, and transmit all construction documentation to the City. At the completion of the project, we will provide the City with the following:

- All contract files and records (hard & electronic files)
- Annotated journal of photos and CD of digital photos
- As-built project schedule

OPTIONAL TASKS
If requested by the City, conflict resolution & claim management can be added under an amendment on a Time & Materials basis.

SCHEDULE
We understand that proper construction management is a priority for the City. Work is anticipated to commence in early August upon receipt of the Notice to Proceed and is expected to continue for 40 days.

WORK ESTIMATE
Based on the Scope of Work outlined in our proposal, we have prepared a comprehensive budget that identifies staffing rates, total hours and costs per task and direct expenses. Inspector rates are in compliance with current California General Prevailing Wage Rate Determinations.

We propose to provide our services on a time-and-materials basis with a not-to-exceed amount. Our proposal is based on a project duration of 40 working days and part-time Construction Manager and Resident Engineer as outlined in our work estimate. We are providing full-time inspection at 40 hours per week and estimate inspector overtime at 20 hours for typical overrun. Because Coastland is not providing full time inspection, we cannot be held liable for actions and decisions made in our absence.

Our proposal also includes factors such as attending meetings, project closeout and vehicle costs. Based on these items, we estimate the not-to-exceed fee (including a 10% contingency) to be $99,781.00 (see attached *Work Estimate*). If the contract time extends beyond 40 working days, or the scope or level of services change, our costs may also increase. Similarly, if the contract time is reduced, charges will decrease accordingly.

This estimate has been created to show the overall cost for comprehensive Construction Management and Inspection services on the project. We welcome the opportunity to speak with you regarding the scope of services. Please feel free to contact us if you have any questions or concerns regarding this estimate.

Coastland maintains a current DIR registration number (1000014855, exp. 6/30/2020).

Exhibit B

R19-79 Year 2 Pavement Restoration

WORK ESTIMATE

R19-79 Year 2 Pavement Restoration Project	PROPOSAL FOR CM & INSPECTION SERVICES	City of St. Helena

TASK INFORMATION							HOURS AND COST INFORMATION		
Task No. (Coastland Code)	Task Information	CM $170	Inspector $155	Inspector OT $225	Admin $95	Direct Costs	Total Hours	Total Costs	Comments
1	Pre-Construction Meeting	4	4		2		10	$1,490	Agendas / conduct meeting
2	Site Visit & Documentation	3	14		2		19	$2,870	Job walk / photos/Meet with City
3	Project Start-Up	8	4		2		14	$2,170	Assemble filing / CM program
4	Daily Field Inspections & Documentation	16	120				136	$21,320	Based on 40 working days
4a	Overtime Inspection			16			16	$3,600	Typical overruns for paving project
4b	Special Inspection								
5	Progress Meetings/Other Mtgs	10	36		8		54	$8,040	Assume attendance @ 8 mtgs (CM & Inspector)
6	Status Reports & Documentation	10	10		4		24	$3,630	Review progress/documentation
6a	Reports	8	32		8		48	$7,080	Status /Daily Updates to City
6b	Submittal Management	8	10		20		38	$4,810	Based on 15 submittals
6c	Requests For Information	8	12		10		30	$4,170	Based on 10 RFI's
6d	Change Order Management	6	8		8		22	$3,020	Based on 3 change orders
7	Construction Management	24					24	$4,080	
8	Cost and Schedule Management	16	8		2		26	$4,150	Based on 3 monthly payments & CPM updates
9	Public Relations & Outreach	8	40		8		56	$8,320	Notices/meeting/coordination etc
10	Conflict Resolution & Claim Management						0		Provided on a time and materials basis if required
11	Utility Coordination	4	6				10	$1,610	Coordination/spot inspection
12	Post Construction Meeting	2	4				6	$960	Walk through
13	Project Closeout	6	10		6		22	$3,140	As-builts / files
	Photographs & video					$25		$25	
	Vehicle/Equipment expenses	150				$6,225		$6,225	415 hours x $15/hr= $6,225
	Total Hours	141	318	16	80		555		
	Subtotal	$23,970	$49,290	$3,600	$7,600	$6,250		$90,710	
	Contingency (10%)							$9,071	
	Project Total *with contingency*	$26,367	$54,219	$3,960	$8,360	$6,875		$99,781	

NOTES: Coastland reserves the right to adjust estimated hours should the Contractor schedule additional crews or overtime work.

1 Based on 40 working days.
2 Based on full time inspection at 40 hours per week for an inspector. 20 hours of overtime have been included for typical overruns.
3 Based on part time construction management of 20 hours per week.
4 Based on an estimated number of RFI's, change orders and submittals shown above.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 8/13/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
AssuredPartners Design Professionals Insurance Services, LLC
3697 Mt. Diablo Blvd Suite 230
Lafayette CA 94549

License#: 6003745
COASTCIVI

CONTACT NAME: Doris A Chambers
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS: Doris.Chambers@AssuredPartners.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : HARTFORD INSURANCE COMPANY	38288
INSURER B : Travelers Casualty and Surety Co of America	31194
INSURER C : Sentinel Insurance Company	11000
INSURER D : Trumbull Insurance Company	27120
INSURER E :	
INSURER F :	

INSURED
Coastland Civil Engineering, Inc.
1400 Neotomas Avenue
Santa Rosa CA 95405

COVERAGES **CERTIFICATE NUMBER:** 440873244 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
C	X COMMERCIAL GENERAL LIABILITY	Y	Y	57SBWBG9489	9/1/2020	9/1/2021	EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
D	AUTOMOBILE LIABILITY	Y	Y	57UEGZC7163	9/1/2020	9/1/2021	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
C	X UMBRELLA LIAB X OCCUR	Y	Y	57SBWBG9489	9/1/2020	9/1/2021	EACH OCCURRENCE	$ 4,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$ 4,000,000
	DED RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N	N / A	Y	57WEGGG8117	9/1/2020	9/1/2021	X PER STATUTE / OTH-ER	
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
B	Professional Liability	N	N	107144283	9/1/2020	9/1/2021	Per Claim Annual Aggr.	$2,000,000 $2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The Excess-Umbrella Liability is Following Form to the General Liability, Automobile Liability and Employers' Liability policies.
REF: R19-79 Year 2 Pavement Restoration GENERAL LIABILITY/AUTOMOBILE LIABILITY ADDITIONAL INSURED: City of St. Helena, its agent, officers, officials, employees, and volunteers are named as Additional Insured as respects General Liability and Auto Liability as required per written contract or agreement. The Excess-Umbrella Liability is Following Form to the General Liability, Automobile Liability and Employers' Liability policies. General Liability is Primary/Non-Contributory per policy form wording. Waiver of Subrogation applies to Commercial General Liability, Automobile Liability and Workers Compensation. Professional Liability Deductible: $25,000 per claim, Retroactive Date: 09/01/1991. 30 Day Notice of Cancellation.

CERTIFICATE HOLDER

City of St. Helena
Public Works Project Manager
Attn: Tobias Barr
1572 Railroad Ave
St Helena CA 94574

CANCELLATION 30 Day NOC/10 Day for NonPay of Prem

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Policy # 57SBWBG9489

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED PROVISIONS - CALIFORNIA

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

A. It is agreed that paragraph **(2)** of subsections **6.d.** and **6.f.** of Section **C. - WHO IS AN INSURED** is replaced by the following:

(2) The insurance afforded by paragraph **(1)** above does not apply if your acts or omissions, or the acts or omissions of those acting on your behalf, that are alleged to have caused the "bodily injury", "property damage" or "personal and advertising injury", involve professional architectural, engineering or surveying services, including but not limited to:

(a) The preparing, approving, editing of or failure to prepare or approve, shop drawings, maps, opinions, reports, surveys, change orders, field orders, designs, drawings, specifications, warnings, recommendations, permit applications payment requests, manuals or instructions;

(b) Supervisory, inspection, quality control, architectural, engineering or surveying activities or services;

(c) Maintenance of job site safety, construction administration, construction contracting, construction management, computer consulting or design software development or programming service, or selection of a contractor or programming service;

(d) Monitoring, sampling, or testing service necessary to perform any of the services included in a. b. or c. above;

(e) Supervision, hiring, employment, training or monitoring of others who are performing any of the services included in a., b. or c. above.

The insurance afforded to such additional insured:

(a) Only applies to the extent permitted by law; and

(b) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. It is agreed that the following paragraphs are added to the end of subsections **1.** and **8.** of Section **F - OPTIONAL ADDITIONAL INSURED COVERAGES;** and it is agreed the following paragraphs replace section **b.** of subsection **9.** of Section **F. - OPTIONAL ADDITIONAL INSURED COVERAGES.** These paragraphs do not attach or amend the language of any of the other subsections of **Section F - OPTIONAL ADDITIONAL INSURED COVERAGES:**

The insurance afforded by this subsection does not apply if your acts or omissions, or the acts or omissions of those acting on your behalf, that are alleged to have caused the "bodily injury", "property damage" or "personal and advertising injury", involve professional architectural, engineering or surveying services, including but not limited to:

(a) The preparing, approving, editing of or failure to prepare or approve, shop drawings, maps, opinions, reports, surveys, change orders, field orders, designs, drawings, specifications, warnings, recommendations, permit applications payment requests, manuals or instructions;

(b) Supervisory, inspection, quality control, architectural, engineering or surveying activities or services;

(c) Maintenance of job site safety, construction administration, construction contracting, construction management, computer consulting or design software development or programming service, or selection of a contractor or programming service;

(d) Monitoring, sampling, or testing service necessary to perform any of the services included in a. b. or c. above;

(e) Supervision, hiring, employment, training or monitoring of others who are performing any of the services included in a., b. or c. above.

The insurance afforded to such additional insured:

(a) Only applies to the extent permitted by law; and

(b) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

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(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

(1) "Bodily injury" or "property damage" that occurred; or

(2) "Personal and advertising injury" arising out of an offense committed

before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person driving the equipment; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs **a.** through **f.** below are additional insureds when you have agreed, in a written

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section **F.** – Optional Additional Insured Coverages.

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a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

(a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs **(d)** or **(f)**; or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

(1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

(a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or

(b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

(1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In connection with your premises; or

(b) In the performance of your ongoing operations performed by you or on your behalf.

(2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

(1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

(a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

(b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

(1) Any other person or organization who is not an insured under Paragraphs **a.** through **e**. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In the performance of your ongoing operations;

(b) In connection with your premises owned by or rented to you; or

(c) In connection with "your work" and included within the "products-completed operations hazard", but only if

(i) The written contract or written agreement requires you to provide such coverage to such additional insured; and

(ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D.** – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E.** – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

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D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.

b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or

b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph **3.** above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

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E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

(1) How, when and where the "occurrence" or offense took place;

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

(1) You or any additional insured that is an individual;

(2) Any partner, if you or an additional insured is a partnership;

(3) Any manager, if you or an additional insured is a limited liability company;

(4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;

(5) Any trustee, if you or an additional insured is a trust; or

(6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This Paragraph **f.** applies separately to you and any additional insured.

3. Financial Responsibility Laws

a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.

b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

(1) The statements in the Declarations are accurate and complete;

(2) Those statements are based upon representations you made to us; and

(3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **A.** – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **A.** – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

(1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.

(2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:

(a) That is a partnership or joint venture,

(b) That is an "insured" under any other policy,

(c) That has exhausted its Limit of Insurance under any other policy, or

(d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:

(1) The agreement requires you to provide direct primary insurance for the lessor and

(2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

D. Additional Insured if Required by Contract

(1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

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The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

(1) During the policy period, and

(2) Subsequent to the execution of such written contract, and

(3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

(a) The limits of insurance specified in the written contract or written agreement; or

(b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM , SUIT OR LOSS – OF SECTION IV – BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

E. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(3)** and **(4)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

2. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

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If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

3. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

4. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

(1) $100,000;

(2) The actual cash value of the damaged or stolen property at the time of the "loss"; or

(3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of $1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of $50 per day and a maximum limit of $1,000.

6. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life Insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

7. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions **4.c.** and **4.d.** do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

(1) Permanently installed in or upon the covered "auto";

(2) Removable from a housing unit which is permanently installed in or upon the covered "auto";

(3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

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(4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

(1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;

(2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or

(3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or $250, whichever deductible is less.

9. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

10. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

(1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;

(2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT,CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership;

(3) A member, if you are a limited liability company; or

(4) An executive officer or insurance manager, if you are a corporation.

13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

14. HIRED AUTO - COVERAGE TERRITORY

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

15. WAIVER OF SUBROGATION

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

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We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

16. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

17. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of $2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,

b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is $10,000.

For the purposes of the coverage provision,

a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.

b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

19. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to $1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is $5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WORKERS' COMPENSATION BROAD FORM ENDORSEMENT EXTENDED OPTIONS

Policy Number: 57 WEG GG8117 **Endorsement Number:**
Effective Date: 09/01/20 Effective hour is the same as stated on the Information Page of the policy.
Named Insured and Address: COASTLAND CIVIL ENGINEERING INC
1400 NEOTOMAS AVE
SANTA ROSA CA 95405

Section I of this endorsement expands coverage provided under WC 00 00 00.
Section II of this endorsement provides additional coverage usually only provided by endorsement.
Section III of this endorsement is a Schedule of Covered States.
You may use the index to locate these coverage features quickly:

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SECTION I

PARTS ONE and TWO

1. WE WILL ALSO PAY

D. We Will Also Pay of **Part One** (WORKERS' COMPENSATION INSURANCE); and

E. We Will Also Pay of **Part Two** (EMPLOYERS' LIABILITY INSURANCE) is replaced by the following:

We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, **INCLUDING** loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this law; and
5. expenses we incur.

PART THREE

2. How This Insurance Applies

Paragraph **4.** of **A. How This Insurance Applies** of **Part 3** (Other States Insurance) is replaced by the following:

4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within **sixty** days.

PART SIX

3. Transfer Of Your Rights and Duties

C. Transfer Of Your Rights and Duties of **Part 6** (Conditions) is replaced by the following:

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within **sixty** days after your death, we will cover your legal representative as insured.

4. Liberalization

If we adopt a change in this form that would broaden the coverage of this form without extra charge, the broader coverage will apply to this policy. It will apply when the change becomes effective in your state.

SECTION II

VOLUNTARY COMPENSATION ANDEMPLOYERS' LIABILITY COVERAGE

5. Voluntary Compensation Insurance

A. How This Insurance Applies

This insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by any officer or employee not subject to the workers' compensation law of any state shown in Item 3.A. of the Information Page.
2. The bodily injury must arise out of and in the course of employment or incidental to work in a state shown in Item 3.A. of the Information Page.
3. The bodily injury must occur in the United States of America, its territories or possessions, or Canada, and may occur elsewhere if the employee is a United States or Canadian citizen, or otherwise legal resident, and legally employed, in the United States or Canada and temporarily away from those places.
4. Bodily injury by accident must occur during the policy period.
5. Bodily injury by disease must be caused or aggravated by the conditions of the

officer's or employee's employment. The officer's or employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay an amount equal to the benefits that would be required of you as if you and your employees were subject to the workers' compensation law of any state shown in Item 3.A. of the Information Page. We will pay those amounts to the persons who would be entitled to them under the law.

C. Exclusion

This insurance does not cover:

1. any obligation imposed by workers' compensation or occupational disease law or any similar law.
2. bodily injury intentionally caused or aggravated by you.
3. officers or employees who have elected not to be subject to the state workers' compensation law.
4. partners or sole proprietors not covered under the Standard Sole Proprietors, Partners, Officers and Others Coverage Endorsement.

D. Before We Pay

Before we pay benefits to the persons entitled to them, they must:

1. Release you and us, in writing, of all responsibility for the injury or death.
2. Transfer to us their right to recover from others who may be responsible for the injury or death.
3. Cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If the persons entitled to the benefits of this insurance fail to do those things, our duty to pay ends at once. If they claim damages from you or from us for the injury or death, our duty to pay ends at once.

E. Recovery From Others

If we make a recovery from others, we will keep an amount equal to our expenses of recovery and the benefits we paid. We will pay the balance to the persons entitled to it.

If the persons entitled to the benefits of this insurance make a recovery from others, they must reimburse us for the benefits we paid them.

F. Employers' Liability Insurance

Part Two (Employers' Liability Insurance) applies to bodily injury covered by this endorsement as though the State of Employment was shown in Item 3.A. of the Information Page.

This provision 5. does not apply in New Jersey or Wisconsin.

EMPLOYERS' LIABILITY STOP GAP COVERAGE

6. Employers' Liability Stop Gap Coverage

A. This coverage only applies in Montana, North Dakota, Ohio, Washington, West Virginia and Wyoming.

B. Part One (Workers' Compensation Insurance) does not apply to work in states shown in Paragraph A above.

C. Part Two (Employers' Liability Insurance) applies in the states, shown in Paragraph A., as though they were shown in Item 3.A. of the Information Page.

D. Part Two, Section C. **Exclusions** is changed by adding these exclusions.

This insurance does not cover;

5. bodily injury intentionally caused or aggravated by you or in Ohio bodily injury resulting from an act which is determined by an Ohio court of law to have been committed by you with the belief than an injury is substantially certain to occur. However, the cost of defending such claims or suits in Ohio is covered.

13. bodily injury sustained by any member of the flying crew of any aircraft.

14. any claim for bodily injury with respect to which you are deprived of any defense or defenses or are otherwise subject to penalty because of default in premium under the provisions of the workers' compensation law or laws of a state shown in Paragraph A.

E. This insurance applies to damages for which you are liable under West Virginia Code Annot. S 23-4-2.

EXTENDED OPTIONS

1. Employers' Liability Insurance

Item 3.B. of the **Information Page** is replaced by the following:

B. Employers' Liability Insurance:

1. **Part Two** of the policy applies to work in each state listed in Item 3.A.

   The Limits of Liability under Part Two are the higher of:

Bodily Injury by Accident	**$500,000**	**Each Accident**
Bodily Injury by Disease	**$500,000**	**Policy Limit**
Bodily Injury by Disease	**$500,000**	**Each Employee**

OR

2. The amount shown in the Information Page.

This provision 1 of **EXTENDED OPTIONS** does not apply in New York because the Limits Of Our Liability are unlimited.

In this provision the limits are changed from **$500,000** to **$1,000,000** in California.

2. Unintentional Failure to Disclose Hazards

If you unintentionally should fail to disclose all existing hazards at the inception date of your policy, we shall not deny coverage under this policy because of such failure.

3. Waiver of Our Right To Recover From Others

A. We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against any person or organization for whom you perform work under a written contract that requires you to obtain this agreement from us.

   This agreement shall not operate directly or indirectly to benefit anyone not named in the agreement.

B. This provision 3. does not apply in the states of Pennsylvania and Utah.

4. Foreign Voluntary Compensation and Employers' Liability Reimbursement

A. How This Reimbursement Applies

This reimbursement provision applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by an officer or employee.
2. The bodily injury must occur in the course of employment necessary or incidental to work in a country not listed in Exclusion C.1. of this provision.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The officer or employee's last exposure to those conditions of your employment must occur during the policy period.

B. We Will Reimburse

We will reimburse you for all amounts paid by you whether such amounts are:

1. voluntary payments for the benefits that would be required of you if you and your officers or employees were subject to any workers' compensation law of the state of hire of the individual employee.
2. sums to which Part Two (Employers' Liability Insurance) would apply if the Country of Employment were shown in Item 3.A. of the Information Page.

C. Exclusions

This insurance does not cover:

1. any occurrences in the United States, Canada, and any country or jurisdiction which is the subject of trade or economic sanctions imposed by the laws or regulations of the United States of America in effect as of the inception date of this policy.
2. any obligation imposed by a workers' compensation or occupational disease law, or similar law.
3. bodily injury intentionally caused or aggravated by you.

4. liability for any consequence, whether direct or indirect, of war, invasion, act of Foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power. No endorsement now or subsequently attached to this policy shall be construed as overriding or waiving this limitation unless specific reference is made thereto.

D. Before We Pay

Before we reimburse you for the benefits to the persons entitled to them, you must have them:

1. release you and us, in writing, of all responsibility for the injury or death,
2. transfer to us their right to recover from others who may be responsible for their injury or death,
3. cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If the persons entitled to the benefits paid fail to do these things, our duty to reimburse ends at once. If they claim damages from us for the injury or death, our duty to reimburse ends at once.

E. Recovery From Others

If we make a recovery from others, we will keep an amount equal to our expenses of recovery and the benefits we reimbursed. We will pay the balance to the persons entitled to it. If persons entitled to the benefits make a recovery from others, they must repay us for the amounts that we have reimbursed you.

F. Reimbursement for Actual Loss Sustained

This endorsement provides only for reimbursement for the loss you actually sustain. In order for you to recover loss or expenses under this reimbursement you must:

1. actually sustain and pay the loss or expense in money after trial, or
2. secure our consent for the payment of the loss or expense.

G. Repatriation

Our reimbursement includes the additional expenses of repatriation to the United States of America necessarily incurred as a direct result of bodily injury.

Our reimbursement shall be limited as follows:

1. to the amount by which such expenses exceed the normal cost of returning the officer or employee if in good health, or
2. in the event of death, to the amount by which such expenses exceed the normal cost of returning the officer or employee if alive and in good health.

In no event shall our reimbursement exceed the bodily injury by accident limit shown in Item 3.B. of the Information Page as respects any one such officer or employee whether dead or alive.

H. Endemic Disease

The word “disease” includes any endemic diseases.

The coverage applies as if endemic diseases were included in the provisions of the workers’ compensation law.

5. Longshore and Harbor Workers’ Compensation Act Coverage

General Section C. Workers’ Compensation Law is replaced by the following:

C. Workers’ Compensation Law

Workers’ Compensation Law means the workers or workers’ compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page and the Longshore and Harbor Workers’ Compensation Act (33 USC Sections 901-950). It includes any amendments to those laws that are in effect during the policy period. It does not include any other federal workers or workers’ compensation law, other federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

Part Two (Employers’ Liability Insurance), C. Exclusions, exclusion 8, does not apply to work subject to the Longshore and Harbor Workers’ Compensation Act.

This coverage does not apply to work subject to the Defense Base Act, the Outer Continental Shelf Lands Act, or the Nonappropriated Fund Instrumentalities Act.

SECTION III

1. SCHEDULE OF COVERED STATES

A. This endorsement only applies in the states listed in this Schedule of Covered States.

B. If a state, shown in Item 3.A. of the Information Page, approves this endorsement after the effective date of this policy, this endorsement will apply to this policy. The coverage will apply in the new state on the effective date of the state approval

C. Schedule of Covered States:

CA

Countersigned by _____

Authorized Representative

Report to the City Council
Regular City Council - 24 Aug 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and proposed adoption of a resolution authorizing the City Manager or designee to execute Amendment No. 4 to the City of Napa Water Supply Agreement (City of Napa Agreement No. 9381; and City of St Helena Agreement No. 2006-131) allowing for an additional 114 AF of Undelivered Water over the next five fiscal years.**

CEQA Determination: **Not a CEQA project**

Prepared By: Martin Beltran, Management Analyst

Reviewed By: Mark Rincon-Ibarra, Public Works Director and City Engineer

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

In 2006, the City of Napa and City of St. Helena executed a water supply agreement (Resolution No. 2006-131) to deliver a minimum of 200-acre-feet annually (AFA) and up to 400 AFA of potable water from Napa to St. Helena for the purpose of supplementing dry-year supplies and to provide below normal-year reserves for St. Helena. Water supplies to support the agreement included a permanent transfer of 1,000 acre-feet (AF) of State Water Project water entitlements from St. Helena to Napa and, per the agreement, St. Helena's ability to purchase more than the 200 AF is tied to the availability of State Water Project entitlements to City of Napa.

In 2005, the 2050 Napa Valley Water Resources Study (2050 Study) was completed and St. Helena was projected to experience a water supply deficit of nearly 400 AFA in multiple dry-years (six years of below normal rainfall) through the year 2020. The 2006 water supply agreement between Napa and St. Helena provided for a minimum delivery of 200 AFA to eliminate half of the dry-year deficit.

In 2009, the City Council approved Amendment No. 1 to the Napa Water agreement in which the City of St. Helena added an additional 200 AFA minimum delivery and expanded the season of delivery. The additional water delivery was significant because the minimum 400 acre-feet represented 17-percent and the maximum 800 acre-feet represented 34-percent of the total storage in Bell Canyon Reservoir. The year-round season of delivery was significant as it provided for water delivery during peak demand summer months and sufficient time for St. Helena pumps to move the volume of water.

On January 12, 2011, the City Council approved Amendment No. 2 to the Napa Water agreement to allow St. Helena to take beneficial use of unused water from 2010 water year. City of St. Helena performed major upgrades to its pipeline infrastructure and as a result St. Helena was not able to receive delivery of 511 AF of the 600 AF water made available. The City of Napa agreed to make the unused 511 AF of water available over the course of the next three years (2011, 2012, and 2013).

On December 15, 2011, Napa and St. Helena entered into Amendment No. 3 to the 2006 Agreement, allowing St. Helena to increase the minimum annual delivery to 600 AFA with no change to the optional delivery up to a total of 800 AFA.

DISCUSSION

According to the metered water record, the City of St. Helena diverted only 486 acre-feet (AF) of its allotted 600 AF for Fiscal Year 2020-21. The diversion shortfall was due to St. Helena operational challenges to increase flow coming from St. Helena's Rutherford Pump Station after Napa switched its water source from Lake Hennessey to the Jamison Canyon Water Treatment Plant in November 2020.

Given the current water shortage, the City of St. Helena desires to ensure that it receives the full benefit of the allocation it receives through the Water Supply Agreement with the City of Napa, and submitted a written request to receive the shortfall from its full allocation of 600 AF from FY 2020-21 over the next three to five fiscal years as to not overly burden the City of Napa's water operations.

City staff has worked with City of Napa staff to prepare a proposed amendment to make available the unused 114 AF of water, characterized by Napa as 'Undelivered Water,' from FY2020-21 available to the City of St. Helena over the course of the next five fiscal years 21-22, 22-23, 23-24, 24-25, and 25-26. Under the proposed agreement, no more than 40 AF of that water shall be made available in any one fiscal year, and no more than 114 AF of water shall be made available in all five fiscal years combined.

The recommended amendment will amend the agreement to allow for the delivery and receipt of the 'Undelivered Water' from the City of Napa with the following conditions: The City of Napa has agreed that City of St. Helena shall make a written request to the City of Napa identifying the amount of 'Undelivered Water' requested for each fiscal year pursuant to the following schedule:

1. By January 1, 2022 for FY 2021-22 water,
2. By April 1, 2022 for FY 2022-23 water,
3. By April 1, 2023 for FY 2023-24 water,
4. By April 1, 2024 for FY 2024-25 water, and
5. By April 1, 2025 for FY 2025-26 water.

FISCAL IMPACT

The amended agreement also stipulates the City of St. Helena will pay the City of Napa the water rate in effect at the time of receipt of 'Undelivered Water'; it is furthered agreed that at the end of FY 2026, to the extent that St. Helena has not submitted a timely request to Napa or failed to take delivery of all or any portion of the 'Undelivered Water', Napa will bill St. Helena for the remaining balance of the 114 AF of 'Undelivered Water, and St. Helena will pay Napa the water rate in effect on June 30, 2026.

RECOMMENDED ACTION

Adopt the attached resolution authorizing City Manager or designee to execute Amendment No. 4 to the City of Napa Water Supply Agreement (City of Napa Agreement No. 9381; and City of St Helena Agreement No. 2006-131) allowing for an additional 114 AF of Undelivered Water over the next five fiscal years in substantially the form included with the agenda for a regular meeting at which this Resolution was approved, and submit to minor edits as approved by the City Manager in consultation with the City Attorney.

ATTACHMENTS

Attachment 1: Resolution
Attachment 2: Amendment No. 4

CITY OF ST. HELENA

RESOLUTION NO. 2021-

Resolution authorizing the City Manager or designee to execute Amendment No. 4 to the City of Napa Water Supply Agreement (City of Napa Agreement No. 9381; and City of St Helena Agreement No. 2006-131) allowing for an additional 114 AF of Undelivered Water over the next five fiscal years

RECITALS

A. Resolution 2006-131 adopted Water Supply Agreement between the City of Napa and the City of St. Helena is September 2006 to provide a minimum annual delivery of 200 acre-feet of water to St. Helena; and

B. Resolution 2009-40 approved Amendment No. 1 to the Water Supply agreement between the City of Napa and the City St. Helena where the City requested an additional minimum annual delivery of 200 acre-feet of water in order to meet dry year demand deficits as specified in the 2050 Study; and

C. Resolution 2010-23 approved Amendment No. 2 to the Water Supply agreement between the City of Napa and the City St. Helena where the City requested that the City of Napa make available the 511 AF of water that was not delivered in water year 2010; and

D. Resolution 2011-82 23 approved Amendment No. 3 to the Water Supply agreement between the City of Napa and the City St. Helena where the City desired additional reliability and requested a third amendment to increase the minimum annual delivery to 600 AFA with no change to the optional delivery up to a total of 800 AFA.; and

E. According to the metered record, the City of St. Helena diverted only 486 acre-feet (AF) of its allotted 600 AF for Fiscal Year 2020-21; and

F. St. Helena did not pump sufficient water from Napa between December 2020 and February 2021 due to operational issues resulting in St. Helena receiving only 486 AF of the 600 AF water made available by Napa for fiscal year 2020-21; and

G. St. Helena has requested Napa make available to St. Helena for beneficial use the 114 AF of water that was undelivered during FY 2021; and

H. Napa water operations have sufficient capacity to make available to St. Helena up to 40 AF per fiscal year of St. Helena's fiscal year 2020-21 undelivered water (under the limited terms of this Amendment No. 4), due to the status of local surface water reservoirs and available State Water Project (SWP) supplies; and

I. The City of Napa and the City of St. Helena have mutually agreed to the terms of Amendment No. 4.

RESOLUTION

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

1. Authorizes the City Manager or designee to execute Amendment No. 4 to the City of Napa Water Supply Agreement (City of Napa Agreement No. 9381; and City of St Helena Agreement No. 2006-131) allowing for an additional 114 AF of Undelivered Water over the next five fiscal years in substantially the form included with the agenda for a regular meeting at which this Resolution was approved, and submit to minor edits as approved by the City Manager in consultation with the City Attorney.

Approved at a Regular Meeting of the St. Helena City Council on August 24, 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

AMENDMENT NO. 4 TO
WATER SUPPLY AGREEMENT BETWEEN
CITY OF NAPA AND CITY OF ST HELENA
(City of Napa Agreement No. 9381
City of St Helena Agreement No. 2006-131)

THIS AMENDMENT NO. 4 TO WATER SUPPLY AGREEMENT BETWEEN CITY OF NAPA AND CITY OF ST HELENA (City of Napa Agreement No. 9381; and City of St Helena Agreement No. 2006-131), hereinafter referred to as "Amendment No. 4"by and between the City of Napa, a California charter city (hereinafter referred to as "Napa") and the City of St. Helena, a municipal corporation (hereinafter referred to as "St. Helena") is effective as of the effective date identified on the signature page.

RECITALS

A. Napa and St. Helena entered into the Water Supply Agreement (City of Napa Agreement No. 9381; and City of St. Helena Agreement No. 2006-131) on September 12, 2006 ("2006 Agreement") by which Napa agreed to provide water to St. Helena with a minimum delivery amount of 200 acre-feet annually ("AFA")and a maximum delivery (subject to availability) of 600 AFA.

B. Napa and St. Helena entered into Amendment No. 1 to 2006 Agreement on April 17, 2009 ("Amendment No. 1") by which Napa agreed to provide water to St. Helena with an increase in the minimum delivery amount from 200 AFA to 400 AFA, and an increase in the maximum delivery amount (subject to availability) from 600 AFA to 800 AFA.

C. Napa and St. Helena entered into Amendment No. 2 to 2006 Agreement on January 12, 2011 ("Amendment No. 2"), to allow St. Helena to take beneficial use of unused water from fiscal year 2009-10 over the succeeding three fiscal years.

D. Napa and St. Helena entered into Amendment No. 3 to 2006 Agreement on December 15, 2011 ("Amendment No. 3") by which Napa agreed to provide water to St. Helena with an increase in the minimum delivery (Base Supply) amount from 400 AFA to 600 AFA, and maintaining the same maximum delivery amount (subject to availability) of 800 AFA.

E. The 2006 Agreement as amended by Amendment No. 1, Amendment No. 2, and Amendment No. 3 shall be referred to herein as the "Agreement."

F. As set forth in Amendment No. 3, St. Helena is obligated to pay Napa for the Base Supply of 600 AFA of water, whether or not St. Helena is able to make beneficial use of the total quantity of such water.

G. In the period of July 1, 2020 to June 30, 2021 ("FY 2020-21"), although Napa made 600 acre-feet ("AF") of water available for delivery to St. Helena, St. Helena did not pump sufficient water from Napa during the

months of December thru February due to operational issues on St. Helena system resulting in St. Helena taking beneficial use of only 486 AF of water, and resulting in unused water in the amount of 114 AF.

H. As set forth in Amendment No. 3, in June of each year, Napa shall bill St. Helena for the difference between metered usage and the 600 AF to which St. Helena is of water entitled under the Agreement.

I. In lieu of being billed for the 114 AF of unused water, St. Helena has requested Napa make available the 114 AF of water in future years under the terms of this Amendment No. 4, in addition to the water otherwise provided by Napa to St. Helena under the Agreement.

NOW THEREFORE, the parties mutually agree as follows:

The Agreement is hereby amended by this Amendment No. 4. This Amendment No. 4 incorporates the Agreement by reference, except and only to the extent that any terms or conditions of the Agreement are specifically modified by this Amendment No. 4. All terms and conditions in the Agreement that are not specifically modified by this Amendment No. 4 remain in full force and effect.

1. Napa hereby characterizes the 114 AF of water made available for delivery by Napa but not taken for beneficial use by St. Helena in FY 2020-21as “Unused Water”. Napa will make the Unused Water available to St. Helena under the terms of this Amendment No. 4 over the course of five fiscal years commencing with FY2021-22 (from July 1, 2021 to June 30, 2022). No more than 40 AF of Unused Water shall be made available in any one fiscal year. No more than 114 AF of Unused Water shall be made available in all five fiscal years combined.

2. St Helena shall make a written request to Napa identifying the amount of Unused Water requested for each fiscal year pursuant to the following schedule: (a) by October 1, 2021 for fiscal year 2021-22; and (b) by April 1 prior to beginning of each of the subsequent fiscal years. Compliance with these timing requirements is essential so that Napa can incorporate the request into its annual water supply planning.

3. Napa will not bill St. Helena for the 114 AF of Unused Water from FY2020-21.

4. St. Helena will pay Napa the water rate in effect at the time Unused Water is delivered to St. Helena.

5. The Unused Water is in addition to the quantity of water to be delivered by Napa to St. Helena (for Base Supply and Optional Supply) in accordance with the Agreement.

6. On July 1, 2026, to the extent that St. Helena has not taken delivery of all or any portion of the Unused Water, Napa will bill St. Helena for the

remaining balance of the 114 AF of Unused Water, and St. Helena will pay Napa the water rate in effect on June 30, 2026.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No.4 to be effective on the Effective Date set forth below.

CITY OF NAPA, a California Charter City:

_____
Phil Brun, Utilities Director

ATTEST:

_____
Tiffany Carranza, City Clerk

Date: _____
("Effective Date")

COUNTERSIGNED:

_____
Joy Riesenberg, City Auditor

APPROVED AS TO FORM:

_____
Michael W. Barrett, City Attorney

CITY OF ST. HELENA, a Municipal Corporation**:**

_____
Mark T. Prestwich, City Manager

ATTEST:

_____
City Clerk

COUNTERSIGNED:

_____
April Mitts, Administrative Services Director

APPROVED AS TO FORM:

_____
Ethan Walsh, City Attorney

Report to the City Council
Regular City Council - 24 Aug 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration of a Resolution authorizing: (1) Amendment #3 to STH Contract: FY2021-042 with Raftelis for continued support in the implementation of, and updates to, the City's water allocations as well as future water shortage policy considerations during declared water shortage emergencies for an additional $89,655 for a total not-to-exceed amount of $124,655; (2) Amendment #1 to STH Contract: FY2021-074 with Raftelis for continued Drought Outreach for an additional $19,980 for a total not-to-exceed amount of $46,960; and (3) a budget increase of $134,635 to 561-5000-2130 for the costs of these amendments and costs associated with the Operational Technical Services agreement and use of water fund balance.**

CEQA Determination: **Not a CEQA project**

Prepared By: April Mitts, Administrative Services Director

Reviewed By: Mark T. Prestwich, City Manager

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

In accordance with the St. Helena Municipal Code, the City Council declared a water emergency on June 23, 2020 which moved the City into Phase I Water Regulations. On October 13, 2020 emergency water conditions continued and City Council declared Phase II Water Restrictions.

STH Contract: FY2021-042

On December 10, 2020, the City entered into STH Contract: FY 2021-042 with Raftelis Financial Consultants, Inc. (Raftelis) to provide recommended Water Emergency Policies, including penalties, during the declared water shortage emergency. The scope of services includes the following:

1. Task 1 - Data Review and Due Diligence
2. Task 2 - Water Shortage Penalty Development
3. Task 3 - Shortage Allocation Analysis
4. Task 4 - Water Shortage Penalty Policy Memorandum

On March 23, 2021, Raftelis presented to City Council their recommendation for a penalty structure for the City of St. Helena. At this meeting, the City council directed staff to hold a public hearing on April 13, 2021 to adopt the recommended penalty structure. On March 30, 2021, a notice of public hearing was circulated.

On April 12, 2021, the City executed Amendment #1 to STH Contract: FY 2021-042 to continue to assist the City through the current water shortage emergency on an as-needed basis.

On April 13, 2021, the recommended penalty structure was brought before the City Council for consideration. City Council provided direction to staff to continue this item to the next City Council meeting (April 27, 2021) to allow for the development of an urgency ordinance addressing the allocation for non-residential customers to be more in line with essential seasonal use.

On April 27, 2021, the City Council adopted an urgency ordinance adjusting water allocations for non-residential customers and adopted the recommended penalty structure.

On June 8, 2021, the City Council approved Amendment #2 to STH Contract: FY2021-042 for an additional $10,000 for a not-to-exceed amount of $35,000. Amendment #2 allowed Raftelis to continue assisting the City each month with water customer allocation updates as well as assist in future water shortage policy recommendations.

STH Contract: FY 2021-074
On April 9, 2021, the City executed STH Contract: FY2021-074 with Raftelis to provide drought outreach and outreach support services in an amount not-to-exceed $24,980.

DISCUSSION
The City has continued utilizing Raftelis during the current water emergency and currently has four separate Professional Services Agreements in place with Raftelis.

Agreement Number	Description	Amount
FY2021-042 FY2021-042-01A FY2021-042-02A	Water Emergency policies, including penalties, during declared water shortage emergencies	35,000
FY2021-074	Drought outreach/messaging	24,980

FY2021-082	Data Integration - monthly penalty calculations and data integration to City's financial software	25,000
FY2021-093	Information materials - procurement of outreach informational materials	24,975

STH Contract: FY2021-042

Staff recommends Amendment #3 to STH Contract: FY2021-042 with Raftelis for an additional $89,655 for a total not-to-exceed amount of $124,655. The additional $89,655 is broken down as follows:

- $69,150 - Continuing Water Emergency Support
- $6,000 - Irrigation Customer Allocations
- $7,470 - Penalty Refund Program Design
- $7,035 - Public Meetings (if necessary)

The majority of the costs for Amendment #3 is for continued water emergency support. Based on the initial implementation of water allocations and penalties in Spring and Summer 2021, both the City and Raftelis have a better estimate of the routine monthly effort required each month for the assessment of penalties, which is approximately 70 hours of work each month by Raftelis. This does not include City staff time designated for the implementation of the penalties.

The proposal provided by Raftelis is based on the estimated hours and level of effort through the end of calendar year 2021 - five months of service.

STH Contract: FY2021-074

Raftelis has been providing drought outreach support for the City since April 2021. This outreach includes material content, social media postings, City of St. Helena e-news, and various outreach materials including posters, flyers, billing inserts, and bookmarks.

As the water emergency continues, staff recommends Amendment #1 to STH Contract: FY2021-074 with Raftelis for an additional $19,980 for a total not-to-exceed amount of $46,960. It is estimated this will enable continued outreach support from Raftelis, at the current activity level, through mid-October 2021.

Other Water Emergency Related Items

Similar to the additional expense incurred with Raftelis, the City continues to need additional support due to the ongoing water emergency.

Operational Technical Services (OTS)

Due to an increase in requests for detailed meter reads, the City is in the process of executing a Professional Services Agreement with Operational Technical Services (OTS) for an initial amount of $25,000 for detailed meter read assistance in the Public Works Department. A detailed meter read consists of a staff member physically going to the

property address, accessing the meter, then pulling a meter report which will show use by the day and by the hour. Once the detailed meter read is done, the information is brought back to the Finance Division. The additional assistance is necessary due to staffing limitations. Requests for detailed meter reads have more than doubled from the previous year. The service requests include both detailed meter reads as well as verification the meter is functioning property.

4Leaf
On May 4, 2021, the City executed STH Contract: FY2021-083 with 4Leaf for $24,890 to provide water regulation outreach, education, code enforcement, and verification of property/landscape areas. 4Leaf has provided services three days per week. This contract has been very beneficial to the City during the water emergency and it is recommended the City extend the agreement with 4Leaf for continued support through October 31, 2021. The City is currently working with 4Leaf on the contract amendment which will be brought to City Council on September 14, 2021 for approval and budget adjustment.

Star Staffing
On May 11, 2021, the City executed STH Contract: FY2021-081 with Star Staffing for $25,000 to provide temporary assistance with significantly increased telephone and emails to the Finance Division during the water emergency. The agreement provides for 80 hours per week of assistance with customer services, outreach at the City of St. Helena Farmer's Market, and temporary support to finance staff. This contract has also been beneficial to the City during the water emergency and it is recommended the City extend the agreement with Star Staffing for continued support through October 31, 2021. The City is currently working with Star Staffing on the contract amendment which will be brought to City Council on September 14, 2021 for approval and budget adjustment.

Staff Recommendation
Staff recommends City Council authorize: (1) Amendment #3 to STH Contract: FY2021-042 with Raftelis for continued support in the implementation of, and updates to, the City's water allocations as well as future water shortage policy consideration during declared water shortage emergencies for an additional $89,655 for a total not-to-exceed amount of $124,655; (2) Amendment #1 to STH Contract: FY2021-074 with Raftelis for continued Drought Outreach for an additional $19,980 for a total not-to-exceed amount of $46,960; and (3) a budget increase of $134,635 to 561-5000-2130 for the costs of these amendments and costs associated with the Operational Technical Services agreement and use of water fund balance.

Amendments to the 4Leaf and Star Staffing agreements and budget adjustments will be brought to City Council at the meeting of September 14, 2021.

FISCAL IMPACT
The overall fiscal impact to the Water Fund is an increase of $134,635 from the current fund balance. The increase if for: (1) Amendment #3 to STH Contract: FY2021-042 for

an additional $89,655, (2) Amendment #1 to STH Contract: FY2021-074 for an additional $19,980, and (3) an additional $25,000 to cover additional water emergency costs for the OTS agreement.

Use of fund balance in the amount of $134,635 will leave an estimated fund balance in the Water Operations Fund (561) of $4,541,600, or 70%.

RECOMMENDED ACTION
Staff recommends City Council approve the attached resolution.

ATTACHMENTS
STH Contract FY2021-042-03A Raftelis Water Emergency On-Call Services
STH Contract FY2021-074-01A Raftelis Outreach
Resolution Raftelis Amendment and Budget Adjustment

AMENDMENT #3
TO PROFESSIONAL SERVICES AGREEMENT WITH RAFTELIS FINANCIAL CONSULTANTS, INC; STH CONTRACT NO: 2021-042 FOR CONTINUED SUPPORT IN THE IMPLEMENTATION OF, AND UPDATES TO, THE CITY'S WATER ALLOCATIONS AS WELL AS FUTURE WATER SHORTAGE POLICY CONSIDERATIONS DURING DECLARED WATER SHORTAGE EMERGENCIES FOR AN ADDITIONAL $89,655 FOR A TOTAL AMOUNT NOT-TO-EXCEED $124,655.

This Third Amendment to Professional Services Agreement with Raftelis Financial Consultants, Inc. STH Contract: FY 2021-042 dated December 10, 2020 ("Agreement") is made as of this ____ day of _____, 2021 by and between the City of St. Helena and Raftelis Financial Services, Inc.

RECITALS

A. On December 10, 2020, The City of St. Helena and Raftelis Financial Consultants, Inc. (Raftelis) entered into an agreement to develop water emergency polcies, including penalties, during declared water shortage emergencies; and

B. On April 12, 2021, The City of St. Helena and Raftelis entered into Amendment #1 continuing to utilizing Raftelis to assist the City through the current water shortage emergency on an as-needed basis for an additional $14,095 for a total not-to-exceed amount of $25,000 and

C. On June 8, 2021, The City of St. Helena and Raftelis entered into Amendment #2 to continue utilizing Raftelis to assist the City through the current water shortage emergency on an as-needed basis for an additional $10,000 for a total not-to-exceed amount of $35,000; and

D. The City of St. Helena desired to continue utilizing Raftelis for on-call services for water shortage emergency assistance; and

E. Expected services is for continued support in the implementation of, and updates to, the City's water allocations as well as future water shortage policy considerations during the ongoing emergency; and

F. The City of St. Helena and Raftelis Financial Consultants, Inc. now desire to amend the Agreement for an additional $89,655 for a total amount not-to-exceed $124,655.

AGREEMENT

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

1. Section 4.A. Compensation, is amended to read as follows:

   "Total compensation shall not exceed $124,655…"

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:_____

Title: _____

CITY OF ST. HELENA
a Municipal Corporation

By:_____

Print Name: Mark T. Prestwich

Title: City Manager

APPROVED AS TO FORM:

_____
Ethan Walsh, City Attorney

ATTEST:

_____
City Clerk

RAFTELIS

445 S. Figueroa Street
Suite 1925
Los Angeles, CA 90071

Phone 213.262.9300
Fax 213.262.9303

www.raftelis.com

August 13, 2021

April Mitts
Finance Director
City of St. Helena
1572 Railroad Ave
St. Helena CA 94574

Subject: **Water Shortage Emergency Services**

Dear April Mitts:

This proposal is to continue supporting the implementation of, and updates to, the City's water allocations; as well as future water shortage policy considerations during the ongoing emergency. The proposal has four main tasks. 1. Continuing (monthly) water emergency support: based on the initial implementation of water allocations and penalties in Spring and Summer of 2021 we have a good estimate of the level of routine monthly effort required. That estimate is reflected in the first task. 2. The creation of allocations for dedicated landscape irrigation customer, consistent with the requirements of the City's Municipal Code. 3. Data services required for the development, integration, and implementation of a penalty forgiveness program. 4. Virtual attendance and participation at five public meetings.

Our proposal is based on the estimated hours and level of effort through the end of calendar year 2021 (five months of service). Detailed hours by Raftelis task and team member are detailed in the attached schedule of fees. Raftelis will invoice the City monthly for time and materials.

We thank you for the opportunity to assist the City. If you have any questions or require additional information, please contact me at 760 519 8520.

Sincerely,

RAFTELIS FINANCIAL CONSULTANTS, INC.

Kevin Kostiuk
Manager

Fee Proposal

Tasks	Staff Meetings (Virtual)	Public Meetings (Virtual)	HOURS					Total Fees & Expenses
			KK	JJ	JC	Admin	Total	
1. Continung Water Emergency Support	5		60	200	80	5	345	**$69,150**
2. Irrigation Customer Allocations	2		6	24	2	0	32	**$6,000**
3. Penalty Refund Program Design	2		4	2	24	0	30	**$7,470**
4. Public Meetings		5	25	4	0	0	29	**$7,035**
Total Estimated Meetings / Hours	**9**	**5**	**95**	**230**	**106**	**5**	**436**	
Hourly Billing Rate			**$245**	**$155**	**$245**	**$80**		
Total Professional Fees			**$23,275**	**$35,650**	**$25,970**	**$400**	**$85,295**	

KK - Kevin Kostiuk, Manager
JJ - Jonathan Jordan, Lead Analyst
JC - Jesse Charette, Data Services
Admin - Raftelis Administration

Fees	**$85,295**
Total Expenses	**$4,360**
Total Fees & Expenses	**$89,655**

Water Shortage Emergency Services
City of St. Helena

* Technology/Communications Charge – this is a $10 hourly fee charged monthly for each hour worked on the project to recover telephone, facsimile, computer, postage/overnight delivery, conference calls, electronic/computer webinars, photocopies, etc.

AMENDMENT #1
TO PROFESSIONAL SERVICES AGREEMENT WITH RAFTELIS FINANCIAL CONSULTANTS, INC; STH CONTRACT NO: 2021-074 FOR CONTINUED OUTREACH AND OUTREACH SUPPORT DURING DECLARED WATER SHORTAGE EMERGENCIES FOR AN ADDITIONAL $19,980 FOR A TOTAL AMOUNT NOT-TO-EXCEED $44,960.

This First Amendment to Professional Services Agreement with Raftelis Financial Consultants, Inc. STH Contract: FY 2021-074 dated April 9, 2021, ("Agreement") is made as of this ____ day of _____, 2021 by and between the City of St. Helena and Raftelis Financial Services, Inc.

RECITALS

A. On April 9, 2021, The City of St. Helena and Raftelis Financial Consultants, Inc entered into an agreement to develop outreach materials and outreach support during the declared water shortage emergencies; and

B. The City of St. Helena desires to continue utiziling Raftelis Financial Consultants, Inc. to continue to assist the City with outreach; and

C. Expected services include continuing with drought outreach and outreach support; and

D. The City of St. Helena and Raftelis Financial Consultants, Inc. now desire to amend the Agreement for an additional $19,980 for a total amount not-to-exceed $46,960.

AGREEMENT

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

1. Section 4.A. Compensation, is amended to read as follows:

   "Total annual compensation shall not exceed $46,960…"

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:_____

Title: _____

CITY OF ST. HELENA
a Municipal Corporation

By:_____

Print Name: Mark T. Prestwich

Title: City Manager

APPROVED AS TO FORM:

_____
Ethan Walsh, City Attorney

ATTEST:

_____
City Clerk

RAFTELIS

August 17, 2021

City of St. Helena
April Mitts, Administrative Services Director
1572 Railroad Avenue
St. Helena, CA 94574

Subject: Ongoing Drought Outreach and Outreach Support

Dear April:

Per our recent conversation, Raftelis requests a contract amendment with the City of St. Helena to enable continued communications services in support of Drought Outreach.

PROPOSED FEE
We propose the following:

- All work performed under this agreement will be at the direction of the City St. Helena.
- This engagement will be based on actual time and materials spent the project.
- Total fees and are estimated at $19,980 and we expect this to enable our continued support at current activity levels through mid-October 2021.
- Direct costs such as printing, mailing, advertising, etc., are not included in the figure above, and will be billed to the City with no markup per separate agreement.
- Any travel expenses will be submitted to the City for approval beforehand and will be billed to the City with no markup.

HOURLY RATES

- Vice President and Senior Strategist: $310
- Senior Consultant: $215
- Project Manager: $215
- Creative Director: $175
- Graphic Artist: $125
- Financial Manager: $245

If the proposed project scope is acceptable to City of St. Helena, please sign in the space provided below and return a copy for our records. Should you have any questions or need additional documentation, please do not hesitate to contact me at 303-305-1141.

Sincerely,

Matt Wittern, APR
Senior Consultant

cc: Kevin Kostiuk, Financial Manager

We accept the terms of this engagement letter:

_____	_____	_____
Signature	Name of authorized agent	Date

445 S. Figueroa Street, Suite 1925
Los Angeles, CA 90071
www.raftelis.com

CITY OF ST. HELENA

RESOLUTION NO. 2021-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA AUTHORIZING: (1) AMENDMENT #3 TO STH CONTRACT: FY2021-042 WITH RAFTELIS FOR CONTINUED SUPPORT IN THE IMPLEMENTATION OF, AND UPDATES TO, THE CITY'S WATER ALLOCATIONS AS WELL AS FUTURE WATER SHORTAGE POLICY CONSIDERATION DURING DECLARED WATER EMEGENCIES FOR AN ADDITIONAL $89,655 FOR A TOTAL NOT-TO-EXCEED AMOUNT OF $124,655; (2) AMENDMENT #1 TO STH CONTRACT: FY2021-074 WITH RAFTELIS FOR CONTINUED DROUGHT OUTREACH FOR AN ADDITIONAL $19,980 FOR A TOTAL NOT-TO-EXCEED AMOUNT OF $46,960; AND (3) A BUDGET INCREASE OF $134,635 TO 561-5000-2130 FOR THE COSTS OF THESE AMENDMENTS AND COSTS ASSOCIATED WITH THE OPERATIONAL TECHNICAL SERVICES AGREEMENT AND USE OF WATER FUND BALANCE.

WHEREAS, In accordance with the St. Helena Municipal Code, the City Council declared a water emergency on June 23, 2021 which moved the City into Phase I Water Regulations. On October 13, 2020 emergency water conditions continued and City Council declared Phase II Water Restrictions; and

WHEREAS, Since the time of the declared Phase II water emergency the City has executed several professional services agreements for assistance with the development of water penalty policies, implementation and ongoing support of the penalty structure, outreach, and additional customer service support; and

WHEREAS, The City has been utilizing the services of Raftelis to provide water emergency support during; and

WHEREAS, Raftelis has demonstrated they have the skills, knowledge, and expertise to continue assisting the City with the current water emergency; and

WHEREAS, The City and Raftelis desire to amend two existing contracts as follows: Amendment #3 to STH Contract: FY2021-042 with Raftelis for continued support in the implementation of, and updates to, the City's water allocations as well as future water shortage policy consideration during declared water shortage emergencies

for an additional $89,655 for a total not-to-exceed amount of $124,655 and Amendment #1 to STH Contract: FY2021-074 with Raftelis for continued Drought Outreach for an additional $19,980 for a total not-to-exceed amount of $46,960.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. HELENA AS FOLLOWS:

1. Approving Amendment #1 to STH Contract: FY2021-042 with Raftelis for continued support in the implementation of, and updates to, the City's water allocations as well as future water shortage policy consideration during declared water shortage emergencies for an additional $89,655 for a total not-to-exceed amount of $124,655; and

2. Approving Amendment #1 to STH Contract: FY2021-074 with Raftelis for continued Drought Outreach for an additional $19,980 for a total not-to-exceed amount of $46,960; and

3. Approving a budget increase of $134,635 to 561-5000-2130 and use of water fund balance; and

4. Authorizes the City Manager to execute both Amendments on the City's behalf.

Approved at a Regular Meeting of the St. Helena City Council on August 24, 2021, by the following vote:

Mayor Geoff Ellsworth: ____

Vice Mayor Paul Dohring: ____

Council Member Anna Chouteau: ____

Council Member Lester Hardy: ____

Council Member Eric Hall: ____

APPROVED:

_____
Geoff Ellsworth, Mayor

ATTEST:

_____
Cindy Tzafopoulos, City Clerk

From: Jennifer Oliver
To: Public Comment
Subject: [External] Water Allocation
Date: Monday, August 23, 2021 7:32:43 PM

Hello,
May I kindly suggest that because you are billing residences bi-monthly, that you also merge two months together for water usage? This would greatly help with those of us who entertain guests in our wonderful valley, but who are allotted water for only household members who live here for 30 days each month.

In my own case, we had a family of five for one week plus two other visits from couples. Each of these folks are former residents and needed to either come for a funeral of a family member, for medical issues to their physicians at St. Helena Hospital, or in the case of the family, were moving from their own home to another home. We had 45 extra "days" of water usage, putting us over the top to incur a penalty for July, but in August we have been very frugal by allowing plantings to die out around the house and have over 2000 gallons left to "spend" (we purchased a Flume to know these figures).

Bottomline: Please consider averaging the two months in each billing cycle.

Jennifer Oliver
Christine Court

Report to the City Council
Regular City Council - 24 Aug 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration of a Resolution Authorizing: (1) Amendment #3 to a Professional Services Agreement with Willdan Financial Services for the amount of $6,045, with a total contract not-to-exceed $108,435, to Complete the Commercial Linkage Fee Analysis Related to the Affordable Housing Impact Fee Portion of the Development Impact Fee Study; and (2) a budget increase of $6,045 to 751-4300-2145 and use of fund balance of the same.**

CEQA Determination: **Not a CEQA project**

Prepared By: Mandy Kellogg, Asst. Administrative Services Director

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The City imposes impact fees on development projects in order to mitigate the impacts caused by new development on public services, infrastructure, and facilities. Development impact fees are subject to Government Code §§66000-66025 known as "the Mitigation Fee Act" and commonly referred to as "AB 1600 Requirements." Adoption of a development impact fee requires compliance with the Mitigation Fee Act and prior to any action establishing, increasing, or imposing a fee as a condition of approval of a development project, a local agency must:

1. Identify the purpose of the fee;
2. Identify the specific uses of the fee;
3. Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed;
4. Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed; and

5. Determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility attributable to the development on which the fee is imposed.

The developments impact fees, also known as public facilities fees, include the following:

- Affordable Housing
- Civic Facilities
- Park and Recreation Facilities
- Public Safety Facilities
- Storm Drainage Facilities
- Transportation
- Wastewater Facilities
- Water Facilities

The City has contracted with Willdan Financial Services (Willdan) to conduct a Development Impact Fee Study. During the course of this study, Willdan has reviewed the existing impact fee schedule and report, updated the demographics, reviewed the facilities list, and reviewed the current status for each fee type. The purpose of the study is to ensure that new development pays its fair share of infrastructure while being mindful of the impact of fees on development.

DISCUSSION

As indicated in the background section, Willdan Financial Services was selected to conduct a development impact fee study and has completed all sections of the study except Affordable Housing. During the FY 2020-21 budget development, City Council requested funding for an inclusionary and workforce housing study be included in the FY 2020-21 adopted City budget. On February 23, 2021, the City entered into a Professional Services Agreement (PSA) with Lisa Wise Consulting, Inc. to complete the Inclusionary Housing Study.

As part of the Inclusionary Housing Study and during the final analysis of the Affordable Housing Impact fees, it was determined that it would be necessary to include a commercial linkage fee analysis. Willdan Financial Services is available to conduct this analysis to prepare recommendations for the amounts and classifications for a housing linkage fee for St. Helena. This fee links the jobs created by commercial development to the needs for the production of affordable housing. The study will determine the per-unit affordability gap by number of households in each job type, by income level to determine linkage fee on a per square foot basis by category of nonresidential development.

Willdan has prepared an addendum (Attachment 3) to the agreement to conduct the commercial linkage impact fee for an additional cost not-to-exceed $6,045, which would be paid for from the Affordable Housing Trust Fund.

FISCAL IMPACT

Amendment No. 3 of $6,045 is proposed to be paid for with reserves from the Affordable Housing Trust Fund - Fund 751 and will amend the existing contract from $102,390 to a not-to-exceed amount of $108,435. The current fund balance in the Affordable Housing Trust Fund* is $233,113, which, if approved, will leave a remaining fund balance of $227,068.

*This is the fund balance including encumbrances after receiving the reimbursement grant from Housing and Community Development for an acquisition grant.

RECOMMENDED ACTION
Recommendation of Approval of the Resolution.

ATTACHMENTS
Resolution Willdan Amendment
Willdan Amendment #3
Change Order - Amendment #3 Willdan

CITY OF ST. HELENA

RESOLUTION NO. 2021-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA AUTHORIZING: AMENDMENT #3 TO A PROFESSIONAL SERVICES AGREEMENT WITH WILLDAN FINANCIAL SERVICES FOR THE AMOUNT OF $6,045, WITH A TOTAL CONTRACT NOT-TO-EXCEED $108,435, TO COMPLETE THE COMMERCIAL LINKAGE FEE ANALYSIS RELATED TO THE AFFORDABLE HOUSING IMPACT FEE PORTION OF THE DEVELOPMENT IMPACT FEE STUDY.

WHEREAS, on November 24, 2015 City Council approved Resolution No 2015-146 approving a Professional Services Agreement with Willdan Financial Services to provide a Full Cost Services and Development Impact Fee Study for an amount not to exceed $81,540.00; and

WHEREAS, in November 2017, the City Council approved Amendment No. 1 via resolution No. 2017-51 to this agreement to increase the contract amount by $16,350.00 for a total not to exceed amount of $97,890.00 to include impact fee studies of the water and wastewater systems which were not included in the initial agreement; and

WHEREAS, in October 2018, the City Council approved Amendment No. 2 via resolution No. 2018-139 to this agreement to increase the contract by $4,500 for a total not-to-exceed amount of $102,390.00 to reassess the cost allocation plan due to the addition of two full-time firefighters, implementation of a compensation and classification study, and a Public Works reorganization that were not factored into the original cost allocation plan; and

WHEREAS, during the analysis of the Affordable Housing fees, it was determined that to properly complete the analysis it would be necessary to include a commercial linkage fee analysis, which will allow for Willdan to prepare recommendations for the amounts and classifications for a housing linkage fee for St. Helena.; and

WHEREAS, in conjunction with the housing market data collected as part of the residential housing impact fee analysis and the data gathered during the commercial linkage fee analysis, Willdan will develop a pro forma and determine the affordability gap per unit for each income level by industry and occupation; and

WHEREAS, City and Consultant desire to amend the Agreement to update the development impact fee study for an additional cost of $6,045.00.

WHEREAS, the total amended contract with Willdan Financial Services will not exceed $108,435.00; and

WHEREAS, funds for Amendment #3 will be available and will be charged to the Affordable Housing Trust Fund.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. HELENA AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The City Council of the City of St. Helena hereby approves the Amendment #3 to the contract with Willdan Financial Services for an additional $6,045.00 for a total not-to-exceed amount of $108,435.00.

SECTION 3. The City Council of the City of St. Helena hereby authorizes a budget increase not-to-exceed $6,045 to 751-4300-2145.

SECTION 4. The City Council of the City of St. Helena hereby authorizes use of Affordable Housing Trust Fund balance in an amount not-to-exceed $6,045.

Approved at a Regular Meeting of the St. Helena City Council on August 24, 2021, by the following vote:

Mayor Geoff Ellsworth: ____

Vice Mayor Paul Dohring: ____

Council Member Anna Chouteau: ____

Council Member Lester Hardy: ____

Council Member Eric Hall: ____

APPROVED: ATTEST:

_____ _____

Geoff Ellsworth, Mayor Cindy Tzafopoulos, City Clerk

Attachment 1

THIRD AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES WITH WILLDAN FINANCIAL SERVICES.

This Third Amendment to Professional Services Agreement dated November 24, 2015 ("Agreement") is made as of this 24th day of August 2021 by and between the City of St. Helena, a municipal corporation ("City"), and Willdan Financial Services. ("Consultant").

RECITALS

A. On November 24, 2015, the City and Willdan Financial Services (Consultant) entered into the Professional Services Agreement ("Agreement") for a Full Cost Services and Development Impact Fee Study for an amount not to exceed $81,540.00; and

B. In November 2017, the City Council approved Amendment No. 1 via resolution No. 2017-51 to this agreement to increase the contract amount by $16,350.00 for a total not-to-exceed amount of $97,890.00 to include impact fee studies for the water and wastewater systems which were not included in the initial agreement; and

C. In October 2018, the City Council approved Amendment No. 2 via resolution No. 2018-139 to this agreement to increase the contract by $4,500 for a total not-to-exceed amount of $102,390.00 to reassess the cost allocation plan due to the addition of two full-time firefighters, implementation of a compensation and classification study, and a Public Works reorganization that were not factored into the original cost allocation plan; and

D. During the analysis of the Affordable Housing fees, it was determined that to properly complete the analysis it would be necessary to include a commercial linkage fee analysis, which will allow for Willdan to prepare recommendations for the amounts and classifications for a housing linkage fee for St. Helena; and

E. In conjunction with the housing market data collected as part of the residential housing impact fee analysis and the data gathered during the commercial linkage fee analysis, Willdan will develop a pro forma and determine the affordability gap per unit for each income level by industry and occupation; and

F. City and Consultant desire to amend the Agreement to update the cost allocation plan for an additional cost of $6,045.00; and

G. Amendment No. 3 in the amount of $6,045.00 to the Agreement for Consultant Services with Willdan Financial Services is hereby approved and entered into on August 24, 2021; and

H. The total amended contract not to exceed $108,435.00.

AGREEMENT

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

1. Section 4. Compensation
   Amendment No. 3 in the amount of $6,045.00 to the Agreement for Consultant Services with Willdan Financial Services for a total amended contract not to exceed $108,435.00; and

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:_____

Title: _____

CITY OF ST. HELENA
a Municipal Corporation

By:_____

Print Name: Mark T. Prestwich
Title: City Manager

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

Attachment 2

March 10, 2021

Ms. Mandy Kellogg
City of St. Helena
Finance Manager
1572 Railroad Avenue
St. Helena, California 94574

Re: Second Addendum to Agreement to Conduct a Commercial Linkage Impact Fee

Dear Ms. Kellogg:

Per the City's request, enclosed is the second addendum to the original Professional Services Agreement, dated November 24, 2015. The purpose of the following is to add the scope and fee necessary to conduct a Commercial Linkage Impact Fee.

If the amended terms are acceptable, please sign and return one fully executed copy, via email, to NStormon@Willdan.com.

We look forward to continuing to serve the City of St. Helena and working with you and your staff. If you have any questions, please feel free to contact me directly at (415) 786-0295, or via email to CVillarreal@Willdan.com.

Sincerely,

WILLDAN FINANCIAL SERVICES

Carlos Villarreal
Project Manager
Financial Consulting Services

SECOND ADDENDUM TO AGREEMENT

The agreement between the City of St. Helena and Willdan Financial Services, dated November 24, 2015, (hereinafter, the "Agreement") is amended as follows:

A. Exhibit A entitled "**SCOPE OF SERVICES**" is amended to include:

Task: Commercial Linkage Fee Analysis

Description: Using data from the California Employment Development Department (EDD) and US Census LEHD data, identify employment levels and types by major sector within St. Helena. Prepare wage estimates on a sector-by-sector basis using Bureau of Labor Statistics (BLS). Sectors will be summarized by occupational classifications using Standard Occupation Codes (SOC).

Using employment densities for each job type, estimate the number of workers that would be accommodated on a per square foot basis, the percentage of those workers who would form households, and the number of new households that would form by income category.

Based on the housing market data in collected as a part of the residential housing impact fee analysis, and the labor market analysis prepared in this task, develop pro forma and determine affordability gap per unit for each income level by industry and occupation. This will be used to determine the per-unit affordability gap by number of households in each job type, by income level to determine linkage fee on a per square foot basis by category of nonresidential development.

Based on the analysis summarized above Willdan will prepare recommendations for the amounts and classifications for a housing linkage fee for St. Helena. The linkage fee serves as a fee on non-residential development. Willdan will provide a recommended fee schedule.

No additional in-person meetings are included in this scope of work.

B. Exhibit B entitled "**COMPENSATION"** is amended to include the following fees:

Commercial Linkage Fee Analysis – six thousand, forty five ($6,045) dollars.

All other terms, fees and conditions contained in the Agreement shall remain in full force and effect. Executed on March 10, 2021.

CITY OF ST. HELENA	**WILLDAN FINANCIAL SERVICES**
By: _____	By: _____
Mark Prestwich	Chris Fisher

SECOND ADDENDUM TO AGREEMENT

City Manager

Vice President – Group Manager

Report to the City Council
Regular City Council - 24 Aug 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration of Approval of Property Use Agreement Between the City of St. Helena and The Boy Scouts of America Regarding Scout Hall at 1515 Railroad Avenue (APN 009-192-009-000)**

CEQA Determination: **Not a CEQA project**

Prepared By: Mark T. Prestwich, City Manager

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The historic "Scout Hall" building located at 1515 Railroad Avenue is owned by the City of St. Helena and serves as a meeting room for both the Boy and Girls Scouts of America. Scouts have been using the property since 1936 for meeting and storage needs under a mutual understanding.

In late 2017, the City commissioned a Facility Condition Needs Assessment of various civic buildings, including Scout Hall, to assist the City with identifying needed repairs and future maintenance requirements. This assessment was helpful in providing the City with a roadmap to guide future maintenance efforts, budget requirements, and identify assets not recommended for further investment (e.g. City Hall).

The EMG study concluded considerable investments were needed for numerous City assets. Given the scale of repairs necessary, the City prioritized discussions related to City Hall replacement and improvements to the City Library. Investments to Scout Hall and other assets were postponed pending decisions related to City Hall.

In late 2019, the St. Helena Rotary Club and Boy Scout Troop 1 submitted letters requesting a partnership with the City of St. Helena to advance repairs to the exterior of

Scout Hall. Troop 1 celebrated its 100th year anniversary in 2020 and the Rotary Club has offered assist with community fundraising to offset costs associated with the rehabilitation. The Rotary Club has also solicited the participation of other service clubs who have expressed their willingness to join the fundraising effort including Kiwanis, Federated Women of Upper Napa Valley, American Legion Post 199, and Native Sons of the Golden West. The Rotary Club's independent analysis of needed exterior improvements ranges from $250,000 to $300,000, which is largely consistent with estimates from the City's EMG report.

Direction was provided at the City Council meeting of February 11, 2020, to work with Troop 1 and St. Helena Rotary Club to develop a recommend a collaborative approach to addressing the exterior repair needs of the building.

Due to the deterioration of Scout Hall's roof, the City Manager executed a $14,125 agreement on December 8, 2020 to replace the roof. The contract required use of 30-year dimensional shingles, new aluminum gutters, and downspouts with screens. Due to safety concerns with the building's parapet, the City Manager executed an amendment in the amount of $8,621.50 on February 11, 2021. The work on the Scout Hall roof was completed on March 29, 2021.

DISCUSSION

The Scout Hall property was granted to the City in 1936 by Nellie G. Smith, under the express condition that the property shall be used for and dedicated to the exclusive purpose of providing a meeting place for the members of the Boy Scouts of America and to house any Boy Scout activities, subject to rules and regulations developed by the City. Historically the City has allowed the Boy Scouts to use the property in accordance with the conditions of grants imposed by Ms. Smith, but has not had a formal agreement with the Scouts governing the use of the building. The City and the Scouts both agreed that it is prudent to have an agreement that governs and sets parameters for the use of the building moving forward.

In light of this fact, the City Attorney, in consultation with representatives for the Scouts, has prepared a Property Use Agreement between the City of St. Helena and The Boy Scouts of America, as organized in St. Helena, California, including Troop 1 and affiliated groups for use of the property.

The agreement is intended to allow the Scouts to independently fundraise, as well as construct internal and external improvements with prior written approval by the City. The agreement will continue for as long as the Boy Scouts of America continue to exist and operate in the City of St. Helena, and includes a 60 day written notice requirement for termination of the agreement. The City may approve or deny such requests for permission to make improvements in its sole discretion. City shall be provided a copy of any plans or descriptions of work to be done by Scouts or its contractors. Scouts may not construct, or materially alter, the Property without prior written approval by City. Any alteration or

improvement to the Property must comply with all applicable laws, including laws regulating the licensing of contractors.

The agreement also includes terms related to damage or destruction to the property or building, maintenance, indemnity obligations, and other general terms.

FISCAL IMPACT
Not applicable at this time.

RECOMMENDED ACTION
Adopt a resolution authorizing City Manager to execute Property Use Agreement with The Boy Scouts of America Regarding Scout Hall at 1515 Railroad Avenue (APN 009-192-009-000).

ATTACHMENTS
Scout Hall Resolution
Troop 1 City of St Helena Scout Hall Agreement--Final-c1

CITY OF ST. HELENA

RESOLUTION NO. 2021-

Resolution of the City of St. Helena City Council Property Use Agreement Between the City of St. Helena and The Boy Scouts of America Regarding Scout Hall at 1515 Railroad Avenue (APN 009-192-009-000)

RECITALS

A. The historic "Scout Hall" building located at 1515 Railroad Avenue is owned by the City of St. Helena and serves as a meeting room for both the Boy and Girls Scouts of America. Scouts have been using the property since 1936 for meeting and storage needs under a mutual understanding; and

B. In late 2017, the City commissioned a Facility Condition Needs Assessment of various civic buildings, including Scout Hall, to assist the City with identifying needed repairs and future maintenance requirements. This assessment was helpful in providing the City with a roadmap to guide future maintenance efforts, budget requirements, and identify assets not recommended for further investment (e.g. City Hall); and

C. In late 2019, the St. Helena Rotary Club and Boy Scout Troop 1 submitted letters requesting a partnership with the City of St. Helena to advance repairs to the exterior of Scout Hall. Troop 1 celebrated its 100th year anniversary in 2020 and the Rotary Club has offered assist with community fundraising to offset costs associated with the rehabilitation; and

D. Direction was provided at the City Council meeting of February 11, 2020, to work with Troop 1 and St. Helena Rotary Club to develop a recommend a collaborative approach to addressing the exterior repair needs of the building; and

E. Due to the deterioration of Scout Hall's roof, the City Manager executed a $14,125 agreement on December 8, 2020, to replace the roof. The contract required use of 30-year dimensional shingles, new aluminum gutters, and downspouts with screens. Due to safety concerns with the building's parapet, the City Manager executed an amendment in the amount of $8,621.50 on February 11, 2021.

RESOLUTION

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

1. The City Council authorizes the City Manager to execute the property use agreement with The Boy Scouts of America regarding Scout Hall at 1515 Railroad Avenue (APN 009-192-009-000).

Approved at a Regular Meeting of the St. Helena City Council on August 24, 2021, by the following vote:

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

APPROVED:

_____
Geoff Ellsworth, Mayor

ATTEST:

_____
Cindy Tzafopoulos, City Clerk

CITY OF ST. HELENA
PROPERTY USE AGREEMENT
(Scout Hall)

This Agreement ("**Agreement**") is entered into as of _____, 2021, by and between the CITY OF ST. HELENA, a California municipal corporation ("**City**") and The Boy Scouts of America, as organized in St. Helena, Ca, including Troop 1, and affiliated groups such as the Cub Scouts ("**Scouts** ") City and Scouts are referred to herein as a "party" and together as the "parties." The Agreement is intended to formalize an arrangement pursuant to which the Scouts have used the Property described below since approximately 1936.

RECITALS

A. On February 28, 1936 **,** Nellie G. Smith, a widow, granted to City a piece of property generally located at 1515 Railroad Avenue, City of St. Helena, with County of Napa Assessor's Parcel Number 009-192-009-000 (the "**Property"**), under the express condition that the real property shall be used for and dedicated to the exclusive purpose of providing a meeting place for the members of the Boy Scouts of America and to house any Boy Scout activities, subject to such rules and regulations as may be promulgated by the City Council of St. Helena for the use and occupancy of said premises (the "Deed").

B. Scouts have been using the Property since 1936 under a mutual understanding and City has requested and Scouts have agreed to document the terms of the use of the Property by this Agreement.

C. City wants to memorialize Scouts' use of the Property to ensure continued use of the Property by the Scouts as Scouts provide valuable skills and services to it's members and the youth of the City of St. Helena.

AGREEMENT

NOW THEREFORE, in recognition of the existing relationship and in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Scouts hereby agree as follows:

1. **Use of Property.**

1.1 General Use. Scouts will have exclusive continuous access to the Property, primarily for use to hold meetings. Scouts shall have the authority to determine the specific individuals who will be admitted to the Property when Scouts use the Property, subject to the terms of this Agreement, and applicable rules and regulations, including but not limited to maximum occupancy limitations.

1.2 Storage Space. Scouts may use the Property for the storage of its materials, office supplies, files, and personal property.

1.3 Compliance with Laws. Scouts' use of the Property shall comply with all applicable laws, ordinances, and regulations. City grants to Scouts the unencumbered right, without restrictions or conditions, at all times that this Agreement remains in effect, to apply for any and all licenses, approvals and/or permits required to use the Property, provided that such licenses, approvals and/or permits are not inconsistent with the terms of this Agreement.

1.4 Girl Scout Use. Scouts may permit the local troop of the Girl Scouts of America (the "Girl Scouts") to use portions of the Property on the terms and conditions that Scouts and Girl Scouts separately negotiate. Other than the Girl Scout use, Scouts may not allow the Property to be sublet or used by any other entity, organization, or agency without the City's advance written permission.

1.5 Other Uses of Property. City has entered into this Agreement to allow Scouts to operate its activities and programs and for no other purpose. Any different use, or subletting to an entity, other than as expressly permitted in this Agreement is prohibited without the express written consent of City.

2. **Term of Agreement** This Agreement, pursuant to the intentions as expressed in the Deed, shall continue for as long at the Boy Scouts of America continue to exist and operate in the City of St. Helena. In the event that the Boy Scouts of America no longer exist or operate in the City of St. Helena for a continuous period of more than one year, the City will have the option of terminating this Agreement by sending a written notice to the Scouts at the address set forth for noticing purposes in this Agreement and also posting a notice at a visible place at the Property, and the termination will be effective 60 days after the notice is delivered and posted, if the Boy Scouts are no longer operating in St. Helena. If the Boy Scouts of America no longer exist, this Agreement shall terminate on the date that such notice is delivered and posted. If the Agreement is terminated because the Boy Scouts of America either cease to exist or cease to operate in the City of St. Helena, then the City will allow the property to be used in accordance with the terms of the restrictions set forth in the Grant Deed for the conveyance of the Property to the City. In considering future use of the Property, the City shall allow the members of the Troop 1 Committee for the St. Helena Scouts an opportunity to make a proposal for use of the Property in accordance with the deed restrictions prior to considering any other uses of the Property, provided that such proposal must be made within 120 days of termination as set forth above. The City Council shall reasonably consider such proposal, but retains it's discretion to determine the use that will be in furtherance of the public good and general welfare in accordance with the terms of the deed restrictions on the Property. In the event that the Scouts are in default under this Agreement and they fail to cure the default within 90 days of written notice from the City describing the default, the City may terminate this Agreement. The Agreement may be terminated by Scouts, at their sole discretion, upon providing sixty (60) days written notice to City. Upon termination of this Agreement, Scouts shall quit and surrender possession of the

Property to City. In the event of such termination, Scouts shall remove all personal property and equipment from the property. If Scouts do not so, City may remove Scouts' personal property and dispose of, or store said personal property and equipment at Scouts' sole cost and expense.

3. **Utilities**. Scouts shall arrange and pay for all, gas, light, power, as well as any other utility services to be used by Scouts on the Property, in connection with the Property during its use by Scouts. Scouts agree to make the payment in a timely manner. City shall have no responsibility for providing or paying for any utilities or services for the Property during the term, except to the extent such utilities or services are provided to City in connection with City operations or activities at the Property. City shall not be liable for any interference with or disruption of any utilities or services at the Property.

4. **Repairs and Maintenance.**

4.1 Scouts' Responsibilities. For so long as this Agreement is in effect, Scouts shall at its own expense keep the Property free from debris, rubbish, and graffiti, and shall not use the Property in any manner that will constitute waste or nuisance. Scouts shall maintain the Property in at least the same condition as it was at the beginning of the term of this Agreement, reasonable wear and tear excluded. Scouts, at its sole cost and expense, shall provide repairs for any damage to the Property, above normal wear and tear, caused by Scouts, its officers, agents, invitees, guests, or volunteers. Scouts shall provide to City five (5) business days' advance written notice of any on-site construction or maintenance services to be provided at the Property by a third party. Scouts shall provide City with a copy of any and all contractor agreements related to the on-site services.

4.2 City Responsibilities. Upon being notified by Scouts of the need for a repair(s) that is not a responsibility of Scouts pursuant to 4.1 above, City shall be responsible for the performance and cost of repairing the Property, unless such repairs are made necessary by the misconduct or negligent acts of Scouts, the participants in Scouts' programs, or other persons allowed on the Property by Scouts, in which case Scouts shall be responsible for the cost of such repairs. City shall, at its discretion, determine the necessity of and the timing for such repairs, provided that in the event that the need for repairs renders the building unusable by the Scouts for the purposes provided in this Agreement, the City shall use its best efforts to expedite the needed repairs. City shall furnish and replace all exterior electric light bulbs and/or tubes, when needed. City shall perform annual maintenance and testing of fire extinguishers. Except for an emergency, City shall provide Scouts five (5) business days' advance written notice of maintenance or construction projects on the Property. In addition to the foregoing, the parties agree that the City shall repair or replace the roof of the building located on the property from time to time at such time that the City determines that the replacement of the roof is necessary.

4.3 Improvements**.** At any time that this Agreement is in effect. Scouts may request permission from City to construct internal and external improvements to the Property, at its sole cost and expense, or, with an agreed upon sharing of costs, the terms of which must be approved

in writing by the City. The City may approve or deny such requests for permission to make improvements in its reasonable discretion. City shall be provided a copy of any plans or descriptions of work to be done by Scouts or its contractors. Scouts may not construct, or materially alter, the Property without prior written approval by City. Any alteration or improvement to the Property must comply with all applicable laws, including laws regulating the licensing of contractors.

4.4 Damage or Destruction to Property or Building. If the Property or building are totally or partially damaged or destroyed, rendering the Property totally or partially inaccessible or unusable and insurance proceeds paid to City are sufficient to cover the full cost to repair, replace and restore the same, City shall promptly repair, replace or restore the building or the Property to substantially the same condition as they were in immediately before such damage or destruction. Such damage or destruction shall not terminate this Agreement. However, if the Property or the building do not appear to be capable of being repaired, replaced or restored within twenty four (24) months after the date of the damage or destruction, as determined by City in the exercise of its reasonable judgment, or if the insurance proceeds paid to City are not sufficient to cover the full cost of repair, and the Scouts are not willing or able to pay the shortfall, then City and Scouts shall meet and confer within (60) days to discuss options to complete the repair, replacement or restoration of the building or Property in a timely manner. In the event the parties do not mutually agree to a means of completing such repair, replacement or restoration following such meet and confer, City or Scouts may terminate this Agreement by written notice thereof to the other party.

4.5 Risk of Loss**.** Scouts shall bear the sole and complete risk of loss or damage to all alterations, improvements, and personal property of Tenant while at or on the property, except as may be caused by the negligence or willful misconduct of City.

4.6 Prevailing Wages. Scouts acknowledge that City has made no representation, express or implied, to Scouts or any person associated with them regarding whether or not laborers employed relative to the construction and installation of any improvements to the Property must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to California Labor Code Sections 1720 *et seq*. Scouts agree with City that Scouts shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to any construction at or on the Property must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to California Labor Code Sections 1720 *et seq.* Notwithstanding any other provision of this Agreement, City shall not be under any duty to monitor or ensure the compliance of Scouts with any State of California labor laws, including, without limitation, prevailing wage laws.

4.7 Inspections. During the construction of any improvements on the property, City may enter into or on the Property at any time, without notice to Scouts in order to inspect any improvements thereon, and Scout's operations.

5. **Possessory Interest Tax** Scouts hereby recognizes and understands that this Agreement may create a possessory interest subject to property taxation, and that Scouts may be subject to the payment of property taxes levied on such interests. Any such imposition of a possessory interest tax shall be a tax liability solely of Scouts and shall be paid for by Scouts. Scouts shall pay any personal property taxes that may become due for equipment, inventory, or other personal property installed, maintained, or present in or on the Property. Scouts shall also pay all interest and penalties any government entity assesses for late payment of any possessory interest taxes that this Agreement requires Scouts to pay. Scouts shall within a reasonable time after written notice from City give City reasonable proof that Scouts has paid any possessory interest taxes that this Agreement requires Scouts to pay. Nothing herein shall prohibit Scouts from the right to challenge any assessment of possessory interest tax in accordance with the procedures set forth by the taxing authority and where applicable withhold any overcharge by such taxing authority until the disputed matter is resolved.

6. **Personal Property Taxes.** Scouts shall pay and discharge all personal property taxes payable or accruing for all period(s) within their use relating to any personal property stored at, used in the operation of or otherwise relating to the Property, before delinquency. Scouts shall also pay all interest and penalties any governmental agency assesses for late payment of any such personal property tax, if any.

7. **Prohibited Liens.**

7.1 Prohibited Liens. Scouts shall keep the Property free from any liens arising out of any work performed, material furnished, or obligations incurred by Scouts ("**Prohibited Lien**"). Scouts shall provide written notice to City of each Prohibited Lien within five (5) days following Scouts' receipt of notice of such Prohibited Lien. Scouts shall, within thirty (30) days after receiving notice of a Prohibited Lien (but in any case within fifteen (15) days after Scouts receive notice of commencement of foreclosure proceedings regarding any Prohibited Lien), cause such Prohibited Lien to be paid, discharged, and cleared from title to the Property; provided, however, that if Scouts dispute such Prohibited Lies in good faith, Scouts shall immediately notify City of such dispute and shall thereafter prosecute such action with reasonable diligence and continuity.

7.2 No Liens Against Public Property. Scouts acknowledge that the Property is owned by City and is thus not subject to the imposition of mechanic's liens or other liens in favor of providers of labor, materials, or services on or to the Property. Scouts shall inform each provider of labor, material, or services on or to Property of the statutory unavailability of such liens with respect to Property, and that City is not responsible for payment of any claims by such providers of labor, material, or services.

8. **Maintenance.**

8.1 Maintenance Standard. Scouts shall, at its sole cost and expense, keep the Property free of noxious weeds and trash, and in good and proper condition in compliance with all

applicable laws and regulations concerning the use of the Property. Scouts shall not cause trash or other debris to accumulate on the Property, provided that City will provide for the cleaning of the building on the Property as part of its normal janitorial services for City owned buildings as those services may be adjusted from time to time by the City.

8.2 Maintenance Default. If, at any time during the term, there is an occurrence of a condition on any area of the Property that the City determines to be a violation of law or this Agreement, then City may provide notice to Scouts in writing of the claimed condition. If Scouts fail to cure or commence and diligently pursue to cure the claimed condition within thirty (30) calendar days of Scouts' receipt of notice of the violation, an event of default shall be deemed to have occurred, and City may exercise any and all remedies available to City in law or equity.

9. **"As Is" Condition of Property**.

9.1 Acceptance. Scouts accepts the Property in its "As Is/Where Is" condition, without warranty of any kind, express or implied, including any warranty as to title, physical condition, soil conditions, zoning, land use restrictions, the availability or location of utilities or services, the suitability of the Property for the uses described herein or any other use, and with full knowledge of the physical condition of the Property, the nature of City's interest therein and rights retained thereto pursuant to this Agreement, and all laws applicable to the Property. Scouts has not relied, and is not relying, on any express or implied, oral or written representations or warranties made by City or its representatives, and all such representations and warranties are specifically disclaimed by City. Notwithstanding the foregoing, nothing in this Section shall limit Scouts' ability to request repairs of building or the Property by the City in accordance with Section 5.2 of this Agreement.

9.2 Waivers and Releases. By executing this Agreement, Scouts waives and releases the City and its representatives from all claims arising after the date of mutual execution of this Agreement relating to the condition of the Property as of the date of mutual execution of this Agreement or at any time during the term of this Agreement, whether known or unknown, suspected or unsuspected. With respect to the waivers and releases contained in this Section 10.2, Tenant waives the provisions of California Civil Code Section 1542 and all similar provisions and principles of law. Section 1542 provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

10. **Subordinate Rights.**

10.1 This Agreement is subject to all leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims, and other matters of title that may affect the Property now or hereafter.

11. **Insurance.**

11.1 Types; Amounts. Scouts shall obtain, and shall require any contractor to obtain, insurance in the amounts described below unless specifically altered or waived by City in writing ("**Required Insurance"**). Scouts shall maintain the Required Insurance at all times while this Agreement is in effect. If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit. In the event that Tenant breaches its obligations under this Section 12 City may, in its sole discretion, require Tenant to increase the policy limits for any or all of the Required Insurance.

11.1.1 General Liability Insurance. Scouts shall maintain occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Five Million Dollars ($5,000,000) per occurrence, which limit may be satisfied by a combination of primary and umbrella policies, as that is the insurance currently provided by the Boy Scouts of America, If that insurance is no longer available at commercially reasonable rates or if the Boy Scouts of America no longer exists or provides coverage for the local Scouts the parties shall meet and confer as to the level of insurance reasonably required.

11.2 General Provisions. The general liability insurance policy shall name City, its elected officials, officers, employees, agents, and volunteers as additional insureds. The Required Insurance shall be primary as to Scouts' defense and indemnification obligations herein with respect to any insurance or self-insurance programs covering City, its elected officials, officers, employees, agents, and volunteers, or if in excess stand in an unbroken chain of coverage in excess of Scouts' scheduled underlying coverage. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, agents, and volunteers.

11.3 Certificates; Insurer Rating; Cancellation Notice. Scouts shall furnish to City upon reasonable request properly executed certificates of insurance which evidence all Required Insurance. All policies shall be endorsed to provide the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days prior written notice to City. Unless approved in writing by City, Scouts shall place the Required Insurance with insurers authorized to do business in the State of California and with a current A.M. Best rating of at least A-:VII.

12. **Indemnity and Release**

12.1 Scouts Indemnity Obligations. Scouts hereby agree to defend, indemnify and hold City and its officials, officers, agents, and employees free and harmless from and against any and

all claims, demands, causes of action, costs, liabilities, expenses, losses, damages, or injuries of any kind in law or equity, to persons or property, including wrongful death, in any manner arising from or related to this Agreement, the use or occupancy by Scouts, the Girl Scouts or any other subtenants of the Scouts and/or their agents, invitees or employees of the Property, Scouts' breach of any condition of this Agreement, and/or any improvements to the Property undertaken by the Scouts or their agents, employees or contractors, unless such claims arise from the negligence or willful misconduct of the City. Scouts shall defend, with counsel reasonably satisfactory to City, at Scouts' sole expense, any and all such suits, actions or proceedings, legal or equitable that may be brought or instituted against City, its officials, officers, agents or employees, unless such actions or proceedings arise from the negligence or willful misconduct of City. Scouts shall pay and satisfy any judgment, award, or decree that may be rendered against City, its officials, officers, agents or employees. Scouts shall reimburse City for any reasonable legal expenses and costs incurred by one or all of them in connection with this Agreement or the indemnity herein provided. Scouts' obligation shall survive termination or expiration of this agreement, and shall not be restricted to insurance proceeds, if any, received by City or its officials, officers, agents or employees. Nothing in this Section 13 shall relieve City of liability for City or City's officials, officers, agents or employees' negligence or willful misconduct.

13. **General Provisions.**

13.1 **Assignment or Subletting.** Except as otherwise provided in this Agreement, Scouts shall not assign or sublease this Agreement without the prior express written consent of the City, which consent may be withheld in the City's sole and absolute discretion.

13.2 **Waiver.** The waiver by City or Scouts of any breach of any term, covenant, condition or provision contained herein shall not be deemed to be a waiver of such term, covenant, condition, or provision for any subsequent breach of the same or any other term, covenant, condition, or provision contained herein.

13.3 **Attorneys' Fees.** The prevailing party in any action brought by either party hereto, based on any claim arising under this Agreement, shall be entitled to reasonable attorneys' fees and court costs.

13.4 **No Relocation or Assistance.** Scouts acknowledge that they are not entitled to relocation assistance or any other benefits under the Uniform Relocation Assistance Act or any other applicable provision of law upon termination of this Agreement.

13.5 **Notices.** All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Scouts:

Stu Smith1517 Sylvaner Avenue
St. Helena, CA 94574
Attn: Troop 1 Committee Chair

City:
City of St. Helena
1572 Railroad Avenue
St. Helena, California 94574
Attn: City Manager

Such notice shall be deemed made when personally delivered or forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service. Copies of notices to the Scouts shall also be posted at the Property.

13.6 **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. The provisions of this Agreement may be amended only by mutual written consent of the parties. Any amendments to this Agreement must be in writing and executed by both parties.

13.7 **Principles of Interpretation**. No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Agreement. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from legal counsel and other advisers of their own selection.

13.8 **Invalidity.** If any provision of this Agreement is invalid or unenforceable with respect to either party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13.9 **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

13.10 **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California. Any action to interpret or enforce this Agreement shall be brought and maintained exclusively in the courts of and for Napa County, California.

13.11 **Execution of Agreement.** This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

13.12 **Survival.** All obligations of the parties hereunder not fully performed as of the completion or termination of this Agreement shall survive such completion or termination, including without limitation all indemnity obligations and obligations concerning the condition of the Property.

13.13 **Authority to Enter Agreement.** Both parties represent to the other that they have the requisite power and authority to conduct their business and to execute, deliver, and perform the requirements of, this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to enter into this Agreement and bind each respective party. Signers for Scouts are signing in their representative, not individual capacities, only and shall have no personal liability under this Agreement whatsoever except to the extent of their willful misconduct or gross negligence.

13.14 **Discrimination.** Scouts, for itself and its successors and assigns, agrees that Scouts will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, religion, creed, national origin, ancestry, gender, gender identity or gender expression, and that Scouts will comply with all applicable local, state and federal fair employment laws and regulations. Scouts covenants and agrees for itself, its successors and assigns, and every successor in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, or national origin in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Scouts, or any person claiming under or through Scouts, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of lessees, sublessees or vendees of the Property.

IN WITNESS WHEREOF this Agreement is executed by the Parties as of the date set forth below (the "Effective Date").

CITY:
CITY OF ST. HELENA,
a California municipal corporation

By:
Mark T. Prestwich
City Manager

Date:

Attest:

By:
Cindy Tzafopolous
City Clerk

SCOUTS:
The Boy Scouts of America, as organized in St. Helena, Ca, including Troop 1,

By:
Name: Stu Smith, Troop 1 Committee Chair

Date:

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] Scout Hall
Date: Monday, August 23, 2021 9:57:06 AM

Sent from my iPhone

Begin forwarded message:

From: Jan Darter <jandarter@gmail.com>
Date: August 22, 2021 at 7:10:44 PM GMT-6
To: Anna Chouteau <AChouteau@cityofsthelena.org>
Cc: Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Scout Hall

Council Member Anna Chouteau,

I am writing to support the Scout Hall agreement on Tuesday night's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Jan Darter
783 Stralla Ct.
St Helena, CA

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] Scout Hall
Date: Monday, August 23, 2021 9:56:43 AM

Sent from my iPhone

Begin forwarded message:

From: Jan Darter <jandarter@gmail.com>
Date: August 22, 2021 at 7:15:38 PM GMT-6
To: Eric Hall <ehall@cityofsthelena.org>
Cc: Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Scout Hall

Council Member Eric Hall,

I am writing to support the Scout Hall agreement on Tuesday night's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

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Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Jan Darter
783 Stralla Ct.
St Helena, CA

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] Scout Hall
Date: Monday, August 23, 2021 9:57:30 AM

Sent from my iPhone

Begin forwarded message:

From: Jan Darter <jandarter@gmail.com>
Date: August 22, 2021 at 7:04:08 PM GMT-6
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Scout Hall

Mayor Geoff Ellsworth,

I am writing to support the Scout Hall agreement on Tuesday night's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Jan Darter
783 Stralla Ct.
St Helena, CA

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] Scout Hall
Date: Monday, August 23, 2021 9:56:53 AM

Sent from my iPhone

Begin forwarded message:

From: Jan Darter <jandarter@gmail.com>
Date: August 22, 2021 at 7:12:16 PM GMT-6
To: Lester Hardy <LHardy@cityofsthelena.org>
Cc: Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Scout Hall

Council Member Lester Hardy,

I am writing to support the Scout Hall agreement on Tuesday night's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Jan Darter
783 Stralla Ct.
St Helena, CA

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] Scout Hall
Date: Monday, August 23, 2021 9:57:20 AM

Sent from my iPhone

Begin forwarded message:

From: Jan Darter <jandarter@gmail.com>
Date: August 22, 2021 at 7:07:14 PM GMT-6
To: Paul Dohring <PDohring@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Scout Hall

Vice-Mayor Paul Dohring,

I am writing to support the Scout Hall agreement on Tuesday night's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Jan Darter
783 Stralla Ct.
St Helena, CA

From: Cindy Tzafopoulos
To: Kamille Garcia; Mark Prestwich
Subject: Fwd: [External] Scout Hall
Date: Monday, August 23, 2021 9:56:16 AM

Sent from my iPhone

Begin forwarded message:

From: Jan Darter <jandarter@gmail.com>
Date: August 23, 2021 at 8:42:06 AM GMT-6
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>
Cc: Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Scout Hall

Dear St. Helena City Council,

The St Helena Kiwanis Club heartily endorses the Scout Hall agreement on Tuesday's agenda. The Kiwanis motto is *Serving the children of the world.* St. Helena Boy Scouting fits with that motto. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, and improvements to our community. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Although this agreement is with the St Helena Boy Scouts, Girl Scouts also benefit. The upstairs room of Scout Hall is the meeting place for several Girl Scout troops with the same positive benefits to the girls and the community.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Jan Darter, Secretary
St Helena Kiwanis Club

From: Cindy Tzafopoulos
To: Kamille Garcia; Mark Prestwich
Subject: Fwd: [External] Support for scout hall
Date: Monday, August 23, 2021 9:58:17 AM
Attachments: ScoutHall-letter.pdf

Sent from my iPhone

Begin forwarded message:

> **From:** Melissa Staid <melissa@vineview.com>
> **Date:** August 22, 2021 at 12:26:35 PM GMT-6
> **To:** Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>
> **Cc:** Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
> **Subject: [External] Support for scout hall**
>
> Please see attached letter in support of Scout Hall.
> Thank you for your attention to this matter.
> Sincerely, Melissa Staid
>
> _____
> Melissa Staid, Ph.D.
>
> 707-339-0087 (mobile)

Melissa Staid
Angwin, CA

August 22, 2021

City Council Members
St Helena, CA

Dear St. Helena City Council,

I am writing to support the Scout Hall agreement on this week's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1 and have been active in the troop for over 5 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California and Scout Hall has played a vital role in this success. More than a meeting location, Scout Hall is the heart of Troop 1, serving to commemorate the formative years of scores of young men who have participated in this character-building program.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Melissa Staid
Angwin

Melissa Staid

From: Cindy Tzafopoulos
To: Kamille Garcia; Mark Prestwich
Subject: Fwd: [External] Writing in Support of Scout Hall
Date: Monday, August 23, 2021 9:55:46 AM

Sent from my iPhone

Begin forwarded message:

From: SARA CAKEBREAD <scakebread@comcast.net>
Date: August 23, 2021 at 9:44:56 AM GMT-6
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>
Cc: Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Writing in Support of Scout Hall

Dear St. Helena City Council Members,

As a lifelong Girl Scout, a former leader of the Upper Valley Girl Scouts and a supporter of Boy Scout Troop 1 and scouting in general, I am writing in support of the Scout Hall deed agreement you will be voting on during your August 24th meeting.

Since Nellie Smith donated the building that is Scout Hall to the Town of St. Helena in 1936 for the purpose of supporting Boy Scouts, Scout Hall has played an integral role in the lives of St. Helena youth. Although the original intent was for Boy Scouts to use the facility, both the city and the Boy Scouts have been more than generous over the years in allowing local Girl Scouts to call Scout Hall home as well. The memories and experiences our troops and I enjoyed over the years have been a great gift for all of us. I hope you will continue to honor the Smith family's donation and decades of grateful scouts by providing a space in St. Helena that not only supports Scouting, but also allows it to thrive.

With that in mind, I ask you to please vote to support the Scout Hall agreement and help ensure that Scouting, and the ensuing youth development it promotes, remain vibrant and active in St. Helena with a safe and secure meeting place for many years to come.

Thank you for your time, consideration, and continued support of St. Helena's youth.

All the best,

Sara Cakebread

What small thing will you do with great love today?

707-254-5309
scakebread@comcast.net

From: Cindy Tzafopoulos
To: Kamille Garcia; Mark Prestwich
Subject: Fwd: [External] Boy Scouts troop 1 support
Date: Monday, August 23, 2021 9:57:46 AM

Sent from my iPhone

Begin forwarded message:

From: Allison Birdwell <allisonbirdwell@gmail.com>
Date: August 22, 2021 at 6:15:17 PM GMT-6
To: Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Boy Scouts troop 1 support

Dear St. Helena City Council,

I am writing to support the Scout Hall agreement on tonight's agenda. I am a supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Thank you,

Allison Birdwell

Saint Helena

--
Best,
Allison

From: Cindy Tzafopoulos
To: Kamille Garcia; Mark Prestwich
Subject: Fwd: [External] Scout Hall
Date: Monday, August 23, 2021 9:58:00 AM

Sent from my iPhone

Begin forwarded message:

From: annsoren@napanet.net
Date: August 22, 2021 at 4:19:16 PM GMT-6
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, pdohring@cityofsthelena.wa-webapps.iad3a, org@napanet.net, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Scout Hall
Reply-To: aw774046@gmail.com

Dear St. Helena City Council,

Boy Scout Troop one has been meeting at Scout Hall for 85 years.

Since 1985 Girl Scouts have also had use of the building.

When there is a Cub Scout Pack in town the Hall is also used as their meeting place.

Scout Hall is a valuable asset for ALL the scouts in town. There are fewer and fewer places available for scout to use for a reasonable fee. Being able to depend on a meeting place, and know that you are is your space is comforting.

Please support the Scout Hall agreement.

Ann Sorenson
St. Helena

From: Cindy Tzafopoulos
To: Kamille Garcia; Mark Prestwich
Subject: Fwd: [External] Item for Regular City Council Meeting on August 24
Date: Monday, August 23, 2021 9:56:06 AM

Sent from my iPhone

Begin forwarded message:

From: Carl Ericson <broken_jah@hotmail.com>
Date: August 23, 2021 at 9:30:59 AM GMT-6
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>
Cc: Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Item for Regular City Council Meeting on August 24

Dear St. Helena City Council,

I am writing to support the Scout Hall agreement on tonight's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, Scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Sincerely,

Carl Ericson
Troop 1 Scoutmaster

Calistoga

From: Cindy Tzafopoulos
To: Kamille Garcia; Mark Prestwich
Subject: Fwd: [External] Support for Scout Hall
Date: Monday, August 23, 2021 9:55:15 AM

Sent from my iPhone

Begin forwarded message:

From: James Sweeney <jwsweeney1@gmail.com>
Date: August 23, 2021 at 10:48:44 AM GMT-6
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Support for Scout Hall

Dear St. Helena City Council,

I am writing to support the Scout Hall agreement on tonight's agenda. As a Troop 1 Eagle Scout myself, I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

James Sweeney, Troop 1 Eagle Scout
1407 Kearney St

From: Cindy Tzafopoulos
To: Kamille Garcia; Mark Prestwich
Subject: Fwd: [External] St. Helena Boy Scout Troop 1
Date: Monday, August 23, 2021 2:05:45 PM

Sent from my iPhone

Begin forwarded message:

From: chris.muttlynchwinery@gmail.com
Date: August 23, 2021 at 2:29:56 PM GMT-6
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] St. Helena Boy Scout Troop 1

Dear St. Helena City Council,

I am writing to support the Scout Hall agreement on tomorrow night's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Chris Lynch
Porter Lynch – Member of Troop 1

Chris Lynch
(707) 478-1722

From: Duane Dappen
To: Kamille Garcia
Subject: Fwd: [External] Scout Hall
Date: Monday, August 23, 2021 11:35:30 AM

Duane Dappen
707-287-0236
dappen@comcast.net

---------- Original Message ----------
From: Duane Dappen <dappen@comcast.net>
To: "ehall@cityofsthelena.org" <ehall@cityofsthelena.org>, "lhardy@cityofsthelena.org" <lhardy@cityofsthelena.org>, "achouteau@cityofsthelena.org" <achouteau@cityofsthelena.org>, "pdohring@cityofsthelena.org" <pdohring@cityofsthelena.org>, "gellsworth@cityofsthelena.org" <gellsworth@cityofsthelena.org>
Cc: "ctzafopoulos@cityofsthelena.org" <ctzafopoulos@cityofsthelena.org>
Date: 08/23/2021 10:50 AM
Subject: Scout Hall

Dear St. Helena City Council,
My son is a Life Scout in Troop 1 St. Helena and working on completing his Eagle Scout Project on the PUC Forest hiking/mountain biking trails in the next few months. My son and many other Troop 1 Scouts have volunteered hours at the St. Helena Coastal Clean-up day, cleaning up at The Bale Mill, and an aid station for the Napa Valley Marathon, Scout Hall is important giving the scouts having a place to call home and safely store their equipment.

I am writing to support the Scout Hall agreement on Tuesday's agenda. The troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Thankyou,
Duane Dappen
Deer Park

Duane Dappen
707-287-0236
dappen@comcast.net

From: Cindy Tzafopoulos
To: Kamille Garcia; Mark Prestwich
Subject: Fwd: [External] WE SUPPORT THE BOY SCOUTS / TROOP ONE AND SCOUT HALL!
Date: Monday, August 23, 2021 1:44:45 PM
Attachments: 2021 08 23 PJ SS Collins re Scout Hall.pdf

Sent from my iPhone

Begin forwarded message:

> **From:** Peter Collins <Peter@pjcarchitects.com>
> **Date:** August 23, 2021 at 2:10:39 PM GMT-6
> **To:** Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>
> **Cc:** Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>, "Sue S. Collins - Sage Design (collins492@comcast.net)" <collins492@comcast.net>
> **Subject: [External] WE SUPPORT THE BOY SCOUTS / TROOP ONE AND SCOUT HALL!**
>
> Dear Geoff, Paul, Lester, Anna, Eric, and Cindy,
> Please find our letter to the city council attached and thanks for all of your good work and your help here.
>
> Best -- Peter and Sue Collins
>
> PETER J. COLLINS – PRINCIPAL
> AIA, USGBC, CGBP
> **Peter J Collins Architects** | 1212 MAIN STREET | SAINT HELENA, CA 94574-2029 | v: 707.967.8383 | f: 707.967. 9335

PETER J. COLLINS ARCHITECTS
1212 MAIN STREET
ST. HELENA, CA 94574
T: 707.967.8383
F: 707.967.9335

WWW/PJCARCHITECTS.COM
E: INFO@PJCARCHITECTS.COM

August 23, 2021

St. Helena City Council Members and staff:
Geoff Ellsworth, Paul Dohring, Anna Chouteau, Lester Hardy, Eric Hall, and Cindy Tzafopoulos.

Dear St. Helena City Council:

Thank you all for your work in support of our community, we truly appreciate it!

My wife Sue Collins and I am writing to support the Scout Hall agreement on Tuesday's agenda. We both are staunch supporters of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Sincerely,

Peter J. Collins, AIA
Susan S. Collins
St. Helena, California

From: Cindy Tzafopoulos
To: Kamille Garcia; Mark Prestwich
Subject: Fwd: [External] Request for support for the "Scout Hall" agreement
Date: Monday, August 23, 2021 1:00:30 PM

Sent from my iPhone

Begin forwarded message:

From: Jim Sweeney <jim@inno-vine.com>
Date: August 23, 2021 at 11:46:47 AM GMT-6
To: Eric Hall <ehall@cityofsthelena.org>, Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Cc: Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Request for support for the 'Scout Hall' agreement

Dear St. Helena City Council,

I am writing to support the Scout Hall agreement on tonight's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. Our family has been involved in scouting for over 15 years, with both my wife and I having leadership roles. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation. In fact, our son James is a Troop 1 Eagle Scout. His Eagle project was to design, get permitted, and install the RLS long jump pit. One was not included when the track was installed.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Thank you in advance for your support.
Jim

Jim Sweeney
Assistant Scoutmaster
Eagle Scout 1978
Troop 1, St. Helena
1407 Kearney Street
St. Helena
707-738-4942

From: Cindy Tzafopoulos
To: Kamille Garcia; Mark Prestwich
Subject: Fwd: [External] In support of the proposed property use agreement between the City of St Helena & St Helena Scout troop 1 concerning 1515 Railroad Avenue, St Helena
Date: Monday, August 23, 2021 9:17:48 PM

Sent from my iPhone

Begin forwarded message:

From: Angus Cleland <angus@terrapacificmarketing.com>
Date: August 23, 2021 at 6:06:39 PM PDT
To: Paul Dohring <PDohring@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>, Geoff Ellsworth <GEllsworth@cityofsthelena.org>
Cc: Jim Sweeney <jim@inno-vine.com>
Subject: [External] In support of the proposed property use agreement between the City of St Helena & St Helena Scout troop 1 concerning 1515 Railroad Avenue, St Helena

Dear St. Helena City Council,

I write In support of the proposed property use agreement between the City of St Helena & St Helena Scout Troop 1 concerning 1515 Railroad Avenue that appears on the St. Helena City Council agenda this Tuesday evening.

The St Helena Scout Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California & the Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout

Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Thank you for your consideration.

Sincerely,

Angus Cleland
1702 Madrona Avenue,
Saint Helena, CA 94574

From: Cindy Tzafopoulos
To: Kamille Garcia; Mark Prestwich
Subject: Fwd: [External] Request to send a letter of support to City Council in support of Scout Hall
Date: Monday, August 23, 2021 5:17:46 PM

Sent from my iPhone

Begin forwarded message:

From: Clare Sweeney <claresweeney@google.com>
Date: August 23, 2021 at 2:17:16 PM MST
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Request to send a letter of support to City Council in support of Scout Hall

Dear St. Helena City Council Members,

As a lifelong Girl Scout and a supporter of Boy Scout Troop 1 and scouting in general, I am writing in support of the Scout Hall deed agreement you will be voting on during your August 24th meeting.

Since Nellie Smith donated the building that is Scout Hall to the Town of St. Helena in 1936 for the purpose of supporting Boy Scouts, Scout Hall has played an integral role in the lives of St. Helena youth. Although the original intent was for Boy Scouts to use the facility, both the city and the Boy Scouts have been more than generous over the years in allowing local Girl Scouts to call Scout Hall home as well. The memories and experiences our troops and I enjoyed over the years have been a great gift for all of us. I hope you will continue to honor the Smith family's donation and decades of grateful scouts by providing a space in St. Helena that not only supports Scouting, but also allows it to thrive.

With that in mind, I ask you to please vote to support the Scout Hall agreement and help ensure that Scouting, and the ensuing youth development it promotes, remain vibrant and active in St. Helena with a

safe and secure meeting place for many years to come.

Thank you for your time, consideration, and continued support of St. Helena's youth.

All the best,

--

Clare Sweeney | eCommerce Operations, Fitbit
San Francisco CA, USA | (707) 320-8281

From: Cindy Tzafopoulos
To: Kamille Garcia; Mark Prestwich
Subject: Fwd: [External] Support of Scout Hall
Date: Monday, August 23, 2021 5:19:28 PM
Attachments: image402182.png
image919584.png
image949869.png
BOY SCOUT LETTER.pdf

Sent from my iPhone

Begin forwarded message:

From: Meg Ryan <mdryan@annie-mac.com>
Date: August 23, 2021 at 2:25:00 PM MST
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>
Cc: Eric Hall <ehall@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Support of Scout Hall

Please find attached letter of support for Scout Hall.

Thank you,

NMLS# 338923

Meg Ryan
Branch Manager - NMLS# 1754810

AnnieMac Home Mortgage
2543 Pinot Way, St. Helena, CA, 94574

Email: mdryan@annie-mac.com

Tel: 707-360-1205 **Ext.** 5011
Cell: 949-547-2580
Fax: 707-360-1205

Web: https://megryan.annie-mac.com

Warning – please read!
WIRE FRAUD IS ON THE RISE.
Accepting wire and disbursement instructions by email is dangerous, especially changes to those instructions.

Please note, AnnieMac Home Mortgage will NEVER send money, wire, transfer or disbursement

instructions as part of your loan application process. You should receive money, wire, transfer, or disbursement instructions from your Closing Agent and contact them directly for confirmation.

If you receive money, wire, transfer or disbursement instructions from what appears to be an AnnieMac Home Mortgage email account, please contact incident@annie-mac.com.

At American Neighborhood Mortgage Acceptance Company LLC (DBA AnnieMac Home Mortgage), our goal is exceeding your expectations by delivering world-class customer service. We would appreciate any feedback regarding your experience with American Neighborhood Mortgage Acceptance Company LLC by contacting us at info@annie-mac.com

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Company NMLS# 338923

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www.nmlsconsumeraccess.org

Dear St. Helena City Council,

I am writing to support the Scout Hall agreement on tonight's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Megan and Todd Ryan

St. Helena

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] Scout Hall
Date: Tuesday, August 24, 2021 3:09:49 PM

Sent from my iPhone

Begin forwarded message:

From: ana martinez <mariposamartinez6@hotmail.com>
Date: August 23, 2021 at 11:47:46 PM PDT
To: Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Scout Hall

Estimados miembros del cabildo de St. Helena,

Escribo para pedirles que apoyen el acuerdo para que podamos seguir teniendo Scout Hall. Mi hija Michelle ha sido una niña Scout por los pasados 5 años, y el programa le ha gustado mucho. Michelle disfruta mucho pasar tiempo con sus amigas y hacer servicio comunitario. Es importante que las niñas tengan un lugar seguro donde se puedan reunir y Scout Hall es un muy buen lugar. Ella sabe que es parte de un equipo importante. Porfavor voten apoyando a que el edificio se mantenga para que los niños Scouts y niñas Scouts puedan seguir ahi sus actividades por mucho tiempo.

Gracias,

Ana Martinez
St. Helena

Ana Martinez

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] St Helena Scout Hall
Date: Tuesday, August 24, 2021 3:09:12 PM

Sent from my iPhone

Begin forwarded message:

From: brendan.sweeney@engie.com
Date: August 24, 2021 at 8:28:07 AM PDT
To: Eric Hall <ehall@cityofsthelena.org>, Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Cc: jim@inno-vine.com
Subject: [External] St Helena Scout Hall

Dear St. Helena City Council,

I am writing to support the Scout Hall agreement on tonight's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

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Brendan Sweeney
Dallas, TX

ENGIE Mail Disclaimer: http://www.engie.com/disclaimer/

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] Letter of support for Scout Hall
Date: Tuesday, August 24, 2021 3:09:23 PM

Sent from my iPhone

Begin forwarded message:

From: Caroline cakebread <carolinecakebr@gmail.com>
Date: August 24, 2021 at 7:20:50 AM PDT
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Letter of support for Scout Hall

Dear St. Helena City Council Members,

As a lifelong Girl Scout and a supporter of Boy Scout Troop 1 and scouting in general, I am writing in support of the Scout Hall deed agreement you will be voting on during your August 24th meeting.

Since Nellie Smith donated the building that is Scout Hall to the Town of St. Helena in 1936 for the purpose of supporting Boy Scouts, Scout Hall has played an integral role in the lives of St. Helena youth. Although the original intent was for Boy Scouts to use the facility, both the city and the Boy Scouts have been more than generous over the years in allowing local Girl Scouts to call Scout Hall home as well. The memories and experiences our troops and I enjoyed over the years have been a great gift for all of us. I hope you will continue to honor the Smith family's donation and decades of grateful scouts by providing a space in St. Helena that not only supports Scouting, but also allows it to thrive.

With that in mind, I ask you to please vote to support the Scout Hall agreement and help ensure that Scouting, and the ensuing youth development it promotes, remain vibrant and active in St. Helena with a safe and secure meeting place for many years to come.

Thank you for your time, consideration, and continued support of St. Helena's youth.

All the best,

Caroline Cakebread

Dear St. Helena City Council,

I am writing to support the Scout Hall agreement on tonight's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Cindy and Kelly Crane

St. Helena

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] Support for Scouting in st. Helena
Date: Tuesday, August 24, 2021 3:09:59 PM

Sent from my iPhone

Begin forwarded message:

> **From:** Gregory DeLucca <gregdelucca59@gmail.com>
> **Date:** August 23, 2021 at 11:41:47 PM PDT
> **To:** Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
> **Subject: [External] Support for Scouting in st. Helena**
>
> Dear St. Helena City Council,
>
> I am writing to support the Scout Hall agreement on tomorrow's Council agenda. I have been a Cub Scout, Boy Scout and Explorer Scout spanning 8 years during my childhood and youth. I count my initiation into the Order of the Arrow and Star rank as among my treasured accomplishments.
>
> I am a staunch supporter of St. Helena's Boy Scout Troop 1. In my St. Helena residence since 1977 I have looked positively at Troop 1 as a mainstay for the City's development of its youth. As Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 to provide meeting space to the Scouts, I am keenly aware how important a large, safe, clean and secure space is to the life and recruitment of community youth.
>
> I urge you to support the Scout Hall agreement and help ensure that Scouting remains a viable contribution to St. Helena's current and future community.
>
> Respectfully,
>
> Greg De Lucca

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] Scout Hall
Date: Tuesday, August 24, 2021 3:07:33 PM

Sent from my iPhone

Begin forwarded message:

From: Molly Hill <mwhill16@hotmail.com>
Date: August 24, 2021 at 10:58:10 AM PDT
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>
Cc: Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Scout Hall

Dear St. Helena City Council,

I am writing to support the Scout Hall agreement on tonight's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Sincerely,
Molly Bjorkman
Calistoga

P.S. Although I do not live in St. Helena, my children both attend St. Helena schools and we are active in the community in St. Helena, as well as Calistoga.

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] Letter to request support for Scout Hall agreement
Date: Tuesday, August 24, 2021 3:11:37 PM

Sent from my iPhone

Begin forwarded message:

From: Norma Ferriz <nferriz@hotmail.com>
Date: August 23, 2021 at 2:56:30 PM PDT
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>
Cc: Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Letter to request support for Scout Hall agreement

Dear members of the St. Helena City Council,

I am writing to support the Scout Hall agreement that you will review on Aug 24th. The City has always been very supportive of Boy and Girl Scouts and that has resulted in many young people benefiting from the services of these organizations. I have been a Girl Scout Leader in St. Helena for the past 12 years, and having a safe place to meet has always been very important.

My troop co-leaders and I have led about 40 girls, mostly Latinas through the Girl Scout program. The girls, some of them already in College, are more confident, integrated and engaged with their community, respectful of the environment and prepared to be better citizens thanks to their participation in the program. They all have great memories about their time with Girl Scouts and of activities hosted at Scout Hall. Enclosed are a couple of pictures of the girls participating in World Thinking Day at Scout Hall; where the girls learn and share their knowledge among different troops about different countries, helping them become Global citizens. Having that space also allows them to do projects that last for more than one day. Enclosed is another picture of the girls painting a banner for the Pet Parade organized by the City, taht needed to dry for more than one day.

Girls and Boy Scouts have participated and are eager to continue to participate in local community projects that benefit our community. The fact that we have Scout Hall benefits all. We are an exceptional city to offer a space for these groups. In many other cities Scouts struggle to find a regular place to meet. Having one place, strengthens their sense of belonging, that is very important in youth development. I thank you and all the city council members before and the generous donors that have supported this space throughout the years.

I am just but one leader, but many others have supported the growth of many girls and of course boys, through Boy Scouts, throughout the last 85 years. It is a jewel that we can all be proud of.

Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Norma Ferriz

St. Helena

GO-GETTER
INNOVATOR
GIRL
RISK-TAKER
LEADER

EXIT

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] Support of Scout Hall
Date: Tuesday, August 24, 2021 3:08:06 PM

Sent from my iPhone

Begin forwarded message:

From: Sue Pressler <sepressler@aol.com>
Date: August 24, 2021 at 9:40:56 AM PDT
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] Support of Scout Hall
Reply-To: Sue Pressler <sepressler@aol.com>

Dear St. Helena City Council,

I am writing to support the Scout Hall agreement on tonight's agenda. I am a staunch supporter of St. Helena Boy Scout Troop 1. The Troop has been an active youth-focused organization in our community for over 100 years. Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Sincerely,

Jim & Susan Pressler

Plano, TX

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] letter of support regarding use agreement of Scout Hall
Date: Tuesday, August 24, 2021 3:10:15 PM

Sent from my iPhone

Begin forwarded message:

From: Evan Massaro <edog1955@yahoo.com>
Date: August 23, 2021 at 9:48:18 PM PDT
To: Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>
Cc: Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
Subject: [External] letter of support regarding use agreement of Scout Hall

Dear St. Helena City Council,

As a father of a Troop 1 Eagle Scout, and a co-leader of St. Helena Girl Scouts, I am writing to encourage you to approve the property use agreement between the City of St. Helena and Boy Scouts of America. I am a staunch supporter of St. Helena Boy Scouts and Girl Scouts. The Troops have been an active youth-focused organization in our community for over 100 years. Boy Scout Troop 1 is one of the oldest continuously organized Scout troops in the state of California. Scout Hall has played a vital role in this success.

Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.

Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.

Evan Massaro

St. Helena

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] CARTA DE APOYO A SCOUT HALL
Date: Tuesday, August 24, 2021 4:01:30 PM

Sent from my iPhone

Begin forwarded message:

From: Rosalba Sepulveda <rossep21@gmail.com>
Date: August 24, 2021 at 1:11:22 PM PDT
To: Paul Dohring <PDohring@cityofsthelena.org>, Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>
Subject: [External] CARTA DE APOYO A SCOUT HALL

Estimados miembros del concilio,

Escribo para pedirles que apoyen el acuerdo para que podamos seguir teniendo Scout Hall. Mi hija Crystal ha sido una niña Scout por los pasados 5 años, y el programa le ha gustado mucho. Cada vez es una niña más segura de sí misma, ha consolidado amistades y ha hecho muchas actividades con las Scouts. Es importante que las niñas tengan un lugar seguro donde se puedan reunir y Scout Hall es un muy buen lugar. Por favor voten apoyando a que el edificio se mantenga para que los niños Scouts y niñas Scouts puedan seguir ahí sus actividades por mucho tiempo.

Gracias,

St. Helena

From: Cindy Tzafopoulos
To: Kamille Garcia
Subject: Fwd: [External] Support for Troop 1 hall improvements
Date: Tuesday, August 24, 2021 4:00:37 PM
Attachments: Troop 1 Support.pdf

Sent from my iPhone

Begin forwarded message:

> **From:** Russell <russell@sh-oddfellows.org>
> **Date:** August 24, 2021 at 3:50:41 PM PDT
> **To:** Geoff Ellsworth <GEllsworth@cityofsthelena.org>, Paul Dohring <PDohring@cityofsthelena.org>, Anna Chouteau <AChouteau@cityofsthelena.org>, Lester Hardy <LHardy@cityofsthelena.org>, Eric Hall <ehall@cityofsthelena.org>
> **Cc:** Cindy Tzafopoulos <ctzafopoulos@cityofsthelena.org>
> **Subject: [External] Support for Troop 1 hall improvements**
>
> August 24, 2021
>
> Dear St. Helena City Council,
>
> I am writing on behalf of Saint Helena Odd Fellows to support the Scout Hall agreement on tonight's agenda. We are staunch supporters of St. Helena Boy Scout Troop 1 and have multiple past members of Troop 1.Troop 1 has always been ready to help us with our various philanthropic endeavors.
>
> Scouting helps develop leadership in our community, respect for the outdoors, improvements to our community through Troop and Eagle Scout projects, and so much more. St. Helena has benefitted from countless volunteer hours, scout projects and community involvement since the Troop's formation.
>
> Nellie Smith donated Scout Hall to the Town of St. Helena in 1936 for this exact purpose: to provide a meeting space to support Scouting in St. Helena. Let's honor the Smith family's donation as intended, and let's do everything in our power to ensure Troop 1 continues to thrive. Please vote to support the Scout Hall agreement and help ensure Scouting remains active with a safe and secure meeting place for many years to come.
>
> Russell Gold
>
> Noble Grand
>
> Saint Helena Odd Fellows #167

St. Helena Odd Fellows #167
1352 Main Street
Saint Helena, CA
94574

Trustees
Eric Larson
Vincent Nadalie
John Collins
Sasha Janev
Daniel Hamlin

August 24, 2021

Dear St. Helena City Council,

I am writing on behalf of Saint Helena Odd Fellows to support the Scout Hall agreement on tonight's agenda. We are staunch supporters of St. Helena Boy Scout Troop 1 and have multiple past members of Troop 1. Troop 1 has always been ready to help us with our various philanthropic endeavors.

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Russell Gold
Noble Grand
Saint Helena Odd Fellows #167

Report to the City Council
Regular City Council - 24 Aug 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and Proposed Approval of a Resolution Authorizing an Agreement with Sutter Home Winery, Inc. for Alternative Measurement of Wastewater Discharge**

CEQA Determination: **Not a "project" as defined in Section 15378(a) subject to CEQA; further, even if deemed a "project" subject to CEQA, exempt from CEQA under the common sense exemption set forth in Section 15061 (b)(3), in that it can be seen with certainty that the proposed action will have no impact on the environment.**

Prepared By: Mark T. Prestwich, City Manager

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The City operates a wastewater collection and treatment system (the "Sanitary Sewer") in conformance with Chapter 13.24 of the St. Helena Municipal Code. Chapter 13.24 establishes uniform requirements for discharges into the Sanitary Sewer and establishes a methodology for determining wastewater volume generated by users of the City's wastewater system.

Sutter Home Winery, Inc. (Sutter Home) owns property located at 100 Main Street, St. Helena California (the "Property"), upon which Sutter Home operates a winery, along with associated office and administrative uses (the "Facility"). The City has issued numerous permits for construction or modification of the Facility's improvements over the years. The wastewater produced from the Facility as part of the wine making process is discharged into on-site ponds, clarified and recycled for on-site landscaping purposes (the "Onsite Treatment System"). However, other portions of the Facility that are not part of the wine production process such as: restrooms, on-site kitchens, and breakrooms are connected to the City's Sanitary Sewer and discharge wastewater into the Sanitary Sewer.

On November 30, 2018, the City's Public Works Department was contacted by a representative of Sutter Home requesting a meeting to discuss a review of waste process at their facility. After an exchange of several emails, a meeting was subsequently held on March 27, 2019, at which a request was made by Sutter Home to exercise a provision of the St. Helena Municipal Code Section 13.24.040 which allows for a reduction of the wastewater charges if a portion of metered water does not flow into the sewer system. The City applies wastewater rates, charges, and fees in accordance with St. Helena Municipal Code Section 13.24.040. Section 13.24.040(A) provides that wastewater charges and fees shall be applied against the total amount of water influent from all sources unless, in the opinion of the City, significant portions of water received are not discharged to the Sanitary Sewer. Section 13.24.040 further provides that where, in the opinion of the City, a significant portion of the water influent from any metered source does not flow into the Sanitary Sewer, user charges and fees will be applied against the volume of water distributed from such premises into the Sanitary Sewer.

City staff, Mayor Ellsworth, and Vice Mayor Dohring attended the March 27, 2019 meeting and agreed with Sutter Home that the methodology being used at that time did not accurately reflect the likely discharge to the City's sewer system. The methodology used assumed each unit of water used produced an equal amount of wastewater deposited into the City's Sanitary Sewer system. In response to the meeting, the City updated its billing methodology and issued a credit in the amount of $362,797.94 for the period between February 2017 and July 2019. The updated methodology utilized volume assumptions noted in the City's 2016 Wastewater Rate Study Technical Memorandum which equates 3,195 gallons per day. Based on 313 employees, this equates to 10.21 gallons per day per employee.

To improve the future accuracy of wastewater billing, City staff, Mayor Ellsworth, Vice Mayor Dohring, and representatives of Sutter Home met again on May 30, 2019, and discussed a plan for Sutter Home to install a wastewater meter onsite. However, after conducting their due diligence and evaluating the cost of installing a wastewater meter (estimated in excess of $800,000), Sutter Home instead proposed the installation of several water meters at known discharge locations as a significantly more affordable alternative that would still allow for an accurate determination of the wastewater flow for City wastewater billing charges. City staff, Mayor Ellsworth, Vice Mayor Dohring, and the City Attorney agree that given the cost of installing a wastewater meter, the use of water meters is a satisfactory alternative and have worked with Sutter Home to prepare the proposed agreement for consideration by the City Council.

DISCUSSION

In order to develop a more accurate means of determining the volume of wastewater discharge from the Facility into the City's Sanitary Sewer, City and Sutter Home have agreed that Sutter Home will install potable water influent meters at its sole cost to determine the potable water influent to portions of the Facility that are connected to the City's Sanitary Sewer. These meters shall be used in accordance with the terms and

conditions of this Agreement as the basis for the City charging wastewater charges and fees to the Facility.

The agreement requires jointly conducted inspections of the sewer laterals at the Facility, including internal camera inspections to confirm the discharge from the wine production process and other discharges at the Facility.

FISCAL IMPACT

Installation of water meters to measure sanitary sewer flow will improve the accuracy of the City's billing to Sutter Home.

RECOMMENDED ACTION

Adopt Resolution authorizing an Agreement with Sutter Home Winery, Inc. for an alternate measurement of wastewater discharge.

ATTACHMENTS

DRAFT Agreement with TFE re Wastewater Discharge (SHW 2021_3_9) (002)
Sutter Home Wineryl Resolution
Sutter Home Sewer Rate Evaluation Agreement executed

AGREEMENT FOR ALTERNATIVE MEASUREMENT OF WASTEWATER DISCHARGE

This Agreement for Alternative Measurement of Wastewater Discharge ("Agreement") is made and entered into as of _____, 2021 (the "Effective Date"), by and between the City of St. Helena, a California municipal corporation ("City") and Sutter Home Winery, Inc., a California corporation ("SHW"), each of which is sometimes individually referred to herein as a "party" and collectively as the "parties".

RECITALS

A. The City operates a wastewater collection and treatment system (the "Sanitary Sewer") in conformance with Chapter 13.24 of the St. Helena Municipal Code. Chapter 13.24 establishes uniform requirements for discharges into the Sanitary Sewer and establishes a methodology for determining wastewater volume generated by users of the City's wastewater system.

B. SHW owns that certain property located at 100 Main Street, St. Helena California (the "Property"), upon which SHW operates a winery, along with associated office and administrative uses (the "Facility"). The Facility has operated at the Property for XX years, and City has issued numerous permits for construction or modification of the Facility's improvements. The wastewater produced from the Facility as part of the wine making process is discharged into on-site ponds, clarified and recycled for on-site landscaping purposes (the "On-site Treatment System"). However, the other portions of the Facility that are not part of the wine production process, such as restrooms, on-site kitchens and breakrooms, are connected to the City's Sanitary Sewer and discharge wastewater into the Sanitary Sewer.

C. The City applies wastewater rates, charges and fees in accordance with St. Helena Municipal Code Section 13.24.040. Section 13.24.040(A) provides that wastewater charges and fees shall be applied against the total amount of water influent from all sources unless, in the opinion of the City, significant portions of water received are not discharged to the Sanitary Sewer. Section 13.24.040 of the Municipal Code further provides that where, in the opinion of the City, a significant portion of the water influent from any metered source does not flow into the Sanitary Sewer, user charges and fees will be applied against the volume of water distributed from such premises into the Sanitary Sewer.

D. City and SHW have jointly conducted inspections of the sewer laterals at the Facility, including internal camera inspections to confirm the discharge from the wine production process and other discharges at the Facility, and have confirmed to the satisfaction of the City that wastewater from the wine production process is not being discharged into the City's Sanitary Sewer. On that basis the City does not believe that the total potable water influent at the Facility is an appropriate basis for determining wastewater charges and fees levied against the Property.

E. In order to develop a more accurate means of determining the volume of wastewater discharge from the Facility into the City's Sanitary Sewer, City and SHW have agreed that SHW will install potable water influent meters at its sole cost to determine the potable water influent to portions of the Facility that are connected to the City's Sanitary Sewer. These meters shall be used

in accordance with the terms and conditions of this Agreement as the basis for the City charging wastewater charges and fees to the Facility.

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

AGREEMENT

Section 1. Incorporation of Recitals

1.1 The foregoing Recitals, and each of them, are hereby incorporated into this Agreement as though set forth in full.

Section 2. Installation of Water Meters

2.1 Within thirty (30) days of the Effective Date, SHW shall, at its sole cost and expense, furnish and install rotary-style water meters (the "Meters") to record the quantity of potable water influent into the areas of the Facility that are connected to the Sanitary Sewer.

2.2 The Meters shall be installed at the locations as depicted on Exhibit A, attached hereto and incorporated herein by this reference. Immediately following installation of the Meters, SHW shall notify City and City shall schedule inspection of the Meters to confirm proper installation. Following such inspection the City shall either approve the installation of the Meters or notify SHW of any additional action required for City approval.

2.3 SHW shall, at its sole cost and expense, maintain the Meters in good working order and promptly perform any repairs to the Meters as deemed necessary or appropriate by the City to assure proper functioning of the Meters.

2.4 SHW shall be solely responsible for obtaining any and all permits and approvals required in connection with the installation of the Meters.

2.5 SHW shall obtain and maintain, or shall cause its general contractor to obtain and maintain, insurance coverage in connection with the installation of the Meters and shall name the City as an additional insured for bodily injury and property damage. The specific insurance requirements are attached hereto as Exhibit B, and incorporated herein by this reference.

Section 3. Operation of On-site Treatment System

3.1 SHW represents and warrants to the City that the On-site Treatment System, including but not limited to the collection system, treatment equipment, pumping stations, treatment ponds, clarifiers, sand/media filters, disinfection systems, recycled water systems, storage ponds, and land application areas located and maintained on the Property are operated and maintained in compliance with all applicable State laws and regulations, and shall continue to be so operated for so long as this Agreement remains in effect.

Section 4. City Access to Facility.

4.1 SHW shall grant City Public Utilities staff access to the Facility on a monthly basis during a mutually agreed upon window of time, which window shall not exceed a four hour period, for purposes of reading and inspecting the Meters. The City and SHW shall agree upon the time of such monthly Meter reading and inspections in writing, and may change the schedule from time to time as mutually agreed in writing. Both parties agree that a request to change the schedule established pursuant to this Section shall not be unreasonably withheld.

4.2 SHW shall further grant City Public Utilities staff access to the Facility upon not less than forty-eight (48) hours emailed notice to conduct any inspections of the Meters and perform any tests as deemed appropriate by the City to confirm that the Meters are operating properly. Such emailed notice shall additionally indicate if the City will perform any testing that will require the shut off of potable water to any portion of the Facility, and if that is the case, SHW may request that the City perform such testing on the weekend or during non-working hours for SHW. The City will grant such request so long as SHW agrees to compensate the City for the time worked by the City staff performing such tests. Such time shall be billed by the City to SHW as a minimum block of __ hours, at an hourly rate of $____ per hour. The City shall invoice SHW for such costs and SHW shall remit payment to the City within thirty (30) days of receipt of invoice from the City.

4.3 SHW shall additionally, within ninety (90) days of execution of this Agreement, authorize the City to conduct a closed circuit television (CCTV) inspection of the City sewer main as it extends through the Property, to document existing conditions and the existence of laterals off of the City's sewer main. Thereafter, SHW, and any successors in interest, shall authorize the City to conduct such inspections every five years commencing in 2026, for so long as this Agreement is in effect. In the event that the CCTV inspection identifies an unknown or non-permitted sewer lateral, City may conduct an analysis of the additional sewer flow to such laterals.

Section 5. Wastewater Charges and Fees for the Facility

5.1 Following approval of the Meters by the City pursuant to Section 2 of this Agreement, for the term of this Agreement and any extension thereof, the City will apply all City wastewater rates, charges and fees now in effect or as they may be amended from time to time against the Facility based on the potable water influent to those areas of the Facility that are connected to the City's Sanitary Sewer, as measured by the Meters. All such charges and fees shall be levied and collected in accordance with the City's municipal code and all applicable laws, regulations and fee resolutions.

5.2 City and SHW agree that the potable water influent measured by the Meters is an appropriate measure of the volume of wastewater discharge from the Facility to the City's Sanitary Sewer in conformance with Section 13.24.040 of the St. Helena Municipal Code.

Section 6. Change in Use The methodology set forth in this Agreement for determining the wastewater charges and fees levied against the Facility shall only apply to the current use and configuration of the Facility. In the event that there is any change or expansion of use, or reconfiguration of the Facility that changes the Facility's existing discharge to the Sanitary Sewer, including but not limited to any additional connections of any portion of the Facility or the Property to the Sanitary Sewer, the City Manager of City or designee and the _____ of

SHW will meet and confer to discuss any necessary or appropriate amendments to this Agreement as part of the permitting process for such change, expansion of use, or reconfiguration.

Section 7. Dispute Resolution In the event of any dispute between City and SHW regarding the performance of this Agreement or any term of this Agreement, the parties shall first attempt to resolve such dispute in good faith in consultations between the management staff of each entity that are responsible for the day to day performance of this Agreement. If the dispute cannot be resolved at the operational level, then either party may submit a formal written request for consultation between the City Manager of City and the _____ of SHW to attempt to resolve the dispute. The request for consultation will provide a description of the dispute in reasonable detail and the position of the party requesting consultation. If the City Manager and _____ are unable to resolve the dispute within thirty (30) days of the request for consultation, then either party will have the right to pursue its remedies at law or equity.

Section 8. Term, Termination, and Remedies

8.1 The initial term of this Agreement shall be for twenty (20) years, commencing on the Effective Date (the "Term"). Upon expiration of the Term, the Agreement shall thereafter automatically extend on an annual basis for additional one year terms unless terminated by either party pursuant to Section 8.2.

8.2 Either party shall have the right to terminate this Agreement at the end of the Term or at the end of any annual extension of the Term, provided that the terminating party must give not less than ninety (90) days written notice to the other party of such termination.

8.3 In the event of a material breach of any term or provision of this Agreement by either party, and such breach is not cured within thirty (30) days after service of written notice of such breach upon the breaching party, then the non-breaching party shall have the right and option to terminate this Agreement, provided, however, that should the breaching party, prior to the expiration of the thirty (30) day cure period, diligently commences to cure such breach, but is unable to do so within the thirty (30) day period, then such cure period shall be extended for an additional ninety (90) day period.

8.4 In the event of a breach of any term or provision of this Agreement by either party, both parties shall have all rights and remedies granted by California law. Nothing contained in this Agreement shall be construed as limiting any of the rights and remedies of either party upon any breach of a term or provision of this Agreement.

Section 9. Indemnification

9.1 With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of City or City's agents, officers, and employees, City agrees to defend, indemnify, protect, and hold SHW its agents, officers, and employees harmless from and against any and all liability. City's duty to defend, indemnify, protect, and hold harmless shall not include any claims or liability arising from the negligence or willful misconduct of SHW, its agents, officers, or employees.

9.2 With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of SHW, or SHW's agents, officers, and employees, SHW agrees to defend, indemnify, protect and hold City, its agents, officers, and employees harmless from and against any and all liability. SHW's duty to defend, indemnify, protect, and hold harmless shall not include any claims or liability arising from the negligence or willful misconduct of City, its agents, officers, or employees.

Section 10. Miscellaneous

10.1 This Agreement may be modified or amended by the parties pursuant to a written modification or amendment executed by both parties. Verbal modifications or amendments to this Agreement shall be of no effect.

10.2 This Agreement, including attachments and/or exhibits, contains all of the agreements of the parties with respect to the subject matter hereof, excluding the, and all prior negotiations and agreements are merged into and superseded by this Agreement.

10.3 Notice: Any and all communications and/or notices in connection with this Agreement shall be either hand-delivered or sent via commercial overnight courier to the following addresses:

To: City

City of St. Helena
1572 Railroad Avenue
St. Helena, CA 94574
Attn: Public Works Director
Email: Esmithies@cityofsthelena.org

To: SHW

_____
_____
_____
Attn: _____
Email: _____

The parties may change the foregoing addresses by providing written notice in compliance with this paragraph.

10.4 No failure of either City or SHW to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term of this Agreement shall continue in full force and effect to any existing or subsequent breach.

10.5 Neither party shall assign its obligations under this Agreement without the other party's prior written approval which shall not be unreasonably withheld. Any assignment in violation of this paragraph shall be void and of no force or effect. Notwithstanding this Section 10.5, the sale of the Property shall not require City consent, and the terms and provisions of this Agreement shall run with the land as provided in Section 10.6 below.

10.6 This Agreement and all rights and obligations contained in this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

10.7 This Agreement is entered into and shall be construed and interpreted as a contract in accordance with the laws of the State of California. Venue for actions arising out of the Agreement shall be in the County of Napa, California.

10.8 If the performance of any act required of City or SHW is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, that party shall be excused from performing that act for the period of time equal to the period of time of the prevention or delay. In the event of the existence of such a delay, the party claiming the delay shall notify the other party in writing of that fact within ten (10) calendar days after the beginning of any such claimed delay.

10.9 This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original, as though all parties had executed the same page.

10.10 The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal, to the extent practicable or provided by law.

10.11 If either party commences a proceeding against the other party arising out of or in connection with this Agreement, including arbitration, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

CITY OF ST. HELENA
a California municipal corporation

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

APPROVED AS TO FORM:

By: _____
Name: Ethan Walsh
Title: City Attorney

SUTTER HOME WINERY, INC.
a California corporation

By: _____
Name: _____
Title: _____

EXHIBIT “A”

LOCATION OF METERS

Exhibit A

EXHIBIT “B”

INSURANCE REQUIREMENTS

CITY OF ST. HELENA

RESOLUTION NO. 2021-

Resolution of the City of St. Helena City Council Authorizing an Agreement with Sutter Home Winery, Inc. for Alternative Measurement of Wastewater Discharge

RECITALS

A. The City operates a wastewater collection and treatment system (the "Sanitary Sewer") in conformance with Chapter 13.24 of the St. Helena Municipal Code.

B. Chapter 13.24 establishes uniform requirements for discharges into the Sanitary Sewer and establishes a methodology for determining wastewater volume generated by users of the City's wastewater system.

C. Sutter Home Winery, Inc. (Sutter Home) owns property located at 100 Main Street, St. Helena California (the "Property"), upon which Sutter Home operates a winery, along with associated office and administrative uses (the "Facility"). The wastewater produced from the Facility as part of the wine making process is discharged into on-site ponds, clarified and recycled for on-site landscaping purposes (the "Onsite Treatment System"). However, other portions of the Facility that are not part of the wine production process such as: restrooms, on-site kitchens, and breakrooms are connected to the City's Sanitary Sewer and discharge wastewater into the Sanitary Sewer.

D. On November 30, 2018, a request was made by Sutter Home Winery, Inc. to exercise a provision of the St. Helena Municipal Code Section 13.24.040 which allows for a reduction of the wastewater charges if a portion of metered water does not flow into the sewer system.

E. To improve the future accuracy of wastewater billing, City staff, Mayor Ellsworth, Vice Mayor Dohring, and representatives of Sutter Home met again on May 30, 2018, and discussed a plan for Sutter Home to install a wastewater meter onsite. However, after conducting their due diligence and evaluating the cost of installing a wastewater meter (estimated in excess of $800,000),

F. Sutter Home instead proposed the installation of several water meters at known discharge locations as a significantly more affordable alternative that would still allow for an accurate determination of the wastewater flow for City wastewater billing charges. City staff, Mayor Ellsworth, Vice Mayor Dohring, and the City Attorney agree that given the cost of installing a wastewater meter, the use of water meters is a satisfactory alternative and have worked with Sutter Home to prepare the proposed agreement for consideration by the City Council.

RESOLUTION

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

1. The City Council authorizes the City Manager to execute an agreement with Sutter Home Winery, Inc. for Alternate Measurement of Wastewater Discharge.

2. Approved at a Regular Meeting of the St. Helena City Council on August 24, 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

City of St. Helena
"We will conduct city affairs on behalf of our citizens using an open and creative process."

1480 Main Street
St. Helena, CA 94574

www.sthelenacity.com

August 8, 2019

Robert D. Torres
Principal, Vice Chairman & Director
Trinchero Family estates
P.O. Box 248
St. Helena, CA 94574

RE: SEWER RATE EVALUATION
Sutter Home Family Vineyards
100 Main Street
St. Helena, CA 94574

Dear Mr. Torres,

Thank you for your letter dated July 30, 2019. Upon review of the information, the overbilling amount has been corrected and is reflected below. Please disregard the City's original letter dated July 19, 2019 as this letter will serve as its replacement.

On November 30, 2018, the City's Public Works Department was contacted by Diana Ortiz, Environmental Supervisor for Trinchero Family Estates requesting a meeting to discuss a review of waste process at Sutter Home Family Vineyards. Between November 30, 2018, and February 11, 2019, several emails were exchanged before a meeting was subsequently scheduled on March 27, 2019. At the March 27, 2019, meeting representatives from Trinchero Family Estates presented City staff with an evaluation titled *City of St. Helena Sewer Volume/Rate Review* delivered via PowerPoint. The evaluation included a comparison between Sutter Home billed water units in 2018 and 2019, use/treatment sewer, a sewer volume study (study) for February 2018 through March 2018 conducted by Trinchero Family Estates, study results and summary, findings and conclusions of the study.

Trinchero Family Estates stated a desire to exercise a provision of the St. Helena Municipal Code (SHMC §13.24.040) which allows for a reduction of the wastewater charges if a portion of metered water does not flow into the sewer system. The code reads as follows:

SHMC § 13.24.040

> *"B. Metered Wastewater Volume and Metered Diversions. For users where, in the opinion of the agency, a significant portion of the water received from any metered source*

does not flow into the community sewer because of the principal activity of the user or removal by other means. The user charges and fees will be applied against the volume of water distributed from such premises into the community sewer. Written notification and proof of the diversion of water must be provided by the user if the user is to avoid the application of the user charges and fees against the total amount of water used from all sources. The user may install a meter of a type and at a location approved by the agency of sewage discharged or the amount of water diverted. Such meters shall be tested for accuracy at the expense of the user when deemed necessary by the manager."

According to Trinchero Family Estates the findings of the study support the following conclusions:

1. City assumptions used for billing are not correct. If the assumption of 3,195 Gallons Per Day (GPD) had been used when the new rates went into effect, Sutter Home Family Vineyards would have been billed for 2,332,350 gallons discharged over the past two years (average of 1,166,176 per year).

2. A recommendation to immediately correct Sutter Home Family Vineyards Sewer discharge volume assumptions by implementing the October 2016 Rate Study estimate of 3,195 Gallons per day (10.20 GPD x 313 employees). The daily charge for this volume at the current rate would be $20.46.

3. Sutter Home Family Vineyards billed charges for the period of January 9, 2017, to February 8, 2019, are $377,924.04. If 3,195 GPD had been used for billing, the charge for this volume would have been $15,131.10 resulting in an overcharge of $362,797.94 for the past 24 months.

In light of the volume of information presented and sensitive nature of the study's conclusion, City staff and representatives from Trinchero Family Estates agreed to meet again to discuss a corrective action, if any.

On May 30, 2019, City staff, Mayor Ellsworth, Vice Mayor Dohring, and representatives from Trinchero Family Estates met as follow up to the March 27, 2019, meeting. The following actions were agreed to by both parties:

1. City Public Works staff will coordinate with Sutter Home staff to install a wastewater meter according to SHMC § 13.24.040.

2. City Public Works staff will monitor Wastewater discharge for one year with a quarterly review of the data with Sutter Home Family Vineyards to evaluate and compare to the study conducted by Trinchero Family Estates staff.

3. The City will charge wastewater consumption at a rate of 3,195 GPD with a true-up after one year (either in the form of a credit or a charge); this equates to 1,166,175 gallons per

year = 1,558.95 units per year (748.05 gallons per unit). This will be billed at 129.92 units per month.

4. For the balance owed to Sutter Home Family Vineyards, the City will reimburse Sutter Home Family Vineyards over a six-month period. The total to be reimbursed is $371,768.70 (Page 4) and the monthly reimbursement will be $61,961.45. This amount takes into consideration charging 129.92 units per month beginning with the initial rate change reflected on the February 2017 bill (for use from January 9, 2017, to February 8, 2017. Once the one-year period of tracking is complete, then a true-up will be made. The first reimbursement will be made within 30 days of receipt of acknowledgement of this letter and monthly thereafter.

The goal of the City is to bill sewer based on metered wastewater data during the regular billing cycles.

Please sign and return below, acknowledging the agreed upon action by the City of St. Helena.

Sincerely,
City of St. Helena

Mark T. Prestwich
City Manager

Received By:

Date: 8-13-19

Robert D. Torres
Principal, Vice Chairman & Director

CC: St. Helena City Council

SUTTER HOME OVERPAYMENT Account #007294

Period	Actual Billing		Revised Billing		Variance	Per Unit Charge
	Units Billed	Units x Per Unit Charge	Units to Bill	Units x Per Unit Charge	Over (under) Payment	
Feb-17	2,901	$ 13,054.50	129.92	$ 584.64	$ 12,469.86	$ 4.50
Mar-17	2,581	$ 11,614.50	129.92	$ 584.64	$ 11,029.86	$ 4.50
Apr-17	2,745	$ 12,352.50	129.92	$ 584.64	$ 11,767.86	$ 4.50
May-17	2,745	$ 12,352.50	129.92	$ 584.64	$ 11,767.86	$ 4.50
Jun-17	2,745	$ 12,352.50	129.92	$ 584.64	$ 11,767.86	$ 4.50
Jul-17	2,745	$ 12,352.50	129.92	$ 584.64	$ 11,767.86	$ 4.50
Aug-17	2,745	$ 12,352.50	129.92	$ 584.64	$ 11,767.86	$ 4.50
Sep-17	2,745	$ 12,352.50	129.92	$ 584.64	$ 11,767.86	$ 4.50
Oct-17	2,745	$ 12,352.50	129.92	$ 584.64	$ 11,767.86	$ 4.50
Nov-17	2,745	$ 12,352.50	129.92	$ 584.64	$ 11,767.86	$ 4.50
Dec-17	3,684	$ 17,499.00	129.92	$ 617.12	$ 16,881.88	$ 4.75
Jan-18	2,161	$ 10,264.75	129.92	$ 617.12	$ 9,647.63	$ 4.75
Feb-18	1,998	$ 9,490.50	129.92	$ 617.12	$ 8,873.38	$ 4.75
Mar-18	1,465	$ 6,958.75	129.92	$ 617.12	$ 6,341.63	$ 4.75
Apr-18	1,614	$ 7,666.50	129.92	$ 617.12	$ 7,049.38	$ 4.75
May-18	1,514	$ 7,191.50	129.92	$ 617.12	$ 6,574.38	$ 4.75
Jun-18	1,770	$ 8,407.50	129.92	$ 617.12	$ 7,790.38	$ 4.75
Jul-18	2,213	$ 10,511.75	129.92	$ 617.12	$ 9,894.63	$ 4.75
Aug-18	3,432	$ 16,302.00	129.92	$ 617.12	$ 15,684.88	$ 4.75
Sep-18	5,882	$ 27,939.50	129.92	$ 617.12	$ 27,322.38	$ 4.75
Oct-18	9,137	$ 43,400.75	129.92	$ 617.12	$ 42,783.63	$ 4.75
Nov-18	8,359	$ 39,705.25	129.92	$ 617.12	$ 39,088.13	$ 4.75
Dec-18	4,738	$ 22,695.02	129.92	$ 622.32	$ 22,072.70	$ 4.79
Jan-19	3,194	$ 15,299.26	129.92	$ 622.32	$ 14,676.94	$ 4.79
Feb-19	2,319	$ 11,108.01	129.92	$ 622.32	$ 10,485.69	$ 4.79
Mar-19	2,260	$ 10,825.40	129.92	$ 622.32	$ 10,203.08	$ 4.79
Apr-19		$ -	129.92	$ 622.32	$ (622.32)	$ 4.79
May-19		$ -	129.92	$ 622.32	$ (622.32)	$ 4.79
Jun-19	129.92	$ 622.32	129.92	$ 622.32	$ -	$ 4.79
Jul-19	129.92	$ 622.32	129.92	$ 622.32		$ 4.79
	83,441.84	***$ 389,999.07***	***3,897.60***	***$ 18,230.37***	***$ 371,768.70***	
				Amount of months to payback:	6	
				Amount per month:	***$ 61,961.45***	

Original units billed 562 in Springbrook. In February 2018 a backbilling of $78,588 was done making the correction to the winter average of 2745 units per month. Refund is necessary for the backbilling amount as well

Report to the City Council
Regular City Council - 24 Aug 2021

Agenda Section: **NEW BUSINESS**

Subject: **Discussion and Direction on Establishing Water Conservation Program with Flume and Water Conservation Incentives.**

CEQA Determination: **Not a CEQA project**

Prepared By: Martin Beltran, Management Analyst

Reviewed By: Mark Rincon-Ibarra, Public Works Director and City Engineer

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On June 23, 2020, City Council adopted a resolution establishing Phase I Water Regulations based on Code Section 13.04.230 where conditions requiring the establishment of a Phase II water emergency, as determined by the Director of Public Works, appear to be imminent. At the time of the emergency, the City had extremely low rainfall (20"), a forecast for a potential multi-year drought, and Bell Canyon Reservoir was at 60% capacity. Water operations had also implemented changes to conserve Bell Canyon water usage by optimizing Stonebridge Wells and City of Napa water use. The forecast was for a potential Phase II trigger by November 2020.

The City of St. Helena declared a Phase II water emergency on October 27, 2020 which established limits on residential and non-residential water use. Residential water customers are limited to 65 gallons per person per day, and provided a 2,500 gallon monthly allocation for outdoor irrigation during the months of April through November (for most single family parcels). Non-residential water use limits were updated by Council approval of an Urgency Ordinance on April 21, 2021, resulting in a Phase II allocation for commercial, industrial, and institutional users that is 10% less than that user's average water use during the three preceding non-shortage years by month.

At the City Council meeting of July 27, 2021, the City Council requested City staff consider opportunities to enhance the City's water customer conservation incentives.

DISCUSSION

Current Water Conservation Incentives

The City has made available several water conservation incentives and rebate programs to encourage and promote water conservation. Information about these programs is summarized below and can be found utilizing the following link: https://www.cityofsthelena.org/publicworks/page/water-conservation-rebates

- Toilet Retrofit
  - Up to $300 per toilet replaced
  - Maximum of 3 toilets for residential and 10 toilets/urinals for commercial
- Smart Irrigation Controller
  - Up to $20 per station for residential and up to $30 per station for commercial
  - Max rebate of $500 for residential and $1,500 for commercial properties
  - Must replace a non-weather based irrigation controllers
- Cash for Grass
  - Up to $1.50 per sq. ft. of turf grass that is replaced with drip-irrigated, low water use plants, or permeable hardscape
  - Max rebate for each residential property is $750 and $2,500 for each commercial property
  - Artificial turf is not eligible
- Laundry to Landscape (Greywater)
  - Use of greywater collected from showers, bathtubs, bathroom sinks, and clothes washing machines
  - Max rebate of $100
- Rainwater Harvesting
  - Must have minimum of 100 gallons of storage
  - Max rebate of $100
- Recirculating Hot Water Pump
  - Max of 1 water pump rebate per household
  - Max rebate of $100

In addition to the programs above, the Public Works Department provides free water conservation supplies which include, but are not limited to: toilet dye tabs, water flow measuring bags, water themed items for children, shower heads, and faucet aerators.

Establishing Water Conservation Program with Flume

Several public agencies have partnered with Flume* to offer rebates for purchase of their Smart Home Water Monitor device which provides customers information about water use, potential leaks, and incidences of high water real-time water use via a WiFi connection.

The Flume device is easy to install and attaches to the existing water meter and leak notifications can be sent directly to a customer's smartphone. As a result, customers can learn more about how they use water at home and identify ways to use less.

Program Benefits:

Water Customer Benefit:

- Whole home (indoor and outdoor), real-time water monitoring via the Flume App
- Intelligent leak detection and notifications
- Customizable water budgets and usage alerts
- Separation of indoor and outdoor water use
- Increased customer satisfaction and transparency

Water Utility Benefit:

- Access to high-resolution consumption data
- Ability to engage water customers regarding their use and behavior
- Improved efficiency and decrease in non-revenue water and/or bill credits
- Increased customer satisfaction and improved utility-homeowner relationship

Partnership Program:

Through a partnership, Flume provides participating utility agencies with a tailored program that magnifies the impact and increases the effectiveness of conservation and customer satisfaction initiatives, including:

- Utility-Specific Landing Page: All participating agencies will receive a unique, agency-specific, co-branded (Flume and Agency) landing page. As utilities promote this program, interested customers can visit the landing page to order their device.
- Easy Installation: Once the customer orders the device, Flume will ship directly to the customer. Customers can self-install in under 10 minutes, with no pipe cutting, wiring, or appointments required.
- Direct Access to Water Data: Once enrolled, both customers and utilities will gain direct access to down-to-the-minute water use data.

This program offers instant rebates to customers who purchase a Flume device. The instant rebate amount is set, and paid for, by the City. Monthly, Flume will send the City an invoice for all customers who have utilized this program. Total costs to the City is dependent on the instant rebate amount set and the number of participants. The tables below illustrate costs to the City for participation in this program dependent on the number of devices purchased and various rebate amounts.

If 100 devices were made available:

Instant Rebate Amount	Amount Customer Pays (after rebate and before tax & fees)	Total Cost to City
$100	$100	$10,000
$125	$75	$12,500
$150	$50	$15,000

If 150 devices were made available:

Instant Rebate Amount	Amount Customer Pays (after rebate and before tax & fees)	Total Cost to City
$100	$100	$15,000
$125	$75	$18,750
$150	$50	$22,500

The current price of a Flume is $200.00; however, the City is currently working with Flume on other pricing options. If this program is implemented, staff recommends the implementation date of the program starts at the beginning of the Phase I water emergency and customers who have purchased a Flume device prior to the implementation of this program and provide verification receive a rebate directly from the City. Once the program is implemented, all purchases will be handled directly through Flume.

* It is important to note the Flume device estimates water use where the City's water meters record actual water use. This will result in a variance between the City's water meter and the use reported by Flume. City water meters uses a positive displacement method of measuring water where the Flume device measures the magnetic field from the spinning meter to estimate water use.

Example Programs:

The City of Healdsburg partnered with Flume to offer an instant rebate. The cost to Healdsburg water customers is $90 (plus tax and shipping) after rebate. For more information related to Healdsburg's Flume rebate program visit: https://flumewater.com/partners/healdsburg/

The City of Napa recently partnered with Flume to offer an instant rebate. The cost to Napa water customers is $65 (plus tax and shipping) after rebate. For more information related to Napa's Flume rebate program visit: https://flumewater.com/partners/napa/

The County of Marin partnered with Flume to offer an instant rebate to single-family residential customers. The cost to Marin water customers is $50 (plus tax and shipping), after installation. For more information related to Marin's Flume rebate program visit: https://flumewater.com/partners/marin/

Additional Water Conservation Incentive Ideas

In addition to the Flume program, staff has compiled an initial list of opportunities to enhance the City's water customer conservation incentives. These incentives are intended to recognize water customers' who are doing their part to help the City reach its water conservation goals. The list below is a starting point and is intended to reward customers who are pitching in while taking into consideration staff impacts.

1. “Catching” those who are helping conserve water – When good behavior is observed (e.g. "gold" lawns, participation in current water programs, low water usage, etc.) City staff can leave a thank you note, gift card, swag, etc. at the resident's doorstep thanking them for conserving water.
2. Best Water Conservation Tips and Tricks - Customers submit their creative ways to conserve water. The top Tips and Trick ideas submitted will be posted on the City's website and a survey can be done to declare a winner. The winner will receive a prize from the City.
3. Best Gold Lawn Contest – Customers submit photos of their gold lawn with the City’s "Gold is the New Green" yard sign. Entries can be placed on the City's website and, similar to #2, a survey can be done to declare a winner who will receive a prize from the City.
4. Launch a “Take the Pledge” challenge – This could be an online form where residents are asked to take a pledge to commit to making more water efficient action in their home. For each submittal a free water conservation device would be given to the resident such as a shower nozzle or hose nozzle. The City can also consider making available larger incentives. For example, Marin/Sonoma has larger incentives/giveaways: a high-efficiency clothes washer, high-efficiency toilet, smart irrigation controller, Flume, rainwater catchment system, and gift certificate for a carwash at a carwash that recycles wash water.

FISCAL IMPACT

The fiscal impact of these programs is dependent on Council direction. Items determining fiscal impact may include, but is not limited to: Flume rebate amount, number of participants in the Flume program, gift cards and giveaways associated with incentive ideas, and any additional temporary staff needed for implementation. Penalty amounts collected can be used for the implementation of this program.

RECOMMENDED ACTION

Provide direction to the City Manager on Establishing Water Conservation Program with Flume and Water Conservation Incentives

ATTACHMENTS

Attachment 1: Flume Program Overview
Attachment 2: Flume Sole-Source Justification

Flume Smart Home Water Monitor

Program Overview - April 2021

Overview:

To help utilities achieve their goals of reducing water demand and increasing local engagement with water customers, Flume is excited to partner with water providers to deploy a suite of hardware, software, and services that optimally addresses local needs.

Flume employs a direct distribution (DD) program model for utility partnerships. These DD programs benefit both utilities and their customers, magnify reach and ensure equity of access to conservation initiatives. Other benefits include:

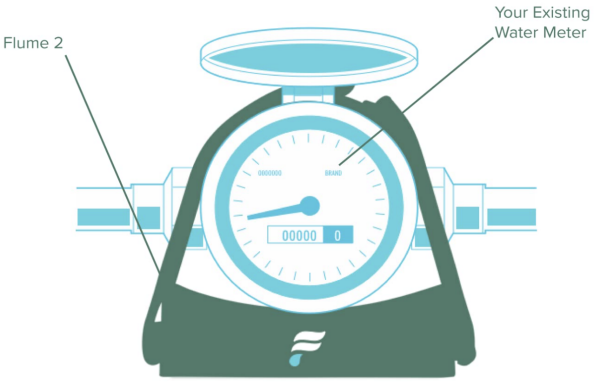
Simple and Replicable Ordering: Using recreatable landing pages, Flume's ordering process works directly with the customer, verifying eligibility and service addresses, applying subsidies, and obtaining data-sharing agreements upfront. This makes for a low administrative burden and an easier enrollment experience for the customer.

Direct Access to Water Data: Both customers and utilities have direct access to down-to-the-minute data in any service area. Using Flume's online portal and customer smartphone interfaces, Flume provides real-time water use information, helping to catch leaks, change behavior and mitigate customer complaints.

Product Overview

Product Summary

The Flume 2 Smart Home Water Monitor is both a hardware and software system. The hardware is a patented sensor that straps around an existing water meter and a WiFi bridge. Installation is a simple do-it-yourself process, typically completed by the end-customer in under 10 minutes. The Flume device comes with pre-installed batteries. Once installed, the device reads the magnetic signal coming from the meter's mechanical register and digitizes the information through a WiFi bridge. Flume's second-generation product reads water use



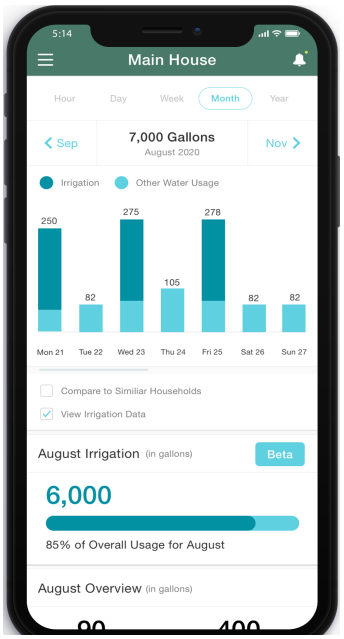
every 5-seconds, enabling incredible functionality, including volumetric separation of daily consumption indoors and outdoors, and soon indoor fixture and appliance-specific water use breakdowns (e.g. toilets, showers and dishwashers).

This flow rate information is then transformed into actionable data and provided to customers through their smartphone application every minute, enabling customers to set water budgets, catch leaks, and more. This information is also provided to utilities – where current utility programs exist – through a utility-specific dashboard.

Flume is the only device on the market that empowers both customers and utilities with a self-installed, whole home solution that offers minute-by-minute use information, leak detection, and personalized water budgets.

Product Features

Customer Facing Application: For the customer, the Flume App provides easy-to-understand information about the homeowner's water consumption. An overview of water use every minute allows users to see in real-time where their water is going. Specifically, the Flume App provides the following data and options to customers:

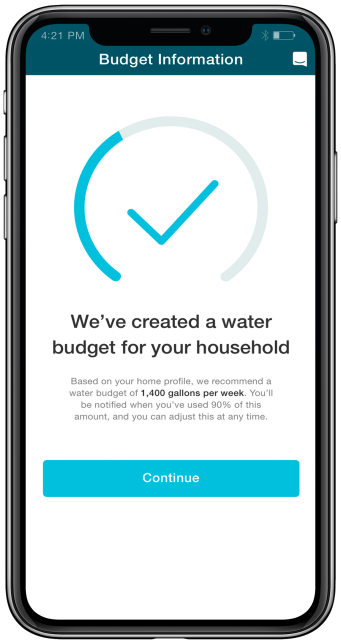


Total Daily Water Use: Customers can view total daily use in gallons and as a percentage of their daily budget.

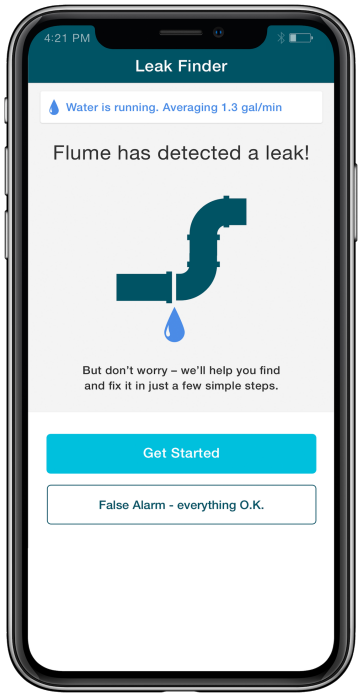
Live Water Status: Customers are able to see if water is or is not running in their home in real-time.

Water Use Information: View total volume of water used on an hourly, daily, weekly, monthly, or annual basis.

Water Budgeting: Some homeowners in drought-stricken areas are charged a penalty if they use more than a certain amount of water in a given billing period. Other homeowners are trying to reduce their water use and/or their water bills. All Flume users have the capacity to set budgets to help them monitor (and reduce) their water use.



Live System Alerts: Customers are alerted if they surpass budgets, if the system detects a leak, and more. Notifications provide flow rate and duration of sustained flow information that triggered the alert. Flume offers water use granularity down to the hundredth of a gallon per minute, catching even the smallest of leaks.

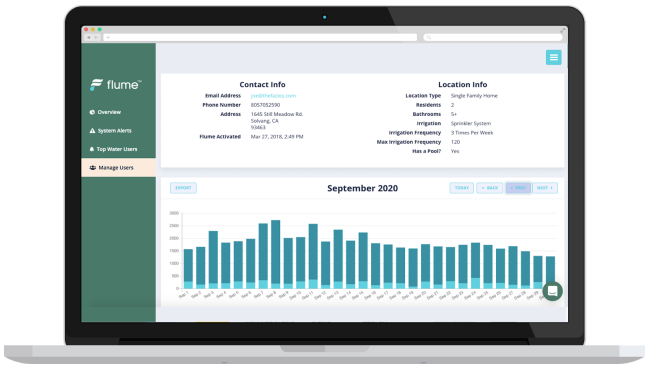


End-Use Water Disaggregation: Customers are able to visualize the disaggregation of their water use - separated by indoor and outdoor categories - as well as determinant percentages of where they use the most water.

Flume users, on average, check their app once every two days. As the Flume customer app increases understanding and education about water consumption, users are empowered to create budgets and stay apprised of any leaks that may cause damage or high bills.

www.flumewater.com
partnerships@flumewater.com

Utility Facing Dashboard: For water utilities, the Flume Dashboard creates a seamless interface between customer water use data and service providers. This Dashboard enables a better understanding of water use, leaks, and overall consumption data at the customer-specific and aggregated community level. Specifically, Flume can set up a utility dashboard for each participating utility to access the following data:



Customer Specific Information: View property information about where the device is installed, including property size, number of bathrooms, outdoor irrigation needs, and more.

Water Use Information: View total volume of water used on an aggregate or customer-specific level, including total water use per day, average household use per day or average per capita use per day in gallons. This includes customer-specific water use and leak detection information on an hourly, daily, weekly, monthly, and annual basis.

Real-time Insights: View individual water customers' consumption data down to the minute, enabling the opportunity to help water customers understand their water use habits and assist in troubleshooting leaks or other forms of water waste.

Top Water Users**:** Focused attention to high bill customers and the opportunity to visualize top water users of the last 7, 30, or 60 days.

Live Queue of System Alerts: See what smart leak notifications are triggered by customers. View flow rate and duration of sustained flow that triggered notifications by water customers. The level of water use granularity offered involves insight down to the hundredth of a gallon per minute.

Interactive Map: See where Flume customers have installed their devices and where they are in the installation process; online, offline, incomplete.

Device Status: View Installation Status for all devices that have been ordered through Flume specific utility program. The dashboard also documents overall Device Health.

Project Summary

By partnering with Flume, water providers ensures that they and their customers are receiving benefits through the following program:

Utility-Specific Landing Page with Simple Distribution and Customer Opt-In: Flume provides a co-branded (Flume + Utility) landing page with a simple URL (www.flumewater.com/NameofUtility). As utilities promote this program, interested customers can visit the landing page to order their device. Here, Flume verifies customer eligibility and service addresses, obtains data-sharing agreements upfront, and applies subsidies so that customers can pay for the device net of the rebate amount. This page enables low administrative burden for participating utilities and makes for easy enrollment.

Easy Installation: Once the customer orders the device, Flume will ship directly to the address provided. There, Flume customers can self-install in under 10 minutes with no pipe cutting, wiring, or appointments required. This eliminates the need for utility assistance or interaction. Flume provides remote support from 7am-7pm PST, 7 days a week for any questions or concerns the customer may have.

Direct Access to Water Data: Once enrolled and installed, both customers and the utility will have direct access to real-time, high-resolution reads on water use data. Using Flume's online portal and customer smartphone interfaces, Flume provides disaggregated indoor and outdoor water use information, helping to catch leaks, change behavior and mitigate customer complaints.

Analysis of Residential Water Use: As Flume deploys devices throughout the service area, Flume has the capacity to analyze end-use across the entire community based on collected disaggregation data. Flume can provide end-use studies and other key planning data and reports to the water provider under additional contracts, including key data such as:

- Average indoor GPCD
- Average outdoor GPCD
- Irrigation trends (and how they relate to weather)
- How these key consumption metrics compare with neighboring metro areas
- How home value, home age and lot size affect water consumption
- Demographics of Flume users (based on home value, home age and lot size)

The benefits of such a program are wide-reaching. Specific project benefits include:

Water Customer Benefit:

- Whole home (indoor and outdoor), real-time water monitoring via the Flume App
- Intelligent leak detection and notifications
- Customizable water budgets and usage alerts
- Separation of indoor and outdoor water use

- Increased customer satisfaction and transparency

Water Utility Benefit:

- Access to high-resolution consumption data
- Ability to engage water customers regarding their use and behavior
- Improved efficiency and decrease in non-revenue water and/or bill credits
- Increased customer satisfaction and improved utility-homeowner relationship
- Ability to contract with Flume for community-specific ongoing end-use data to assist in future planning and greater community water use insight

Sample Project Results:

Metrics of Success			
Utility	**% that found leaks**	**% net reduction in consumption relative to control group**	**% that report change in water usage behavior**
Rainbow Municipal Water District	63%	9%	88%
San Antonio Water System	>50%	18%	66%
Contra Costa Water District	66%	17%	67%

Sole Source Justification:

Despite some utilities having strict regulations limiting sole-source rebate or pilot programs, Flume programs have consistently received this justification. Flume is the only device on the market that empowers both users and utilities with a self-installed, whole-home solution that offers minute-by-minute use information, leak detection, and personalized water budgets.

DIY Installation: Flume is the only product in the category that does not require any pipes to be cut and is easily and safely installed by the homeowner. Flume does not permanently modify infrastructure or plumbing.

Indoor/Outdoor Capture: Flume is the only product in the category that captures indoor and outdoor water use. Since the device is installed on the meter it is guaranteed to capture irrigation use.

Reporting Accuracy: Unlike ultrasonic or other in-line solutions, Flume is 1:1 with the meter and AWWA M6 certified for accuracy. This ensures that bills will not be contested by ratepayers based on disparate readings.

Utility Focus: Flume is the only product in the category that's been sole-sourced by water utilities, and is leveraged by various state and planning agencies for end-use disaggregation. Likewise, Flume is the only company in the category offering a utility-facing dashboard.

Customer Participation Agreement

Every customer that purchases a Flume device through the utility-specific landing page will be required to fill out a data-sharing and participation agreement. These agreements feature the following information, and can be modified by the utility as they see fit:

I acknowledge and understand the following:

- *I understand that as part of this rebate program, I will receive the Flume Water Sensor for the discounted price of $XX plus tax. The retail price is $199 plus tax and shipping.*
- *I will be billed for water consumption based only on measurements from the Demo Water District meter. The Flume Water Sensor provides detailed information on daily water use. Its readings will not match the total monthly reads from the Demo Water District meter, which are read in different units and do not always coincide with the calendar month.*
- *This offer is non-transferable. The Flume Water Sensor must be installed at the property associated with the account that received the offer.*
- *I am the account holder of the property where the Flume Water Sensor will be installed and understand by accepting this offer, I own the device.*
- *I am physically able to install the Flume Water Sensor on my water meter, which may require bending over my in-ground meter box and working with my home Wi-Fi system.*
- *My home has Wi-Fi and should for the next year of the program.*
- *I am able to plug the Flume Bridge into a power outlet inside my home and am able to connect it to my home's Wi-Fi. This process is similar to installation of other smart home technology.*
- *I have a smartphone or other mobile device and I agree to accept Flume notifications when sent through the mobile app. Feedback on the notifications is an important program component. I understand that if I disable these messages I could miss key information such as increases in my water use.*
- *This system presents no guarantee for reductions in water use.*
- *Flume will be sharing water use data with the Demo Water District.*
- *As a part of the program, I agree to keep the Flume Water Sensor installed for one year.*
- *I agree to install the Flume Water Sensor device without tampering with the meter in any other way.*
- *If I purchase the Flume Water Sensor and fail to install it at the approved property, Flume will withhold a final rebate amount of $XX. The Flume Water Sensor must be installed within 30 days of delivery or returned to Flume. Flume can send a mailing label for this purpose and will refund my payment.*

Marketing and Adoption

As part of the program, Flume will create a marketing package that can be leveraged by a utility to market to their ratepayer base. This will include, but is not limited to, sample imagery, graphics, and suggested messaging/copy.

Flume recommends that, whenever possible, utilities advertise the Flume program to their customers through email. This has proven to be the most effective way to engage customers in this program and has resulted in very high adoption rates. This can be supplemented with other marketing techniques, if desired by the utility, including door hangers, bill stuffers, and other printed marketing materials.

Regardless of the marketing approach taken, Flume has extensive experience administering distribution programs in partnership with water utilities, insurance companies, and other strategic partners. Flume's proven marketing and fulfillment process enables the company to recruit homeowners, distribute Flume Smart Water Systems, and confirm activation and installation rapidly and inexpensively.

At the request of utilities, Flume can:

- Create and maintain a customized retail co-branded landing page
- Provide automated program eligibility verification
- Secure ratepayer agreement to Terms and Conditions, as defined by retail utilities
- Manage electronic scheduling and automatic reminders for installation Manage a waitlist if customer demand exceeds supply

Support

Flume's world-class support network will be made available to all customers and utility staff from 7:00 AM to 7:00 PM Pacific Time, 7 days a week. This network consists of approximately 15 staff dedicated to addressing product issues, helping identify leaks, and other inquiries. For the duration of MWD's Flume program, expedited support service will be provided with a goal of contact resolution within 1 hour.

To ensure an optimal level of correspondence and the effective delivery of MWD's Flume program, a project manager will be assigned to MWD.

Contact Information

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Director of Utilities
sarahm@flumewater.com
510-203-7394

Joe Fazio
VP of Customer Success
joe@flumewater.com
805-705-2590

Flume, Inc.
75 Higuera St. Suite 120
San Luis Obispo, CA
93401

flume™

Company Overview

Before Flume, homeowners had no means by which they could effectively measure their water use. Instead, they relied on monthly snapshots from their bill.

Inspired by the cycle of drought in California and broad-based messages from utilities asking them to save water, Flume founders created a solution that gives homeowners real-time insights: the Flume Smart Water Monitor and app.

Flume empowers customers with a self-installed, whole-home solution that offers minute-to-minute flow and water use information, including leak detection and personalized water budgets.

Sole Source Justification:

Despite some utilities having strict regulations limiting sole-source rebate or distribution programs, Flume programs have consistently received this justification. Flume is the only device on the market that empowers both customers and utilities with a self-installed, whole-home solution that offers granular real-time monitoring, leak detection, and water budgeting.

- DIY Installation: Flume is the only product in the category that does not require the cutting of pipe and is easily and safely installed by the homeowner. Flume does not permanently modify infrastructure or plumbing.

- Indoor/Outdoor Capture: Flume is the only product in the category that captures indoor and outdoor water use. Since the device is installed on the meter it is guaranteed to capture irrigation use.

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August 24, 2021

Dear City Council,

It is encouraging to see city council finally following the lead of other cities and counties who have made Flume rebates available to their water customers.

Please go a step further and remedy the unfair conservation mandate that currently favors all but the residential water customer. The other cities and counties have equitable water conservation measures in place. There is no plausible reason St. Helena can't to the same.

Also, please consider Jennifer Oliver's request for averaging of two months water use, which is in keeping with the two-month water bill. It is a great idea and a small way to support your constituents.

And finally, employing a public opinion survey at a cost of $35,000 to make decisions that could and should be made from within would be yet another foolish and unnecessary waste of money.

$35,000 would support a lot of Flume rebates.

Sincerely,
Nancy Dervin

Report to the City Council
Regular City Council - 24 Aug 2021

Agenda Section: **NEW BUSINESS**

Subject: **Review and Discussion of Draft St. Helena Business Recovery Strategy**

CEQA Determination: **Exempt**

Prepared By: Mark T. Prestwich, City Manager

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

In accordance with completion of a 2018 Downtown Retail Market Analysis and the City's 2018 workplan, the City Council adopted a Downtown Economic Strategy on September 25, 2018 to revitalize and enhance the competitiveness and resilience of the downtown economy. Several initiatives outlined in the Strategy have been completed including:

- Streamlining the City's permit process by allowing more community supported uses without discretionary review (e.g. clothing stores, home furnishing stores, combination of two or more permitted uses at one location, beauty/barber shop, child care facilities, farm supply stores, etc.);
- Implementing a Temporary Pop-up Retail Uses Policy (21 permits have been approved since October 2018);
- Completing construction of a downtown restroom project;
- Advancing planning for a downtown streetscape improvement project to fundamentally enhance the pedestrian experience; and
- Establishing a Sewer Lateral Loan Program.

Additionally, to stabilize businesses during the COVID-19 pandemic, the City Council approved a Small Business Sustainability (SBS) Loan Program ($300,000 appropriation with up to $20,000 loans per business), initiated an Emergency Temporary Use Permit Program to assist businesses with over-the-counter COVID-19 related permitting needs,

and cultivated several public outdoor dining/seating spaces including the Hunt Avenue Hub, Telegraph Alley dwelling space, and Money Way Park Pop-Up Park.

Council Members Anna Chouteau and Eric Hall were designated by the City Council to work with the City Manager and Business Liaison (Planning Director) to prepare a COVID Business Recovery Plan and continuity plan for the Downtown Streetscape project (City Council Fiscal Year 2021-22 Goal 4D).

DISCUSSION

Despite the successes from the 2018 Economic Plan, the continuing COVID-19 pandemic, recent fires, and the City's current Phase II water emergency have resulted in unprecedented economic disruptions to our local economy. These disruptions challenge the City to rethink and consider new policy initiatives to ignite and sustain the City's economic recovery.

A central focus of the new draft St. Helena Business Recovery Strategy (SH Business Recovery Strategy or "Strategy") includes initiatives to address the existing (and unacceptable) 20% retail vacancy rate of the downtown core's 200,000 retail square footage (SF). For example, over the past several years, landlords have typically only leased about 5,000 SF per year, resulting in prolonged visible vacancies which have a detrimental impact on nearby businesses, and contribute to a loss of critical revenue for City services.

To be effective, the SH Business Recovery Strategy must remove business constraints and support initiatives that will grow and sustain the City's local businesses. In addition to the challenges presented by the pandemic and other emergencies, St. Helena's current and future brick and mortar retailers find themselves facing new challenges as the retail sector is rapidly changing due to evolving consumer shopping behavior, technological evolution, staffing shortages, and digital disruption.

To this end, the recommended initiatives comprise bold strategies to support the growth and prosperity of St. Helena businesses. To manage implementation of Strategy initiatives, implementation metrics have been included along with a target date, level of effort, estimated cost, and party/department responsible for implementation of the various initiatives.

FISCAL IMPACT

The Draft SH Business Recovery Strategy is focused on supporting initiatives to increase City taxable revenues. While the Strategy includes several recommendations that would require additional capital investment, including landscape architectural services, tenant/façade improvements, and graphic design/branding services, it also anticipates new revenue and economic vitality may be derived from future and/or better use of the City-owned properties.

RECOMMENDED ACTION

Review, discuss, and provide direction to the City Manager.

ATTACHMENTS
SH Business Recovery Strategy

DRAFT SH Business Recovery Strategy

Honoring Our Past to Create a New Way Forward

In accordance with completion of a 2018 Downtown Retail Market Analysis and the City's 2018 workplan, the City Council adopted a Downtown Economic Strategy on September 25, 2018 to revitalize and enhance the competitiveness and resilience of the downtown economy. Several initiatives outlined in the Strategy have been completed including:

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To this end, the recommended initiatives comprise bold strategies to support the growth and prosperity of St. Helena businesses.

Open for Business Initiative

St. Helena businesses have endured monumental challenges in the past several years. Further, the retail sector is experiencing unprecedented changes with industry innovation, along with expanding regional and online competition. To reinforce recent changes in St. Helena's business positioning and the City's forthcoming Zoning Code update, the Open for Business Initiative will advance several strategies to raise awareness of the benefits of doing business in St. Helena, support business investment, and achieve a goal of reducing downtown retail vacancies to less than 10,000 square feet within 24 months.

A. Develop Business Start-up Guide to Support New Business Formation

In partnership with St. Helena Chamber of Commerce, create new business start-up guide that includes information on City business license and permitting requirements and assistance, and private sector resources such as accounting, legal and other professional resources. This information will be made available on the Chamber website (and City website (www.cityofsthelena.org).

B. St. Helena Business Open House Tours

Every 90 days, the City will host a networking event with North Bay Area brokers, elected City officials, key City staff (e.g. Planning/Building Director, City Engineer, City Manager) and Chamber representatives to engage a broader brokerage community, tour vacant available building space, advance business messaging, and connect with prospective businesses. Broker packets will be provided outlining the competitive advantages of doing business in St. Helena, and will be made available on the City's website.

C. Fund and Launch Downtown Facade and Tenant Improvement Program

The appearance of the City has a significant influence on its economic success. Improving the downtown's physical appearance to improve business recovery and the attraction and retention of businesses. To encourage private investment in high-quality improvements that enhance the appearance of retail, commercial and professional buildings and properties (including side and rear facades, and interior tenant improvements), the City will develop and launch a Downtown Façade and Tenant Improvement Program with dedicated annual funding.

D. Promote Available Downtown Space on City and Chamber of Commerce Websites

Work with local brokers and promote availability of existing spaces for targeted uses, including a list of all vacant spaces with size, zoning, ownership, broker representation, contact information. Include St. Helena demographic and employee characteristics and community maps.

E. Refresh City Branding with Coordinated Style Guide, Website and Logo Update

The City's own look and feel needs a refresh and how it interacts with its customer base. The City's branding identify is distinct from how the Chamber's destination marketing efforts work to encourage visitors. Development of a coordinated style guide establishes standards for the writing, formatting and design of documents to improve communication by ensuring consistency in color, fonts, etc. This helps to ensure a continuous brand experience and conveys a consistent message to customers. Completion of a style guide will lead to opportunities to update the look and functionality of the City's website, letterhead, logo and more.

F. Reduce Restrictions on Formula Retail Businesses

Current City regulations require a Conditional Use Permit to operate a formula retail business (defined as more than one similar operating business anywhere in the United States). The cost to a prospective formula retail business to submit a request and plans to the City Planning Commission for consideration to open can exceed tens of thousands of dollars, a significant cost few will consider as there is no certainty of approval. Formula restaurants (defined as more than one single restaurant operating business to be replicated in St. Helena) are strictly prohibited.

As downtown retail businesses struggle to remain profitable in an era of online and improved regional competition and expensive rent, the City risks increasing retail vacancies without removing the restrictions on a portion of the retail market that traditionally has avoided business investment in St. Helena. While a City policy change in 2019 did allow a formula retail business the opportunity to secure an over-the-counter temporary pop-up retail permit for up to three months, this limited window of operation coupled with the uncertainty of securing eventual Planning Commission approval should they desire to operate beyond three months, discourages formula businesses from considering investment in St. Helena. No formula retail businesses were among the 21 temporary use permits processed by the City since this program became available.

To balance the community's desire for unique retail while also considering ways to reduce vacancies, the City should consider reducing restrictions on formula businesses. For example, the City could allow up to a certain number of new formula businesses in the downtown district (e.g. up to 10), update the Municipal Code to define formula businesses as more than 10 locations throughout the United States as many other cities do (vs. more than "one" anywhere) so smaller emerging formula retailers have an opportunity to grow their business in St. Helena. Other communities like St. Helena with small town charm have also required sensitive and compatible signage and proximity limits for formula businesses. Alternatively, the City could remove the restriction altogether for a market-based approach in this extremely competitive new retail era.

G. Implement Wine Train Pilot Program

The City, Chamber of Commerce, and Wine Train have developed a Pilot Program to bring up to 20 additional shoppers/diners into downtown St. Helena daily via the Wine Train. The Wine Train is exploring a regular tour for approximately 20 customers to enjoy lunch at St. Helena restaurants and shop until a Wine Train Motor Coach transports the visitors back to Napa. Final planning and implementation of the pilot program was placed on hold with the onset of the COVID-19 pandemic.

H. Support Business Recovery Marketing Investment and Evaluate Analytics

The City of St. Helena City Council appropriated $100,000 in targeted business recovery digital marketing for fiscal year 2021-22 to support the economic recovery of St. Helena businesses. The City will use performance metrics to determine whether the investments made have provided a return on investment that should be sustained.

I. Strengthen St. Helena's Regional Business Efforts

In partnership with the Town of Yountville, City of Calistoga and Angwin/Deer Park, business leaders, wine representatives, art leaders, and Chambers of Commerce, evaluate and, if feasible, develop an implementation plan to establish a **P**artnership for **U**pValley **B**usiness (PUB) that maximizes collaboration with neighboring communities. Explore opportunities to grow existing quarterly regional Chamber events to include discussions and opportunities for collaboration on mini-PUB talks on climate initiatives, BlueZone efforts, celebrating diversity and region's history, housing, water, and visitor trends. Consider inviting speakers to address teleworking workforce challenges/opportunities and smart city attributes/infrastructure (e.g. wifi, radio, fiber optic, power) that will position Upvalley as a remote working destination and what makes cities attractive places to live and work.

Enhancing Public Infrastructure and Adjusting Policies to Support Business Investment

St. Helena enjoys a reputation as an established and distinctive and historic shopping district. However, this nationally recognized treasure is experiencing a need for public investment in sidewalks, alleys, parking, and other amenities. Adjusting policies to support business investment will improve and enhance the City's ability to reactivate St. Helena's reputation as a shopping, dining, and cultural destination. The following initiatives are intended to fundamentally enhance public infrastructure, the pedestrian experience, available parking, and foster economic vitality through improved placemaking.

A. Complete Downtown Streetscape Project

Design of the Phase I of the downtown streetscape replacement project is complete and the City is completing acquisition of temporary construction easements before advancing the project to construction. Construction of this project will improve the safety of the pedestrian sidewalks and right-of-way in downtown St. Helena.

B. Advance Pedestrian Alley Beautification

Invest in landscape architectural services to develop recommendations and cost-estimates for beautification of pedestrian alleys and gateway signage (see H below).

***C.* Add Parklets on Main Street**

The COVID-19 pandemic has spurred innovation including the addition of parklets in downtowns. Testimonials from businesses throughout California reveal that restaurants and retailers have enjoyed significant increases in sales, with some reporting sales up 300% over pre-pandemic levels due to the addition of parklets. City staff has identified two locations on the east and west sides of Main Street to add a total of 96 seats that would result in the loss of only six parking spots. The additional "dwell space" is intended to create a more pedestrian friendly experience, and assist restaurants and businesses.

D. Identify Enhanced Parking Solutions to Support Businesses

Identify parcels for public parking structure – 75+ stalls, three levels; private development subsidized by City financing, metered parking, designated employer spaces; encourage joint development with new hotels and/or housing projects. Consider adding signage and promoting existing on-street parking on Adams Street east of Library Lane as a visitor parking destination.

E. Establish a Hospitality Rehabilitation Program

It is recommended the City initiate a discussion with its existing hotel owners to explore opportunities to grow or improve their business and consider establishing a Hospitality Rehabilitation Program to incentivize quality investment in deteriorated lodging assets via transient occupancy tax incentives.

F. Evaluate potential for Upvalley Shuttle Bus Pilot Program

Conduct engagement with the Town of Yountville and City of Calistoga and their respective Chambers of Commerce to evaluate the possibility of establishing a local, bus/shuttle for the UpValley only to reduce vehicle traffic and improve visitor access to UpValley shopping, dining, historic landmarks, jobs, and adventure opportunities. For example, stops could be established in downtown cores, at wineries, parks, schools, trails, etc. The program could serve visitors, local commuters, and routine airport destinations.

G. Identify Sub-districts and Catalytic Sites to Guide Business Investment; Develop Regional B2B Marketing Campaigns to Attract Businesses to each of these Markets

As retail continues to evolve, it will be increasingly important to prioritize the location of business investment to ensure the highest and best uses are prioritized for high visibility locations. Identifying sub-districts to guide business investment will position the City to develop a regional Business to Business (b2b) marketing campaign to attract businesses to each of these markets.

Example:

<u>Downtown Core:</u>

On Main Street – Highest and best uses that generate best revenue for City

1. Retail, food, beverage, entertainment, general merchandise, markets, galleries, hospitality, residential (above retail and/or not fronting Main Street on ground floor)

Off Main Street - Lower City-revenue producing businesses

2. Finance (banking), insurance, real estate (FIRE)
3. Technology, advertising, media, and information (TAMI)

<u>Outside Downtown Core:</u>

1. Auto-related, sales, service, parts
2. Maker-craft businesses (e.g. consider creating a “maker’s row” in industrial area with work-live spaces; market spaces to maker business operators in established markets like Oakland and Livermore)

H. Initiate Gateway and Wayfinding Signage Program to Create a Sense of Place

Identify ingress/egress points to downtown core and hire landscape architect to develop recommendations for Planning Commission and City Council review that would install appropriate, wayfinding signage, including consideration of entry welcome signage, possible entrance archways over City gateways. It is envisioned the wayfinding program would link

signage design with historical landmarks, historic plaques, businesses, Heritage City Walk routes, and existing city parks and schools.

I. **Advance Council Policy Discussion on Higher and Better Use of Assets**

The City's planned move of Interim City Hall from 1572 Railroad Avenue and the Police Station from 1480 Main Street to the Napa Valley College Upper Valley Campus presents an opportunity for the City to identify higher and better use options for these City assets to enhance the downtown's vitality. Additionally, the City's Carnegie Library Building remains underutilized as a City Parks and Recreation asset and could be leased or sold given the City will soon have access to similar sized space at the Upper Valley Campus. The conversation about the 1480 Main Street parcel should include a discussion about advancing a beautification of Lyman Park.

J. **Approve, Implement and Advertise Walking Loops/Trails Beginning and Ending at Chamber of Commerce Welcome Center**

The City's St. Helena Park & Recreation Commission's Ad Hoc Subcommittee on Walking Routes, Trails, and Publicly Accessible Open Space has been developing a comprehensive plan to implement walking, access, passive recreation, and connectivity goals outlined in the 2019 General Plan and 2017 Pedestrian Plan. One of the initiatives includes launching Walking Loops/Trails beginning and ending at the Chamber Welcome Center to enhance the recreational draw of a St. Helena visit. Studies document that trails and open space are an economic driver for cities as visitors spend money before and after planned outings.

K. **Enhance Arts and Culture Programming**

The Council Ad Hoc Committee, in partnership with the St. Helena Chamber of Commerce, will convene a group of arts and cultural stakeholders to discuss and identify opportunities to enhance arts and cultural programming in St. Helena serving visitors and residents alike. Recommendations will be presented to the City Council.

Implementation Metrics

Open for Business Initiative		Responsible Party/Dept.	Level of Effort	Estimated Cost	Target Date
A	Complete Business Start-up Guide and add to City and Chamber website.	COSH (Chamber contributes)	Low	$5,000	October 2021
B	Launch St. Helena Business Open House Tours.	COSH (Chamber contributes)	Medium	Staff time	October 2022
C	Fund and Launch Downtown Façade and Tenant Improvement Program.	Planning Department	Medium	$100,000	October 2022
D	Promote available business space on City and Chamber websites.	City Manager's Office	Low	$15,000 + Staff time	October 2021
E	Refresh City Branding with Coordinated Style Guide, Website and Logo Update.	City Manager's Office	Medium	$25,000	June 2022
F	Reduce Restrictions on Formula Retail Businesses.	Planning Department	Medium	Staff time	Concurrent with Zoning Code Update
G	Implement Wine Train Pilot Project.	Chamber of Commerce	Medium	Staff time	April 2022
H	Council Ad Hoc evaluates Business Marketing Program and provides City Council with funding annual recommendation.	Ad Hoc Committee	Low	$100,000	April 2022
I	Develop implementation Plan for Partnership for Upvalley Business Program.	Chamber of Commerce + Ad Hoc Committee	Low	Staff time	June 2022

Enhancing Public Infrastructure and Adjusting Policies to Support Business Investment		Responsible Party/Dept.	Level of Effort	Estimated Cost	Target Date
A	Complete Phase I downtown sidewalk improvement project.	Public Works Department	High	$4.6 million	December 2022
B	Fund and hire landscape architect to develop alley beautification proposals.	Planning Department	Low	$50,000	June 2022
C	Implement Parklets on Main Street.	Planning Department/Public Works Department	High	$70,000	October 2022
D	Present parking solutions/options to Active Transportation & Sustainability Committee and City Council.	Ad Hoc Committee	Medium	Staff time	June 2022
E	Conduct hotel outreach and present Hospitality Rehabilitation Program recommendations to the City Council.	City Manager's Office	Low	Future hotel tax increment	December 2021
F	Provide recommendations to ATSC and City Council for Upvalley Shuttle Bus Pilot Program.	Public Works Department	Medium	Unknown	June 2022
G	Conduct Planning Commission and City Council policy discussions on business sub-districts and B2B marketing.	Planning Department	Medium	Staff time	June 2022
H	Fund and hire landscape architect to conduct community outreach and develop recommendations and cost-estimates for gateway and wayfinding signage enhancements.	Planning Department	Low	$50,000	February 2023
I	Schedule Council policy discussion to discuss approaches to higher and better use of city assets.	City Manager's Office	Low	Staff time	October 2022

J	Approve and implement walking loops and trails which begin and end at Chamber of Commerce including signage and maps.	Planning Department	Low	$40,000	October 2023
K	Present recommendations to enhance arts and cultural programming to City Council.	Ad Hoc Committee	Medium	Staff time	June 2022

Report to the City Council
Regular City Council - 24 Aug 2021

Agenda Section: **NEW BUSINESS**

Subject: **Designation of voting delegates and the City Council to review proposed resolutions for consideration at the League of California Cities Annual Conference business meeting and provide voting direction to the voting delegate and alternate voting delegates**

CEQA Determination: **Not a CEQA project**

Prepared By: Cindy Tzafopoulos, City Clerk

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

DISCUSSION

The League of California Cities provides legislative advocacy, professional development, and educational resources for incorporated cities and towns in California, including the City of St. Helena.

The League of California Cities Annual Conference is scheduled for September 22 - 24, 2021, at the SAFE Credit Union Convention Center in Sacramento. The League's General Assembly will convene on the last day of the conference for the Annual Business Meeting in order to consider and take action on resolutions that establish League policy. Each member city of the League of California Cities may, with the approval of the City Council, designate a city official as their Designated Voting Delegate and, in the event that the Designated Voting Delegate is unable to serve in that capacity, up to two Alternate Voting Delegates may vote.

Designated Voting Delegates and Alternates must be registered to attend the Annual Conference. A staff member can be appointed to fill the voting role in the event that no Council Member plans to attend, or as an alternate delegate.

The resolutions to be considered at the business meeting are listed below and outlined in the attached packet.

Resolutions:

1. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES ("CAL CITIES") CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

Summary:
This Resolution calls on the League of California Cities (Cal Cities) to request the Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE NECCESARY FUNDING FOR CUPC TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE QAULITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETLY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUTT THE RAILROAD RIGHT-OF-WAY.

Summary:
The City of South Gate submits this resolution, which states the League of California Cities should urge the Governor and the Legislature to provide adequate regulatory authority and necessary funding to assist cities with railroad right-of-way areas to address illegal dumping, graffiti, and homeless encampments that proliferate along the rail lines and result in public safety issues.

FISCAL IMPACT
Resolution 1 fiscal impact:

Significant but unknown. The Resolution on its own does not shift sales tax revenues. In anticipation and mitigation of impacts, the Resolution requests Cal Cities to utilize online sales tax data to identify a fair and equitable distribution formula that accounts for the broad impacts fulfillment centers involved in online retail have on the cities that host them. The Resolution does not prescribe the revenue distribution split nor does it prescribe the impacts, positive and negative, of distribution networks.

Resolution 2 fiscal impact:

If the League of California Cities were to secure funding from the state for railroad clean-up activities, cities could potentially save money in addressing these issues themselves or through an MOU, as detailed above. This funding could also save railroad operators money in addressing concerns raised by municipalities about illegal dumping, graffiti, and homeless encampments along railroads.

Conversely, if the League of California Cities is unable to secure this funding through the Legislature or the Governor, cities may need to consider alternative methods, as detailed above, which may include significant costs.

RECOMMENDED ACTION

Staff recommends for the City Council to designate a voting delegate and alternates. Staff also recommends for Council to discuss and consider the proposed resolution and provide direction to the City's voting delegates for participation at the League of California Cities virtual Annual Business Meeting and General Assembly on Friday, September 24, 2021 at 12:30 p.m.

ATTACHMENTS

LOCC Voting Delegate Packet
2021 LOCC Resolutions Packet

LEAGUE OF CALIFORNIA CITIES

Council Action Advised by August 31, 2021

June 16, 2021

TO: City Managers and City Clerks

RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference & Expo – September 22-24, 2021

Cal Cities 2021 Annual Conference & Expo is scheduled for September 22-24, 2021 in Sacramento. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly) on Friday, September 24. At this meeting, Cal Cities membership considers and acts on resolutions that establish Cal Cities policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote if the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to Cal Cities office no later than Wednesday, September 15. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please note: Our number one priority will continue to be the health and safety of participants. We are working closely with the Sacramento Convention Center to ensure that important protocols and cleaning procedures continue, and if necessary, are strengthened. Attendees can anticipate updates as the conference approaches.

- **Action by Council Required.** Consistent with Cal Cities bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.

- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. Conference registration will open mid-June at www.cacities.org. In order to cast a vote, at least one voter must be present at the Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but

only between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.

- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Sacramento Convention Center, will be open at the following times: Wednesday, September 22, 8:00 a.m. – 6:00 p.m.; Thursday, September 23, 7:00 a.m. – 4:00 p.m.; and Friday, September 24, 7:30 a.m.– 11:30 a.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League's office by Wednesday, September 15. If you have questions, please call Darla Yacub at (916) 658-8254.

Attachments:
- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form

LEAGUE OF CALIFORNIA CITIES

CITY:_____

2021 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM

Please complete this form and return it to Cal Cities office by Wednesday, September 15, 2021. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

To vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name:_____

Title:_____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____ Email _____

Mayor or City Clerk_____ Date_____ Phone_____
(circle one) (signature)

Please complete and return by Wednesday, September 15, 2021 to:
Darla Yacub, Assistant to the Administrative Services Director
E-mail: dyacub@cacities.org
Phone: (916) 658-8254

LEAGUE OF CALIFORNIA CITIES

Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to Cal Cities policy.

2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the Cal Cities Credentials Committee.

3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.

4. **Signing Initiated Resolution Petitions**. Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.

5. **Voting.** To cast the city's vote, a city official must have in their possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.

6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.

7. **Resolving Disputes**. In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.

Annual Conference Resolutions Packet

2021 Annual Conference Resolutions

September 22 - 24, 2021

INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League of California Cities (Cal Cities) bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, two resolutions have been introduced for consideration at the Annual Conference and referred to Cal Cities policy committees.

POLICY COMMITTEES: Three policy committees will meet virtually one week prior to the Annual Conference to consider and take action on the resolutions. The sponsors of the resolutions have been notified of the time and location of the meetings.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet at 1:00 p.m. on Thursday, September 23, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of Cal Cities regional divisions, functional departments, and standing policy committees, as well as other individuals appointed by the Cal Cities president. Please check in at the registration desk for room location.

CLOSING LUNCHEON AND GENERAL ASSEMBLY: This meeting will be held at 12:30 p.m. on Friday, September 24, at the SAFE Credit Union Convention Center.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a petition resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Closing Luncheon & General Assembly. This year, that deadline is 12:30 p.m., Thursday, September 23. Resolutions can be viewed on Cal Cities Web site: www.cacities.org/resolutions.

Any questions concerning the resolutions procedures may be directed to Meg Desmond mdesmond@calcities.org.

GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within Cal Cities. The principal means for deciding policy on the important issues facing cities is through Cal Cities seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop Cal Cities policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.

2. The issue is not of a purely local or regional concern.

3. The recommended policy should not simply restate existing Cal Cities policy.

4. The resolution should be directed at achieving one of the following objectives:

   (a) Focus public or media attention on an issue of major importance to cities.

   (b) Establish a new direction for Cal Cities policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.

   (c) Consider important issues not adequately addressed by the policy committees and board of directors.

KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number	Key Word Index	Reviewing Body Action		
		1	2	3

1 - Policy Committee Recommendation to General Resolutions Committee
2 - General Resolutions Committee
3 - General Assembly

HOUSING, COMMUNITY & ECONOMIC DEVELOPMENT POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

REVENUE & TAXATION POLICY COMMITTEE

		1	2	3
1	Online Sales Tax Equity			

TRANSPORTATION, COMMUNICATION & PUBLIC WORKS POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

KEY TO ACTIONS TAKEN ON RESOLUTIONS *(Continued)*

Resolutions have been grouped by policy committees to which they have been assigned.

KEY TO REVIEWING BODIES

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

ACTION FOOTNOTES

* Subject matter covered in another resolution

** Existing League policy

*** Local authority presently exists

KEY TO ACTIONS TAKEN

A	Approve
D	Disapprove
N	No Action
R	Refer to appropriate policy committee for study
a	Amend+
Aa	Approve as amended+
Aaa	Approve with additional amendment(s)+
Ra	Refer as amended to appropriate policy committee for study+
Raa	Additional amendments and refer+
Da	Amend (for clarity or brevity) and Disapprove+
Na	Amend (for clarity or brevity) and take No Action+
W	Withdrawn by Sponsor

Procedural Note:
The League of California Cities resolution process at the Annual Conference is guided by the Cal Cities Bylaws.

1. **RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES ("CAL CITIES") CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION**

Source: City of Rancho Cucamonga
Concurrence of five or more cities/city officials:
Cities: Town of Apple Valley; City of El Cerrito; City of La Canada Flintridge; City of La Verne; City of Lakewood; City of Moorpark; City of Placentia; City of Sacramento
Referred to: Revenue and Taxation Policy Committee

WHEREAS, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of "siting" the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines "out-of-state" online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale ("situs") as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state's largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being entirely allocated to the specific city where the warehouse fulfillment center is located as opposed to going into a countywide pool that is shared with all jurisdictions in that County, as was done previously; and

WHEREAS, this all-or-nothing change for the allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue from the retailer that was once spread amongst all cities in countywide pools is now concentrated in select cities that host a fulfillment center; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting a 1 million square foot fulfillment center, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their RHNA obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering product from that center now receive no revenue from the center's sales activity despite also experiencing the impacts created by the center, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

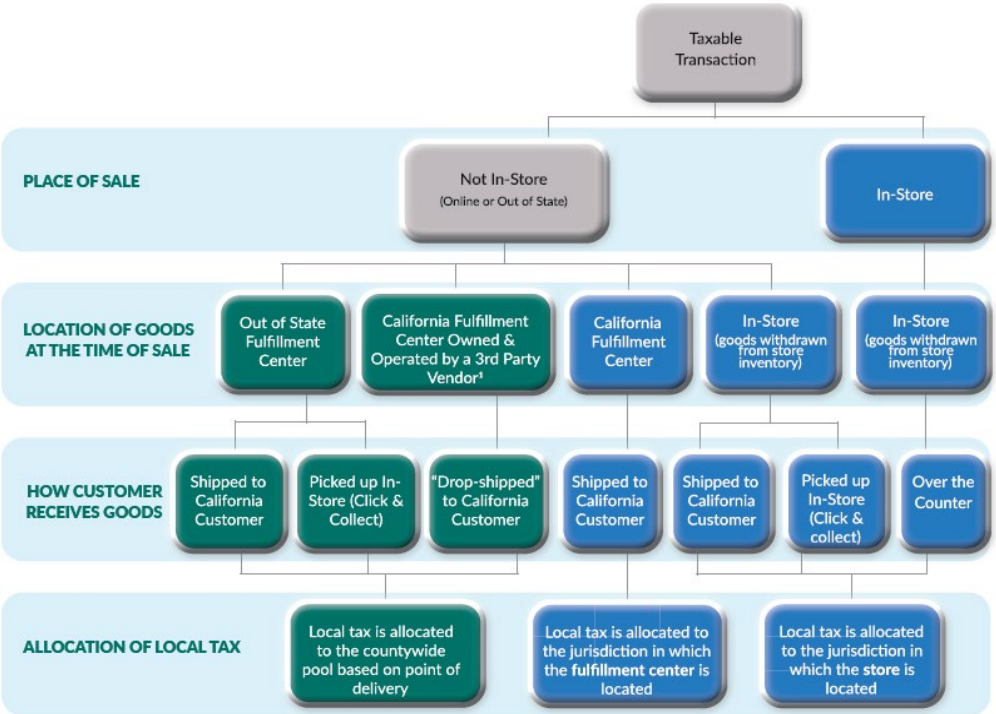
Background Information to Resolution

Source: City of Rancho Cucamonga

Background:
Sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950's, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction's boundaries.

Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances. The California Department of Tax and Fee Administration (CDTFA) is responsible for administering this system and issuing rules regarding how it is applied in our state.

The following chart created by HdL Companies, the leading provider of California sales tax consulting, illustrates the complex structure of how sales and use tax allocation is done in California, depending on where the transaction starts, where the goods are located, and how the customer receives the goods:



¹ In this scenario the retailer does not own a stock of goods in California and sales orders are negotiated/processed out of state. An out of state company is not required to hold a seller's permit for an in-state third party warehouse if they do not own a stock of goods at the time of sale.

With the exponential growth of online sales and the corresponding lack of growth, and even decline, of shopping at brick and mortar locations, cities are seeing much of their sales tax

growth coming from the countywide sales tax pools, since much of the sales tax is now funneled to the pools.

Recently, one of the world's largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated. Following the chart above, previously much of the sales tax would have followed the green boxes on the chart and been allocated to the countywide pool based on point of delivery. Now, much of the tax is following the blue path through the chart and is allocated to the jurisdiction in which the fulfillment center is located. (It should be noted that some of the tax is still flowing to the pools, in those situations where the fulfillment center is shipping goods for another seller that is out of state.)

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer's fulfillment centers.

This has brought to light again the need to address the issues in how sales and use taxes are distributed in the 21st century. Many, if not most cities will never have the opportunity have a warehouse fulfillment center due to lack of space or not being situated along a major travel corridor. These policies especially favor retailers who may leverage current policy in order to negotiate favorable sales tax sharing agreements, providing more money back to the retailer at the expense of funding critical public services.

With that stated, it is important to note the many impacts to the jurisdictions home to the fulfillment centers. These centers do support the ecommerce most of us as individuals have come to rely on, including heavy wear and tear on streets – one truck is equal to about 8,000 cars when it comes to impact on pavement – and increased air pollution due to the truck traffic and idling diesel engines dropping off large loads. However, it is equally important that State policies acknowledge that entities without fulfillment centers also experience impacts from ecommerce and increased deliveries. Cities whose residents are ordering products that are delivered to their doorstep also experience impacts from traffic, air quality and compromised safety, as well as the negative impact on brick-and-mortar businesses struggling to compete with the sharp increase in online shopping. These cities are rightfully entitled to compensation in an equitable share of sales and use tax. We do not believe that online sales tax distribution between fulfillment center cities and other cities should be an all or nothing endeavor, and not necessarily a fifty-fifty split, either. But we need to find an equitable split that balances the impacts to each jurisdiction involved in the distribution of products purchased online.

Over the years, Cal Cities has had numerous discussions about the issues surrounding sales tax in the modern era, and how state law and policy should be revisited to address these issues. It is a heavy lift, as all of our cities are impacted a bit differently, making consensus difficult. We believe that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.

It is for these reasons, that we should all aspire to develop an equitable sales tax distribution for online sales.

League of California Cities Staff Analysis on Resolution No. 1

Staff: Nicholas Romo, Legislative Affairs, Lobbyist

Committee: Revenue and Taxation

Summary:
This Resolution calls on the League of California Cities (Cal Cities) to request the Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Background:
The City of Rancho Cucamonga is sponsoring this resolution to *"address the issues in how sales and use taxes are distributed in the 21st century."*

The City notes that *"sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950's, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction's boundaries. Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances.*

Recently, one of the world's largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated.

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer's fulfillment centers."

The City's resolution calls for action on an unspecified solution that *"rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction,"* which aims to acknowledge the actions taken by cities to alleviate poverty, catalyze economic development, and improve financial stability within their communities through existing tax sharing and zoning powers.

Ultimately, sponsoring cities believe *"that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger."*

Sales and Use Tax in California

The Bradley-Burns Uniform Sales Tax Act allows all local agencies to apply its own sales and use tax on the same base of tangible personal property (taxable goods). This tax rate currently is fixed at 1.25% of the sales price of taxable goods sold at retail locations in a local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Cities and counties use this 1% of the tax to support general operations, while the remaining 0.25% is used for county transportation purposes.

In California, all cities and counties impose Bradley-Burns sales taxes. California imposes the sales tax on every retailer engaged in business in this state that sells taxable goods. The law requires businesses to collect the appropriate tax from the purchaser and remit the amount to the California Department of Tax and Fee Administration (CDTFA). Sales tax applies whenever a retail sale is made, which is basically any sale other than one for resale in the regular course of business. Unless the person pays the sales tax to the retailer, they are liable for the use tax, which is imposed on any person consuming taxable goods in the state. The use tax rate is the same rate as the sales tax rate.

Generally, CDTFA distributes Bradley-Burns tax revenue based on where a sale took place, known as *a situs-based system*. A retailer's physical place of business—such as a retail store or restaurant—is generally the place of sale. "Sourcing" is the term used by tax practitioners to describe the rules used to determine the place of sale, and therefore, which tax rates are applied to a given purchase and which jurisdictions are entitled to the local and district taxes generated from a particular transaction.

California is primarily an origin-based sourcing state – meaning tax revenues go to the jurisdiction in which a transaction physically occurs if that can be determined. However, California also uses a form of destination sourcing for the local use tax and for district taxes (also known as "transactions and use taxes" or "add-on sale and use taxes"). That is, for cities with local add-on taxes, they receive their add-on rate amount from remote and online transactions.

Generally, allocations are based on the following rules:

- The sale is sourced to the place of business of the seller - whether the product is received by the purchaser at the seller's business location or not.
- If the retailer maintains inventory in California and has no other in state location, the source is the jurisdiction where the warehouse is situated. *This resolution is concerned with the growing amount of online retail activity being sourced to cities with warehouse/fulfillment center locations.*
- If the business' sales office is located in California but the merchandise is shipped from out of state, the tax from transactions under $500,000 is allocated

via the county pools. The tax from transactions over $500,000 is allocated to the jurisdiction where the merchandise is delivered.

- When a sale cannot be identified with a permanent place of business in the state, the sale is sourced to the allocation pool of the county where the merchandise was delivered and then distributed among all jurisdictions in that county in proportion to ratio of sales. *For many large online retailers, this has been the traditional path.*

Online Sales and Countywide Pools

While the growth of e-commerce has been occurring for more than two decades, led by some of the largest and most popular retailers in the world, the dramatic increase in online shopping during the COVID-19 pandemic has provided significant revenue to California cities as well as a clearer picture on which governments enjoy even greater benefits.

In the backdrop of booming internet sales has been the steady decline of brick-and-mortar retail and shopping malls. For cities with heavy reliance on in-person retail shopping, the value of the current allocation system has been diminished as their residents prefer to shop online or are incentivized to do so by retailers (during the COVID-19 pandemic, consumers have had no other option but to shop online for certain goods). All the while, the demands and costs of city services continue to grow for cities across the state.

As noted above, the allocation of sales tax revenue to local governments depends on the location of the transaction (or where the location is ultimately determined). For in-person retail, the sales tax goes to the city in which the product and store are located - a customer purchasing at a register. For online sales, the Bradley Burns sales tax generally goes to a location other than the one where the customer lives – either to the city or county where an in-state warehouse or fulfillment center is located, the location of in-state sales office (ex. headquarters) or shared as use tax proceeds amongst all local governments within a county based on their proportionate share of taxable sales.

Under current CDTFA regulations, a substantial portion of local use tax collections are allocated through a countywide pool to the local jurisdictions in the county where the property is put to its first functional use. The state and county pools constitute over 15% of local sales and use tax revenues. Under the pool system, the tax is reported by the taxpayer to the countywide pool of use and then distributed to each jurisdiction in that county on a pro-rata share of taxable sales. If the county of use cannot be identified, the revenues are distributed to the state pool for pro-rata distribution on a statewide basis.

Concentration of Online Sales Tax Revenue and Modernization

Sales tax modernization has been a policy goal of federal, state, and local government leaders for decades to meet the rapidly changing landscape of commercial activity and ensure that all communities can sustainably provide critical services.

For as long as remote and internet shopping has existed, policy makers have been concerned about their potential to disrupt sales and use tax allocation procedures that underpin the funding of local government services. The system was designed in the early twentieth century to ensure that customers were paying sales taxes to support local government services within the community where the transactions occurred whether they resided there or not. This structure provides benefit to and recoupment for the public resources necessary to ensure the health and safety of the community broadly.

City leaders have for as long been concerned about the loosening of the nexus between what their residents purchase and the revenues they receive. Growing online shopping, under existing sourcing rules, has led to a growing concentration of sales tax revenue being distributed to a smaller number of cities and counties. As more medium and large online retailers take title to fulfillment centers or determine specific sales locations in California as a result of tax sharing agreements in specific cities, online sales tax revenue will be ever more concentrated in a few cities at the control of these companies. Furthermore, local governments are already experiencing the declining power of the sales tax to support services as more money is being spent on non-taxable goods and services.

For more on sales and use tax sourcing please see Attachment A.

State Auditor Recommendations

In 2017, the California State Auditor issued a report titled, "The Bradley-Burns Tax and Local Transportation Funds, noting that:

"Retailers generally allocate Bradley Burns tax revenue based on the place of sale, which they identify according to their business structure. However, retailers that make sales over the Internet may allocate sales to various locations, including their warehouses, distribution center, or sales offices. This approach tends to concentrate Bradley Burns tax revenue into the warehouses' or sales offices' respective jurisdictions. Consequently, counties with a relatively large amount of industrial space may receive disproportionately larger amounts of Bradley Burns tax, and therefore Local Transportation Fund, revenue.

The State could make its distribution of Bradley Burns tax revenue derived from online sales more equitable if it based allocations of the tax on the destinations to which goods are shipped rather than on place of sale."

The Auditor's report makes the following recommendation:

"To ensure that Bradley-Burns tax revenue is more evenly distributed, the Legislature should amend the Bradley-Burns tax law to allocate revenues from Internet sales based on the destination of sold goods rather than their place of sale."

In acknowledgement of the growing attention from outside groups on this issue, Cal Cities has been engaged in its own study and convening of city officials to ensure pursued solutions account for the circumstances of all cities and local control is best protected. These efforts are explored in subsequent sections.

Cal Cities Revenue and Taxation Committee and City Manager Working Group
In 2015 and 2016, Cal Cities' Revenue and Taxation Policy Committee held extensive discussions on potential modernization of tax policy affecting cities, with a special emphasis on the sales tax. The issues had been identified by Cal Cities leadership as a strategic priority given concerns in the membership about the eroding sales tax base and the desire for Cal Cities to take a leadership role in addressing the associated issues. The policy committee ultimately adopted a series of policies that were approved by the Cal Cities board of directors. Among its changes were a recommended change to existing sales tax sourcing (determining where a sale occurs) rules, so that the point of sale (situs) is where the customer receives the product. The policy also clarifies that specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood. See "Existing Cal Cities Policy" section below.

Cal Cities City Manager Sales Tax Working Group Recommendations
In the Fall of 2017, the Cal Cities City Managers Department convened a working group (Group) of city managers representing a diverse array of cities to review and consider options for addressing issues affecting the local sales tax.

The working group of city managers helped Cal Cities identify internal common ground on rapidly evolving e-commerce trends and their effects on the allocation of local sales and use tax revenue. After meeting extensively throughout 2018, the Group made several recommendations that were endorsed unanimously by Cal Cities' Revenue and Taxation Committee at its January, 2019 meeting and by the board of directors at its subsequent meeting.

The Group recommended the following actions in response to the evolving issues associated with e-commerce and sales and use tax:

Further Limiting Rebate Agreements: The consensus of the Group was that:

- Sales tax rebate agreements involving online retailers should be prohibited *going forward*. They are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one.
- Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited *going forward*. Existing law already prohibits such agreements for auto dealers and big box stores.

Shift Use Tax from Online Sales, including from the South Dakota v. Wayfair Decision Out of County Pools: The Group's recommendation is based first on the principle of "situs" and that revenue should be allocated to the jurisdiction where the use occurs. Each city and county in California imposed a Bradley Burns sales and use tax rate

under state law in the 1950s. The use tax on a transaction is the rate imposed where the purchaser resides (the destination). These use tax dollars, including new revenue from the South Dakota v. Wayfair decision, should be allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

- Shift of these revenues, from purchases from out of state retailers including transactions captured by the South Dakota v. Wayfair decision, out of county pools to full destination allocation on and after January 1, 2020.
- Allow more direct reporting of use taxes related to construction projects to jurisdiction where the construction activity is located by reducing existing regulatory threshold from $5 million to $100,000.

Request/Require CDTFA Analysis on Impacts of Sales Tax Destination Shifts: After discussion of numerous phase-in options for destination sourcing and allocation for sales taxes, the Group ultimately decided that a more complete analysis was needed to sufficiently determine impacts. Since the two companies most cities rely on for sales tax analysis, HdL and MuniServices, were constrained to modeling with transaction and use tax (district tax) data, concerns centered on the problem of making decisions without adequate information. Since the CDTFA administers the allocation of local sales and use taxes, it is in the best position to produce an analysis that examines:

- The impacts on individual agencies of a change in sourcing rules. This would likely be accomplished by developing a model to examine 100% destination sourcing with a report to the Legislature in early 2020.
- The model should also attempt to distinguish between business-to-consumer transactions versus business-to-business transactions.
- The model should analyze the current number and financial effects of city and county sales tax rebate agreements with online retailers and how destination sourcing might affect revenues under these agreements.

Conditions for considering a Constitutional Amendment that moves toward destination allocation: Absent better data on the impacts on individual agencies associated with a shift to destination allocation of sales taxes from CDTFA, the Group declined to prescribe if/how a transition to destination would be accomplished; the sentiment was that the issue was better revisited once better data was available. In anticipation that the data would reveal significant negative impacts on some agencies, the Group desired that any such shift should be accompanied by legislation broadening of the base of sales taxes, including as supported by existing Cal Cities policy including:

- Broadening the tax base on goods, which includes reviewing existing exemptions on certain goods and expanding to digital forms of goods that are otherwise taxed; and
- Expanding the sales tax base to services, such as those commonly taxed in other states.

This Resolution builds upon previous work that accounts for the impacts that distribution networks have on host cities and further calls on the organization to advocate for changes to sales tax distribution rules.

The Resolution places further demands on data collected by CDTFA to establish a "fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases." Such data is proposed to be collected by SB 792 (Glazer, 2021). More discussion on this topic can be found in the "Staff Comments" section.

Staff Comments:

Proposed Resolution Affixes Equity Based, Data Driven Approach to Existing Cal Cities Policy on Sales Tax Sourcing

The actions resulting from this resolution, if approved, would align with existing policy and efforts to-date to modernize sales tax rules. While not formalized in existing Cal Cities policy or recommendations, city managers and tax practitioners generally have favored proposals that establish a sharing of online sales tax revenues rather than a full destination shift. City leaders and practitioners across the state have acknowledged during Cal Cities Revenue and Taxation and City Manager's working group meetings that the hosting of fulfillment centers and ancillary infrastructure pose major burdens on local communities including detrimental health and safety impacts. This acknowledgement has moved mainstream proposals such as this one away from full revenue shifts towards an equity-based, data driven approach that favors revenue sharing. This Resolution would concretely affix this approach as Cal Cities policy.

More Data is Needed to Achieve Equity Based Approach

A major challenge is the lack of adequate data to model the results of shifting in-state online sale tax revenues. Local government tax consultants and state departments have limited data to model the effects of changes to sales tax distribution because their information is derived only from cities that have a local transactions and use tax (TUT). Tax experts are able to model proposed tax shifts using TUTs since they are allocated on a destination basis (where a purchaser receives the product; usually a home or business). However, more than half of all cities, including some larger cities, do not have a local TUT therefore modeling is constrained and incomplete.

Efforts to collect relevant sales tax information on the destination of products purchased online are ongoing. The most recent effort is encapsulated in SB 792 (Glazer, 2021), which would require retailers with online sales exceeding $50 million a year to report to CDTFA the gross receipts from online sales that resulted in a product being shipped or delivered in each city. The availability of this data would allow for a much more complete understanding of online consumer behavior and the impacts of future proposed changes to distribution. SB 792 (Glazer) is supported by Cal Cities following approval by the Revenue and Taxation Committee and board of directors.

Impact of Goods Movement Must Be Considered

As noted above, city leaders and practitioners across the state acknowledge that the hosting of fulfillment centers and goods movement infrastructure pose major burdens on local communities including detrimental health, safety, and infrastructure impacts. Not least of which is the issue of air pollution from diesel exhaust. According to California Environmental Protection Agency (Cal EPA):

"Children and those with existing respiratory disease, particularly asthma, appear to be especially susceptible to the harmful effects of exposure to airborne PM from diesel exhaust, resulting in increased asthma symptoms and attacks along with decreases in lung function (McCreanor et al., 2007; Wargo, 2002). People that live or work near heavily-traveled roadways, ports, railyards, bus yards, or trucking distribution centers may experience a high level of exposure (US EPA, 2002; Krivoshto et al., 2008). People that spend a significant amount of time near heavily-traveled roadways may also experience a high level of exposure. Studies of both men and women demonstrate cardiovascular effects of diesel PM exposure, including coronary vasoconstriction and premature death from cardiovascular disease (Krivoshto et al., 2008). A recent study of diesel exhaust inhalation by healthy non-smoking adults found an increase in blood pressure and other potential triggers of heart attack and stroke (Krishnan et al., 2013) Exposure to diesel PM, especially following periods of severe air pollution, can lead to increased hospital visits and admissions due to worsening asthma and emphysema-related symptoms (Krivoshto et al., 2008). Diesel exposure may also lead to reduced lung function in children living in close proximity to roadways (Brunekreef et al., 1997)."

The founded health impacts of the ubiquitous presence of medium and heavy-duty diesel trucks used to transport goods to and from fulfillment centers and warehouses require host cities to meet increased needs of their residents including the building and maintenance of buffer zones, parks, and open space. While pollution impacts may decline with the introduction of zero-emission vehicles, wide scale adoption by large distribution fleets is still in its infancy. Furthermore, the impacts of heavy road use necessitate increased spending on local streets and roads upgrades and maintenance. In addition, many cities have utilized the siting of warehouses, fulfillment centers, and other heavy industrial uses for goods movements as key components of local revenue generation and economic development strategies. These communities have also foregone other land uses in favor of siting sales offices and fulfillment networks.

All said, however, it is important to acknowledge that disadvantaged communities (DACs) whether measured along poverty, health, environmental or education indices exist in cities across the state. For one example, see: California Office of Environmental Health Hazard Assessment (OEHHA) CalEnviroScreen. City officials may consider how cities without fulfillment and warehouse center revenues are to fund efforts to combat social and economic issues, particularly in areas with low property tax and tourism-based revenues.

The Resolution aims to acknowledge these impacts broadly (this analysis does not provide an exhaustive review of related impacts) and requests Cal Cities to account for them in a revised distribution formula of the Bradley Burns 1% local sales tax from in-state online purchases. The Resolution does not prescribe the proportions.

Clarifying Amendments
Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. *To review the proposed changes, please see Attachment B.*

Fiscal Impact:
Significant but unknown. The Resolution on its own does not shift sales tax revenues. In anticipation and mitigation of impacts, the Resolution requests Cal Cities to utilize online sales tax data to identify a fair and equitable distribution formula that accounts for the broad impacts fulfillment centers involved in online retail have on the cities that host them. The Resolution does not prescribe the revenue distribution split nor does it prescribe the impacts, positive and negative, of distribution networks.

Existing Cal Cities Policy:

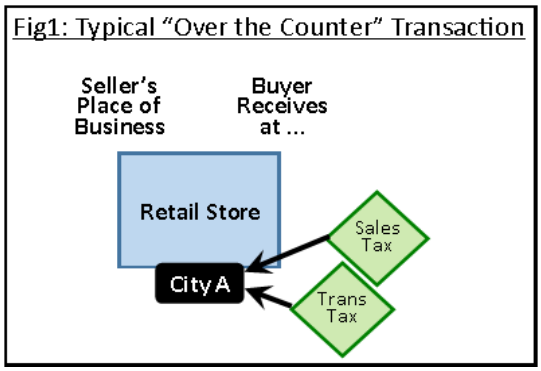
- Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.
- Support as Cal Cities policy that point of sale (situs) is where the customer receives the product. Specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood.
- Revenue from new regional or state taxes or from increased sales tax rates should be distributed in a way that reduces competition for situs-based revenue. (Revenue from the existing sales tax rate and base, including future growth from increased sales or the opening of new retail centers, should continue to be returned to the point of sale.)
- The existing situs-based sales tax under the Bradley Burns 1% baseline should be preserved and protected.
- Restrictions should be implemented and enforced to prohibit the enactment of agreements designed to circumvent the principle of situs-based sales and redirect or divert sales tax revenues from other communities, when the physical location of the affected businesses does not change. Sales tax rebate agreements involving online retailers are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one. Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited going forward.
- Support Cal Cities working with the state California Department of Tax and Fee Administration (CDTFA) to update the county pool allocation process to ensure that more revenues are allocated to the jurisdiction where the purchase or first use of a product occurs (usually where the product is delivered). Use Tax collections from online sales, including from the South Dakota v Wayfair Decision, should be shifted out of county pools and allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

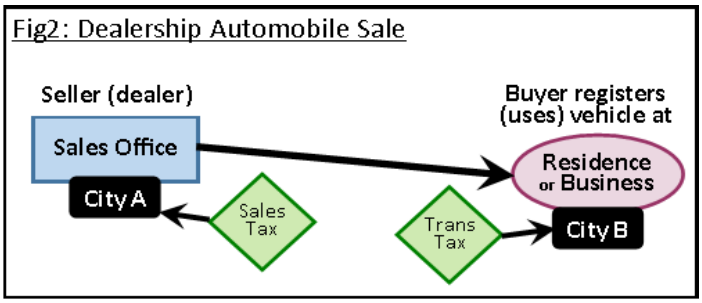
Support:
The following letters of concurrence were received:

Town of Apple Valley
City of El Cerrito
City of La Canada Flintridge
City of La Verne
City of Lakewood

City of Moorpark
City of Placentia
City of Sacramento

Attachment A





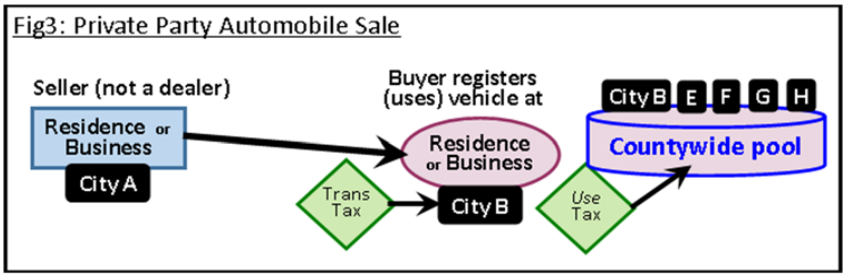
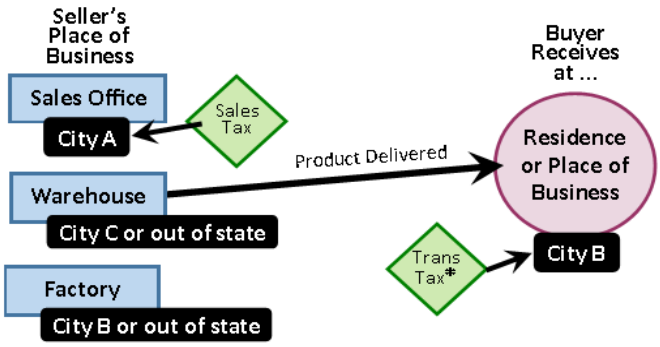
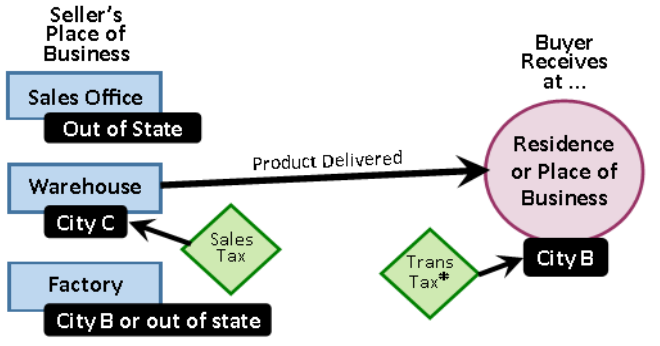


Fig4: Remote (Online) Sale—In-State Business Office

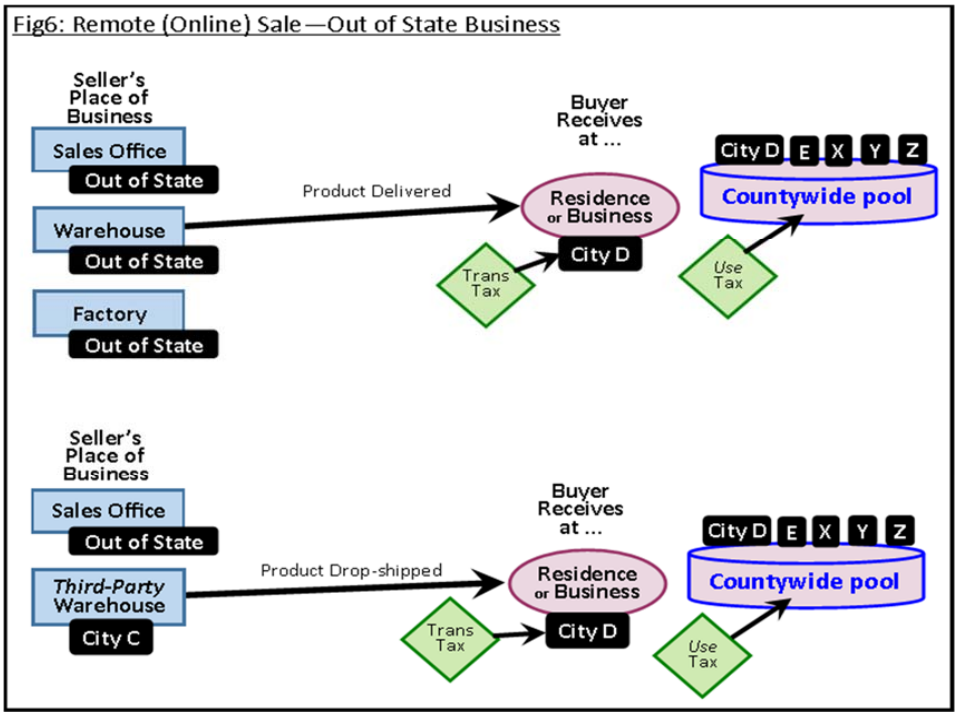


#If the seller is in the same Transactions and Use Tax "district" as the buyer, then the seller is responsible for collecting and remitting the tax. If the buyer is in a different district, the buyer is responsible.

Fig5: Remote (Online) Sale—In-State Warehouse, Out-of-State Sales Office



#If the seller is in the same Transactions and Use Tax "district" as the buyer, then the seller is responsible for collecting and remitting the tax. If the buyer is in a different district, the buyer is responsible.



GUIDELINES FOR ALLOCATION OF LOCAL TAX - ONLINE AND IN-STORE			
Place of Sale	**Location of Goods at the Time of Sale**	**How Customer Receives Goods**	**Allocation of Tax**
Online – Order is placed or downloaded outside California	California Fulfillment Center	Shipped to California Customer	Local tax is allocated to the jurisdiction in which the fulfillment center is located
Online – Order is placed or downloaded in California	California Fulfillment Center	Shipped to California Customer	Per CDTFA Regulation 1802, local tax is allocated to the jurisdiction where the order is placed
Online	Out of State Fulfilment Center	Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	Out of State Fulfilment Center	Picked Up In-Store (Click & Collect)	Local tax is allocated to the countywide pool based on point of delivery
Online	California Fulfillment Center Owned and Operated by Third Party Vendor	Drop-Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	In-Store (Goods withdrawn from store inventory)	Shipped to California Customer	Local Tax is allocated to the jurisdiction where the store is located
Online	In-Store (Goods withdrawn from store inventory)	Picked Up In-Store (Click & Collect)	Local Tax is allocated to the jurisdiction where the store is located
In-Store	In-Store (Goods withdrawn from store inventory)	Over the Counter	Local Tax is allocated to the jurisdiction where the store is located

Courtesy of HdL Companies

CaliforniaCityFinance.com

Tax Incentive Programs, Sales Tax Sharing Agreements

In recent years, especially since Proposition 13 in 1978, local discretionary (general purpose revenues) have become more scarce. At the same time, options and procedures for increasing revenues have become more limited. One outcome of this in many areas has been a greater competition for sales and use tax revenues. This has brought a rise in arrangements to encourage certain land use development with rebates and incentives which exploit California's odd origin sales tax sourcing rules.

The typical arrangement is a sales tax sharing agreement in which a city provides tax rebates to a company that agrees to expand their operations in the jurisdiction of the city. Under such an arrangement, the company generally agrees to make a specified amount of capital investment and create a specific number of jobs over a period of years in exchange for specified tax breaks, often property tax abatement or some sort of tax credit. In some cases, this has simply taken the form of a sales office, while customers and warehouses and the related economic activity are disbursed elsewhere in the state. In some cases the development takes the form of warehouses, in which the sales inventory, owned by the company, is housed.[6]

Current sales tax incentive agreements in California rebate amounts ranging from 50% to 85% of sales tax revenues back to the corporations.

Today, experts familiar with the industry believe that between 20% to 30% of local Bradley-Burns sales taxes paid by California consumers is diverted from local general funds back to corporations; over $1 billion per year.

The Source of Origin Based Sourcing Problems

Where other than over-the-counter sales are concerned origin sourcing often causes a concentration of large amounts of tax revenue in one location, despite the fact that the economic activity and service impacts are also occurring in other locations.

The large amounts of revenue concentrated in a few locations by California's "warehouse rule" origin sourcing causes a concentration of revenue far in excess of the service costs associated with the development.

In order to lure jobs and tax revenues to their communities, some cities have entered into rebate agreements with corporations. This has grown to such a problem, that 20% to 30% of total local taxes paid statewide are being rebated back to corporations rather than funding public services.

Moving to Destination Sourcing: The Concept[7]

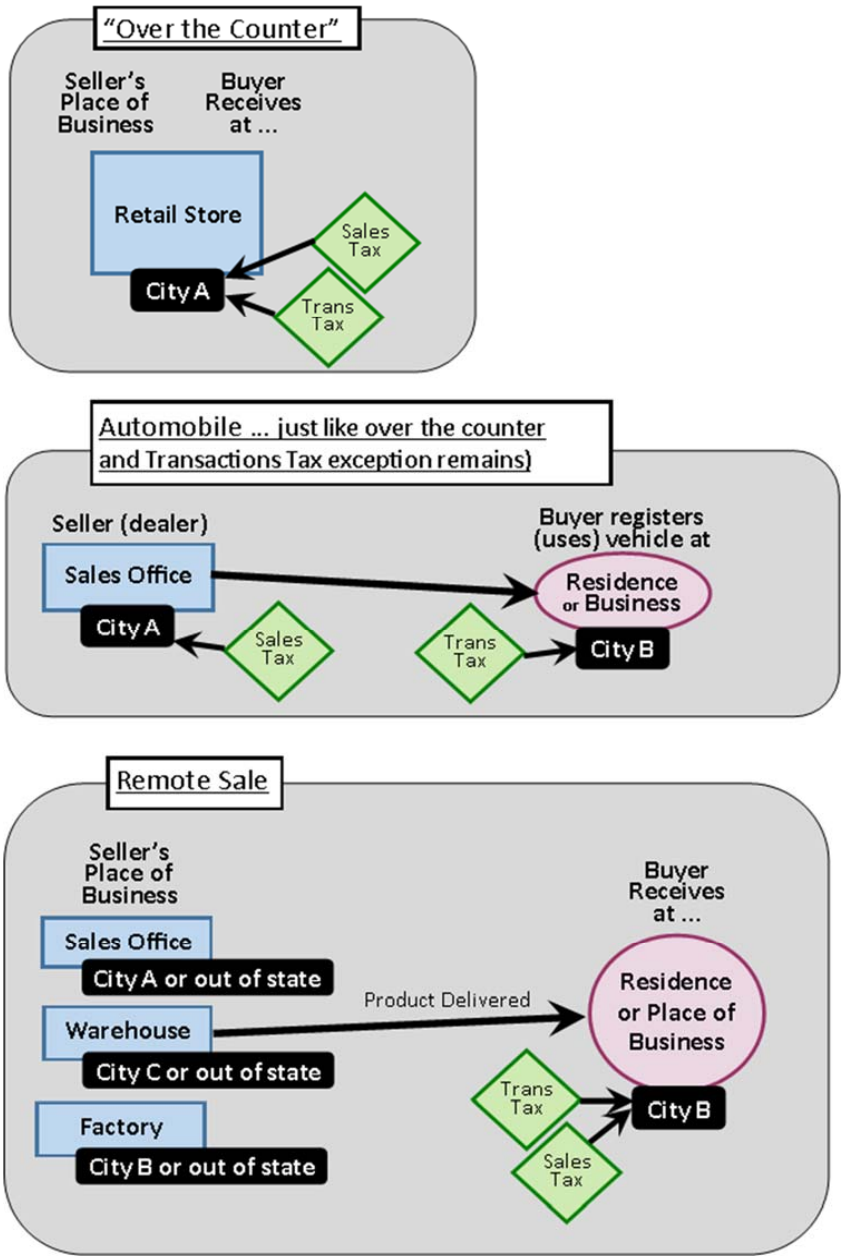
A change from origin sourcing rules to destination sourcing rules for the local tax component of California's sales tax would improve overall revenue collections and distribute these revenues more equitably among all of the areas involved in these transactions.

A change from origin based sourcing to destination based sourcing would have no effect on state tax collections. However, it would alter the allocations of local sales and use tax revenues among local agencies. Most retail transactions including dining, motor fuel purchases, and in-store purchases would not be affected. But in cases where the property is received by the purchaser in a different jurisdiction than where the sales agreement was negotiated, there would be a different allocation than under the current rules.

[6] See Jennifer Carr, "Origin Sourcing and Tax Incentive Programs: An Unholy Alliance" Sales Tax Notes; May 27, 2013.

[7] The same issues that are of concern regarding the local sales tax do not apply to California's Transactions and Use Taxes ("Add-on sales taxes") as these transactions, when not over the counter, are generally allocated to the location of use or, as in the case of vehicles, product registration. There is no need to alter the sourcing rules for transactions and use taxes.

Destination Sourcing Scenario 1: Full-On



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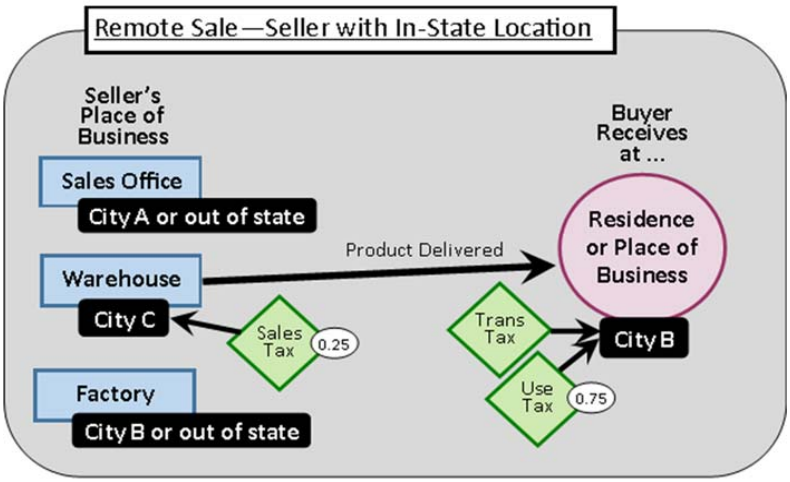
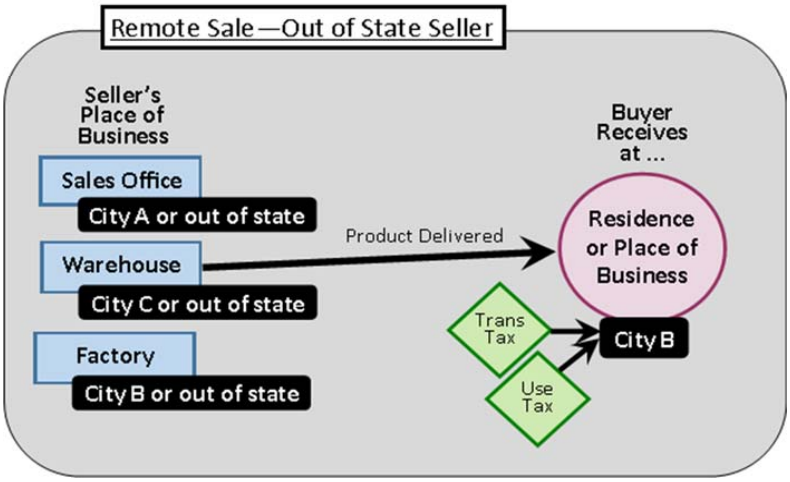
Destination Sourcing Scenario 2: Split Source

- Same as now for "over the counter" and automobile.
- Leave 0.25% on current seller if instate (origin)
- Could be phased in.





mjgc

RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES ("CAL CITIES") CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

WHEREAS, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of "siting" the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines "out-of-state" online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale ("situs") as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state's largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being ~~**entirely**~~ allocated to ~~**the specific city**~~ **cities** where ~~the~~ warehouse fulfillment centers ~~**is**~~ **are** located as opposed to going into ~~**a**~~ countywide pools that ~~**is**~~ **are** shared with all jurisdictions in **those counties** ~~**that County**~~, as was done previously; and

WHEREAS, this all-or-nothing ~~change for the~~ allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue ~~**from the retailer**~~ that was once spread amongst all cities in countywide pools is now concentrated in select cities that host ~~**a**~~ fulfillment centers; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting ~~**a 1 million square foot**~~ fulfillment centers, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their **Regional Housing Needs Allocation (**RHNA**)** obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering products from **those** ~~**that**~~ centers now receive no **Bradley Burns** revenue ~~**from the center's sales activity**~~ despite also experiencing the impacts created by them ~~center~~, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE NECCESARY FUNDING FOR CUPC TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE QAULITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETLY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUTT THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate
Concurrence of five or more cities/city officials:
Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera
Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the California Public Utilities Commission for operational safety and maintenance; and

WHEREAS, the California Public Utilities Commission (CPUC) is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the League Annual Conference on September 24, 2021, in Sacramento, that the League calls for the Governor and the Legislature to work with the League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. The League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.

Background Information to Resolution

Source: City of South Gate

Background:
The State of California has over 6,000 miles of rail lines, with significant amount running through communities that are either economically disadvantaged and/or disadvantaged communities of color. While the Federal Railroad Administration (FRA) has primary oversight of rail operations, they delegate that obligation to the State of California for lines within our State. The administration of that oversight falls under the California Public Utilities Commission (CPUC). The CPUC has only 41 inspectors covering those 6,000 miles of railroad lines in the State of California. Their primary task is ensuring equipment, bridges and rail lines are operationally safe.

The right-of-way areas along the rail lines are becoming increasingly used for illegal dumping, graffiti and homeless encampments. Rail operators have admitted that they have insufficient funds set aside to clean up or sufficiently police these right-of-way areas, despite reporting a net income of over $13 billion in 2020. CPUC budget does not provide the resources to oversee whether rail operators are properly managing the right-of-way itself.

The City of South Gate has three rail lines traversing through its city limits covering about 4 miles. These lines are open and inviting to individuals to conduct illegal dumping, graffiti buildings and structures along with inviting dozens of homeless encampments. As private property, Cities like ourselves cannot just go upon them to remove bulky items, trash, clean graffiti or remove encampments. We must call and arrange for either our staff to access the site or have the rail operator schedule a cleanup. This can take weeks to accomplish, in the meantime residents or businesses that are within a few hundred feet of the line must endure the blight and smell. Trash is often blown from the right-of-way into residential homes or into the streets. Encampments can be seen from the front doors of homes and businesses.

South Gate is a proud city of hard working-class residents, yet with a median household income of just $50,246 or 65% of AMI for Los Angeles County, it does not have the financial resources to direct towards property maintenance of any commercial private property. The quality of life of communities like ours should not be degraded by the inactions or lack of funding by others. Cities such as South Gate receive no direct revenue from the rail operators, yet we deal with environmental impacts on a daily basis, whether by emissions, illegal dumping, graffiti or homeless encampments.

The State of California has record revenues to provide CPUC with funding nor only for safety oversight but ensuring right-of-way maintenance by operators is being managed properly. Rail Operators should be required to set aside sufficient annual funds to provide a regular cleanup of their right-of-way through the cities of California.

LETTERS OF CONCURRENCE

Resolution No. 2

League of California Cities Staff Analysis on Resolution No. 2

Staff: Damon Conklin, Legislative Affairs, Lobbyist
Jason Rhine, Assistant Director, Legislative Affairs
Caroline Cirrincione, Policy Analyst

Committees: Transportation, Communications, and Public Works
Housing, Community, and Economic Development

Summary:
The City of South Gate submits this resolution, which states the League of California Cities should urge the Governor and the Legislature to provide adequate regulatory authority and necessary funding to assist cities with railroad right-of-way areas to address illegal dumping, graffiti, and homeless encampments that proliferate along the rail lines and result in public safety issues.

Background:
California Public Utilities Commission (CPUC) Railroad Oversight
The CPUC's statewide railroad safety responsibilities are carried out through its Rail Safety Division (RSD). The Railroad Operations and Safety Branch (ROSB), a unit of RSD, enforces state and federal railroad safety laws and regulations governing freight and passenger rail in California.

The ROSB protects California communities and railroad employees from unsafe practices on freight and passenger railroads by enforcing rail safety laws, rules, and regulations. The ROSB also performs inspections to identify and mitigate risks and potential safety hazards before they create dangerous conditions. ROSB rail safety inspectors investigate rail accidents and safety-related complaints and recommend safety improvements to the CPUC, railroads, and the federal government as appropriate.

Within the ROSB, the CPUC employs 41 inspectors who are federally certified in the five Federal Railroad Administration (FRA) railroad disciplines, including hazardous materials, motive power and equipment, operations, signal and train control, and track. These inspectors perform regular inspections, focused inspections, accident investigations, security inspections, and complaint investigations. In addition, the inspectors address safety risks that, while not violations of regulatory requirements, pose potential risks to public or railroad employee safety.

CPUC's Ability to Address Homelessness on Railroads
Homeless individuals and encampments have occupied many locations in California near railroad tracks. This poses an increased safety risk to these homeless individuals of being struck by trains. Also, homeless encampments often create unsafe work environments for railroad and agency personnel.

While CPUC cannot compel homeless individuals to vacate railroad rights-of-way or create shelter for homeless individuals, it has the regulatory authority to enforce measures that can reduce some safety issues created by homeless encampments. The disposal of waste materials or other disturbances of walkways by homeless individuals can create tripping hazards in the vicinity of railroad rights-of-way. This would cause violations of Commission GO 118-A, which sets standards for walkway surfaces alongside railroad tracks. Similarly, tents, wooden structures, and miscellaneous debris in homeless encampments can create violations of

Commission GO 26-D, which sets clearance standards between railroad tracks, and structures and obstructions adjacent to tracks.

Homelessness in California
According to the 2020 Annual Homeless Assessment Report (AHAR) to Congress, there has been an increase in unsheltered individuals since 2019. More than half (51 percent or 113,660 people) of all unsheltered homeless people in the United States are found in California, about four times as high as their share of the overall United States population.

Many metro areas in California lack an adequate supply of affordable housing. This housing shortage has contributed to an increase in homelessness that has spread to railroad rights-of-way. Homeless encampments along railroad right-of-way increase the incidents of illegal dumping and unauthorized access and trespassing activities. Other impacts include train service reliability with debris strikes, near-misses, and trespasser injuries/fatalities. As of April 2021, there have been 136 deaths and 117 injuries reported by the Federal Railroad Administration over the past year. These casualties are directly associated with individuals who trespassed on the railroad.

Cities across the state are expending resources reacting to service disruptions located on the railroad's private property. It can be argued that an increase in investments and services to manage and maintain the railroad's right-of-way will reduce incidents, thus enhancing public safety, environmental quality, and impacts on the local community.

State Budget Allocations – Homelessness
The approved State Budget includes a homelessness package of $12 billion. This consists of a commitment of $1 billion per year for direct and flexible funding to cities and counties to address homelessness. While some details related to funding allocations and reporting requirements remain unclear, Governor Newsom signed AB 140 in July, which details key budget allocations, such as:

- $2 billion in aid to counties, large cities, and Continuums of Care through the Homeless Housing, Assistance and Prevention grant program (HHAP);
- $50 million for Encampment Resolution Grants, which will help local governments resolve critical encampments and transitioning individuals into permanent housing; and
- $2.7 million in onetime funding for Caltrans Encampment Coordinators to mitigate safety risks at encampments on state property and to coordinate with local partners to connect these individuals to services and housing.

The Legislature additionally provided $2.2 billion specifically for Homekey with $1 billion available immediately. This funding will help local governments transition individuals from Project Roomkey sites into permanent housing to minimize the number of occupants who exit into unsheltered homelessness.

With regards to this resolution, the State Budget also included $1.1 billion to clean trash and graffiti from highways, roads, and other public spaces by partnering with local governments to pick up trash and beautify downtowns, freeways, and neighborhoods across California. The program is expected to generate up to 11,000 jobs over three years.

Cities Railroad Authority
A city must receive authorization from the railroad operator before addressing the impacts made by homeless encampments because of the location on the private property. Additionally, the city

must coordinate with the railroad company to get a flagman to oversee the safety of the work crews, social workers, and police while on the railroad tracks.

A city may elect to declare the encampment as a public nuisance area, which would allow the city to clean up the areas at the railroad company's expense for failing to maintain the tracks and right-of-way. Some cities are looking to increase pressure on railroad operators for not addressing the various homeless encampments, which are presenting public safety and health concerns.

Courts have looked to compel railroad companies to increase their efforts to address homeless encampments on their railroads or grant a local authority's application for an Inspection and Abatement Warrant, which would allow city staff to legally enter private property and abate a public nuisance or dangerous conditions.

In limited circumstances, some cities have negotiated Memoranda of Understandings (MOU) with railroad companies to provide graffiti abatement, trash, and debris removal located in the right-of-way, and clean-ups of homeless encampments. These MOUs also include local law enforcement agencies to enforce illegally parked vehicles and trespassing in the railroad's right-of-way. MOUs also detailed shared responsibility and costs of providing security and trash clean-up. In cases where trespassing or encampments are observed, the local public works agency and law enforcement agency are notified and take the appropriate measures to remove the trespassers or provide clean-up with the railroad covering expenses outlined in the MOU.

Absent an MOU detailing shared maintenance, enforcement, and expenses, cities do not have the authority to unilaterally abate graffiti or clean-up trash on a railroad's right-of-way.

Fiscal Impact:
If the League of California Cities were to secure funding from the state for railroad clean-up activities, cities could potentially save money in addressing these issues themselves or through an MOU, as detailed above. This funding could also save railroad operators money in addressing concerns raised by municipalities about illegal dumping, graffiti, and homeless encampments along railroads.

Conversely, if the League of California Cities is unable to secure this funding through the Legislature or the Governor, cities may need to consider alternative methods, as detailed above, which may include significant costs.

Existing League Policy:
Public Safety:
Graffiti
The League supports increased authority and resources devoted to cities for abatement of graffiti and other acts of public vandalism.

Transportation, Communications, and Public Works
Transportation
The League supports efforts to improve the California Public Utilities Commission's ability to respond to and investigate significant transportation accidents in a public and timely manner to improve rail shipment, railroad, aviation, marine, highway, and pipeline safety

Housing, Community, and Economic Development
Housing for Homeless
Homelessness is a statewide problem that disproportionately impacts specific communities. The state should make funding and other resources, including enriched services, and outreach and case managers, available to help assure that local governments have the capacity to address the needs of the homeless in their communities, including resources for regional collaborations.

Homeless housing is an issue that eludes a statewide, one-size-fits-all solution, and collaboration between local jurisdictions should be encouraged.

Staff Comments:
Clarifying Amendments
Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. To review the proposed changes, please see Attachment A.

The committee may also wish to consider clarifying language around regulatory authority and funding to assist cities with these efforts. The resolution asks that new investments from the state be sent to the CPUC to increase their role in managing and maintaining railroad rights-of-ways and potentially to cities to expand their new responsibility.

The committee may wish to specify MOUs as an existing mechanism for cities to collaborate and agree with railroad operators and the CPUC on shared responsibilities and costs.

Support:
The following letters of concurrence were received:
City of Bell Gardens
City of Bell
City of Commerce
City of Cudahy
City of El Segundo
City of Glendora
City of La Mirada
City of Paramount
City of Pico Rivera
City of Huntington Park
City of Long Beach
City of Lynwood
City of Montebello

ATTACHMENT A

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE ~~NECCESARY~~ NECESSARY FUNDING FOR ~~CUPC~~ THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE ~~QAULITY~~ QUALITY OF LIFE AND RESULTS IN INCREASED PUBLIC ~~SAFETLY~~ SAFETY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUT~~T~~ THE RAILROAD RIGHT-OF-WAY.

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Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the ~~California Public Utilities Commission~~ CPUC for operational safety and maintenance; and

WHEREAS, the ~~California Public Utilities Commission (~~CPUC~~)~~ is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well as a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the ~~League~~ Cal Cities Annual Conference on September 24, 2021, in Sacramento, that ~~the~~ Cal Cities ~~League~~ calls for the Governor and the Legislature to work with ~~the~~ Cal Cities ~~League~~ and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. ~~The~~ Cal Cities ~~League~~ will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.