City of St. Helena
Regular City Council Meeting
Tuesday, September 14, 2021 @ 6:00 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/81073831285
Or One tap mobile :
US: +16699006833,,81073831285# or +13462487799,,81073831285#
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 +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799
Meeting ID: 810 7383 1285
International numbers available: https://us02web.zoom.us/u/kqhc8VOo3
Please click the link below to join the webinar:

https://us02web.zoom.us/j/84952446750

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Ciudad de Santa Helena Reunión Especial del Ayuntamiento 14 **de septiembre** 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.

Please click the link below to join the meeting:
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1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL
Mayor: Geoff Ellsworth, Vice Mayor: Paul Dohring, City Council Members: Anna Chouteau, Eric Hall and Lester Hardy

4. ADOPTION OF THE AGENDA

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

5.1. Public Comment.Glenn Smith 17

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. Hunter Subdivision Informational Presentation by Applicant Team Members Tim Massey and Ben VanZutphen 19 - 38

CEQA Determination: This item is purely an informational discussion to gain Council direction and is therefore not a CEQA project. Any formal decisions on individual projects will be subject to a complete analysis and determination under CEQA.
Prepared By: Maya DeRosa, Planning & Building Director
Recommendation:
Receive presentation from applicant and allow for public comment.
Staff Report - Pdf
Hunter Presentation

7.2. Proclamation Recognizing Napa County Latino Heritage Month 39
2021 Proclamation for Latino Heritage Month

8. STAFF BRIEFING

8.1. Update on Waste Water Treatment Plant Upgrade Project
Prepared By: Mark Rincon-Ibarra, Public Works Director and City Engineer

9. CONSENT ITEMS
Members of the Council or the public may ask that any items be considered individually for purposes of considering alternative action, for extended

discussion, or for public comment. Unless that is done, one motion may be used to adopt all recommended actions. (Roll Call Vote)

9.1. Consideration and proposed approval of Regular Meeting Minutes of August 10, 2021 and August 24, 2021 — 41 - 54

Prepared By: Cindy Tzafopoulos, City Clerk

Recommendation:

Adopt

08-10-21 Regular City Council - Minutes

08-24-21 Regular City Council - Minutes

9.2. Consideration and Proposed Approval of: — 55 - 152

1. Designating Council Member Anna Chouteau as the Voting Delegate on Behalf of the City of St. Helena City Council; and
2. Designating Council Member Eric Hall and City Manager Mark Prestwich as Alternate Voting Delegates; and
3. City Council Voting in Favor of the Two Proposed Resolutions and League of California Cities Proposed Bylaw Amendments at the League of California Cities Annual Conference Business Meeting.

CEQA Determination: Not a CEQA project

Prepared By: Cindy Tzafopoulos, City Clerk

Recommendation:

Consideration and Proposed Approval of:

1. Designating Council Member Anna Chouteau as the Voting delegate on Behalf of the City of St. Helena City Council; and
2. Designating Council Member Eric Hall and City Manager Mark Prestwich as Alternate Voting Delegates; and
3. City Council Voting in Favor of the Proposed Resolutions and League of California Cities Proposed Bylaw Amendments at the League of California Cities Annual Business Meeting and General Assembly on Friday, September 24, 2021 at 12:30 p.m.

Staff Report - Pdf

9.3. Consideration of a Resolution authorizing: the City Manager to execute Amendment No. 2 to Professional Services Agreement STH Contract: FY2021-071 with Noll & Tam Architects in the amount of $8,580 for Phase I of the Napa Valley College tenant improvements at the City of St. Helena for a total contract amount not-to-exceed $167,577. — 153 - 187

CEQA Determination: Not a CEQA project

Prepared By: Preya Nixon, Asst. to the City Manager

Recommendation:

Adopt Resolution authorizing the City Manager to execute Amendment No. 2 to Professional Services Agreement with Noll & Tam Architects in the amount of $8,580 to STH contract No: FY 2021-071 for Phase I of the Napa Valley College tenant improvements at the City of St. Helena for a total contract amount not-to-exceed $167,577.

Staff Report - Pdf

9.4. Consideration and Proposed Approval of a Resolution Authorizing Amendment No. 1 to Napa County Professional Services Agreement for a multi-agency, grant funded Gang Violence Suppression Program. 189 - 210

CEQA Determination: Not a CEQA project
Prepared By: Chris Hartley, Chief of Police
Recommendation:
Recommend approval of resolution.
Staff Report - Pdf

9.5. Consideration and proposed approval of a resolution approving Amendment #1 STH Contract: FY2021-081 with Star Staffing in an amount of $25,000 for a total not-to-exceed amount of $50,000 for continued temporary staffing due to the City of St. Helena's water emergency. 211 - 230

CEQA Determination: Not a CEQA project
Prepared By: April Mitts, Administrative Services Director
Recommendation:
Approve the attached resolution.
Staff Report - Pdf

9.6. 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, October 26, 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. 231 - 286

CEQA Determination: Not a CEQA project
Prepared By: Martin Beltran, Management Analyst
Recommendation:
It is recommended the City Council adopt a Resolution setting a Public Hearing for 6:00 p.m. on Tuesday, October 26, 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.
Staff Report - Pdf

9.7. Consideration and proposed approval of a resolution approving the the Mexican flag to be flown on the City's ceremonial flagpole from Wednesday, September 15 through Wednesday, September 29, 2021 Recognizing Napa County Latino Heritage Month starting September 15, 2021 and Mexican Independence Day on Thursday, September 16, 2021 287 - 294

CEQA Determination: Not a CEQA project
Prepared By: Cindy Tzafopoulos, City Clerk
Recommendation:
Approve Resolution authorizing the Mexican flag to be flown on the City's ceremonial flagpole from Wednesday, September 15 through Wednesday, September 29, 2021.

Staff Report - Pdf

9.8. Consideration of approval of a Resolution authorizing: 1) acceptance of a bank proposal for financing CIP S-52 Wastewater Treatment Plant Phase I Upgrades, and 2) hiring of Jones Hall as Bond Counsel and Brandis Tallman, A Division of Oppenheimer & Co., Inc. as Placement Agent for a financial transaction. 295 - 338

CEQA Determination: Not a CEQA project
Prepared By: Mandy Kellogg, Asst. Administrative Services Director
Recommendation:
Recommendation of approval of a Resolution authorizing: 1) acceptance of a bank proposal for financing CIP S-52 Wastewater Treatment Plant Phase I Upgrades, and 2) hiring of Jones Hall as Bond Counsel and Brandis Tallman, A Division of Oppenheimer & Co., Inc. as Placement Agent for a financial transaction.

Staff Report - Pdf

9.9. Consideration and proposed approval of a resolution approving Amendment #1 STH Contract: FY2021-083 with 4Leaf, Inc. in an amount of $35,000 for a total not-to-exceed amount of $59,890 for continued Water Regulation Code Enforcement and Outreach. 339 - 360

CEQA Determination: Not a CEQA project
Prepared By: April Mitts, Administrative Services Director
Recommendation:
Approve the attached resolution.

Staff Report - Pdf

9.10. Receive and file the FY 2020-21 Q4 Financial Report (unaudited). 361 - 379

CEQA Determination: Not a CEQA project
Prepared By: Mandy Kellogg, Asst. Administrative Services Director
Recommendation:
Receive and file the Q4 FY 2020-21 unaudited financial report.

Staff Report - Pdf

9.11. Consideration and Proposed Approval of a Resolution Authorizing a Professional Services Agreement with Del Rio Advisors, LLC in an amount not-to-exceed $58,250 for the following (1) $33,250 for Direct Placement services in connection with the interim financing for the Wastewater Treatment Plant Phase I Upgrade project and (2) $25,000 for continued Municipal Advisory Services on an as-needed basis. 381 - 406

CEQA Determination: Not a CEQA project
Prepared By: April Mitts, Administrative Services Director
Recommendation:
Approve the attached Resolution.

Staff Report - Pdf

9.12. Consideration and Proposal Approval of a Resolution Approving a Professional Services Agreement with Fairbank, Maslin, Maullin, Metz & 407 - 427

Associates (FM3 Research) in an amount not-to-exceed $32,175 for Opinion Research Services

CEQA Determination: Exempt
Prepared By: Mark T. Prestwich, City Manager
Recommendation:
It is recommended the City Council adopt the attached resolution.
Staff Report - Pdf
Public Comment.Rick Crebs

10. PUBLIC HEARINGS

10.1. Consideration and proposed approval of a Resolution Approving the Annexation of Territory into the St Helena Municipal Sewer District No. 1 MSD Annexation No. 140, 1386 Community Drive, St. Helena, CA. 94574 (APN 009-432- 025). 429 - 438

CEQA Determination: It is determined that the Ordinance is exempt from CEQA pursuant to Guidelines Sections 15061(b)(1), 15061(b)(2), and specifically, the “General Rule” Section 15061(b)(3), where is can be seen with certainty that the proposed action will have no significant effect on the environment.
Prepared By: Martin Beltran, Management Analyst
Recommendation:
It is recommended the City Council adopt a Resolution approving the Annexation of Territory into the St Helena Municipal Sewer District No. 1 MSD Annexation No. 140, 1386 Community Drive, St. Helena, CA. 94574 (APN) 009-432- 025.
Staff Report - Pdf

11. OLD BUSINESS

11.1. Informational Presentation on CalPERS Investment Return for Fiscal Year 2020-21 and Impacts on City Finances (Presentation Forthcoming). 439

CEQA Determination: Not a CEQA project
Prepared By: Mandy Kellogg, Asst. Administrative Services Director
Recommendation:
Receive and file.
Staff Report - Pdf

11.2. Consideration and adoption of an urgency ordinance amending Chapter 13.04 of the Municipal Code to establish a permitting system for groundwater exports during water emergencies 441 - 457

CEQA Determination: Exempt
Prepared By: Ethan Walsh, City Attorney
Recommendation:
Adopt Urgency Ordinance
Staff Report - Pdf

11.3. Update to FY 2021-22 Revenue Forecasts, and Discussion and Direction Regarding the FY 2021-22 Add Back Considerations and Full-Time Fire Department Cost Analysis — 459 - 467

CEQA Determination: Not a CEQA project
Prepared By: April Mitts, Administrative Services Director
Recommendation:
Provide direction to the City Manager.
Staff Report - Pdf

12. NEW BUSINESS

12.1. Consideration adoption of an urgency ordinance amending Chapter 13.04 of the Municipal Code to establish water theft regulations, administrative penalties, and enforcement procedures. — 469 - 480

CEQA Determination: Exempt
Prepared By: Ethan Walsh, City Attorney
Recommendation:
Adopt the urgency ordinance.
Staff Report - Pdf

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

13.1.

September City Council Meetings: **9/28 (Staff reports due 9/10)** **9/28 Special CC & PC Mtg 4pm**
PH or OLD / NEW BUSINESS:
9/28 OB Review and Proposed Adoption of the City of St. Helena City Council Three Year Goals 2021-22 Workplan
9/28 Rosebud Lane agreement
9/28 Pest Management
9/28 Chamber request? Road closure
October City Council Meetings: **10/12 (Staff reports due 9/24)** **10/25 (Staff reports due 10/8)**
Presentation
October – Sexual Violence Awareness Proclamation
10/12 October 17-23, 2021 National Friends of Libraries Week
STAFF BRIEFING:
Move to November - Update on Waste Water Treatment Plant Upgrade Project (report every other month)
PH or OLD / NEW BUSINESS:
10/26 Business recovery Update

14. ADJOURNMENT

The next Regular City Council meeting is scheduled for September 28, 2021, at 6:00 p.m.

I do hereby certify that a copy of the foregoing agenda was posted on the City website on September 10, 2021.



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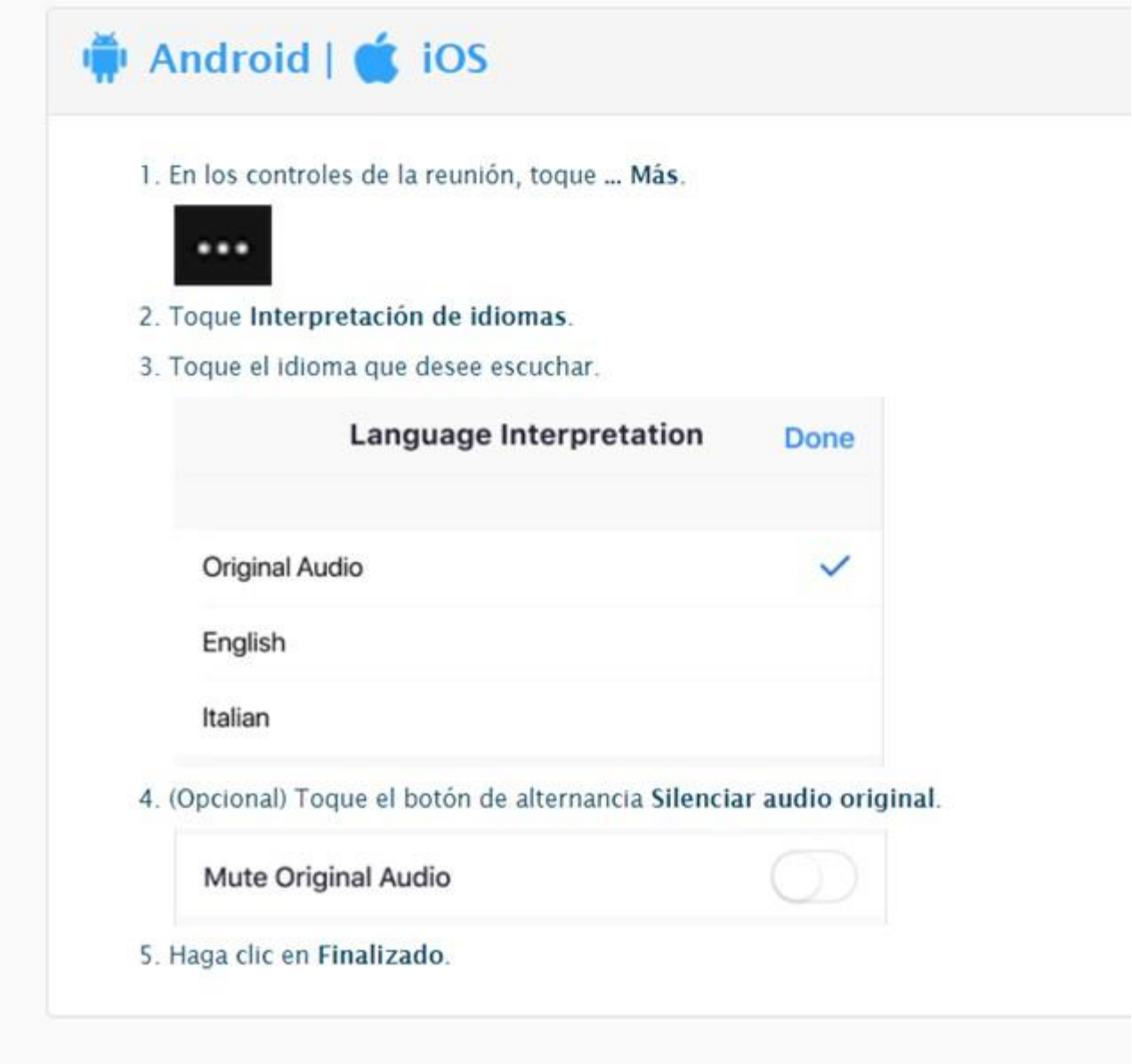
En cumplimiento de la Ley de Estadounidenses con Discapacidades, si necesita asistencia especial para participar en esta reunión, llame a la Oficina del Secretaría de la Ciudad (707) 967-2792. La notificación 72 horas antes de la reunión, como lo requiere la Sección 202 de la Ley de Estadounidenses con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

Cindy Tzafopoulos

From: glenn@smith-carr.com
Sent: Friday, September 10, 2021 5:06 PM
To: Public Comment
Subject: [External] Elected Mayor

Dear Council members,

I first advocated for eliminating the elected mayor position at a Council meeting in 2018 following the election campaign between Councilman Ellsworth and Mayor Galbraith. This election and subsequent Mayoral elections seem to me to divide the City and make it increasingly difficult to build consensus on the critical issues our City faces. Subsequently there have been many letters to the Star and an editorial suggesting this change would be beneficial. I would ask that at least one Council member request this issue be agenized for discussion. There are surely arguments pro and con that need to be examined in a public forum. I believe the current council members are best equipped to consider this issue and make the best decision for our City government in these challenging times. Thank you for your consideration of this request.

Glenn Smith
St. Helena

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **PRESENTATIONS AND PUBLIC RECOGNITIONS**

Subject: **Hunter Subdivision Informational Presentation by Applicant**

CEQA Determination: **This item is purely an informational discussion to gain Council direction and is therefore not a CEQA project. Any formal decisions on individual projects will be subject to a complete analysis and determination under CEQA.**

Prepared By: Maya DeRosa, Planning & Building Director

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

In 2010, the applicant, Bill Van Zutphen, applied to the City to subdivide an approximately 17-acre parcel of land in the eastern area of St. Helena, east of the existing terminus of Adams Street. The proposed subdivision would create lots for 51 single family homes and a 52nd lot on which at least 25 attached multi-family homes would be built. The applicant proposes to include Accessory Dwelling Units (ADUs) with 11 of the 51 single family homes. Including the ADUs, the project would have 87 homes, which is the minimum number of homes that can be built on the site per the existing General Plan and Zoning designations.

Designs for the single-family and multi-family homes have not yet been submitted. The only approval being sought by the applicant at a future hearing will be the subdivision itself.

If the subdivision is approved, the project will also require approval of an Affordable Housing Agreement, Design Review application, and a Conditional Use Permit (the latter for the development of the proposed multi-family homes). These applications are not being considered at this time but will be submitted and reviewed at a future date. The Affordable Housing Agreement will be required prior to the recordation of the Final Map.

Due to a number of unforeseen circumstances, the project has been pending since 2010 with periodic revisions made to the tentative map and screencheck Environmental Impact Report (EIR).

Staff and a consultant for the City, Dudek, are currently working to complete a Draft EIR for the project. The Draft EIR is anticipated to be released for public review and comment for a 45-day period upon finalization of a pending utility report.

The project will require future public hearings for consideration of the tentative subdivision map and Draft EIR by both the Planning Commission and City Council.

DISCUSSION

With the pending release of the Draft EIR, staff wanted to provide the applicant with the opportunity to re-acquaint the City Council and public with the proposed subdivision (Attachment 1). The applicant has accordingly prepared a brief presentation summarizing the project.

This item is not a public hearing and is intended to provide an informational project briefing to the Council and public. No action on the project will be taken.

FISCAL IMPACT

There are no fiscal impacts to the City of St. Helena. The costs of staff and consultant time to process the application and prepare the project's EIR are being paid by the applicant.

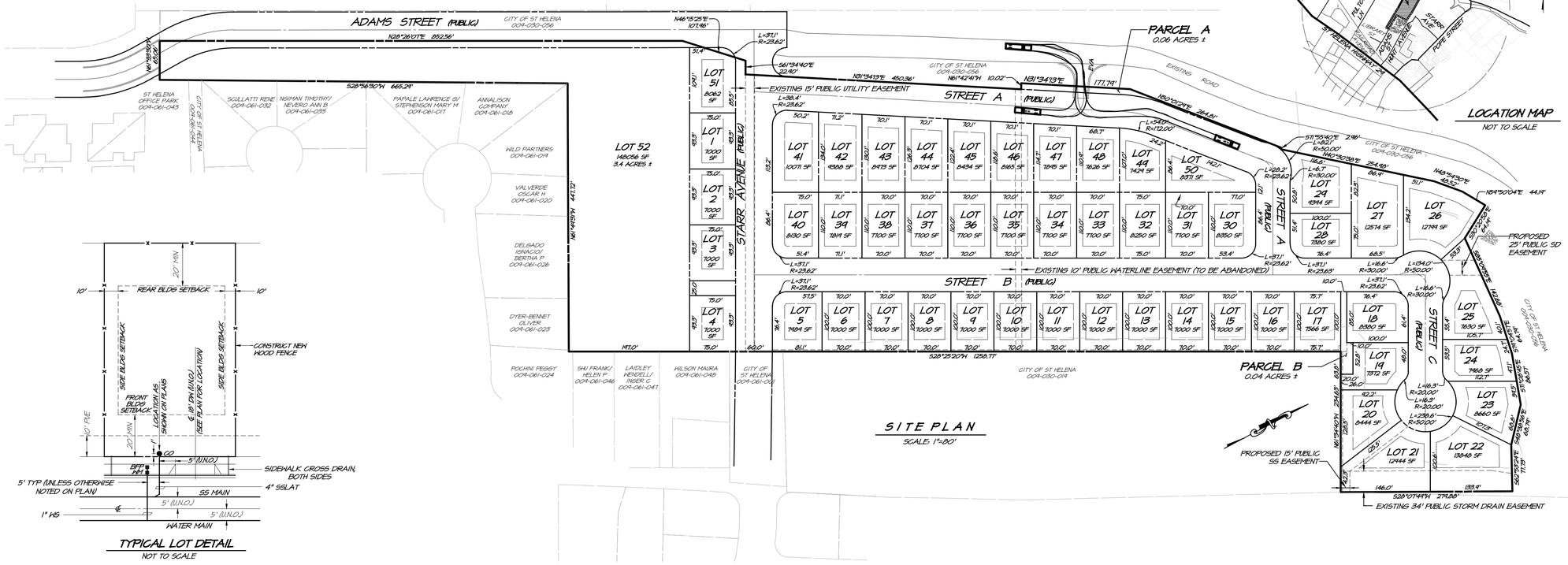
RECOMMENDED ACTION

Receive presentation from applicant and allow for public comment.

ATTACHMENTS

Attachment 1-Hunter Subdivision TM 4-30-21

TENTATIVE MAP
HUNTER SUBDIVISION
ST HELENA CALIFORNIA



TYPICAL LOT DETAIL
NOT TO SCALE

SITE PLAN
SCALE: 1"=80'



LOCATION MAP
NOT TO SCALE

GRAPHIC SCALE
80 0 80 160
(IN FEET)
1 inch = 80 FT

SYMBOL LEGEND

EXISTING		PROPOSED
EDGE OF PAVEMENT		EDGE OF PAVEMENT
EX SD STORM DRAIN LINE	SD	STORM DRAIN LINE
EX SS SANITARY SEWER LINE	SS	SANITARY SEWER LINE
EX W WATER LINE	W	WATER SERVICE LINE
EX SSMH SANITARY SEWER MANHOLE	SSMH	SANITARY SEWER MANHOLE
EX SDMH STORM DRAIN MANHOLE	SDMH	STD STORM DRAIN MANHOLE
BANK/SLOPE		2:1 SLOPE, UNLESS OTHERWISE SHOWN
CURB AND GUTTER		STD CURB AND GUTTER
CATCH BASIN	CB 100	STD CATCH BASIN
SIDEWALK		STD SIDEWALK
EX FH FIRE HYDRANT	FH	STD FIRE HYDRANT
EX WV WATER VALVE		
EX SL STREET LIGHT	WV	STD WATER VALVE
CLEANOUT	SL	STREET LIGHT
WATER METER AND BACKFLOW PREVENTION DEVICE	DI	DROP INLET
TREE TO REMAIN		RIGHT OF WAY / PROPERTY LINE
FENCE		RETAINING WALL
JOINT POLE W/ GUY		100-YEAR OVERLAND RELEASE PATH
DRIVEWAY		EXISTING RUNOFF DIRECTION
CONTOUR LINE 235		STANDARD DRIVEWAY
SPOT ELEVATION +231.5		REMOVE EXISTING TREE
OVERHEAD ELECTRIC EX OHE		

ABBREVIATIONS

AB	AGGREGATE BASE	NH	NORTHWEST
AC	ASPHALT CONCRETE	OHE	OVERHEAD ELECTRIC
BVC	BEGINNING OF VERTICAL CURVE	PL	PROPERTY LINE
CB	CATCH BASIN	PUE	PUBLIC UTILITY EASEMENT
CL	CLASS	PVI	POINT OF VERTICAL INTERSECTION
℄	CENTERLINE	R	RADIUS
CO	CLEANOUT	RCE	REGISTERED CIVIL ENGINEER
CONC	CONCRETE	ROW	RIGHT OF WAY LINE
DI	DROP INLET	S	SLOPE / SOUTH
E	EAST	SD	STORM DRAIN
ELEV	ELEVATION	SDCB	STORM DRAIN CATCH BASIN
EP	EDGE OF PAVEMENT	SDJB	STORM DRAIN JUNCTION BOX
EVC	END OF VERTICAL CURVE	SDMH	STORM DRAIN MANHOLE
EX	EXISTING	SL	STREET LIGHT
EXP	EXPIRES	SS	SANITARY SEWER
FC	FACE OF CURB	SSLAT	SANITARY SEWER LATERAL
FF	FINISH FLOOR ELEVATION	SQ FT	SQUARE FEET
FG	FINISH GRADE	SSE	SANITARY SEWER EASEMENT
FH	FIRE HYDRANT	SSMH	SANITARY SEWER MANHOLE
FL	FLOW LINE	STA	STATION
GB	GRADE BREAK	STD	STANDARD
GF	GARAGE FLOOR ELEVATION	SW	SIDEWALK
GNV	GROUND, NOT VISIBLE	T	TRASH ENCLOSURE
GP	GUEST PARKING	TC	TOP OF CURB ELEVATION
HP	HIGH POINT	TW	TOP OF WALL ELEVATION
INV	INVERT ELEVATION	TYP	TYPICAL
JP	JOINT POLE	VC	VERTICAL CURVE
L	LENGTH	W	WATER / WEST
LF	LINEAL FOOT/FEET	WM	WATER METER
LP	LOW POINT	WUE	WATER UTILITY EASEMENT
MAX	MAXIMUM	WV	WATER VALVE
N	NORTH		
NCR	NAPA COUNTY RECORDS		
NO	NUMBER		

SHEET INDEX

TM1	COVER SHEET
TM2	EXISTING CONDITIONS
TM3	GRADING PLAN
TM4	GRADING SECTIONS & DETAILS
TM5	UTILITY PLAN

BASIS OF BEARINGS:
THE BEARING OF N28°25'20"E BETWEEN THE FOUND MONUMENTS AS SHOWN ON 26 RS 64, MAP NO. 4142

PROJECT BENCHMARK:
USCGS NO. 410 BRASS DISK ON NORTH WALL OF VASCONI PHARMACY.

ELEVATION 256.58' NGVD 1424

NOTES:

1. ALL FEATURES SHOWN HEREON REPRESENT CONDITIONS OF THE PROJECT AREA AS COMPILED FROM AN AERIAL SURVEY CONDUCTED JANUARY 4, 2010 BY AEROMETRICS SURVEYS AND A SUPPLEMENTAL FIELD SURVEY BY RSA+ IN JUNE OF 2018. NO ATTEMPT HAS BEEN MADE TO DETERMINE THE EXTENT OR EXISTENCE OF UNDERGROUND UTILITIES OR OTHER FEATURES NOT SURFACE VISIBLE, EXCEPT AS SHOWN HEREON.
2. BOUNDARY INFORMATION SHOWN IS FROM A BOUNDARY SURVEY PERFORMED JULY 2010 BY BROOKS AND ASSOCIATES.
3. THE CITY OF ST HELENA COMPREHENSIVE FLOOD PROTECTION PROJECT IS COMPLETE. SUBJECT PROPERTY IS NO LONGER SUBJECT TO INUNDATION BY FLOOD WATERS AND DOES NOT LIE WITHIN THE 100 YEAR FLOOD PLAIN.
4. THIS MAP SHOWS ALL CONTIGUOUS PROPERTY OF THE OWNERS.
5. THERE ARE NO EXISTING STRUCTURES ON THE SUBJECT PROPERTIES.
6. ALL EXISTING AND PROPOSED EASEMENTS ARE SHOWN.
7. ALL EXISTING AND PROPOSED UTILITIES ARE SHOWN. EXISTING UNDERGROUND UTILITIES AS SHOWN WERE DRAWN FROM RECORD SOURCES ONLY. BURIED PIPES WERE NOT VERIFIED, NOR WAS ANY SUBSURFACE EXPLORATION CONDUCTED.
8. ALL EXISTING UTILITY POLES AND OVERHEAD LINES ARE SHOWN.
9. CONTOUR LINES AS SHOWN ARE AT 1 FOOT INTERVALS.
10. THERE IS NO PHASING PLANNED FOR THIS PROJECT.

GENERAL NOTES

OWNER:	DENNIS HUNTER 900 COLLEGE AVENUE SANTA ROSA, CALIFORNIA 95404 (707) 574-0120
DEVELOPER:	BEN AND KELLY VANZUTPHEN 231 LORRAINE COURT HEALDSBURG, CALIFORNIA 95448 (707) 431-8582
ARCHITECT:	FARRELL-FABER AND ASSOCIATES 1022 MENDOCINO AVENUE SANTA ROSA, CALIFORNIA 95401 (707) 574-3811
CIVIL ENGINEER:	RSA+ 1515 FOURTH STREET NAPA, CALIFORNIA 94559 (707) 252-8601
PARCEL NO:	APN 004-030-057
PARCEL AREA:	16.912 ACRES
EXISTING USE:	VACANT/AGRICULTURE
PROPOSED USE:	RESIDENTIAL
WATER:	CITY OF ST HELENA
SEWER:	CITY OF ST HELENA
EXISTING ZONING:	MR (MEDIUM DENSITY RESIDENTIAL)
PROPOSED ZONING:	MR (MEDIUM DENSITY RESIDENTIAL)
GENERAL PLAN DESIGNATION:	MEDIUM DENSITY RESIDENTIAL

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RSA+ CIVIL ENGINEERS + SURVEYORS
1515 FOURTH STREET NAPA, CA 94559 (707) 252-8601
RS+ | CONSULTING CIVIL ENGINEERS + SURVEYORS

CALIFORNIA
ST HELENA
COVER SHEET
HUNTER SUBDIVISION

REGISTERED PROFESSIONAL ENGINEER
No. 73257
DEC. 31, 2022
CIVIL
STATE OF CALIFORNIA

DATE	APRIL 30, 2021
DRAWN	EM
DESIGNED	BT
CHECKED	AS
JOB NO.	17004.1.0

SHEET NO.
TM1
1 OF 5 SHEETS

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RSA+ CIVIL
1211 LINCOLN AVENUE, SUITE J
SAN RAFAEL, CA 94901
RS+ | CONSULTING CIVIL ENGINEERS + SURVEYORS
707.252.7901

NO.	DATE	REVISIONS	APPD BY

CALIFORNIA

ST HELENA

EXISTING HUNTER SUBDIVISION

REGISTERED PROFESSIONAL ENGINEER
No. 73257
Exp. 3-31-2022
CIVIL
STATE OF CALIFORNIA

DATE JUL 30, 2021
DRAWN CEL
DESIGNED BTK
CHECKED JC
JOB NO. 19004.1.0

SHEET NO.
TM2
2 OF 5 SHEETS

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EROSION CONTROL

CONSTRUCTION BMP'S
FIBER ROLLS
STORM DRAIN INLET PROTECTION
STABILIZED CONSTRUCTION ENTRANCE/EXIT
OUTDOOR MATERIAL STORAGE AREAS
CONCRETE WASTE MANAGEMENT
PROPER VEHICLE AND EQUIPMENT MAINTENANCE
SLOPE PROTECTION

POST-CONSTRUCTION BMP'S
INLET LABELS "DRAINS TO RIVER"
PRIVATE STREET SWEEPING
DOWNSPOUTS TO LANDSCAPE SWALES
VEGETATED SWALES
HOMEOWNER EDUCATION ON STORM WATER POLLUTION PREVENTION
HYDRODYNAMIC OIL, WATER & SOLID SEPARATOR

NOTE:
THOSE AREAS DRAINING INTO THE EXISTING STORM DRAIN SYSTEM (DIRECTLY DISCHARGING TO THE NAPA RIVER) WILL BE TREATED BY HYDRODYNAMIC SEPARATORS PRIOR TO ENTERING INTO THE EXISTING SYSTEM. THE REMAINING SITE WILL DRAIN INTO THE DETENTION POND (PER THE CITY OF ST HELENA COMPREHENSIVE FLOOD PROTECTION PROJECT) WHICH WILL TREAT THE RUNOFF PRIOR TO BEING DISCHARGED INTO THE NAPA RIVER.

LEGEND

- CURB INLET SEDIMENT BARRIER (1/4)
- FIBER ROLL SEDIMENT BARRIER (2/4)
- EX TREE TO REMAIN
- EX TREE TO BE REMOVED
- (A) = TYPE 'A' LOT GRADING (SEE SHEET TM4 FOR DETAILS)
- EX 100 YEAR OVERLAND RELIEF ROUTE

APPROXIMATE RAW EARTHWORK QUANTITIES*

CUT	FILL
10,202 CY	24,350 CY

* DOES NOT INCLUDE COMPACTION AND CONSOLIDATION LOSSES OR TRENCH, PAD OR FOUNDATION SPOILS.

GRAPHIC SCALE
50 0 50 100
(IN FEET)
1 inch = 50 FT

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RSA+ | CONSULTING CIVIL ENGINEERS + SURVEYORS
1220 Maple Street, Suite 300, P.O. Box 2568, St. Helena, CA 94574 (707) 963-4388

CALIFORNIA

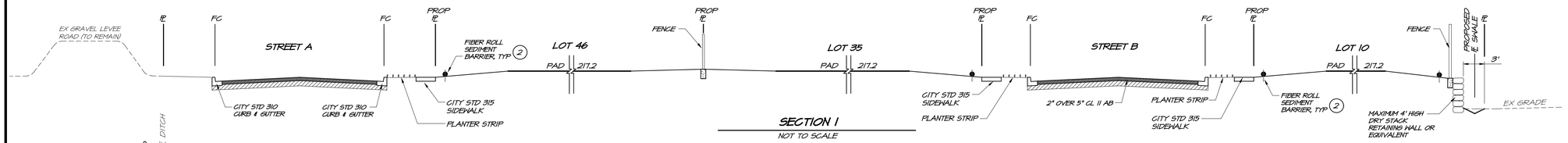
ST HELENA
GRADING PLAN
HUNTER SUBDIVISION

REGISTERED PROFESSIONAL ENGINEER — No. 73257 — Exp. 12-31-2021 — CIVIL — STATE OF CALIFORNIA

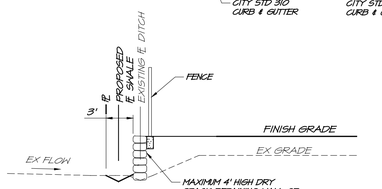
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3 OF 5 SHEETS

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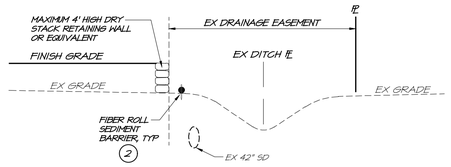
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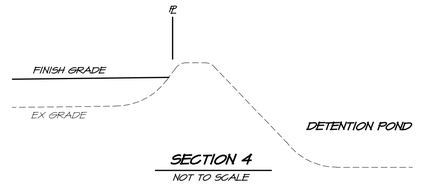
SECTION 1
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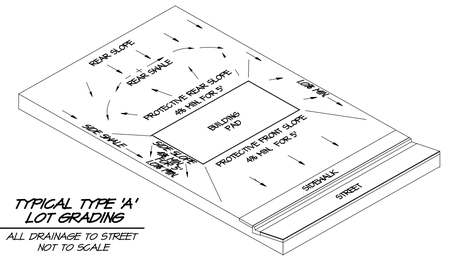
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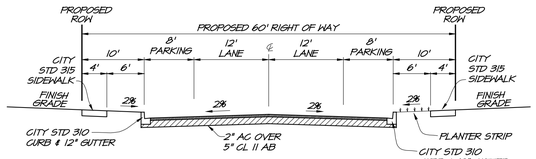
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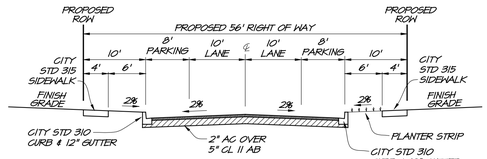
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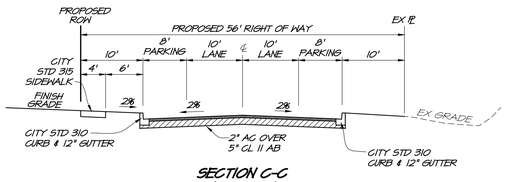
A TYPICAL TYPE 'A' LOT GRADING
ALL DRAINAGE TO STREET
NOT TO SCALE



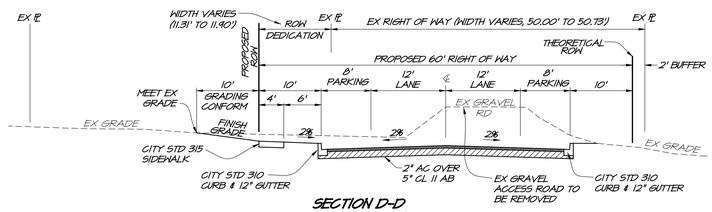
SECTION A-A
(STARR AVENUE)
NOT TO SCALE



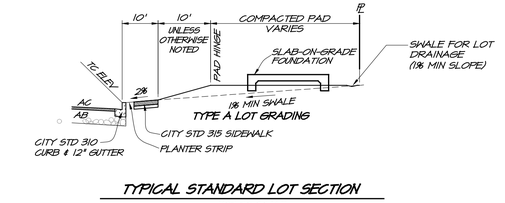
SECTION B-B
(STREET 'B')
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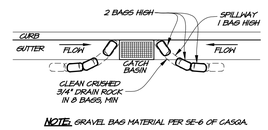
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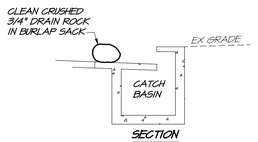
SECTION D-D
(ADAMS STREET)
NOT TO SCALE



TYPICAL STANDARD LOT SECTION
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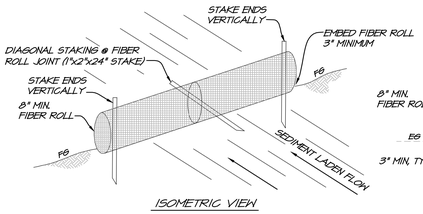


NOTE: GRAVEL BAG MATERIAL PER SE-6 OF CASQA.

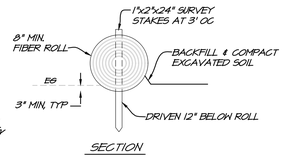


SECTION

1 CURB INLET SEDIMENT BARRIER
NOT TO SCALE



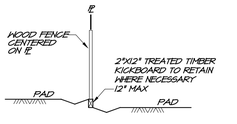
ISOMETRIC VIEW



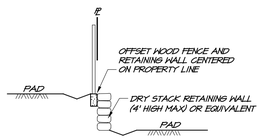
SECTION

NOTE:
PLACE FIBER ROLLS INTO THE KEY TRENCH AND STAKE ON BOTH SIDES OF THE ROLL WITHIN 6 FEET OF EACH END AND THEN 4 FEET WITH 1" x 2" STAKES OR AS SUGGESTED BY MANUFACTURER.

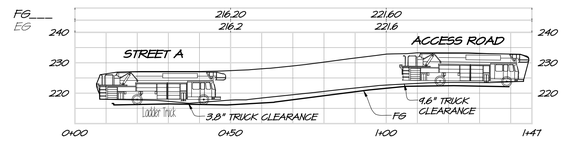
2 FIBER ROLL SEDIMENT BARRIER
RSA EC0000-04 NOT TO SCALE



TYPICAL SIDE YARD GRADING
NOT TO SCALE



TYPICAL SIDE YARD GRADING WITH RETAINING WALL
NOT TO SCALE



EMERGENCY VEHICLE ACCESS SECTION
SCALE: 1" = 20'

PRELIMINARY-NOT FOR CONSTRUCTION

RSA+ CIVIL ENGINEERS + SURVEYORS, Inc.
RS+ | CONSULTING CIVIL ENGINEERS + SURVEYORS
LAND PLANNING | SURVEYING | CIVIL ENGINEERING
252 2ND STREET, SUITE 201, OAKLAND, CA 94607 | 510.251.2801

NO.	DATE	REVISIONS	APPD BY

CALIFORNIA
ST HELENA
HUNTER'S SUBDIVISION
GRADING SECTIONS

DATE 04/20/2023
DRAWN CT
DESIGNED JM
CHECKED JM
JOB NO. 21-0107

SHEET NO.
TM 4
4 OF 5 SHEETS

K:\2021\4110\CAD\T1-0_Hunter_Subdivision\Design CSD\TM\exhibits\sd_04/20/2023 2:40:48PM dlaberge (J:\Projects\Planners Signout & Assoc...

PIPE DESIGN SLOPES	
SEWER	
8"	= 0.0033
6"	= 0.0050
STORM DRAIN	
15"	= 0.0035
18"	= 0.0025
24"	= 0.0026
30"	= 0.0025

(UNLESS OTHERWISE NOTED)

NOTES

1. ALL PARCELS SHALL BE SERVED BY A SEPARATE SEWER LATERAL. ALL EXISTING SERVICES INCLUDING SEPTIC SYSTEMS TO EXISTING STRUCTURES WITHIN THE PROJECT AREA SHALL BE ABANDONED.
2. ALL PARCELS SHALL BE SERVED OFF THE NEW WATERLINE IN THE PROPOSED STREET. ALL EXISTING SERVICES TO EXISTING STRUCTURES WITHIN THE PROJECT AREA SHALL BE ABANDONED.

TYPICAL UTILITY LOCATIONS
56' RIGHT OF WAY STREETS
NOT TO SCALE

TYPICAL UTILITY LOCATIONS
60' RIGHT OF WAY STREETS
NOT TO SCALE

GRAPHIC SCALE
50 0 50 100
(IN FEET)
1 inch = 50 FT

PRELIMINARY-NOT FOR CONSTRUCTION

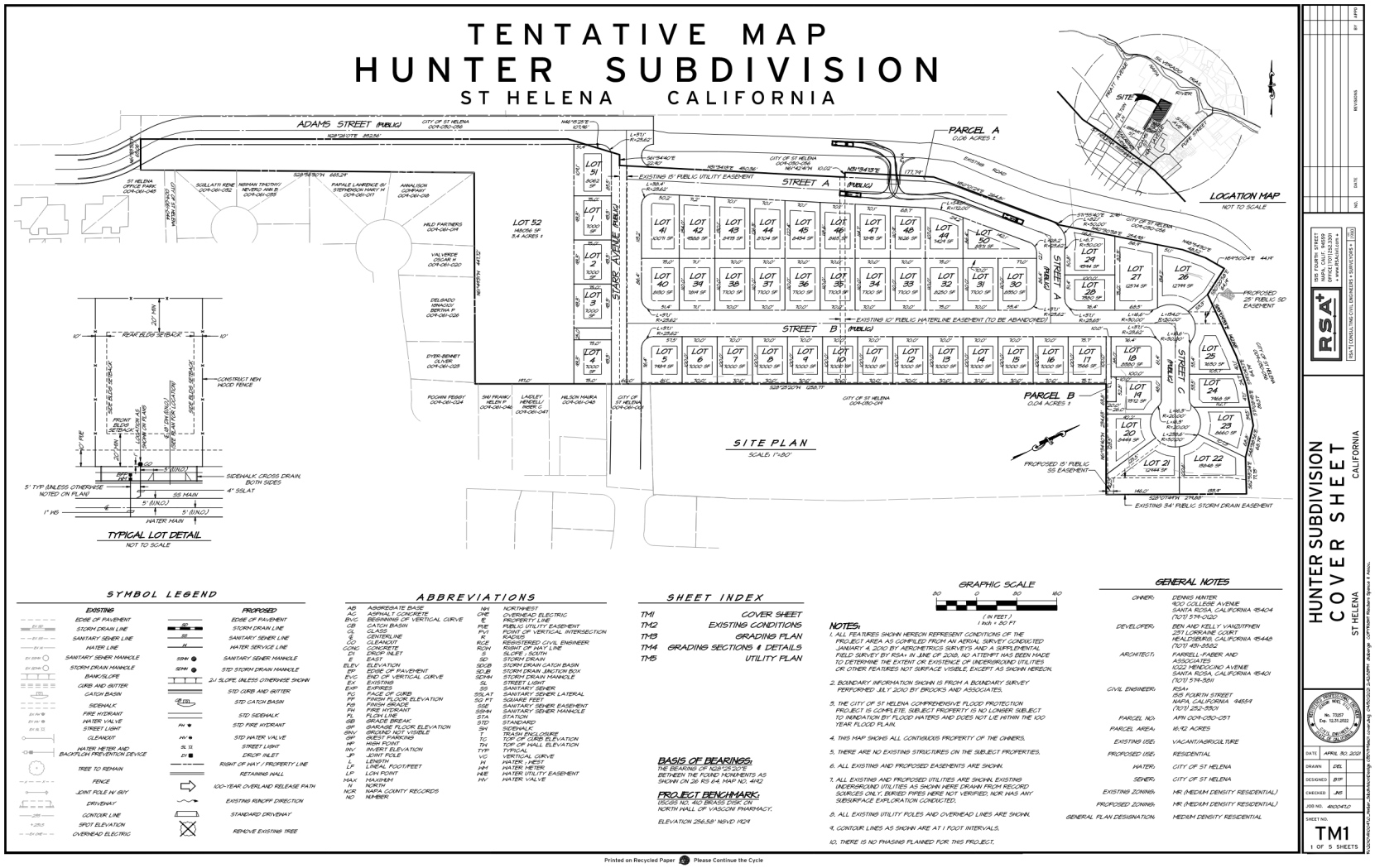
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ST HELENA
CALIFORNIA
UTILITY PLAN
HUNTER SUBDIVISION

DATE 04/30/2021
DRAWN EFL
DESIGNED EFF
CHECKED JDP
JOB NO. 1200.41

SHEET NO.
TM5
5 OF 5 SHEETS

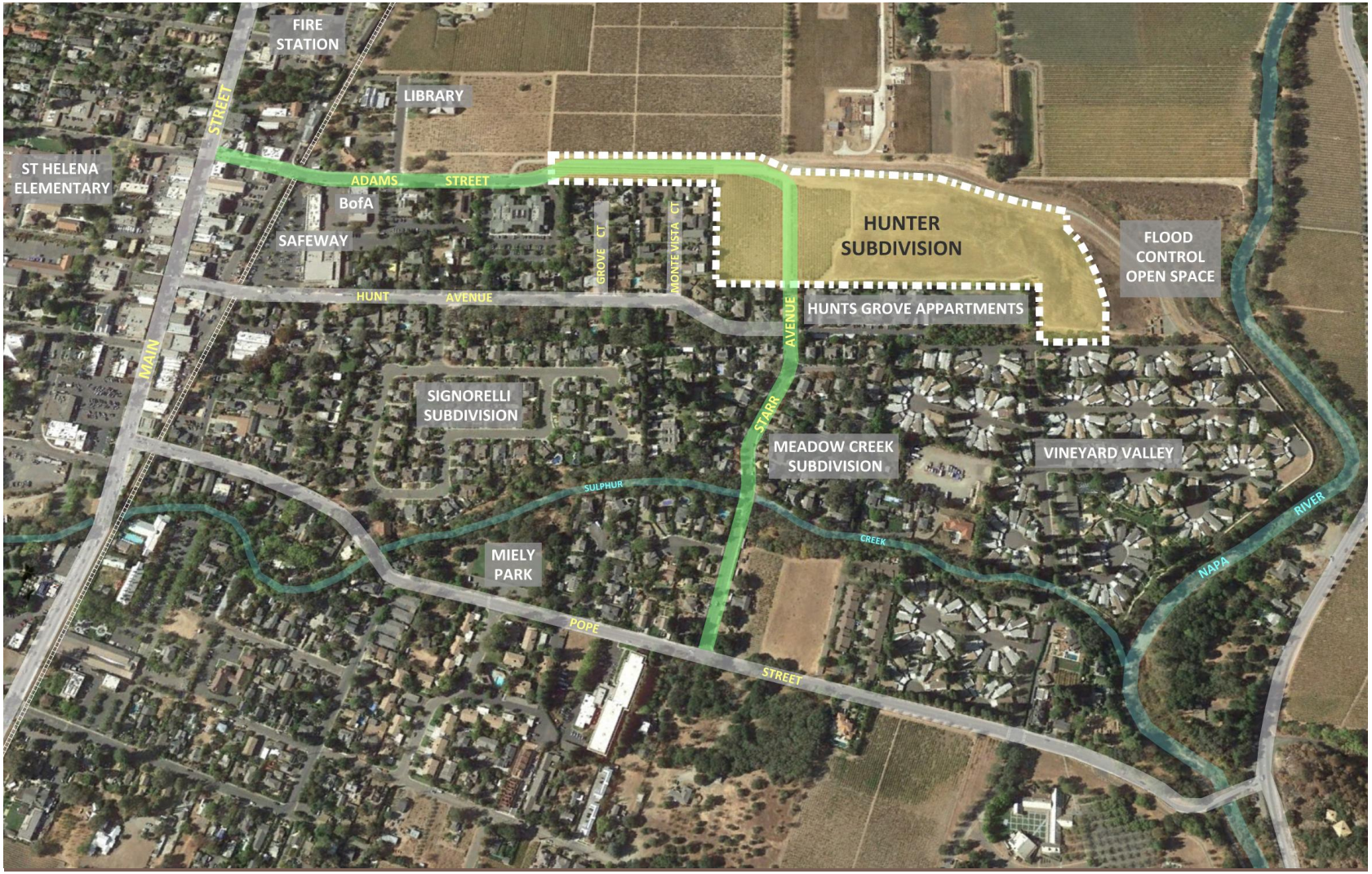
RSA+ CIVIL INC. 252 2ND STREET SUITE 201 NAPA, CA 94559 (707) 252-8065
RSA+ CONSULTING CIVIL ENGINEERS + SURVEYORS



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Site Plan

Hunter Subdivision Project



Aerial Map

Hunter Subdivision Project

Project Detail

- Parcel size: 16.9 acres
- General Plan designation: Medium Density Residential (MDR)
- Zoning designation: (MR)
- General Plan & Zoning allow for a density range of 5.1-16 units per acre.
- This results a range of from 87 to 270 units for the parcel.
- This project proposes to build at the minimum density or 87 units.



RIECHERS SPENCE & ASSOCIATES
1515 FOURTH STREET NAPA, CA
(707) 252-3301

SPATIAL DESIGN GROUP
5460 CRYSTAL DRIVE, SANTA ROSA, CA
(707) 569-6739

HUNTER SUBDIVISION
MASTER PLAN

SEPTEMBER 2021

SAINT HELENA, CALIFORNIA

APN 009-030-057

Master Plan

Hunter Subdivision Project

Project Utilities

- The project meets City of St Helena's water neutrality requirements.
- The project will connect to St Helena Municipal Water for domestic use.
- The project will utilize an existing well to provide all irrigation water.
- The project will connect to St Helena's Municipal Wastewater system.
- The project will connect to St Helena's Storm Drainage system.

Project Objectives

- Subdivide the site to accommodate residential development at a density of 5.1 units per acre – the lowest density allowable via the Medium Density Residential District.

- Provide a variety of housing types, including multi-family, single- family and accessory dwelling units.

- Provide housing at a range of incomes including very low, low and moderate income households.

Project Description

The project includes a request for a Tentative Map to subdivide the 16.9-acre parcel into 51 single-family lots and one 3.4-acre parcel (Lot 52). The single-family lots would range in size from 7,000 to 8,000 square feet, with some larger corner and cul-de-sac lots. In order to meet the minimum density requirements for the site, at least 87 dwelling units must be built as a part of the project.

The project will include 87 dwellings consisting of the following:

- 51 Market-rate single-family dwellings.
- 11 ADUs on 11 of the single-family lots (not income restricted).
- 25 Multi-family, affordable units proposed on Lot 52.
- All units will be built concurrently – no phasing.

Project Character Concepts









Character

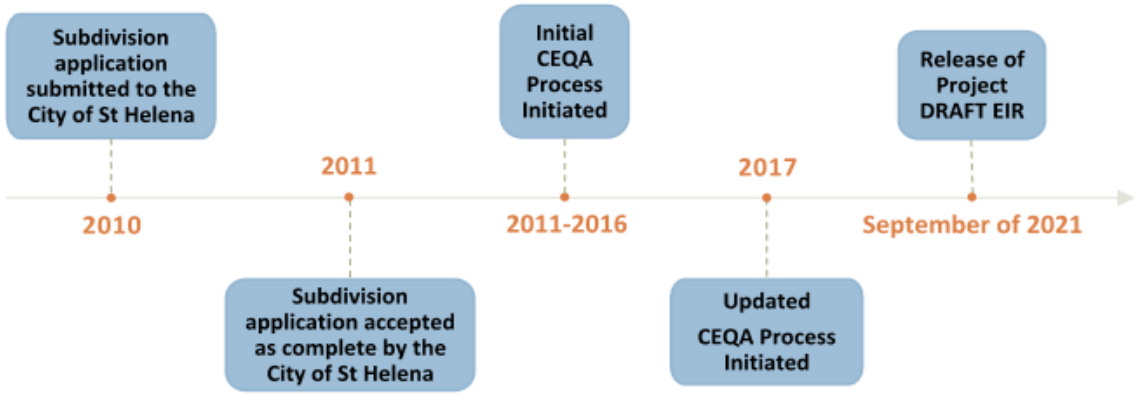
Hunter Subdivision Project

Hunter Subdivision Next Steps

Current Items:

- **Draft EIR**
- **Tentative Subdivision Map**

Project Activity to Date



NEXT STEPS

Next Steps: Opportunities for Public Input

Item	45-Day Public Review and Comment	Planning Commission Public Hearing	City Council Public Hearing	Timing
Draft Environmental Impact Report	✔ (Includes Public comment meeting at PC)	✔	✔	45-Day Review Starts mid-September
Tentative Subdivision Map		✔	✔	Winter 2021

Hunter Subdivision Next Steps

Future Entitlements:

- **Affordable Housing Agreement (CC)**
- **Design Review of Proposed Homes (PC)**
- **Conditional Use Permit for Multi-Family Housing (PC)**

CITY OF ST. HELENA

Proclamation recognizing Napa County Latino Heritage Month

SEPTEMBER 15 - OCTOBER 15, 2021

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

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

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

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

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

Now, therefore, be it resolved, that I, Geoff Ellsworth, Mayor of the City of City of St. Helena, and the City Council Members of the City of St. Helena do hereby proclaim September 15-October 15, 2021, as Napa County Latino Heritage Month in the City of City of St. Helena.

IN WITNESS WHEREOF, I do hereby set my hand, and cause the Seal of the City of City of St. Helena to be affixed this 14th day of September, 2021.

_____

Geoff Ellsworth, Mayor
City of St. Helena

MINUTES
City of St. Helena
Regular City Council Meeting
Tuesday, August 10, 2021 @ 6:00 PM

A complete video recording of this meeting, except for closed session, can be found at https://sthelena.civicweb.net/Portal/ or by calling the City Clerk at (707) 968-2742. The City Council video is the official record of the Council meeting.

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

Absent: None

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. ADOPTION OF THE AGENDA

Administrative Records Assistant Kami Garcia reported no new changes to the agenda.

Council Member Lester Hardy moved to adopt the agenda as presented. The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

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

5. PUBLIC FORUM:

No public comment was received.

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

Reports were made by staff and City Council.

Council Member Hardy requested adding an agenda item regarding the public comments received at the July 27, 2021 Regular City Council Meeting that came from Mr. Smithers and Mr. Belt regarding suggestions on messaging and recommendations to non-residential water users. Mayor Ellsworth was in support of adding the item to the August 24, 2021 Regular City Council Meeting.

7. PRESENTATIONS AND PUBLIC RECOGNITIONS

7.1 None

8. STAFF BRIEFING

8.1 COVID 19 City Manager Update

City Manager Mark Prestwich reported a COVID-19 Update.

8.2 Wastewater Plant Update by Mark Rincon-Ibarra, Public Works Director and City Engineer

Public Works Director Mark Rincon reported on the item.

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 Special Meeting Minutes of July 13, 2021 and Regular Meeting Minutes of July 27, 2021.
Prepared By: Cindy Tzafopoulos, City Clerk

9.2 Consideration and approval of a Resolution Authorizing the Parks and Recreation Commission Chairperson to serve an additional year as Chairperson.

CEQA Determination: Not a CEQA project
Prepared By: Andre Pichly, Parks & Recreation Director
Recommendation:
It is recommended the City Council make an exception to the St. Helena Protocol for Committees, Commissions and Boards, which states "No member may serve more than two consecutive years as chair, unless unanimously agreed upon by the Committee in a sealed vote and approved by the City Council," and approve a resolution authorizing Matthew Demchuk to serve as the Parks and Recreation Commission Chairperson for an additional year, ending June 2022.

9.3 Consideration and proposed approval of a resolution (1) approving the Professional Services Agreement with Cardno, Inc. in an amount not-to-exceed $43,393 for the demolition and disposal of one steel bullet trap located at the

City's Bell Canyon Reservoir Shooting Range for the Emergency Bell Canyon Gun Range Bullet Trap Demolition and Disposal due to Glass FIre Incident, CIP Project No. E21-08; (2) and approving the Professional Services Agreement with Cardno, Inc. in an amount not-to-exceed $41,362 for the assessment, removal, and disposal of ash and debris in the permanganate building located just south of the City's Bell Canyon Reservoir dam for the Emergency Permanganate Building Demolition and Disposal due to Glass Fire Incident, CIP Project No. E21-09

CEQA Determination: Exempt from CEQA pursuant to Sections 21080(b)(3) and (4)
Prepared By: Edrees Argand, Assistant Engineer
Recommendation:
Staff recommends City Council adopt the attached resolution.

Vice Mayor Paul Dohring moved to approve Consent items 9.1 through 9.3. The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

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

10. PUBLIC HEARINGS

10.1 None

11. OLD BUSINESS

11.1 Discussion and Direction Regarding Analysis of Select Non-Residential Water Customer Categories (Churches/ Cemeteries, City, Schools)

CEQA Determination: Exempt
Prepared By: Mark T. Prestwich, City Manager
Recommendation:
Provide direction to the City Manager.

City Manager Mark Prestwich reported on the item.

It was the consensus of the City Council to have staff provide an update for non-residential water customer category comparison in addition to the other two.

Vice Mayor Dohring requested that the community receive a monthly water report and Council Member Hall was in agreement.

No direction was provided to staff regarding the analysis of select non-residential water customer categories (Churches/Cemeteries, City, Schools). The City Council discussed data of the water customers.

No public comment was received.

12. NEW BUSINESS

12.1 Review and Forecasting of City Water Supply Availability

CEQA Determination: Exempt
Prepared By: Mark Rincon-Ibarra, Public Works Director and City Engineer
Recommendation:
Provide direction to the City Manager.

Public Works Director Mark Rincon presented on the item.

The City Council expressed thanks for the additional Bell Canyon water supply forecasting.

No public comment was received.

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

13.1

August City Council Meetings: **8/24 (Staff reports due 8/6)**
STAFF BRIEFING:
8/24 Dr. Karen Relucio, Deputy Director of HHSA - Public Health Officer presentation
CONSENT:
8/24 Scout Hall agreement
8/24 Consideration and Proposed Approval of a Resolution Authorizing an Agreement with Sutter Home Winery, Inc. for Alternative Measurement of Wastewater Discharge
PH or OLD / NEW BUSINESS:
8/24 LOCC voting delegate and resolutions
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:

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
October City Council Meetings: **10/12 (Staff reports due 9/24)** **10/25 (Staff reports due 10/8)**
Presentation
October – Sexual Violence Awareness Proclamation

14. ADJOURNMENT

Mayor Ellsworth adjourned the meeting at 7:12 p.m.

APPROVED: **ATTEST:**

_____ _____

Geoff Ellsworth, Mayor Cindy Tzafopoulos, City Clerk

MINUTES
City of St. Helena
Regular City Council Meeting
Tuesday, August 24, 2021 @ 6:00 PM

A complete video recording of this meeting, except for closed session, can be found at https://sthelena.civicweb.net/Portal/ or by calling the City Clerk at (707) 968-2742. The City Council video is the official record of the Council meeting.

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

Absent: None

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. ADOPTION OF THE AGENDA

4.1 Adoption of the agenda

Mayor Ellsworth requested item 7.1 to be heard prior to public forum.

Vice Mayor Paul Dohring moved to adopt the agenda apart from item 7.1 being heard prior to public forum. The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

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

5. PUBLIC FORUM:

Public Forum was heard after item 7.1.

Norma Ferriz, Connie Wilson, Leslie Stanton, and Gayle Davies addressed the City Council.

6. REPORTS BY STAFF AND CITY COUNCIL, FUTURE AGENDA ITEMS, and AB

1234 REPORTS:

Reports were made by staff and City Council.

City Attorney Ethan Walsh noted that there was no reportable action from the August 24, 2021 Special Closed Session Meeting.

7. PRESENTATIONS AND PUBLIC RECOGNITIONS

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

Item 7.1 was heard prior to Public Forum.

Deputy Director of HHSA – Public Health Officer Dr. Karn Relucio presented a COVID update.

8. STAFF BRIEFING

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

Administrative Services Director April Mitts reported on the item.

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.

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.

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.

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.

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.

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.

Item 9.4 was removed from consent.

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 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.~~

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.

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

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)

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).

City Attorney Ethan Walsh reported that there was an omission from section 13.14 of the Scout Hall agreement. Section 13.14 is the non-discrimination section of the agreement and there are two references to the categories of people who will be protected from discrimination. In the second reference, the City omitted gender, gender identity or gender expression. An updated version has been given to the City Council and discussed with the Scout's representative.

9.7 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
Recommendation:
Adopt Resolution authorizing an Agreement with Sutter Home Winery, Inc. for an alternate measurement of wastewater discharge.

Council Member Anna Chouteau moved to approve consent items 9.1 through 9.3 and items 9.5 through 9.7. The motion was seconded by Council Member Eric Hall and on roll call carried by the following vote:

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

ABSTAIN: None
RECUSE: None

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 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.

Item 9.4 was pulled from the consent calendar.

Tom Belt addressed the City Council.

Council Member Lester Hardy moved to approve item 9.4. The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

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

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.

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

Administrative Services Director April Mitts reported on the item.

It was the consensus of the City Council to budget a flume rebate program for $20,000 total, distributing $100 per device. The implementation would be retroactive to the start of the Phase I Water Emergency.

Public comment was opened regarding the flume portion of this item. Norma Ferriz and Garry Rose addressed the City Council.

City Council direction to Administrative Services Director April Mitts was to get specifications on the data security aspect and gain approval from City Attorney Ethan Walsh.

No public comment was received regarding the water conservation incentive ideas.

It was the consensus of the City Council to bring a refined proposal back in two weeks through the Water Ad Hoc Committee and Staff.

Council Member Hardy called for a break at 7:58pm. The meeting reconvened at 8:05pm.

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

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

City Manager Mark Prestwich reported on the item.

No public comment was received.

Direction was provided to City Manager Mark Prestwich to advance the initiatives presented and to schedule an informational item on the 21 temporary use permits that have been issued since the policy was established.

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~~

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.

Item 12.3 was continued to the next Regular City Council Meeting.

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

Mayor Ellsworth adjourned the meeting at 8:56 p.m.

APPROVED: **ATTEST:**

_____ _____

Geoff Ellsworth, Mayor Cindy Tzafopoulos, City Clerk

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and Proposed Approval of:**

1. **Designating Council Member Anna Chouteau as the Voting Delegate on Behalf of the City of St. Helena City Council; and**
2. **Designating Council Member Eric Hall and City Manager Mark Prestwich as Alternate Voting Delegates; and**
3. **City Council Voting in Favor of the Two Proposed Resolutions and League of California Cities Proposed Bylaw Amendments at the League of California Cities Annual Conference Business Meeting.**

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 and

bylaws amendments. 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 and bylaws amendments to be considered at the business meeting are listed below and outlined in the attached packets.

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.

The League of California Cities Board recommends the following amendments to the bylaws:

1. Adjust the composition of the Board to achieve a higher impact and be more representative by adding Director seats to the Board for each of the five Diversity Caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Cal Cities Board.

2. Recognize the Cal Cities Diversity Caucuses in the Cal Cities bylaws to reflect the full contribution the caucuses make to Cal Cities' mission and vision.

3. Update the League of California Cities' moniker to Cal Cities.

4. Make various minor technical corrections.

While the work to enhance Cal Cities' governance is a process that will be implemented in phases over several years, the Board believes these proposed amendments constitute an important first step towards ensuring Cal Cities' governance is operating at peak performance.

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.

Bylaw amendments have no fiscal impact.

RECOMMENDED ACTION

Consideration and Proposed Approval of:

1. Designating Council Member Anna Chouteau as the Voting delegate on Behalf of the City of St. Helena City Council; and
2. Designating Council Member Eric Hall and City Manager Mark Prestwich as Alternate Voting Delegates; and
3. City Council Voting in Favor of the Proposed Resolutions and League of California Cities Proposed Bylaw Amendments at the League of California Cities 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
LOCC General-Assembly-Bylaws-Packet-Final

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.

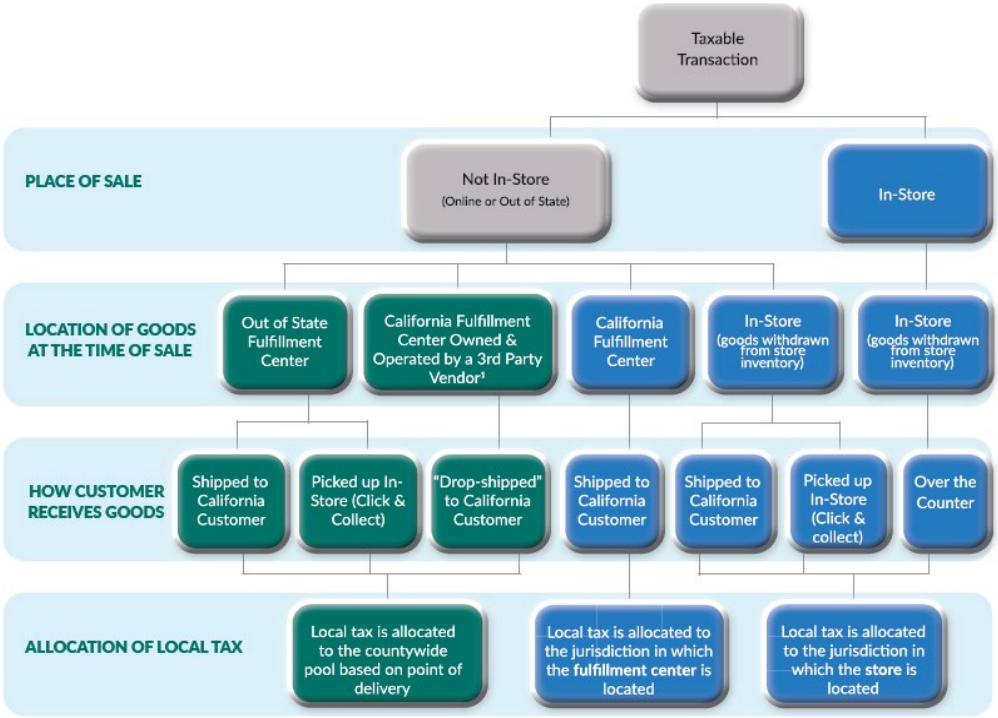
Background Information to Resolution

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.*

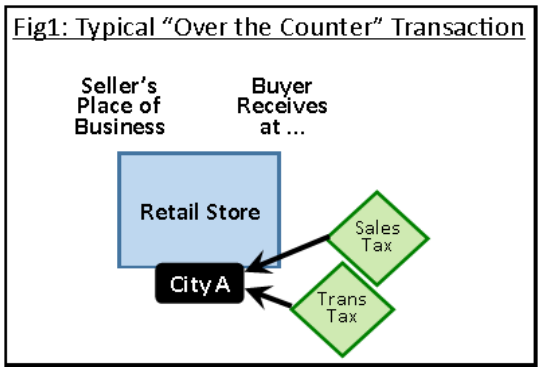
Fiscal Impact:
Significant but unknown. The Resolution on its own does not shift sales tax revenues. In anticipation and mitigation of impacts, the Resolution requests Cal Cities to utilize online sales tax data to identify a fair and equitable distribution formula that accounts for the broad impacts 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.

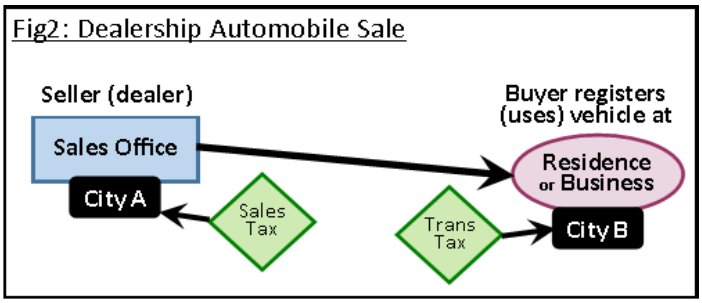
Existing Cal Cities Policy:

- 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


Fig1: Typical "Over the Counter" Transaction
Seller's Place of Business
Buyer Receives at ...
Retail Store
City A
Sales Tax
Trans Tax


Fig2: Dealership Automobile Sale
Seller (dealer)
Sales Office
City A
Sales Tax
Buyer registers (uses) vehicle at
Residence or Business
City B
Trans Tax

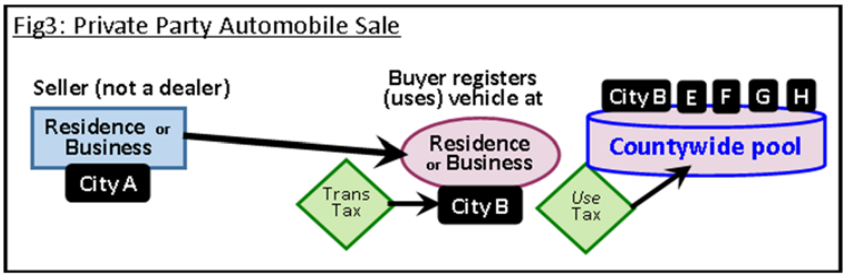
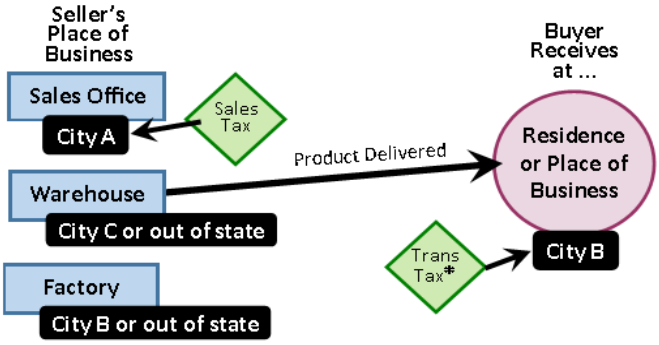
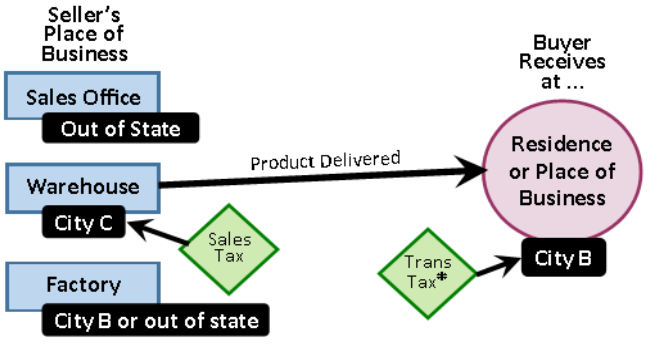

Fig3: Private Party Automobile Sale
Seller (not a dealer)
Residence or Business
City A
Trans Tax
Buyer registers (uses) vehicle at
Residence or Business
City B
City B E F G H
Countywide pool
Use Tax

Fig4: Remote (Online) Sale—In-State Business Office

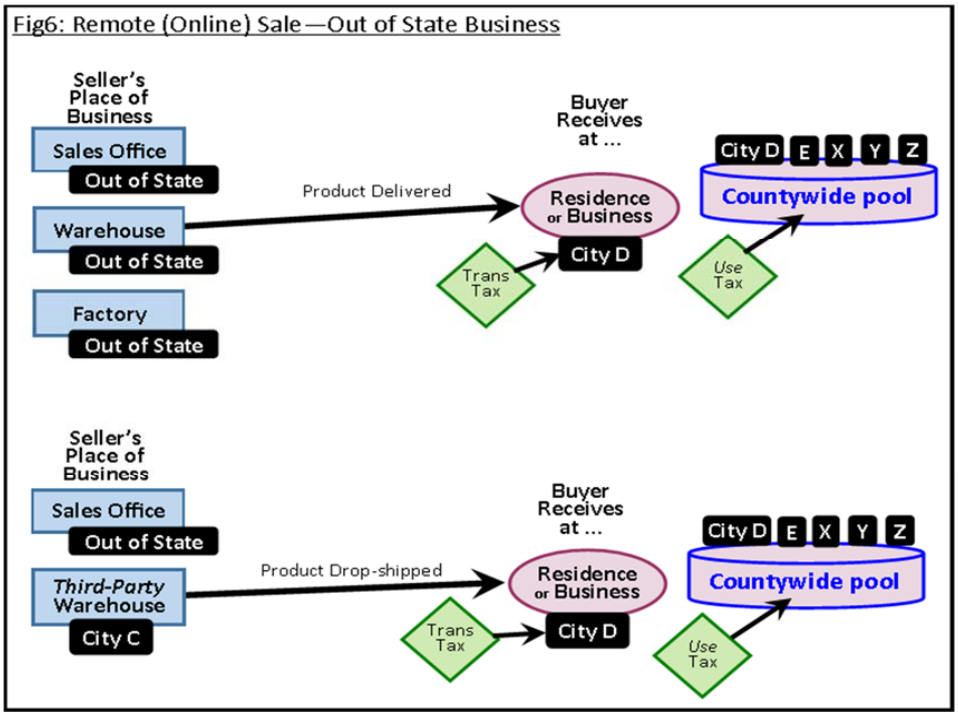


*If the seller is in the same Transactions and Use Tax "district" as the buyer, then the seller is responsible for collecting and remitting the tax. If the buyer is in a different district, the buyer is responsible.

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.

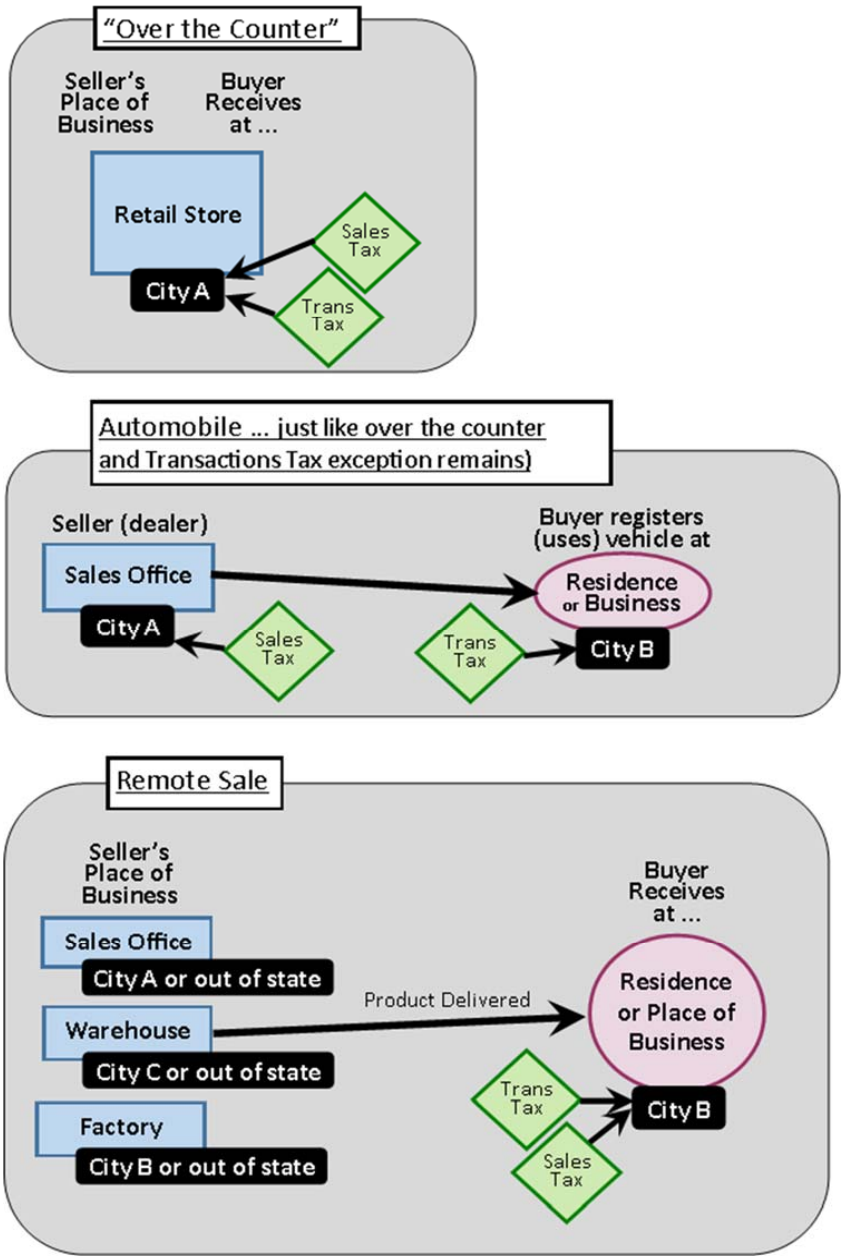
Moving to Destination Sourcing: The Concept[7]

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.

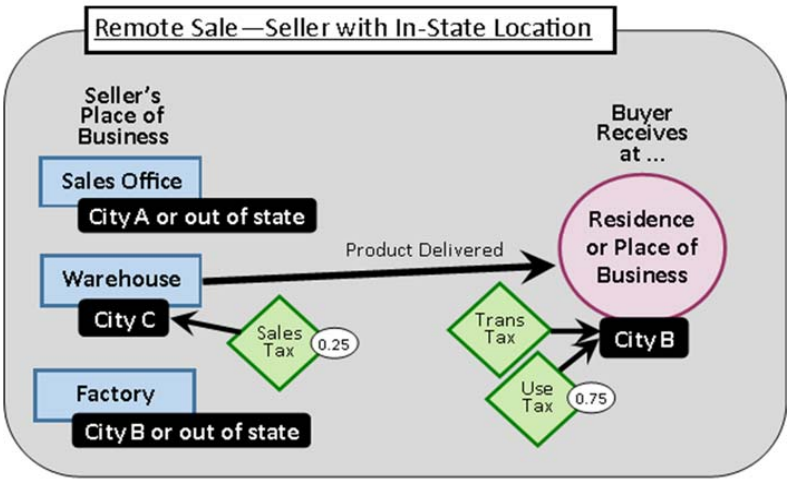
Destination Sourcing Scenario 1: Full-On

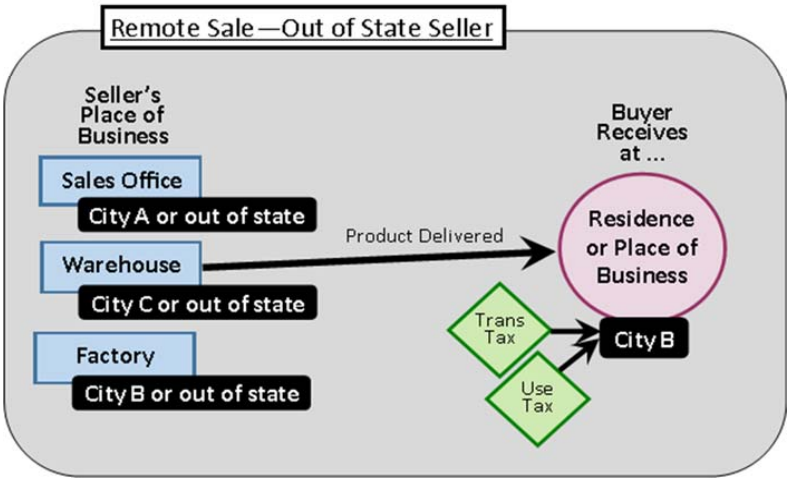


CaliforniaCityFinance.com

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 product**s** from **those** ~~**that**~~ center**s** now receive no **Bradley Burns** revenue ~~**from the center's sales activity**~~ despite also experiencing the impacts created by the**m** ~~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.

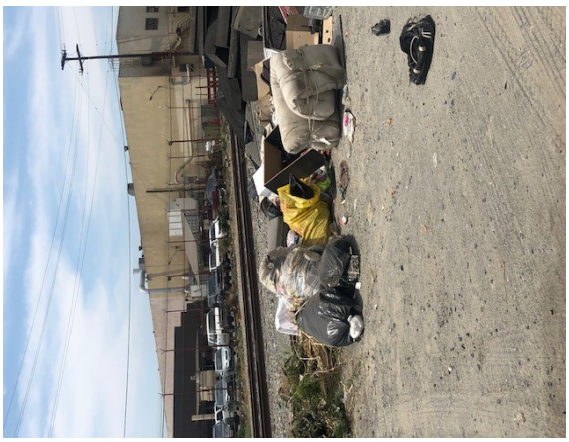
The State of California has record revenues to provide CPUC with funding nor only for safety oversight but ensuring right-of-way maintenance by operators is being managed properly. Rail Operators should be required to set aside sufficient annual funds to provide a regular cleanup of their right-of-way through the cities of California.





46





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.**

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~~ 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.



PROPOSED BYLAWS AMENDMENTS

2021 Annual Conference
Sacramento, CA

General Assembly
September 24, 2021

2020-2021
CAL CITIES OFFICERS

President
Cheryl Viegas Walker
Mayor,
El Centro

First Vice President
Cindy Silva
Council Member,
Walnut Creek

Second Vice President
Ali Taj
Council Member,
Artesia

Immediate Past President
John F. Dunbar
Mayor,
Yountville

Executive Director
and CEO
Carolyn M. Coleman

To: Cal Cities General Assembly
From: Cheryl Viegas Walker, President
Carolyn Coleman, Executive Director
Date: September 2021
Re: Proposed Cal Cities Bylaws Amendments

On August 17, 2021, the League of California Cities (Cal Cities) Board of Directors (Board) voted to present proposed bylaws amendments to the General Assembly at the 2021 Cal Cities' Annual Conference. This document describes the background of the proposed amendments, summarizes the proposed amendments, and explains the procedure for adopting amendments to the bylaws.

Background

Beginning in 2017, the Board directed Cal Cities to undertake a strategic planning process that resulted in the adoption of the "Powering Up for California Cities Strategic Growth Plan 2018-2021" (Strategic Growth Plan). The Strategic Growth Plan set forth goals to enhance Cal Cities' governance to: (a) achieve even higher levels of engagement and effectiveness; (b) ensure optimal engagement by members and their effectiveness in supporting fulfillment of Cal Cities' mission; and (c) ensure the pathway to leadership is transparent and inclusive.

In furtherance of its governance goals, the Board engaged an association governance consultant (Consultant) to evaluate the Cal Cities governance system and make recommendations for enhancing Cal Cities' governance. The Consultant gathered and considered input from more than 350 Cal Cities members through advisory groups, roundtable discussions, interviews, and surveys. On July 8, 2021, the Consultant produced a report (Governance Report) detailing 49 recommendations to the Board to deepen the engagement of Cal Cities' Member Cities and ensure Cal Cities' governance is operating at peak performance.

The Governance Report included findings indicating that Cal Cities is a strong organization, with a high level of member engagement, but also highlighted opportunities for Cal Cities to enhance its governance. The opportunities for enhancement included: (a) improving the clarity, ease, and consistency in how the governance system works; (b) clarifying the guidelines for position qualifications and performance expectations; (c) identifying ways to deepen member engagement and enhance the quality of the experience of involvement; and (d) ensuring Cal Cities has an intentional, consistent organizational culture at all levels of the governance system.

The findings and recommendations from the report were presented at the July Cal Cities Board meeting, and following a robust exchange of ideas and input, the Board decided to move forward with many of the recommendations, referred other recommendations to a Board subcommittee for further study, and deferred consideration of still other recommendations. Two of the approved recommendations adopted by the Board require bylaws amendments; specifically, the recommendations to adjust the composition of the Board, and fully recognize the Diversity Caucuses in the Cal Cities bylaws.[1]

In addition to governance goals, the Strategic Growth Plan also set forth goals to increase the visibility of Cal Cities to: (a) ensure that Cal Cities conveys a strong and consistent brand to all audiences; and (b) elevate the voice of Cal Cities across all channels, including media, on priority issues for California cities. In furtherance of its visibility goals, Cal Cities adopted the abbreviated moniker "Cal Cities" to identify and differentiate Cal Cities as the voice of California cities on priority issues. To promote consistency, the Cal Cities bylaws should be amended to change the League of California Cities' moniker to Cal Cities.

Finally, in reviewing the Cal Cities bylaws amendments staff identified various minor technical corrections to the bylaws.

Summary of Amendments

At this time, the Board recommends for adoption the following amendments to the bylaws:

1. Adjust the composition of the Board to achieve a higher impact and be more representative by adding Director seats to the Board for each of the five Diversity Caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Cal Cities Board.

2. Recognize the Cal Cities Diversity Caucuses in the Cal Cities bylaws to reflect the full contribution the caucuses make to Cal Cities' mission and vision.

3. Update the League of California Cities' moniker to Cal Cities.

4. Make various minor technical corrections.

While the work to enhance Cal Cities' governance is a process that will be implemented in phases over several years, the Board believes these proposed amendments constitute an important first step towards ensuring Cal Cities' governance is operating at peak performance.

[1] Cal Cities Diversity Caucuses are currently recognized through Board Policy. See page 35 of the Board Manual, available at https://www.calcities.org/docs/default-source/default-document-library/2016-board-manual-(b15).pdf.

Procedure for Amending the Cal Cities Bylaws

Amendments to the Cal Cities bylaws may be proposed by the Cal Cities Board and may be adopted: (a) by vote of the Cal Cities General Assembly, or (a) by mail ballot to member cities.[2] In this case, the amendments will be considered by the General Assembly. Bylaws amendments need to be approved by 2/3 of those voting,[3] and the number that constitutes 2/3 of those voting (1) cannot be less than a majority of the voting delegates present if there is a quorum at the time the vote is taken;[4] or (2) cannot be less than a majority of a quorum if the meeting started with a quorum but a quorum is not present when the vote is taken.[5]

If approved by the General Assembly, the amendments to the bylaws will go into effect after the expiration of a 60-day protest period.[6] If, within 60 days after the adoption of the amendments, one-third or more of the Member Cities submit a written protest against the amendments, the amendments are automatically suspended until the next Annual Conference, when they may be taken up again for reconsideration and vote.[7]

[2] Article XVI, Section 1.
[3] Article XVI, Section 2.
[4] Cal. Corp. Code 7512, subd. (a).
[5] Cal. Corp. Code 7512, subd. (d).
[6] Article XVI, section 6.
[7] Article XVI, section 7.

RESOLUTION RELATING TO AMENDMENTS TO THE CAL CITIES BYLAWS
(2/3 vote at General Assembly required to approve)

Source: *League of California Cities Board of Directors*

WHEREAS, the League of California Cities (Cal Cities) is a nonprofit mutual benefit corporation under California law and, as such, is governed by corporate bylaws; and

WHEREAS, the Cal Cities Board of Directors (Board) periodically reviews the Cal Cities bylaws for issues of clarity, practicality, compliance with current laws, and responsiveness to membership needs and interests; and

WHEREAS, beginning in 2017, the Board directed Cal Cities to undertake a strategic planning process that resulted in the adoption of the "Powering Up for California Cities Strategic Grown Plan 2018-2021" (Strategic Growth Plan); and

WHEREAS, the Strategic Growth Plan set forth goals to enhance Cal Cities' governance to: (a) achieve even higher levels of engagement and effectiveness; (b) ensure optimal engagement by members and effectiveness in supporting fulfillment of the Cal Cities' mission; and (c) ensure the pathway to leadership is transparent and inclusive; and

WHEREAS, in furtherance of its governance goals, the Board engaged an expert in association governance (Consultant) who gathered and considered input from more than 350 Cal Cities members through advisory groups, roundtable discussions, interviews, and surveys to evaluate the Cal Cities governance system and make recommendations for enhancing Cal Cities' governance; and

WHEREAS, the Board approved certain recommendations made by the Consultant as a result of that governance assessment, which identified amendments to the bylaws that: (a) fully recognize the Cal Cities diversity caucuses; and (b) adjust the composition of the Board by adding Director seats to the Board for each of the five caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Board; and

WHEREAS, Corporations Code section 7222(c) provides that a bylaws amendment that reduces the number of directors or the number of classes of directors does not remove any director prior to the expiration of the director's term of office; and

WHEREAS, the Directors currently serving as Directors of Cal Cities by virtue of their service as Directors on the National League of Cities Board will continue to serve on the Cal Cities Board until the expiration of their terms and the bylaws amendment providing for one non-voting advisor to the Cal Cities Board to be appointed if members of the National League of Cities Board of Directors hold an office in a Member City will not become effective until December 1, 2022; and

WHEREAS, the Strategic Growth Plan also set forth goals to increase the visibility of Cal Cities to: (a) ensure that Cal Cities conveys a strong and consistent brand to all audience; and (b) elevate the voice of Cal Cities across all channels, including media, on priority issues for California cities; and

WHEREAS, in furtherance of its visibility goals, the Board engaged a strategic communications expert to work alongside Cal Cities staff to assess the Cal Cities' brand; and

WHEREAS, that assessment indicated that numerous abbreviations for the "League of California Cities" were diluting its brand; and

WHEREAS, Cal Cities thus adopted the abbreviated moniker "Cal Cities" to identify and differentiate Cal Cities across all channels, including media, as the voice of California cities on priority issues; and

WHEREAS, the Cal Cities Board offers the following proposed amendments and additions to the bylaws, as summarized in the attached Summary of Proposed Bylaw Changes, and as set forth in full in the attached redlined version of the bylaws referenced below, both of which are hereby incorporated by reference, which (1) fully recognize the Cal Cities Diversity Caucuses in the Cal Cities bylaws; (2) adjust the composition of the Board by adding Director seats to the Board for each of the five caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Board; (3) change the League of California Cities' moniker to Cal Cities; and (4) make various minor technical corrections; and

now therefore, be it

RESOLVED, by the General Assembly of the League of California Cities assembled during the Annual Conference in Sacramento on September 24, 2021, that Cal Cities makes the specified changes to the Cal Cities bylaws set forth in full in the attached redlined version of the bylaws, and as summarized in the attached Summary of Proposed Bylaws Changes.

See ATTACHMENT 1 for a summary of the proposed bylaws changes.
See ATTACHMENT 2 for full redlined version of the proposed changes to the bylaws.

ATTACHMENT 1
Summary of Proposed Bylaws Changes

Summary of Proposed Bylaws Changes

1. **Fully Recognize the Cal Cities Diversity Caucuses in the Cal Cities Bylaws.**

    - Add a new Article XI, formally recognizing the caucuses in the bylaws consistent with how departments and divisions are recognized. Provide default rules for caucus structure and process where the caucuses do not have bylaws or where caucus bylaws are silent.

    - Make conforming changes as follows:

        - Amend Article VI, Section 3, Subdivisions (a) and (b) to allow for one elected official from each caucus to be appointed to the resolutions committee by their respective caucus, or by the Cal Cities President in the event a caucus does not make its appointment.

        - Amend Article VII, Section 10, Subdivision (c) to provide that one member of each standing policy committee shall be appointed by each caucus president.

        - Amend new Article XII (formerly, Article XI), Section 1, Subdivision (a) to specify that a majority of the members of a caucus constitutes a quorum for the purpose of making decisions.

        - Amend new Article XII (formerly, Article XI), Section 2, Subdivision (a) to provide that all voting in a caucus meeting is by voice vote.

        - Amend new Article XII (formerly, Article XI), Section 4 to provide that representatives of each Member City present and in good standing at a caucus meeting collectively cast one vote, except as otherwise provided in caucus bylaws.

        - Amend new Article XII (formerly, Article XI), Section 5, Subdivision (d) to allow caucuses to use mail balloting as specified in their bylaws.

        - Amend Article XIII (formerly, Article XII), Section 1, Subdivision (a) to provide that persons must officially be in city service in a Member City in order to be eligible to hold office in a caucus.

        - Amend Article XIII (formerly, Article XII), Section 2, Subdivisions (c) and (d) to clarify the effective date of a caucus office resignation or vacancy.

        - Amend Article XIV (formerly, Article XIII), Section 2, Subdivision (b) to provide that a copy of Cal Cities' budget shall be sent to each caucus president who shall make it available to caucus members.

- Amend Article XVI (formerly, Article XV), Section 5 to provide that Robert's Rules of Order or other parliamentary rules adopted by the Cal Cities Board shall prevail at caucus meetings.

2. **Adjust the Composition of the Board.**

- **Add directors from each diversity caucus**:

  - Amend Article VII, Section 2, Subdivision (d) to add one director from each of the five caucuses to the Board for a term of two years.

  - Make conforming changes to the following sections:

    - Amend Article VII, Section 3, to stagger the terms of the caucus directors so that the terms of approximately one-half of the Board continue to expire each year. Provide that the terms for the directors from the African American, Asian Pacific Islander, and LGBTQ caucuses expire in even-numbered years, and terms of the directors from the Latino and Women's caucuses expire in odd-numbered years.

    - Amend Article VII, Section 4, Subdivision (c) to provide that the initial caucus director shall either be the caucus president or another caucus member appointed by the caucus president, and thereafter, that caucus directors are to be elected by their caucuses.

    - Amend Article VII, Section 4, new Subdivision (f) (formerly Subdivision (e)) to provide that newly created caucuses can elect a representative to the Board.

    - Amend Article VII, Section 6, Subdivision (c) to provide that, if a vacancy occurs in a caucus directorship, the caucus officers may elect a new director.

- **Transition members of the National League of Cities (NLC) Board of Directors from Cal Cities Directors to one non-voting advisor to the Board:**

  - Delete Article VII, Section 2, Subdivision (e) which provides that directors on the NLC Board who hold an office in a Member City are directors on the Cal Cities Board, and make a conforming change as follows:

    - Delete the language from Article VII, Section 2, Subdivision (g) which provides that directors that sit on the Cal Cities Board by virtue of their directorship on the NLC Board shall serve until their terms on the NLC Board conclude.

- Add new Section 17 to Article VII to provide that effective December 1, 2022 (after the terms of the currently serving NLC Board directors expire), if members of the NLC Board hold office in a Member City, no more than one such member shall be appointed by the Cal Cities President to serve as a non-voting advisor to the Cal Cities Board for a term that coincides with their service on the NLC Board. Provide further that such non-voting advisor shall be invited to attend regularly-scheduled Board meetings, but shall not attend emergency meetings and/or closed/executive sessions unless otherwise determined by the Board.

3. **Change the League of California Cities Moniker.** Amend Article I, Section 1 to read, "This corporation is the League of California Cities ~~(the League)~~ (Cal Cities)" and make conforming changes to replace "League" with "Cal Cities" throughout the entirety of the bylaws.

4. **Make Technical Corrections.**

   - Amend the following sections of the bylaws to correct technical errors and typos:

     - Article I, Section 3: change "to" to "do"
     - Article II, Section 2(a): change "Advocate legislation" to "Advocate for legislation"
     - Article II, Section 2(g): change "member cities" to "Member Cities"
     - Article III, Section 3: change "state and federal laws" to "state or federal laws"
     - Article V, Section 3(b): changed "Designating" to "Designated"
     - Article VI: clarify that "Petitioned Resolutions" is a defined term in Section 2 and capitalize "Petitioned Resolutions" in Section 4(a), Section 5(f), and Section 5(g)
     - Article VI, Section 5(d): change "late" to "later"
     - Article VII, Section 4(d): change "organization" to "organizational"
     - Article VII, Section 4(f): add "the" before "nominating committee"
     - Article VII, Section 10(c)(ii): capitalize "President"
     - Article IX, Section7(c)(ii): correct cross-reference from 4(d) to 4(e)
     - Article X, Section 2(c): change "two years established" to "two years as established"
     - Article X, Section 2(d): capitalize "Director"
     - Article XII, Section 4: change "representatives" to "representative" and "cast" to "casts"
     - Article XVI, Section 5: add "and applicable law"
     - Article XVIII, Section 3(c): correct cross-reference from "Article XI" to "Article XII"
     - Article XII, Section 2(b): change "three or Member Cities" to "three or more Member Cities"

ATTACHMENT 2
Full Redlined Version of Proposed Changes to Bylaws

Bylaws for the League of California Cities

Table of Contents

Article I: General 1
Section 1: Corporation Name. 1
Section 2: Offices. 1
Section 3: Compliance with Governing Laws. 1
Article II: Purpose and Objectives 1
Section 1: General. 1
Section 2: Objectives. 1
Article III: Membership 2
Section 1: Qualification. 2
Section 2: Termination. 2
Section 3: Honorary Members. 2
Section 4: Non-Liability. 3
Article IV: Dues 3
Section 1: Establishment 3
Section 2: Increase in Dues. 3
Section 3: Delinquency. 4
Article V: Membership Meetings 4
Section 1: Annual Conference. 4
Section 2: Special Meetings. 4
Section 3: City Delegates as General Assembly. 4
Section 4: Notice of Meetings. 5
Section 5: Parliamentarian. 5
Section 6: Credentials. 5
Article VI: Resolutions 5
Section 1: Role and Scope of Resolutions. 5
Section 2: Origination. 6
Section 3: Resolutions Committee for Annual Conference Resolutions. 6
Section 4: Procedure for Resolution Review for the Annual Conference. 7
Section 5: Resolutions Proposed by Petition for the Annual Conference. 7
Section 6: Special Meeting Resolution Procedures. 8

Section 7: Full Debate. 9
Article VII: Board of Directors 9
Section 1: Role and Powers; Board Diversity Policy. 9
Section 2: Composition. 9
Section 3: Staggered Terms. 10
Section 4: Election of Directors. 11
Section 5: Nomination Process. 12
Section 6: Vacancies. 13
Section 7: Resignation. 14
Section 8: Meetings and Meeting Notice. 14
Section 9: Policies. 15
Section 10: Committees. 15
Section 11: Compensation. 16
Section 12: Reports of Directors. 16
Section 13: Standard of Care. 16
Section 14: Right to Inspect Records. 17
Section 15: Policy Changes. 17
Section 16: Positions on Statewide Ballot Measures. 17
Section 17: Non-Voting Advisor to the Board. 17
Article VIII: Officers. 18
Section 1: Identity. 18
Section 2: Duties of Cal Cities Officers. 18
Section 3: Election. 18
Section 4: Vacancies. 18
Section 5: Executive Director and Cal Cities Employees. 19
Article IX: Regional Divisions 20
Section 1: Listing. 20
Section 2: Purposes and Functions. 20
Section 3: Names of Divisions. 21
Section 4: Boundaries. 21
Section 5. Membership. 21
Section 6: Voting. 21
Section 7: Officers. 21
Section 8: Resignation. 23

Section 9: Regional Division Bylaws. 23
Article X: Functional Departments 23
Section 1: Listing. 23
Section 2: Officers. 23
Section 3: Voting. 24
Section 4: Department Meetings. 24
Section 5: Department Bylaws. 24
Article XI: Caucuses 25
Section 1: Listing. 25
Section 2: Purposes and Functions. 25
Section 3: Names of Caucuses. 26
Section 4: Membership. 26
Section 5: Voting. 26
Section 6: Officers. 26
Section 7: Resignation. 27
Section 8: Caucus Bylaws. 27
Article XII: Voting 27
Section 1: Quorum. 27
Section 2: Voting Methods. 28
Section 3: Vote Threshold. 28
Section 4: One City One Vote. 29
Section 5: Mail Balloting. 29
Article XIII: Qualifications to Hold Office and Vacancies 29
Section 1: Eligibility to Hold Office. 29
Section 2: Vacancies. 30
Article XIV: Finances 30
Section 1: Fiscal Year. 30
Section 2: Budget. 31
Section 3: Limitation of Expenditures. 31
Section 4: Annual Audit. 31
Section 5: Special Assessment for Cal Cities Building. 31
Article XV: Prohibited Transactions 31
Section 1: Conflicts of Interest. 31
Section 2: Loans. 32

Section 3: Self-Dealing and Common Directorship Transactions. 32
Section 4: Ethical Considerations. 33
Article XVI: Miscellaneous 33
Section 1: Indemnification. 33
Section 2: Insurance. 34
Section 3: Contracts and Execution of Instruments. 34
Section 4: Disposition of Assets Upon Dissolution. 34
Section 5: Parliamentary Authority. 35
Section 6: Seal. 35
Section 7: Governing Law. 35
Section 8: Litigation Authority 35
Article XVII: Amendments 35
Section 1: Consideration. 35
Section 2: Vote Threshold. 36
Section 3: Who May Propose 36
Section 4: Board Review. 36
Section 5: Procedure for Consideration by General Assembly. 36
Section 6: Effective Date. 36
Section 7: Protest and Suspension until Next Conference. 36
Article XVIII: Establishment and Financing of Grassroots Network 36
Section 1: Enhancement of Advocacy Efforts. 36
Section 2: Dues Increase. 37
Section 3: Accountability. 37

Bylaws for the League of California Cities[1]

Article I: General

Section 1: Corporation Name.

This corporation is the League of California Cities (Cal Cities~~the League~~).

Section 2: Offices.

The principal office of this corporation shall be located in Sacramento, California. The ~~League~~ Cal Cities Board of Directors (~~League~~ Cal Cities Board) may establish such other ~~League~~ Cal Cities offices as it deems necessary to the effective conduct of ~~League~~ Cal Cities programs.

Section 3: Compliance with Governing Laws.

In all matters not specified in these bylaws, or in the event these bylaws d~~t~~o not comply with applicable law, the California Nonprofit Corporation Law applies.

Article II: Purpose and Objectives

Section 1: General.

~~The League's~~Cal Cities' purpose is to strengthen and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

Section 2: Objectives.

~~The League's~~Cal Cities' objectives are the following:

(a) Advocate for legislation that results in benefits to Member Cities,

(b) Communicate to Member Cities and the public on issues related to the general welfare of citizens in California cities,

(c) Pursue strong intergovernmental relationships to promote the well being of California cities,

(d) Organize educational opportunities, such as conferences of city officials,

[1] Note: All footnotes are for reference and explanation only and are not part of the bylaws text.

(e) Stimulate greater public interest and more active civic consciousness as to the importance of cities in California's system of government,

(f) Collect and disseminate information of interest to Member Cities, and

(g) Engage the membership in a continuing analysis of the needs of Mmember Ccities.

Article III: Membership

Section 1: Qualification.

(a) **Cities.** Any city, or city and county, in California may, by the payment of annual dues prescribed in Article IV, become a Member City and as such is entitled to ~~League~~ Cal Cities services and privileges.

(b) **Elected and Appointed Officials.** All elected and appointed officials in Member Cities are members of ~~the League~~Cal Cities.

Section 2: Termination.

(a) **Grounds for Termination.** Membership is suspended or terminated whenever any of the following occurs:

(i) The Member City resigns by giving written notice to ~~the League~~Cal Cities;

(ii) The Member City does not pay dues, fees or assessments in the amounts and terms set by the ~~League~~ Cal Cities Board; or

(iii) An event occurs that makes the Member City ineligible for membership.

(b) **Procedures for Termination.** ~~The League~~Cal Cities shall give 15 days notice of any suspension or termination of membership and the reasons for such action, along with the opportunity to respond orally or in writing not less than five days before the effective date of the action.[2]

Section 3: Honorary Members.

Any person who has given conspicuous service for the improvement of city government may, by the vote of the Cal Cities ~~League~~ Board, be granted an honorary membership

[2] *See* Cal. Corp. Code § 7341(c) (requiring termination procedures be included in bylaws and specifying what constitutes a fair and reasonable procedure).

in Cal Citiesthe League. All ex-presidents of the LeagueCal Cities are Honorary Members. Honorary Members as such do not have a voice or vote in any of the meetings of the LeagueCal Cities and do not have membership status in Cal Cities the League for purposes of state and or federal laws.

Section 4: Non-Liability.

No Member City is liable for the debts or obligations of Cal Citiesthe League.

Article IV: Dues

Section 1: Establishment.

The League Cal Cities Board establishes the League'sCal Cities' dues annually according to city population. The population of each city is the most current population as determined by the California Department of Finance, Demographic Research Unit, or its successor agency or unit. If no successor agency or unit is named, the most current population used to determine dues shall be used to determine future dues until such time as these bylaws are amended to designate a new source for determining city population.

Section 2: Increase in Dues.

(a) Board Vote Requirement. Any increase in dues must be approved by the League Cal Cities Board by a two-thirds vote. The Cal CitiesLeague Board's approval shall be accompanied by an explanation of the need for the increase, including but not limited to:

(i) Increases in the League'sCal Cities' costs related to general increases in the consumer price index or other factors; and/or

(ii) The expansion of existing programs or initiation of new programs.

(b) Member City Ratification Requirement. Any dues increase that exceeds either the "consumer price index" for the preceding twelve months or five percent (whichever is greater) requires Member City ratification. In no event, however, shall the League Cal Cities Board approve a dues increase in excess of ten percent without Member City ratification.

(i) "Consumer Price Index" Defined. For purposes of this section, the consumer price index is the California consumer price index for all urban consumers calculated by the California Department of Industrial Relations or its state or federal successor.

(ii) Approval Threshold. Member City ratification requires a majority of Member Cities casting votes.

(iii) Mechanism for Seeking Approval. The ratification may occur at ~~the League's~~Cal Cities' General Assembly (see Article V) or by using the mail balloting procedure (see Article XI, section 5).

(c) Dues Cap. In no event will a Member City's dues increase by more than $5,000 per year.

Section 3: Delinquency.

Any Member City of ~~the League~~Cal Cities who is delinquent in dues, fees or assessments may be suspended or have that member's membership terminated as provided in Article III, section 2.

Article V: Membership Meetings

Section 1: Annual Conference.

(a) Time and Place. ~~The League's~~Cal Cities' regular Annual Conference is held at the time and place as the ~~League~~ Cal Cities Board determines. In case of any unusual conditions or extraordinary emergency, the ~~League~~ Cal Cities Board may, at its discretion, change the time or place of the meeting.

(b) Conference Program Planning. The ~~League~~ Cal Cities Board shall establish an Annual Conference program planning process that provides for input from representative segments of Cal Cities' ~~the League's~~ membership.

Section 2: Special Meetings.

Special meetings of Cal Cities ~~the League~~ may be called by the ~~League~~ Cal Cities Board and shall be called by the ~~League~~ Cal Cities Board upon the written request of five percent or more of the Member Cities.[3] Any written request by Member Cities shall describe the general nature of the business to be transacted and the text of any proposed resolution(s).

Section 3: City Delegates as General Assembly.

(a) Designation. Each Member City may, with the approval of the city council, designate a city official as the city's 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.

[3] *See* Cal. Corp. Code § 7510 ("special meetings of members for any lawful purpose may be called by 5 percent or more of the members").

(b) Membership Decision-making Body. Designated~~ing~~ voting delegates (or their alternates) constitute ~~the League's~~Cal Cities' General Assembly.

(c) Registration for Annual Conference. For General Assemblies held in conjunction with the Annual Conference, designated voting delegates must register to attend the Annual Conference.

Section 4: Notice of Meetings.

(a) General. Notice shall be given to all Member Cities of the time and place of all regular and special meetings by faxing or mailing a written notice at least fifteen days prior to each meeting, or by publishing a notice of the meeting at least two weeks prior to the meeting in an official publication of Cal Cities~~the League~~; provided, however, that failure to receive such notice does not invalidate any proceedings at such meeting.

(b) Special Notice Requirements for Special Meetings. Any notice of the calling of a special meeting shall specify the purpose of the special meeting in such detail to enable Member Cities to determine whether they should attend. In the event a special meeting is requested by five percent or more of the Member Cities, the notice shall also set for the text of any proposed resolution(s).

Section 5: Parliamentarian.

The ~~League~~ Cal Cities President shall appoint a Parliamentarian to resolve procedural issues at ~~the League's~~Cal Cities' General Assembly and in Resolutions Committee meetings.

Section 6: Credentials.

Designated voting delegates must register with the Credentials Committee. The Cal Cities ~~League~~ President shall appoint a three-person Credentials Committee no later than the first day of the General Assembly. In case of dispute, this committee determines the right of a member to participate.

Article VI: Resolutions

Section 1: Role and Scope of Resolutions.

Resolutions adopted by ~~the League's~~Cal Cities' General Assembly and such ~~League~~ Cal Cities Board policies as are not inconsistent with such resolutions constitute ~~League~~ Cal Cities policy. All resolutions shall be germane to city issues.

Section 2: Origination.

Resolutions may originate from city officials, city councils, regional divisions, functional departments, caucuses, policy committees, or the ~~League~~ Cal Cities Board or by being included in a petition signed by designated voting delegates of ten percent of the number of Member Cities (Petitioned Resolutions). Except for P~~p~~etitioned R~~r~~esolutions, all other resolutions must be submitted to ~~the League~~ Cal Cities with documentation that at least five or more cities, or city officials from at least five or more cities, have concurred in the resolution.

Section 3: Resolutions Committee for Annual Conference Resolutions.

(a) Resolutions Committee Composition. The ~~League~~ Cal Cities President establishes a Resolutions Committee sixty days prior to each Annual Conference, which committee shall consist of:

(i) One elected official from each regional division, appointed by the regional division;

(ii) One elected official from each policy committee, appointed by the policy committee;

(iii) One member from each functional department, appointed by the department~~;~~

(iv) One elected official from each caucus, appointed by the caucus; and

(~~i~~v) Up to ten additional members (at least five of whom are elected officials) as the ~~League~~ Cal Cities President deems necessary to achieve geographic and population balance, as well as recognize the multiplicity of city functions not represented by the other appointments, including, but not limited to, the perspectives of board and commission members as well as professional staff.

(b) Presidential Appointments. In the event a regional division, policy committee~~,~~ ~~or~~ functional department, or caucus does not make its appointment to the Resolutions Committee, the ~~League~~ Cal Cities President may make the appointment on the regional division's, policy committee's~~,~~ ~~or~~ functional department's, or caucus's behalf.

(c) Chair. The ~~League~~ Cal Cities President shall also appoint to the Resolutions Committee a committee chair and vice chair.

(d) Minimum Committee Size and Composition. In the event the full committee is not in attendance at the Annual Conference, the ~~League~~ Cal Cities President shall appoint a sufficient number of city officials in attendance

to achieve a total of thirty. No less than two-thirds of the members of the Resolutions Committee shall be elected officials.

(e) Committee Consideration of Proposed Resolutions. Except for resolutions of courtesy, commendation, appreciation or condolence, no resolution expressing the opinion or policy of ~~the League~~ Cal Cities on any question may be considered or discussed by ~~the League's~~Cal Cities' General Assembly, unless it has been first submitted to, and reported on, by the Resolutions Committee.

Section 4: Procedure for Resolution Review for the Annual Conference.

(a) Timing. Except for P~~p~~etitioned R~~r~~esolutions, all resolutions shall be submitted to the Resolutions Committee, at ~~the League's~~ Cal Cities' headquarters, not later than sixty days prior to the opening session of ~~the League's~~ Cal Cities' Annual Conference.

(b) Referral to Policy Committees.

(i) Review and Recommendations. Except for resolutions of courtesy, commendation, appreciation or condolence, all resolutions submitted to the Resolutions Committee shall be referred by the ~~League~~ Cal Cities President to an appropriate policy committee for review and recommendation prior to the opening general session of the Annual Conference.

(ii) Report to Resolutions Committee. Policy committees shall report their recommendations on such resolutions to the Resolutions Committee. The inability of a policy committee to make a recommendation on any resolution does not preclude the Resolutions Committee from acting upon it.

Section 5: Resolutions Proposed by Petition for the Annual Conference.

(a) Presentation by Voting Delegate. A designated voting delegate of a Member C~~c~~ity may present by petition a resolution to the ~~League~~ Cal Cities President for consideration by the Resolutions Committee and the General Assembly at the Annual Conference. These resolutions are known as "P~~p~~etitioned R~~r~~esolutions."

(b) Contents. The petition shall contain the specific language of the resolution and a statement requesting consideration by ~~the League's~~Cal Cities' General Assembly.

(c) Signature Requirements. The petition shall be signed by designated voting delegates registered with the Credentials Committee who represent ten percent of the number of Member Cities.

(d) Time Limit for Presentation. The signed petition shall be presented to the ~~League~~ Cal Cities President no later than twenty-four hours prior to the time set for convening ~~the League's~~Cal Cities' General Assembly.

(e) Parliamentarian Review. If the ~~League~~ Cal Cities President finds that the petition has been signed by designated voting delegates of ten percent of the number of Member Cities, the petition shall be reviewed by the Parliamentarian for form and substance. The Parliamentarian's report shall then be presented to the chair of the Resolutions Committee. Among the issues that may be addressed by the Parliamentarian's report is whether the resolution should be disqualified as being either:

(i) Non-germane to city issues; or

(ii) Identical or substantially similar in substance to a resolution already under consideration.

(f) Disqualification. The Resolutions Committee may disqualify a P~~p~~etitioned R~~r~~esolution as either being:

(i) Non-germane to city issues; or

(ii) Identical or substantially similar in substance to a resolution already under consideration.

(g) Consideration by General Assembly. The P~~p~~etitioned R~~r~~esolution and the action of the Resolutions Committee will be considered by ~~the League's~~Cal Cities' General Assembly following consideration of other resolutions.

(h) Availability of List of Voting Delegates. A list of voting delegates shall be made available during the Annual Conference to any designated voting delegate upon request.

Section 6: Special Meeting Resolution Procedures.

(a) Germane-ness. All resolutions must be germane to the meeting purpose specified in the special meeting notice.

(b) Opportunity for Member Review. All resolutions to be proposed during the General Assembly shall be available for membership review by electronic (for example, by posting on the Cal Cities~~League's~~ website) or other means at least 24 hours prior to the beginning of the special meeting.

(c) Parliamentarian Review. The Parliamentarian shall review all proposed resolutions for form and substance. The Parliamentarian's report shall be presented to the General Assembly.

Section 7: Full Debate.

The opportunity for full and free debate on each resolution brought before the General Assembly shall occur prior to consideration of a resolution.

Article VII: Board of Directors

Section 1: Role and Powers; Board Diversity Policy.

(a) Subject to the provisions and limitations of California Nonprofit Corporation Law, any other applicable laws, and the provisions of these bylaws, Cal Cities' ~~the League's~~ activities and affairs are exercised by or under the direction of the ~~League's~~Cal Cities Board of Directors. The ~~League~~ Cal Cities Board is responsible for the overall supervision, control and direction of Cal Cities~~the League~~. The ~~League~~ Cal Cities Board may delegate the management of ~~the League's~~Cal Cities' affairs to any person or group, including a committee, provided the ~~League~~ Cal Cities Board retains ultimate responsibility for the actions of such person or group.

(b) The goal of ~~the League~~Cal Cities is to ensure that the Board of Directors reflects the diverse ethnic and social fabric of California. As such, each Division, Department, Caucus, and Policy Committee should encourage and support members of every race, ethnicity, gender, age, sexual orientation and heritage to seek leadership positions within Cal Cities~~the League~~, with the ultimate goal of achieving membership on the Board of Directors.

Section 2: Composition.

~~The League's~~The Cal Cities Board is composed of the following:

(a) A President, First Vice-President and Second Vice-President/Treasurer, who each serve a term of one year;

(b) The Immediate Past President who serves for a term of one year, immediately succeeding his or her term as President;

(c) Twelve Directors-at-Large,

(i) Who serve staggered two-year terms, and

(ii) At least one of whom is a representative of a small city with a population of 10,000 or less;

(d) One Director to be elected from each of the regional divisions, ~~and~~ functional departments, and caucuses of Cal Cities~~the League~~, each of whom serves for a term of two years; and

~~(e) Members of the National League of Cities Board of Directors who hold an office in a Member City; and~~

~~(f)~~(e) Ten Directors that may be designated by the mayors of each of the ten largest cities in California to serve two-year terms.

~~(g)~~(f) For purposes of this section, the population of each city is the most current population as determined by the California Department of Finance, Demographic Research Unit, or its successor agency or unit. If no successor agency or unit is named, the most current population used to determine these dues shall be used to determine future dues until such time as these bylaws are amended to designate a new source for determining city population.

~~(h)~~(g) Directors hold office until their successors are elected and qualified~~, or, if they sit on the Cal Cities League Board by virtue of their membership on the National League of Cities Board of Directors, until their terms on the National League of Cities Board of Directors conclude~~.

Section 3: Staggered Terms.

The terms of the Directors are staggered, so that the terms of approximately one-half of the members of the ~~League~~ Cal Cities Board expire each year.

(a) Even-Numbered Year Terms. The following directorship terms expire in even-numbered years:

(i) Departments. Directors from the Fiscal Officers, Public Works Officers, Mayors and Council Members, Planning and Community Development, Fire Chiefs, and City Clerks departments;

(ii) Divisions. Directors from the Central Valley, Desert-Mountain, Imperial County, Monterey Bay, North Bay, Orange County, Redwood Empire, Sacramento Valley and San Diego County divisions; ~~and~~

(iii) **Caucuses.** Directors from the African American, Asian Pacific Islander, and LGBTQ caucuses; and

(iv~~ii~~) At Large. Directors from five of the ten at-large directorships.

(b) Odd-Numbered Year Terms. The following directorships expire in odd-numbered years:

(i) Departments. Directors from the City Attorneys, City Managers, Police Chiefs, Recreation, Parks and Community Services, and Personnel and Employee Relations departments;

(ii) Divisions. Directors from the Channel Counties, Inland Empire, East Bay, Los Angeles County, Peninsula, Riverside County and South San Joaquin Valley divisions; ~~and~~

(iii) **Caucuses.** Directors from the Latino and Women's caucuses; and

(iv~~ii~~) At Large. Directors from five of the ten at-large directorships.

Section 4: Election of Directors.

(a) Functional Department Directors. Unless their respective functional department bylaws provide otherwise, Departmental Directors are elected by their respective departments at the Annual Conference.

(b) Regional Division Directors. Unless their respective regional division bylaws provide otherwise, Regional Directors are elected at the regional division meeting immediately preceding the Annual Conference.

~~(b)~~(c) Caucus Directors. The caucus presidents shall serve, or may appoint a member of their respective caucuses to serve, as the initial Caucus Directors for their respective caucuses. Thereafter, unless their respective caucus bylaws provide otherwise, Caucus Directors shall be elected by their respective caucuses at the Annual Conference.

~~(c)~~(d) At-Large Directors. Directors-at-Large are elected by the ~~League~~ Cal Cities Board at its organizational meeting.

~~(d)~~(e) Commencement of Terms. The term of office of all newly elected Directors commences immediately on the adjournment of the Annual Conference; however, the newly constituted ~~League~~ Cal Cities Board may meet prior to the adjournment of the Annual Conference for the purpose of organization.

~~(e)~~(f) Additional Directors. In the event of the creation of additional regional divisions, ~~or~~ functional departments, or caucuses of Cal Cities ~~the League~~, each regional division, ~~or~~ functional department, or caucus may elect a representative to the ~~League~~ Cal Cities Board. When a new functional department, ~~or~~ regional division, or caucus is created at any Annual Conference, the ~~League~~ Cal Cities Board may select a Director to represent

such functional department, ~~or~~ regional division, or caucus until the entity organizes and elects a Director in the regular manner. The ~~League~~ Cal Cities Board may fix the initial term of any such Director from a new regional division, ~~or~~ functional department, or caucus at either one or two years, so as to keep the number of terms expiring on alternate years as nearly equal as possible.

Section 5: Nomination Process.

(a) Timing. The ~~League~~ Cal Cities President, with the concurrence of the ~~League~~ Cal Cities Board, shall establish a nominating committee at the first Board meeting of the calendar year in which the election is to occur.

(b) Composition. The nominating committee shall be comprised of eleven Board members. Two nominating committee members shall be At-Large Directors and one shall represent a functional department. Regional divisions shall be represented on the nominating committee on the following rotating basis:

(i) Even-Numbered Years: In even-numbered years, the Central Valley, Imperial County, Monterey Bay, North Bay, Orange County, Redwood Empire, Sacramento Valley and San Diego County Regional Divisions shall be represented on the nominating committee.

(ii) Odd-Numbered Years: In odd-numbered years, the Channel Counties, Inland Empire, Desert-Mountain, East Bay, Los Angeles County, Peninsula, Riverside County, and South San Joaquin Regional Divisions shall be represented on the nominating committee.

(c) Nominating Committee Chair. The ~~League~~ Cal Cities President shall appoint the chair of the nominating committee.

(d) Candidates for Positions Ineligible. Candidates for officer and at-large positions on the ~~League~~ Cal Cities Board are not eligible to serve on the nominating committee. In the event a regional division representative on the nominating committee wishes to be a candidate for an officer or at-large position, the ~~League~~ Cal Cities President will appoint a substitute nominating committee member from the same regional division, if available. If one is not available, the President shall appoint a substitute from a nearby regional division.

(e) Duties. The duties of the nominating committee are to:

(i) Member Outreach. Publicize the qualifications for the offices of Second Vice President/Treasurer and the at-large members of the ~~League~~ Cal Cities Board to Cal Cities' ~~the League's~~ Member Cities;

(ii) At-Large and Second Vice President Recommendations. Make recommendations to the ~~League~~ Cal Cities Board on the following year's ~~League~~ Cal Cities officers and at-large board members; and

(iii) President and First Vice President Recommendation. Recommend whether the previous year's First Vice President becomes President and the previous year's Second Vice President/Treasurer becomes First Vice President.

(f) Notice to Members. An explanation of the nomination process and relevant deadlines for submitting nominations to the nominating committee shall be publicized in ~~League~~ Cal Cities publications and communications throughout the year, along with the identity of nominating committee members once such members are appointed. In addition, the nominating committee shall inform the membership of the opening of the nominations for the following year when it makes its report to the general membership as provided in Article VI, Section 5(g) below.

(g) Decision and Report. The nominating committee's recommendations shall be communicated to the ~~League~~ Cal Cities Board not later than 30 days prior to the date of Cal Cities' ~~the League's~~ Annual Conference and again at the Annual Conference. In addition, the nominating committee shall make its report to the membership at the opening general session of the Annual Conference.

(h) Election. The election of ~~League~~ Cal Cities Board officers and Directors-at-Large shall occur at a ~~League~~ Cal Cities Board meeting at the Annual Conference as provided in Article VII, Section 4(c) and Article VII, section 3.

Section 6: Vacancies.

(a) Functional Departmental Directorships. In the event of a vacancy in a functional departmental directorship, the president of the department may become a member of the ~~League~~ Cal Cities Board or may appoint a member of his or her department to fill the vacancy.

(b) Regional Division Directorships. If a vacancy occurs in the regional division directorship, the regional division in question may elect a new Director at the next regular meeting of the regional division.

~~(b)~~**(c) Caucus Directorships.** If a vacancy occurs in a caucus directorship, the caucus officers may elect a new Director.

~~(c)~~**(d) At-Large Directorships.** If a vacancy occurs in an at-large directorship, the ~~League~~ Cal Cities Board may elect a new Director to fill the vacancy at

the next regular board meeting. The ~~League~~ Cal Cities president may nominate individuals for consideration by the ~~League~~ Cal Cities Board.

~~(d)~~(e) **Large City Directorships.** In the event of a vacancy in a large-city seat, that large city may designate a new representative.

~~(e)~~(f) **Terms.** The person elected or appointed to fill a vacancy holds office for the remainder of the term of the office in question (see Article VII, section 3).

~~(f)~~(g) **Grounds for Vacancy.** A vacancy in a directorship shall occur due to resignation, a vacancy in elective or appointed office held by the director, or if the ~~League~~ Cal Cities Board determines the department, ~~or~~ division, or caucus that elected the director, or an appointed director, is not complying with these bylaws or the policies of the ~~League~~ Cal Cities Board.

Section 7: Resignation.

Any Director resignation is effective upon receipt in writing by the ~~League's~~ Cal Cities President or Executive Director, unless a later date is specified in the letter.

Section 8: Meetings and Meeting Notice.

(a) Regularly Scheduled Board Meetings. The ~~League~~ Cal Cities Board shall meet no fewer than four times a year. Notice of regularly scheduled Board meetings shall be mailed to each Director at least 14 days before any such meeting.

(b) Emergency Board Meetings. A good faith effort shall be made to provide notice of any emergency board meetings (for example, by first-class mail, personal or telephone notification, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means).

(c) Telephonic or Electronic Participation. Members of the ~~League~~ Cal Cities Board may participate in any meeting through the use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Participation in a meeting by this means constitutes presence in person at such meeting.

(d) Notice Content. All meeting notices shall include the meeting date, place, time, and, as applicable, the means by which a ~~League~~ Cal Cities Board member may participate electronically.

Section 9: Policies.

The ~~League~~ Cal Cities Board may adopt such policies for its government as it deems necessary and which are not inconsistent with these bylaws. In the event of an inconsistency, these bylaws shall prevail.

Section 10: Committees.

(a) General. The ~~League~~ Cal Cities Board may establish committees to study city problems, advise on ~~League~~ Cal Cities educational efforts, make recommendations with respect to ~~League~~ Cal Cities advocacy efforts, or to engage in other appropriate Cal Cities ~~League~~ service.

(b) Executive Committee.

(i) Composition. The Executive Committee of the ~~League~~ Cal Cities Board consists of the following: the ~~League's~~ Cal Cities President, First Vice-President, Second Vice-President/Treasurer, Immediate Past President and Executive Director.

(ii) Authority. The Executive Committee has authority to act for the ~~League~~ Cal Cities Board between Board meetings, provided that no action of the Executive Committee is binding on the ~~League~~ Cal Cities Board unless authorized or approved by the Board.

(c) Standing Policy Committees.

(i) Charge. Cal Cities~~The League~~ shall have a series of standing policy committees, whose charge shall be to make recommendations to the ~~League~~ Cal Cities Board on matters within the committees' jurisdiction, as well as fulfill other duties specified in these bylaws (see, for example, Article VI, section 4(b)).

(ii) Membership. Each ~~League~~ Cal Cities Policy Committee shall be comprised of the following:

- Two members appointed by each regional division president;
- One member appointed by each functional department president;
- One member appointed by each caucus president;
- No more than 16 members appointed by the ~~League~~ Cal Cities P~~p~~resident, to provide population and geographic balance, as well as expertise; and

- Such representatives of affiliate organizations in the capacity authorized by the ~~League~~ Cal Cities Board.

(iii) Feedback. Policy committees shall receive information on actions taken on committee recommendations and the reasons for those actions.

(d) Committee Chairs and Vice Chairs. The ~~League~~ Cal Cities President appoints the chair of all ~~League~~Cal-Cities-wide committees. The term of such appointments coincides with the ~~League~~ Cal Cities President's term. The ~~League~~ Cal Cities President may appoint vice chairs for such committees, as the ~~League~~ Cal Cities President deems necessary.

Section 11: Compensation.

The Directors do not receive any compensation for their services, but, with ~~League~~ Cal Cities Board approval, may be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties.

Section 12: Reports of Directors.

The ~~League~~ Cal Cities Board's duties include providing an annual report to ~~League~~ Cal Cities members at the regular Annual Conference showing ~~the League's~~Cal Cities work, ~~the League's~~ Cal Cities financial condition, and a statement with respect to ~~the League's~~Cal Cities' plans for further work and proposed policies.

Section 13: Standard of Care.[4]

(a) General. A Director shall perform the Director's duties, including duties on any committee on which the Director serves, in good faith, in a manner the Director believes to be in the best interests of ~~the League~~Cal Cities and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

(b) Reliance on Information. In performing the Director's duties, the Director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by:

(i) One or more ~~League~~ Cal Cities officers or employees whom the Director believes to be reliable and competent as to the matters presented;

[4] *See* Cal. Corp. Code § 7231 (providing that a director who performs the director's duties according to these standards is not liable for any alleged failure to properly discharge the individual's obligations as a director).

(ii) Counsel, independent accountants, or other persons as to matters which the Director believes to be within such person's professional or expert competence; or

(iii) A ~~League~~ Cal Cities Board committee upon which the Director does not serve, as to matters within the committee's designated authority, provided that the Director believes the committee merits confidence.

The Director may rely on such information, opinions, reports, or statements as long as the Director acts in good faith after reasonable inquiry (when the need for such inquiry is indicated by the circumstances) and as long as the Director has no knowledge that would suggest that such reliance is unwarranted.

(c) Non-Liability. An individual who performs the duties of a Director in accordance with this section will not be liable for any failure or alleged failure to discharge that person's obligations as a Director, including, without limiting the generality of the preceding, any actions or omissions which are inconsistent with ~~the League's~~Cal Cities' nonprofit purposes.

Section 14: Right to Inspect Records.

Every Director has a right at any reasonable time to inspect and copy all ~~League~~ Cal Cities books, records and documents of every kind and to inspect ~~the League's~~Cal Cities' physical property.[5]

Section 15: Policy Changes.

Any policy established by ~~the League's~~Cal Cities' General Assembly may be changed by the ~~League's~~ Cal Cities Board upon ratification of such proposed change by a majority of the regional divisions representing a majority of Member Cities within the time period specified by the ~~League~~ Cal Cities Board.

Section 16: Positions on Statewide Ballot Measures.

Notwithstanding any other provision of these bylaws, the ~~League~~ Cal Cities Board may take a position on a statewide ballot measure by a 2/3rd vote of those Directors present.

Section 17: Non-Voting Advisor to the Board.

Effective December 1, 2022, if members of the National League of Cities Board of Directors hold an office in a Member City, no more than one such member shall be appointed by the Cal Cities President to serve as a non-voting advisor to the Cal Cities Board, for a term that coincides with their term on the National League of Cities Board

[5] *See* Cal. Corp. Code § 833~~43~~ (characterizing this right as absolute).

of Directors. Any such non-voting advisor shall be invited to attend all regularly-scheduled Board meetings. The non-voting advisor shall not attend emergency Board meetings and/or closed/executive sessions of the Board unless a determination is made by the Board to include the non-voting advisor in a particular emergency Board meeting and/or closed/executive session.

Article VIII: Officers

Section 1: Identity.

The officers of ~~the League~~ Cal Cities are a President, a First Vice-President, a Second Vice-President/Treasurer, an Immediate Past President, and an Executive Director.

Section 2: Duties of ~~League~~ Cal Cities Officers.

(a) President. The President presides at all ~~League~~ Cal Cities Board meetings and all General Assemblies. The President has such other powers and duties as may be prescribed by these bylaws or the ~~League~~ Cal Cities Board.

(b) First Vice-President. The First Vice-President carries on the duties of the President in the President's temporary absence or incapacity. The First Vice-President has such other powers and duties as may be prescribed by these bylaws or the ~~League~~ Cal Cities Board.

(c) Second Vice-President/Treasurer. The Second Vice-President/Treasurer carries on the duties of the President in the President's and First Vice-President's temporary absence or incapacity. The Second Vice-President/Treasurer has such other powers and duties as may be prescribed by these bylaws or the ~~League~~ Cal Cities Board.

Section 3: Election.

The ~~League~~ Cal Cities Board elects the ~~League's~~ Cal Cities President, First Vice-President and Second Vice-President for terms of one year.[6] The election occurs at the ~~League~~ Cal Cities Board's meeting at the Annual Conference.

Section 4: Vacancies.

A vacancy in the office of President is filled by the Immediate Past President who shall serve for the unexpired term of office and, upon election of a new President at the next Annual Conference, shall subsequently serve a full term as Immediate Past President. In the event the Immediate Past President is not available to fill the vacancy in the office of the President, or declines in writing, it shall be filled by the succession of the First

[6] *See* Cal. Corp. Code § 7151(c)(5) (suggesting bylaws address this issue).

Vice-President to that office. A vacancy in the office of First Vice-President, or Second Vice-President/Treasurer, is filled for the un-expired term by appointment by the ~~League~~ Cal Cities Board of a member of the ~~League~~ Cal Cities Board. A vacancy in the office of the Immediate Past President is filled for the un-expired term by the last Past President continuing to hold a city office.

Section 5: Executive Director and ~~League~~ Cal Cities Employees.

(a) Employment. The ~~League~~ Cal Cities Board selects an Executive Director who employs, or causes to be employed, such other persons as may be necessary who need not be ~~League~~ Cal Cities members. The Executive Director and employees perform such duties and receive such compensation as the ~~League~~ Cal Cities Board may from time to time prescribe.

(b) Specific Duties. The Executive Director performs or causes to be performed the following functions:

(1) Corporate Secretary. These duties include:

(i) Keeping a full and complete record of the proceedings of the ~~League~~ Cal Cities Board;

(ii) Giving such notices as may be proper and necessary;

(iii) Keeping minute books for Cal Cities~~the League~~;

(iv) Communicating the ~~League~~ Cal Cities Board's actions to Member Cities;

(v) Executing such instruments necessary to carry out Board directives and policies; and

(vi) Complying with other record-keeping and reporting requirements of California Nonprofit Corporation Law.

(2) Chief Financial Officer. These duties include:

(i) Having charge of and custody of and receiving, safeguarding, disbursing and accounting for all ~~League~~ Cal Cities funds;

(ii) Depositing and investing such funds in such institutions and investments as approved by the ~~League~~ Cal Cities Board;

(iii) Maintaining ~~the League's~~Cal Cities' financial books and records; and

(iv) Preparing and submitting such accounting and tax forms as may be required by local, state and federal law.

(c) Insurance. All employees handling the finances of Cal Cities ~~the League~~ shall be insured in such amount as the ~~League~~ Cal Cities Board deems desirable or necessary, such insurance to be approved by the ~~League~~ Cal Cities Board or a committee designated by the ~~League~~ Cal Cities Board and the premiums paid by Cal Cities~~the League~~.

Article IX: Regional Divisions

Section 1: Listing.

(a) Existing Regional Divisions. Cal Cities ~~The League~~ is comprised of the following regional divisions:

Central Valley	North Bay
Channel Counties	Orange County
Desert-Mountain	Peninsula
East Bay	Redwood Empire
Imperial County	Riverside County
Inland Empire	Sacramento Valley
Los Angeles County	San Diego County
Monterey Bay	South San Joaquin Valley

(b) New Divisions. Additional divisions may be formed through an amendment to these bylaws (Article XVI).

Section 2: Purposes and Functions.

The purposes and functions of regional divisions of Cal Cities ~~the League~~ are as follows:

(a) To promote interest in the problems of city government and administration among city officials within such divisions.

(b) To assist ~~League~~ Cal Cities officials in formulating policies by expressing, through resolutions duly adopted, the recommendations of the regional divisions. Resolutions adopted by regional divisions to be considered at the Annual Conference shall be submitted in the manner provided by Article VI.

(c) To take action consistent with general ~~League~~ Cal Cities policy as duly adopted by Cal Cities' ~~the League's~~ General Assembly or by the ~~League's~~ Cal Cities Board. Regional divisions may take no action in conflict with such policies. Nothing in the foregoing limits or restricts regional division activities in matters of purely local interest and concern.

(d) To meet not less than once every three months, provided that ~~the League~~Cal Cities' Annual Conference may be considered one such meeting of a regional division.

Section 3: Names of Divisions.

Each regional division will identify itself as a division of the League of California Cities.

Section 4: Boundaries.

The territorial boundaries of each regional division may be fixed by each division subject to the approval of ~~the League's~~Cal Cities' General Assembly.

Section 5. Membership.

All cities within the boundaries of a regional division may become members of and participate in the activities of that division. A city may join a different regional division with the approval of both the existing and proposed division, and the ~~League's~~ Cal Cities Board of Directors.

Section 6: Voting.

Unless otherwise provided in a regional division's bylaws, the representatives of each Member City may cast collectively one vote on division matters, and a majority of the votes cast is necessary for a decision.

Section 7: Officers.

(a) Identity. Each regional division elects a President, a Vice-President, and a representative on the ~~League~~ Cal Cities Board of Directors, and such other officers as any regional division bylaws may establish.

(b) Election Timing. Each regional division elects its officers at the regional division meeting immediately preceding ~~the League's~~ Cal Cities' Annual Conference, unless another date is provided by any regional division's bylaws.

(c) Terms.

(i) Officers' Terms and Commencement Dates. Except as provided below, the term of office of all newly elected officers is one year, commencing immediately upon election unless another date is

provided by the regional division's bylaws.[7] A majority of the members may amend any regional division bylaws to provide for two-year terms for regional division officers.

(ii) Directors' Terms and Commencement Dates. The term of office and commencement date for regional division representatives on the ~~League~~ Cal Cities Board are established in Article VII, section 2(d) (term length) and 4(~~e~~d) (term commencement).

(d) Vacancies. In the event of a vacancy in any regional division office, such vacancy is filled by election at the next regular meeting of such division for the unexpired term of that office. The fact that such a vacancy will be so filled shall be included in the notice of such meeting. This requirement also applies to a vacancy in the office of regional division director, as provided in Article VII, section 6(b).

(e) Duties.

(i) President. The President presides at all regional division meetings and has such other powers and duties as may be prescribed by any division bylaws.

(ii) Vice-President. The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by any division bylaws.

(iii) Secretary. The Secretary a) immediately notifies ~~the League~~Cal Cities of any change in the regional division officers, b) records the minutes of all division meetings and sends one copy to ~~League~~ Cal Cities headquarters, and c) prepares and mails all notices of the meetings of the division and sends a copy to the ~~League~~ Cal Cities headquarters.

(iv) Director. The regional division Director shall represent the regional division on the ~~League~~ Cal Cities Board and shall keep the division membership apprised of ~~League~~ the Cal Cities Board's activities. The Director serves as a liaison between the regional division and the ~~League~~ Cal Cities Board.

[7] Note that this term commencement is different than that for the ~~League~~ Cal Cities board (whose terms commence upon adjournment of the Annual Conference) and than that for department officers (also upon adjournment of the Annual Conference).

Section 8: Resignation.

Except as provided in Article VII, section 7 for members of the ~~League~~ Cal Cities Board, a regional division officer's resignation is effective upon receipt in writing by the division's President or Secretary, unless a later date is specified in the letter.

Section 9: Regional Division Bylaws.

Regional divisions may adopt their own bylaws. Division bylaws may not conflict with ~~the League's~~ Cal Cities' bylaws. In the event of a conflict between a division's bylaws and ~~League~~ Cal Cities' bylaws, ~~the League's~~Cal Cities' bylaws will prevail; ~~the League's~~Cal Cities' bylaws also prevail when the division does not have bylaws or the division's bylaws are silent.

Article X: Functional Departments

Section 1: Listing.

(a) Existing Departments. ~~The League~~Cal Cities includes the following functional departments:

Mayors and Council Members	Police Chiefs
City Attorneys	Fire Chiefs
Fiscal Officers	Community Services
Public Works Officers	City Clerks
City Managers	Personnel and Employee Relations
Planning and Community Development	

(b) New Departments. Additional functional departments may be formed through an amendment to these bylaws (Article XVI).

Section 2: Officers.

(a) Identity. Each functional department elects a President, a Vice-President, a representative on the Board, and such other officers as the department's bylaws may establish.

(b) Election Timing. Each functional department elects its officers at the department's business session at ~~the League's~~Cal Cities' Annual Conference, unless the department's bylaws provide otherwise.

(c) Terms. The term of office for functional department officers is one year, commencing immediately upon the adjournment of the Annual Conference. The exception is the functional department representatives of the ~~League~~ Cal Cities Board, whose term is two years as established in Article VII, section 2(d).

(d) Vacancies. A vacancy in the office of President is filled for the unexpired term by the succession of the Vice-President. A vacancy in the office of the Vice-President or any other office of the functional department is filled by appointment by the department President for the unexpired term. The person so appointed shall be a member of such department. A vacancy in the office of department Ddirector is filled as provided in Article VII, section 6(a) for the unexpired term.

(e) Duties.

(i) President. The President presides at functional department meetings and has such other powers and duties as may be prescribed by any department bylaws.

(ii) Vice-President. The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by any department bylaws.

(iii) Director. The department Director shall represent the functional department on the ~~League~~ Cal Cities Board and shall keep the department membership apprised of ~~League~~ the Cal Cities Board's activities. The Director serves as a liaison between the department and the ~~League~~ Cal Cities Board.

(f) Resignation. Except as provided in Article VII, section 7 for members of the ~~League~~ Cal Cities Board, a functional department officer's resignation is effective upon receipt in writing by the department's President or Vice-President, unless a later date is specified in the letter.

Section 3: Voting.

Except as otherwise provided in a functional department's bylaws, the representatives of each Member City may cast collectively one vote on functional department matters. A majority of the votes cast is necessary for a decision.

Section 4: Department Meetings.

Functional departments meet at the Annual Conference and at other times and places as they find necessary.

Section 5: Department Bylaws.

Functional departments may adopt their own bylaws. Such bylaws may not conflict with ~~the League's~~ Cal Cities' bylaws. In the event of a conflict between a department's

bylaws and ~~League~~ Cal Cities' bylaws, Cal Cities' ~~the League's~~ bylaws will prevail; Cal Cities' ~~the League's~~ bylaws also prevail when the department does not have bylaws or the department's bylaws are silent.

Article XI: Caucuses

Section 1: Listing.

(a) Existing Caucuses. Cal Cities includes the following caucuses:

African American Caucus
Asian Pacific Islander Caucus
Lesbian Gay Bisexual Transgender Queer (LGBTQ) Caucus
Latino Caucus
Women's Caucus

(b) New Caucuses. Additional caucuses may be formed through an amendment to these bylaws (Article XVI).

Section 2: Purposes and Functions.

The purposes and functions of the caucuses are as follows:

(a) To promote within Cal Cities the active involvement and full participation of a wide spectrum of city officials reflecting the diversity of California's cities, so as to enhance responsive city government.

(b) To facilitate the sharing of information between city officials who share characteristics such as nationality, race, ethnicity, gender, sexual orientation, age, or religion, and to provide educational and leadership development opportunities to such city officials.

(c) To promote interest in, and advocate for, issues relating to city government and administration that are of concern to caucus members to enhance the quality of life for their diverse constituencies.

(d) To assist Cal Cities officials in formulating policies by expressing, through resolutions duly adopted, the recommendations of the caucuses. Resolutions adopted by caucuses to be considered at the Annual Conference shall be submitted in the manner provided by Article VI.

(e) To take action consistent with general Cal Cities policy as duly adopted by Cal Cities' General Assembly or by the Cal Cities Board. Caucuses may take no action in conflict with such policies.

(f) To meet at the Annual Conference and at other times and places as they find necessary.

Section 3: Names of Caucuses.

Each caucus will identify itself as a caucus of the League of California Cities.

Section 4: Membership.

All elected and appointed officials in Member Cities may apply to become members of a caucus in accordance with such caucus's bylaws or procedures.

Section 5: Voting.

Unless otherwise provided in caucus bylaws, each caucus member may cast one vote on caucus matters, and a majority of the votes cast is necessary for a decision.

Section 6: Officers.

(a) Identity. Each caucus elects a President, a Vice-President, and a representative on the Cal Cities Board of Directors, and such other officers as caucus bylaws may establish.

(b) Election Timing. Each caucus elects its officers at the caucus meeting at the Cal Cities Annual Conference, unless another date is provided by caucus bylaws.

(c) Terms.

(i) Officers' Terms and Commencement Dates. Except as provided below, the term of office of all newly elected officers is one year, commencing immediately upon election, unless another term length or commencement date is provided by caucus bylaws.[8]

(ii) Directors' Terms and Commencement Dates. The term of office and commencement date for caucus representatives on the Cal Cities Board are established in Article VII, section 2(d) (term length) and 4(c) (term commencement).

(d) Vacancies. Unless otherwise provided in caucus bylaws, a vacancy in the office of President is filled for the unexpired term by the succession of the Vice-President. A vacancy in the office of the Vice-President or any other

[8] Note that this term commencement is different than that for the Cal Cities board (whose terms commence upon adjournment of the Annual Conference) and than that for department officers (also upon adjournment of the Annual Conference).

office of the caucus is filled by appointment by the caucus President for the unexpired term. The person so appointed shall be a member of such caucus. A vacancy in the office of caucus Director is filled as provided in Article VII, section 6(c) for the unexpired term.

(e) Duties.

(i) President. The President presides at all caucus meetings and has such other powers and duties as may be prescribed by caucus bylaws.

(ii) Vice-President. The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by caucus bylaws.

(iii) Director. The caucus Director shall represent the caucus on the Cal Cities Board and shall keep the caucus membership apprised of the Cal Cities Board's activities. The Director serves as a liaison between the caucus and the Cal Cities Board.

Section 7: Resignation.

Except as provided in Article VII, section 7 for members of the Cal Cities Board, a caucus officer's resignation is effective upon receipt in writing by the caucus' ~~s~~ President, unless a later date is specified in the resignation letter or provided by caucus bylaws.

Section 8: Caucus Bylaws.

Caucuses may adopt their own bylaws. Such bylaws may not conflict with Cal Cities' bylaws. In the event of a conflict between a caucus's bylaws and Cal Cities' bylaws, Cal Cities' bylaws will prevail; Cal Cities' bylaws also prevail when the caucus does not have bylaws or the caucus's bylaws are silent.

Article XII: Voting

Section 1: Quorum.

(a) In General. A majority of the members of the ~~League's~~ Cal Cities Board, functional department, regional division, caucus, committee or other kind of subsidiary body constitutes a quorum for the purpose of making decisions.[9]

[9] *See* Cal. Corp. Code § 7211(a)(8) (noting that a board meeting may continue to transact business after a quorum is lost as long as items approved receive a majority of the quorum, unless a higher approval threshold exists for approval of a certain type of action).

(b) General Assembly. The presence, at the General Assembly, of credentialed voting delegates (or alternates) representing a majority of Member Cities, constitutes a quorum.[10]

(c) Failure to Achieve Quorum. In the event that a body other than the ~~League~~ Cal Cities Board of directors lacks a quorum, all votes taken by that body will be advisory to the ~~League~~ Cal Cities Board, which shall be advised that a quorum was not present. In the event that the ~~League's~~ Cal Cities Board is unable to achieve a quorum, the ~~League~~ Cal Cities Board will adjourn until such time as a quorum can be achieved.

Section 2: Voting Methods.

(a) General Assembly. All voting in meetings of the General Assembly of Cal Cities~~the League~~, its regional divisions, functional departments, caucuses, committees, and other kinds of subsidiary bodies is by voice vote.

(b) Alternative Methods. If the presiding official cannot determine the outcome of the voice vote or three or more Member Cities request, an alternative method of voting may be used. An alternative voting method may be by any means (show of hands, written ballot, display of voting cards, etc.) which allows the presiding official to accurately determine the outcome of the vote.

(c) Roll Call Vote. A roll call may be demanded by representatives of ten percent or more of the voting body.

(d) Voting Cards. A voting card will be issued to each Member City's designated voting delegate upon presentation of evidence of the delegate's designation by the Member City.

(e) Proxy Voting. Proxy voting is not allowed.

Section 3: Vote Threshold.

Except as otherwise provided in these bylaws (see, for example, Article XVI, section 2), a majority vote of approval of those voting is necessary for decision.

[10] *See* Cal. Corp. Code § 7512(c) (noting that a membership meeting may continue to transact business after a quorum is lost as long as items approved receive a majority of the quorum, unless a higher approval threshold exists for approval of a certain type of action—for example, bylaws approval).

Section 4: One City One Vote.

Except as otherwise provided in a functional department's, ~~or~~ a regional division's, or caucus's bylaws, the representative~~s~~ of each Member City present and in good standing collectively cast~~s~~ one vote. A majority of the votes cast is necessary for a decision.

Section 5: Mail Balloting.

In addition to voting at ~~League~~ Cal Cities meetings, Cal Cities~~the League~~ may solicit member input by mail ballot.

(a) Mailing.[11] The question(s) to be voted upon, along with explanatory materials and a ballot, shall be mailed by first class mail to each Member City for consideration and action.

(b) Time Frame for Action. Member Cities shall have at least 45 days to cast their vote. Ballots shall be cast by returning the Member City's ballot to Cal Cities' ~~the League's~~ principal office in Sacramento.

(c) Ballot Tabulation and Results Announcement. The ~~League~~ Cal Cities President will appoint a counting committee of three board members to count the votes cast by mail ballot. The counting committee will submit its count to the ~~League~~ Cal Cities Board, which shall canvass the vote and announce the results.

(d) Functional Departments, ~~and~~ Regional Divisions, and Caucuses. Departments, ~~and~~ divisions, and caucuses may also use mail balloting under procedures specified in their respective ~~department and division~~ bylaws.

Article XII~~I~~: Qualifications to Hold Office and Vacancies

Section 1: Eligibility to Hold Office.

(a) In General. Excepting the office of the Executive Director, no person shall be eligible to hold office in ~~the League~~Cal Cities or any ~~League~~ Cal Cities division, ~~or~~ department, or caucus unless the individual is officially in city service in a Member City at the time of the person's election or appointment. Regional division~~s~~, ~~and~~ functional department, and caucus bylaws may specify additional eligibility requirements for their respective officeholders.

[11] The Administrative Services Committee recommends ~~the League~~Cal Cities also include notice of the upcoming ballot in a variety of ~~League~~ Cal Cities communications to alert Member Cities to make inquiry in the event a city's ballot is lost in the mail.

(b) Length of Service. An individual who has occupied an elected ~~League~~ Cal Cities Board office (as defined in Article VIII, section 1) for nine months (275 days) or more is ineligible to stand for election for that same office again.

Section 2: Vacancies.

(a) Vacancy Defined. A ~~League~~ Cal Cities office becomes vacant when an individual resigns, misses three consecutive convened meetings or leaves city service.[12]

(b) Effective Date of Vacancy Caused by Leaving City Service. The effective date of a vacancy caused by a departure from city service is the date an individual ceases to occupy the same or comparable city office as the individual had when the individual was elected or appointed to ~~League~~ the Cal Cities office. Upon written request of the individual, the ~~League~~ Cal Cities Board may allow the individual to continue in the ~~League~~ Cal Cities office for a period not to exceed 3 months from the effective date of the vacancy, which time period may be extended by the Board upon finding of good cause.

(c) Effective Date of Resignations. For the effective dates of resignations, see Article VII, section 7 (effective date of ~~League~~ Cal Cities Board resignations), Article IX, section 8 (effective date of regional division officer resignations), ~~and~~ Article X, section 2(f) (effective date of department officer resignations), and Article XI, section 7~~8~~ (effective date of caucus officer resignations).

(d) Filling Vacancies. Vacancies will be filled as provided in these bylaws; see Article VII, section 6 (filling ~~League~~ Cal Cities Board vacancies), Article IX, section 7(d) (filling regional division officer vacancies), ~~and~~ Article X, section 2(d) (filling functional department officer vacancies), and Article XI, section 6~~7~~(d~~i~~) (filling caucus officer vacancies).

(e) Successor Terms. An individual filling a vacancy serves the unexpired term of his or her predecessor.

Article XI~~V~~~~II~~: Finances

Section 1: Fiscal Year.

The fiscal year of ~~the League~~ Cal Cities is the calendar year.

[12] *See also* Cal. Corp. Code § 7221 (board may declare a director's seat vacant if a court declares the director of unsound mind or the director has been convicted of a felony).

Section 2: Budget.

(a) Preparation and Approval. Not less than fifteen days prior to the budget meeting of the ~~League~~ Cal Cities Board, the Executive Director shall distribute to the Board a detailed budget describing the estimated revenues and expenditures for the ensuing budgetary period for the Cal Cities ~~League~~ Board's consideration and approval.

(b) Dissemination. Upon approval, a copy of ~~the League's~~ Cal Cities' budget shall be sent to each regional division, ~~and~~ functional department ~~president~~, and caucus president, who shall make it available to division, ~~and~~ department, and caucus members.

Section 3: Limitation of Expenditures.

The ~~League~~ Cal Cities Board may not incur indebtedness in excess of the estimated or actual revenues for the ensuing fiscal year, without the approval of ~~the League's~~Cal Cities' General Assembly.

Section 4: Annual Audit.

~~The League's~~Cal Cities' accounts shall be audited by a certified public accountant after the close of each fiscal year.

Section 5: Special Assessment for ~~League~~ Cal Cities Building.

By resolution approved by a majority of those cities present and voting thereon at an Annual Conference, a special assessment may be levied for a permanent headquarters office building in Sacramento as specified in the resolution.

Article X~~I~~V: Prohibited Transactions

Section 1: Conflicts of Interest.

General Principle. Members of the ~~League~~ Cal Cities Board as well as members of ~~League~~ Cal Cities policy committees, and members of any standing or ad hoc committees and task forces consisting of members of the ~~League~~ Cal Cities Board or ~~League~~ Cal Cities policy committees, are expected to make decisions in the best overall interests of cities statewide, as opposed to narrow parochial, personal, or financial interests. This is analogous to city officials being expected to make decisions in the best overall interests of the community as opposed to narrow private or self-interests.

Section 2: Loans.

Except as permitted by California Nonprofit Corporation Law,[13] ~~the League~~Cal Cities may not make any loan of money or property to, or guarantee the obligation of, any director or officer. This prohibition does not prohibit ~~the League~~Cal Cities from advancing funds to a ~~League~~ Cal Cities director or officer for expenses reasonably anticipated to be incurred in performance of their duties as an officer or director, so long as such individual would be entitled to be reimbursed for such expenses under ~~League~~ Cal Cities Board policies absent that advance.

Section 3: Self-Dealing and Common Directorship Transactions.[14]

(a) Self-Dealing Transactions. A self-dealing transaction is a transaction to which ~~the League~~Cal Cities is a party and in which one or more of its directors has a material financial interest.

(b) Common Directorships. "Common directorships" occur when ~~the League~~Cal Cities enters into a transaction with an organization in which one of ~~the League~~Cal Cities' directors also serves on the organization's board.

(c) Pre-Transaction Approval. To approve a transaction involving either self-dealing or a common directorship, the ~~League~~ Cal Cities Board shall determine, before the transaction, that

(i) Cal Cities~~The League~~ is entering into the transaction for its own benefit;

(ii) The transaction is fair and reasonable to ~~the League~~Cal Cities at the time; and

(iii) After reasonable investigation, the ~~League~~ Cal Cities Board determines that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

Such determinations shall be made by the ~~League~~ Cal Cities Board in good faith, with knowledge of the material facts concerning the transaction and the director's interest in the transaction, without counting the vote of the interested director or directors.

(d) Post-Transaction Approval. When it is not reasonably practicable to obtain Board approval before entering into such transactions, a Board committee may approve such transaction in a manner consistent with the requirements

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[13] *See* Cal. Corp. § 7235.

[14] *See generally* Cal. Corp. Code § 7233. Note that interested or common directors may be counted in determining the existence of a quorum in a board or committee meeting that approves such transactions. See Cal. Corp. Code § 7234.

in the preceding paragraph, provided that, at its next meeting, the full Board determines in good faith that the ~~League~~ Cal Cities Board committee's approval of the transaction was consistent with such requirements and that it was not reasonably practical to obtain advance approval by the full Board, and ratifies the transaction by a majority of the directors then in office without the vote of any interested director.[15]

Section 4: Ethical Considerations.

These restrictions, of course, represent the floor, not the ceiling, for ethical conduct as a ~~League~~ Cal Cities board member or policy committee member. If a board member or policy committee member believes that there are circumstances under which ~~the League's~~ Cal Cities' members might reasonably question the board member's or policy committee member's ability to act solely in the best interests of Cal Cities ~~the League~~ and its member cities, the prudent course is to abstain. As an example, typically ~~League~~ Cal Cities board members have abstained from participating in decisions on legislation that would affect organizations for which they work. Another example is legislation that would uniquely benefit a board member's city. Policy committee members should also consider abstaining in similar circumstances.

Article XVI: Miscellaneous

Section 1: Indemnification.

(a) Indemnity Authorized. To the extent allowed by California Nonprofit Corporation Law,[16] ~~the League~~Cal Cities may indemnify and advance expenses to its agents in connection with any proceeding, and in accordance with that law. For purposes of this section, "agent" includes directors, officers, employees, other ~~League~~ Cal Cities agents, and persons formerly occupying these positions.

(b) Approval of Indemnity. An individual seeking indemnification shall make a written request to the ~~League~~ Cal Cities Board in each case.

(i) Success on the Merits. To the extent that the individual has been successful on the merits, the ~~League~~ Cal Cities Board will promptly authorize indemnification in accordance with California Nonprofit Corporation Law.[17]

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[15] *See* Cal. Corp. Code § 7233 (specifying under what circumstances a self-dealing transaction is void or voidable).

[16] *See* Cal. Corp. Code § 7237.

[17] *See* Cal. Corp. Code § 7237(d).

(ii) Other Instances. Otherwise, the ~~League~~ Cal Cities Board shall promptly determine, by a vote of a majority of a quorum consisting of directors who are not parties to the proceeding, whether, in the specific case, the agent has met the applicable standard of conduct under California law,[18] and, if so, will authorize indemnification to the extent permitted.

(c) Advancing Expenses. To the extent allowed under California Nonprofit Corporation Law,[19] the ~~League~~ Cal Cities Board may authorize an advance of expenses incurred by or on behalf of an agent of this corporation in defending any proceeding prior to final disposition. The ~~League~~ Cal Cities Board shall find that:

(i) the requested advances are reasonable; and

(ii) before any advance is made, the agent will submit a written undertaking satisfactory to the ~~League~~ Cal Cities Board to repay the advance unless it is ultimately determined that the agent is entitled to indemnification for the expenses under this section.

Section 2: Insurance.[20]

The ~~League~~ Cal Cities Board may authorize the purchase of insurance on behalf of any agent against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, and such insurance may provide for coverage against liabilities beyond Cal Cities' ~~the League's corporation's~~ authority to indemnify an agent under law.

Section 3: Contracts and Execution of Instruments.

All contracts entered into on behalf of Cal Cities ~~the League~~ shall be authorized by the ~~League~~ Cal Cities Board, or by the person or persons upon whom the ~~League~~ Cal Cities Board confers such power from time to time. Except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of Cal Cities ~~the League~~ shall be signed by the persons authorized to do so by the Cal Cities ~~League~~ Board.

Section 4: Disposition of Assets Upon Dissolution.

~~The League's~~Cal Cities' properties and assets are irrevocably dedicated to the fulfillment of ~~the League's~~Cal Cities' purposes as described in Article II. No part of ~~the~~

[18] *See* Cal. Corp. Code § 7237(b) and (c) (with exceptions).

[19] *See* Cal. Corp. Code § 7237(~~f~~a).

[20] *See also* Cal. Corp. Code § 7237(i) (authorizing insurance).

Cal Cities' ~~League's~~ net earnings, properties and assets, on dissolution or otherwise, may inure to the benefit of any private person. On liquidation or dissolution, Cal Cities'~~the League's~~ net assets shall be distributed to ~~the League's~~ Cal Cities' Member Cities consistent with the provisions of the California Nonprofit Corporation Law relating to mutual benefit corporations then in effect.

Section 5: Parliamentary Authority.

Subject to the provisions of these bylaws and applicable law, Robert's Rules of Order or other such parliamentary rules as may be adopted by the ~~League~~ Cal Cities Board shall prevail at all meetings of ~~the League~~Cal Cities, the ~~League~~ Cal Cities Board, and in all functional departments, ~~and~~ regional divisions, and caucuses.

Section 6: Seal.

The ~~League~~ Cal Cities Board has provided a suitable seal for ~~the League~~ Cal Cities which is circular and which contains the following inscription:

"LEAGUE OF CALIFORNIA CITIES
INCORPORATED NOVEMBER 4, 1932, CALIFORNIA"

The seal may be affixed to corporate instruments, but any failure to affix it does not affect the instrument's validity.

Section 7: Governing Law.

In all matters not specified in these bylaws, or in the event these bylaws are inconsistent with applicable law, the provisions of California Nonprofit Corporation Law then in effect apply.

Section 8: Litigation Authority.

Member Cities authorize ~~the League~~Cal Cities to initiate or respond to litigation on their collective behalf when the ~~League~~ Cal Cities Board determines such litigation is necessary to protect Member Cities' shared vital interests.

Article XVII: Amendments

Section 1: Consideration.

These bylaws may be amended by ~~the League's~~Cal Cities' General Assembly (see Article XVII, section 5 for procedures) or by a mail ballot to Member Cities (see Article XII, section 5 for procedures).

Section 2: Vote Threshold.

A two-thirds vote of approval of those voting is necessary to amend these bylaws.

Section 3: Who May Propose.

Amendments may be proposed by the ~~League~~ Cal Cities Board or by petition of ten percent of Member Cities. The proponent may specify whether the amendment is to be considered at the General Assembly or by mail ballot.

Section 4: Board Review.

Any amendment proposed by petition shall be submitted to the ~~League~~ Cal Cities Board in writing for its review. The ~~League~~ Cal Cities Board's recommendation and reasons following its review shall accompany all materials relating to the proposed amendment.

Section 5: Procedure for Consideration by General Assembly.

(a) Notice. The meeting notice required by Article V, section 4 for ~~League~~ Cal Cities meetings shall include notice of any proposal to amend ~~the League's~~Cal Cities' bylaws, along with the subject of the proposed amendment(s).

(b) Consideration by General Assembly. The proposed amendment, along with any action by the ~~League~~ Cal Cities Board pursuant to section 4 of this Article, shall be considered by the General Assembly along with any resolutions presented pursuant to Article VI.

Section 6: Effective Date.

After approval, amendments go into effect after the expiration of the protest period (see Article XVI**I**, section 7) unless otherwise specified in the amendment.

Section 7: Protest and Suspension until Next Conference.

If, within sixty days after the adoption of any amendment, one-third or more of the Member Cities submit a written protest against such amendment, the amendment is automatically suspended until the next Annual Conference, when it may be taken up again for reconsideration and vote.

Article XVII**I**: Establishment and Financing of Grassroots Network

Section 1: Enhancement of Advocacy Efforts.

To enhance ~~the League's~~Cal Cities' advocacy efforts on behalf of cities, Cal Cities ~~the League~~ hereby establishes a Grassroots Network. The Grassroots Network consists of

a series of field offices throughout California, responsible for coordinating city advocacy efforts and promoting statewide ~~League~~ Cal Cities policy priorities.

Section 2: Dues Increase.

(a) Initial Financing. The dues increase approved concurrently with the addition of this article shall finance ~~the League's~~Cal Cities' Grassroots Network for the second half of 2001 and 2002. The increase shall be used exclusively to finance the Grassroots Network.

(b) Continued Financing. Any subsequent dues increases shall occur in accordance with Article IV.

Section 3: Accountability.

(a) Annual Goal-Setting and Performance Assessment. The ~~League~~ Cal Cities Board shall set long-term goals and annual objectives for Cal Cities'~~the League's~~ Grassroots Network. The ~~League~~ Cal Cities Board shall periodically report to ~~the League's~~Cal Cities' Member Cities on the Grassroots Network's performance in meeting those goals and objectives.

(b) Board Discontinuance. If at any time the ~~League~~ Cal Cities Board finds the Grassroots Network is not meeting its objectives on behalf of cities, the ~~League~~ Cal Cities Board may discontinue the Grassroots Network.

(c) Membership Vote on Program Continuation. On or before December 31, 2007, Member Cities shall vote (see Article XII, section 5 for procedures) on whether to continue the Grassroots Network beyond December 31, 2008.[21]

[21] At its meeting of September 8, 2007, the General Assembly of the League of California Cities adopted Resolution #1 that the Grassroots Network Program be continued and operated in accordance with these bylaws.

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration of a Resolution authorizing: the City Manager to execute Amendment No. 2 to Professional Services Agreement STH Contract: FY2021-071 with Noll & Tam Architects in the amount of $8,580 for Phase I of the Napa Valley College tenant improvements at the City of St. Helena for a total contract amount not-to-exceed $167,577.**

CEQA Determination: **Not a CEQA project**

Prepared By: Preya Nixon, Asst. to the City Manager

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On May 25, 2021, the City Council approved a resolution authorizing the City Manager or designees to execute a lease for a portion of the Napa Valley Community College District Upper Valley Campus to lease space to serve as a City Hall and Police facility. It is anticipated this space will serve the City for at least five years and is in need of Tenant Improvements (TI's) in order to facilitate the specific needs of the City.

DISCUSSION

In order to identify the tenant improvements required for the space, the City executed STH Contract FY2021-071 with Noll and Tam Architects at the April 13, 2021 City Council meeting. The City has an interim timeframe to complete the required TI's for it administrative departments prior to start of the first lease payment and additional time to complete the required TI's for the Police Department. It is the City's intention to have staff move in as quickly as possible in order to move from the current facilities to the NVC campus as the current facilities are outdated, in need of significant repairs, and are much smaller facilities that are not as conducive to multiple staff being in the office at the same time due to continuing COVID restrictions.

Phase 1 of the TI's scope includes the initial space planning of the City Administration offices, Police area, construction documents for the tenant improvements of the Administration offices, and ADA improvements. The original agreement was based on a construction document set for public bidding without DSA permitting and limited Construction Administration services. No engineering consultants were included with the exception of limited civil engineering scope for ADA upgrade to the existing parking stalls.

In working with Noll and Tam Architects, it was determined the TI's would require a review and permit from the Division of the State Architect (DSA). Submitting plans for TI's to the DSA requires detailed site plans that were not anticipated, or included, with the original scope of work of the Agreement. Noll and Tam has identified that civil, structural, and mechanical engineering review is necessary to meet the DSA process requirements.

Phase I was also intended to bid the Administration TI first, then complete the Police bidding documents at a later time. Since that time the Napa Valley College District has clarified the TI's for the City and Police offices must be approved and permitted by the Division of State Architect (DSA). The DSA permitting process has particular requirements including full engineering consultant drawings and construction administration protocols. The DSA review process is typically lengthy and more formal, so it was determined that it would be more efficient and cost effective to permit both the Administration and Police as one project, and subsequently constructed as one phase of construction.

As a result of the DSA requirement, Amendment No. 1 to the original Noll and Tam Agreement was approved at the June 8, 2021 City Council meeting to include additional engineering services required for the permit submittal.

As the City and Noll and Tam are solidifying the TI's to submit to the DSA and, in an effort to be efficient with the submittal to the DSA, it is necessary to add the following services to the scope of work through Amendment No. 2:

1. Preparation for Division 1 Specifications for the bid documents (technical assistance)
2. New Air Conditioning for two IT Server spaces (mechanical engineering)
3. Plumbing for new single occupancy restroom (mechanical engineering)
4. Design of a new generator to support all building needs (electrical engineering)

The total cost of Amendment No. 2 is a not-to-exceed amount of $8,580.

By approving Amendment No. 2, the tenant improvements listed above can be captured in the permit that goes to DSA now, making it more efficient for the entire project.

FISCAL IMPACT

The fiscal impact of Amendment No. 2 is an additional $8,580 for a total not-to-exceed amount of $167,577. Funds for this amendment have been included in the FY 2021-22 budget for Napa Valley College Tenant Improvements.

RECOMMENDED ACTION

Adopt Resolution authorizing the City Manager to execute Amendment No. 2 to Professional Services Agreement with Noll & Tam Architects in the amount of $8,580 to STH contract No: FY 2021-071 for Phase I of the Napa Valley College tenant improvements at the City of St. Helena for a total contract amount not-to-exceed $167,577.

ATTACHMENTS

Amendment _2 Noll and Tam
Resolution - Noll and Tam Amendment _2 Final
0907_2021 St Helena NVC Add Service 1
STH Contract FY2021-071 NVC TI - Phase I
STH Contract FY2021-071-01A NVC TI - Phase I Amendment #1

AMENDMENT #2
TO PROFESSIONAL SERVICES AGREEMENT WITH NOLL & TAM ARCHITECTS IN THE AMOUNT OF $8,580 TO STH CONTRACT NO: FY 2021-071 FOR PHASE I OF THE NAPA VALLEY COLLEGE TENANT IMPROVEMENTS AT THE CITY OF ST. HELENA FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED $167,577

This Second Amendment to Professional Services Agreement STH Contract: FY 2021-071 dated April 10, 2021 ("Agreement") is made as of this 14 day of September 2021 by and between the City of St. Helena, a municipal corporation ("City"), and Noll & Tam Architects ("Consultant").

RECITALS

A. On April 13, 2021, the City and Consultant entered into the Agreement for Consultant to provide professional services in connection with the project described tenant improvements at the Napa Valley College Upper Campus for Phase I; and

B. On May 25, 2021, the City Council approved resolution authorizing the City Manager or designees to execute a lease regarding a portion of the Napa Valley Community College District Upper Valley Campus; and

C. Based on the required identified tenant improvements, the City and Consultant desired to amend the Agreement with the Consultant to provide additional fees for permitting the Division of State Architect; and

D. Permitting for the Division of the State Architect requires full engineering consultant drawings and construction administraton protocols that were not included in the original scope of work with Noll and Tam Architects; and

E. Amendment No. 1 was for an additional $117,622 for a total not-to-exceed amount of $158,997; and

F. Additional scope of work has been idenfied that require mechanical and electrical engineering necessary for Division of State Architect Review; and

G. Amendment No. 2 is for an additional $8,580 for a total not-to-exceed amount of $167,577.

AGREEMENT

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

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

"Total compensation shall not exceed $167,577…".

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

CITY OF ST. HELENA

RESOLUTION NO. 2021-_____

AUTHORIZING: (1) THE CITY MANAGER TO EXECUTE AMENDMENT No. 2 TO PROFESSIONAL SERVICES AGREEMENT WITH NOLL & TAM ARCHITECTS IN THE AMOUNT OF $8,580 TO STH CONTRACT NO: FY 2021-071 FOR PHASE I OF THE NAPA VALLEY COLLEGE TENANT IMPROVEMENTS AT THE CITY OF ST. HELENA FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED $167,577

RECITALS

A. On April 13, 2021, the City and Consultant entered into the Agreement for Consultant to provide professional services in connection with the project described tenant improvements at the Napa Valley College Upper Campus for Phase I; and

B. On May 25, 2021, the City Council approved resolution authorizing the City Manager or designees to execute a lease regarding a portion of the Napa Valley Community College District Upper Valley Campus; and

C. Based on the required identified tenant improvements, the City and Consultant desired to amend the Agreement with the Consultant to provide additional fees for permitting the Division of State Architect; and

D. Permitting for the Division of the State Architect requires full engineering consultant drawings and construction administration protocols that were not included in the original scope of work with Noll and Tam Architects; and

E. Amendment No. 1 was for an additional $117,622 for a total not-to-exceed amount of $158,997; and

F. Additional scope of work has been identified that require mechanical and electrical engineering necessary for Division of State Architect Review; and

G. Amendment No. 2 is for an additional $8,580 for a total not-to-exceed amount of $167,577.

RESOLUTION

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

1. Approves Amendment No. 2 to STH Contract: FY2021-71 with Toll and Tam Architects for an additional $8,580 for a total not-to-exceed amount of $167,577; and

2. Authorizing the City Manager to execute Amendment No. 2.

Approved at a Regular Meeting of the St. Helena City Council on September 14, 2021, by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Anna Chouteau:	_____
Councilmember Lester Hardy:	_____
Councilmember Eric Hall:	_____

APPROVED:

_____
Geoff Ellsworth, Mayor

ATTEST:

_____
Cindy Tzafopoulos, City Clerk

St Helena City Admin and Police Offices/DSA Permitting

Additional Service Request #1

Sept 7th, 2021.

Additional Service Proposal

	Noll & Tam		
1.	Division 1 Specifications	$	1,980
	Consultants		
2.	Eddie Padilla Consulting Engineers	$	6,000
	a. New air conditioning for (2) IDF rooms $3,000 (@Dispatch and adjacent to Men's Rm)		
	b. Plumbing for new single occupancy restroom at Dispatch $3000		
3.	Atium Engineering	$	3,600
	Design of new generator to support all building loads		
	Noll & Tam consultant mark up waived	$	-
Subtotal		**$**	**11,580**
	Reallocated fees from currrent NT contract (Utility survey not required)	$	(3,000.00)
Total Add service Request		$	8,580.00

Scope of Services

See attached proposals from Noll & Tam 9/3/21, Atium 7/22/21 and Padillia Consulting 9/3/21

NOLL & TAM ARCHITECTS

September 3, 2021

ST HELENA ADMIN & POLICE OFFICES AT NVC

Add Service Request #1

ADD SCOPE DESCRIPTION
Prepare Division 1 specification to include the following sections:

- 01 10 00 - Summary.doc
- 01 14 00 - Coordination and Site Conditions.doc
- 01 30 00 - Administrative Requirements.doc
- 01 33 00 - Submittals.doc
- 01 40 00 - Quality Requirements.doc
- 01 41 00 - Contractor Safety Standards.doc
- 01 50 00 - Construction Facilities And Temporary Controls.doc
- 01 60 00 - Product Requirements.doc
- 01 70 00 - Contract Closeout.doc
- 01 73 29 - Cutting and Patching.docx

Add Fee Request:
$165/hour X 12 hours = $1980 total

Eddie Padilla Consulting Engineers Inc.

September 3, 2021

Noll & Tam Architects
729 Heinz Ave. #7
Berkeley, CA 94710

Attention: Phan N. Dung

Subject: Proposal for St. Helena NVC TI
Napa Valley College Upper Valley Center, CA
EPCE Job #21-1545
Change Order No.1 : IDF HVAC and new Restroom 3A. REV 1

Dear Phan,

We are pleased to submit this proposal to provide consulting engineering design services for the addition of IDF rooms and the new single restroom 3A.

SCOPE OF WORK

1. Split AC units for the IDF rooms: $3.000.00
   A. Obtain cooling load from the Owner.
   B. Site survey for location of fan coils and condensing units.
   C. Design for split DX AC unit piping and mounting details.
   D. Provide additional construction drawings and specifications for the AC units.

2. Plumbing work for the new restroom 3A: $3,000.00
   A. Site survey for sewer drainage, CW and HW connections into the existing Mechanical Room.
   B. Design for toilet exhaust ventilation.
   C. Design for plumbing.
   D. Provide additional construction drawings and specifications.

- Reimbursable at cost: Drawing plotting, and copies, specification copies or printing or reproductions.
- Billing: Monthly base design progress completion.

Please let me know you need additional information.

Respectfully,

Eddie Padilla, P.E.
Principal

274 DEVONSHIRE STREET, VALLEJO, CA 94591 PH: (707) 980-4049 FAX: (707) 644-3656 eddie.padilla@comcast.net

3533 York Ln
San Ramon, CA 94582
913.961.1658
maino@atiumeng.com
www.atiumeng.com

PROPOSAL FOR ELECTRICAL ENGINEERING SERVICES

Project:	St. Helena NVC TI Generator 1088 College Ave St. Helena, CA 94574	Client:	Noll & Tam 729 Heinz Ave, Suite #7 Berkeley, CA 94710 510.542.2200
Date:	07.22.21	Attention:	Phan Dung

Dear Phan,

Thank you for the opportunity to provide you with our Proposed Agreement For Electrical Engineering Services (hereinafter referred to as “Agreement”) for the above referenced project. This proposed Agreement is based on the drawings and RFP information provided in your email from 07.22.21, and the scope of services noted below.

Please date and sign below should you agree to the terms of this proposed Agreement and the terms and conditions therein. Upon signature, this proposed Agreement shall become effective and shall serve as the formal Agreement between Client (identified above) and Atium Engineering, Inc. (hereinafter referred to as “Engineer”).

PROJECT DESCRIPTION

The project shall involve providing a backup generator for the existing building undergoing a renovation to support the city’s offices and police department. Refer to previous TI proposal for scope related to renovation.

MEETINGS AND SITE VISITS

Client acknowledges that Engineer may request to conduct site visits and/or in-person meetings. Client further acknowledges that all site visits and in-person meetings, including the scheduling thereof, are contingent upon the status of any pandemics including the current “shelter in place” order being lifted and subject to any public access restrictions and/or social distancing requirements and guidelines. No site visits or in person meetings shall be provided until such a time as permitted with reference to the preceding and in Engineer’s sole discretion. If a site visit is not feasible, design documents shall be based on available as-built information and additional information as may be provided by the owner and architect. As part of the design services, Engineer will attend meetings and site visits in accordance with Engineer’s understanding of the project requirements, which includes and is expressly limited to the following:

- All site visits and meetings provided as noted in TI proposal dated 06.03.21

SUBMITTALS

Unless otherwise noted, all submissions shall be digital in nature and shall be provided in PDF format only. Progress sets may be provided in addition to the items below at the request of the Client.

- Submittals as noted in TI proposal dated 06.03.21

ASSUMPTIONS

- As noted in TI proposal dated 06.03.21

INCLUDED SERVICES

General
- Coordinate with architect, mechanical engineer, plumbing engineer, civil engineer, and landscape architect for required adjustments to plans and site to accommodate new generator
- Provide deliverable documents formatted in AutoCAD 2017 and PDF
- Coordination of systems design with all consultants on project team
- Layout of all systems and devices noted herein
- Circuiting of all devices and systems noted herein
- Written specifications for the systems noted herein
- Demolition drawings will be provided in a schematic format only with demolition notes. Detail of all existing conditions will not be recorded beyond available existing drawings. Documentation of existing devices shall not be provided beyond existing low voltage head end equipment and electrical power distribution equipment

Electrical
- Design of a new generator to support all building loads
  - Sizing of generator
  - Layout of generator and miscellaneous appurtenances
  - Connection of generator to Automatic Transfer Switch (ATS) and main switchboard
  - Provide remote annunciator for remote monitoring of generator
  - Provide base tank capable of providing backup for all loads for 24 hours at full load
- Revised single line to provide automatic transfer switch ahead of existing main switchboard

Construction Administration
- As noted in TI proposal dated 06.03.21

EXCLUDED SERVICES

General
- As noted in TI proposal dated 06.03.21

Electrical
- Submission of documentation to, or coordination with, Bay Area Air Quality Management District (BAAQMD), California Air Resources Board (CARB), local Fire Department (FD), or other agencies requiring permits or approval

TERMS AND CONDITIONS

Agreement: The terms and fees noted herein shall be considered valid for 30 days from the date of the Agreement unless this Agreement is signed by both Engineer and Client.

Client Responsibilities: The Client shall provide full and complete and accurate information regarding requirements for the Project. The Client shall designate, when necessary, a representative authorized to act in the Owner's behalf with respect to the Project. The Client or such authorized representative shall examine the documents submitted by the Engineer and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Engineer's services. The Client shall also furnish required information as expeditiously as necessary for the orderly progress of the Work, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof.

Professional Credit: Press releases, articles, professional publications and the like where the Architect is named shall credit Atium Engineering as the Electrical Engineer.

Use of Engineer's Documents: All documents, including this Agreement, prepared by the Engineer with regards to this Project shall be construed as instruments of the Engineer's services for use with sole respect to this Project. The Engineer shall remain the owner of these documents and shall retain all rights thereto. Any reuse of these documents without specific written authorization and adaptation by Engineer will entitle Engineer to further compensation and may subject the unauthorized user to legal action.

Site Visits and In-Person Meetings: All site visits and in-person meetings shall be provided at a time deemed safe and appropriate by the Engineer, and shall be subject to cancelation or delay pending the current “Shelter in Place” directive put in place by the State of California. Should a site visit or in-person meeting not be feasible, Engineer shall provide design documents based on available as-built information and additional information as may be provided by the Client. When such inability to perform site visits or in-person meetings are beyond the Engineer’s reasonable control, the Client agrees that the Engineer shall not be responsible for damages that may result from incorrect or missing information contained in the as-built or supplemental information, nor shall the Engineer be deemed in default of this Agreement.

Ownership and Instruments of Service: All reports, drawings, specifications, computer files, field data, notes and other documents and instruments prepared by the Engineer as instruments of service shall remain the property of the Engineer. The Engineer shall retain all common law, statutory and other reserved rights, including the copyright thereto. The Client acknowledges the Engineer's construction documents, including electronic files, as instruments of professional service. Nevertheless, the final construction documents prepared under this Agreement shall become the property of the Client upon completion of the services and payment in full of all monies due to the Engineer. The Client shall not reuse or make any modification to the construction documents and/or documents contemplated herein without the prior written authorization of the Engineer. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers, directors, employees and subconsultants (collectively, Consultant) against any damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising from or allegedly arising from or in any way connected with the reuse or modification of the construction documents by the Client or any person or entity that acquires or obtains the construction documents from or through the Client with or without the written authorization of the Consultant.

Standard of Care: In providing services under this Agreement, the Engineer will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

Permitted / Excusable Delays: The Engineer shall be excused and shall not be held responsible for any delays caused in any part by factors beyond the Engineer’s reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, government ordered industry shutdowns and/or shelter-in-place orders, power or server outages, acts of nature, acts of God, staff member illness, widespread infectious disease outbreaks (including, but not limited to epidemics and pandemics), failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or disapprove of the Engineer’s services or work product, or delays caused by faulty performance by the Client’s or by contractors of any level. When such delays beyond the Engineer’s reasonable control occur, the Client agrees that the Engineer shall not be responsible for damages, nor shall the Engineer be deemed in default of this Agreement.

Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Client agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, Property or Project, nor for any failure of a contractor to comply with any laws and/or regulations applicable to such contractor’s furnishing and performing of its work.

Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. The parties agree that

Engineer does not and cannot guarantee construction costs nor are any construction costs implied by and/or through this Agreement. The Owner acknowledges that the Engineer has no control over the competitive bidding process or the methods that contractors have in determining prices. The Owner is solely responsible for receiving preliminary estimates for construction costs. The Engineer assumes no responsibility or liability for these estimates or final construction costs.

Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ their own independent cost estimator.

Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.

Engineer shall be responsible only for those Construction Phase services expressly required of Engineer herein. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Client assumes all responsibility for the application and interpretation of the Contract Documents, revisions to the Contract Documents during construction, construction observation and review, review and response to contractor claims, contract administration, processing Change Orders, construction surety bonding and insurance requirements, review of payment applications, and all other necessary Construction Phase engineering and professional services. Client waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer herein.

Existing Conditions: The Engineer and/or the Engineer's Consultants shall not be responsible for jobsite conditions which are not readily visible for inspection. This includes but is not limited to: inaccessible areas of existing structures, buried footings, areas of the roof and chimney for which exact measurements cannot be readily taken from the ground, etc. Inasmuch as the remodeling and/or rehabilitation of an existing building requires that certain assumptions be made regarding existing conditions and because some of these assumptions may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of the subject building, the Client agrees that except for gross negligence of Engineer, the Client will hold harmless, indemnify, and defend the Engineer from and against all claims arising out of or from unknown existing conditions.

Termination: This Agreement may be terminated by either party upon not less than seven days' prior written notice should the other party fail substantially to perform in accordance with the terms of this proposal through no fault of the party initiating the termination. This Agreement may be terminated by the Client upon not less than seven days' prior written notice for the Client's convenience and without cause. Engineer shall be compensated for all services performed prior to the receipt of written notice from the Client for such a termination.

Should Client terminate this Agreement for no good cause, then Client shall also be responsible to pay Engineer termination expenses which are in addition to compensation for the Engineer's services and include expenses directly attributable to termination for which the Engineer is not otherwise compensated, plus an amount for the Engineer's anticipated profit on the value of the services not performed by the Engineer.

Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Engineer's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of ten percent (10%) per annum, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Engineer.

The Client shall not withhold amounts from the Engineer's compensation to impose a penalty or liquidated damages on the Engineer, or to offset sums requested by or paid to contractors for the cost of changes to the Work unless the Engineer agrees in writing or has been found liable for the amounts in a binding dispute resolution proceeding.

Unless otherwise required in this Agreement, the Engineer shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

This Agreement shall be governed by the laws of the place where the Property / Project is located.

No action arising from or related to the Agreement, or the performance thereof, shall be commenced by either party against the other more than two (2) years after the completion or cessation of work of Engineer hereunder.

Client and Contractor have knowledge of the risks, rewards and benefits of the Project and the Contractor's fees for such services. In recognition of the relative risks and benefits of the Project to both the Client and the Contractor, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Contractor and its officers, employees and assigns, for any and all claims, losses, costs, damages of any nature whatsoever and claim expenses from any cause or causes arising out of this Agreement and/or Work, so that the total aggregate liability of the Contractor and its officers, employees and assigns shall not exceed the Contractor's total fee paid by Owner for services rendered on this Project. Such claims and clauses include, but are not limited to, negligence, errors or omissions, strict liability, breach of contract, and breach of warranty.

To the fullest extent permitted by law, Client and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

Any provision or part of the Agreement held to be void or unenforceable under any laws and/or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

No breach of any agreement, warranty or representation shall be deemed waived unless expressly waived in writing by the party who might assert such breach. Waiver by one party of the performance of any covenant, condition or promise of the other party shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant, condition or promise contained herein. The waiver of either or both parties of the time for performing any act shall not be construed as a waiver of any other required to be performed at a later date.

This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Client and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument signed by all the parties hereto.

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

Each person executing this Agreement represents that the execution of this Agreement has been duly authorized by the party on whose behalf the person is executing the Agreement and that such person is authorized to execute the Agreement on behalf of such party.

The terms, covenants and conditions of this Agreement shall be binding upon and shall insure to the benefit of the successors and permitted assigns of the respective parties to this Agreement.

Any controversy or claim arising out of the related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Request for mediation shall be filed in writing with the other party to the Agreement and shall be commenced within thirty (30) days of receipt of such notice. The parties shall share the mediator's fee and filing fees equally, and each party shall be responsible for its own attorney's fees. The mediation shall be held in the County where the Project is located unless another location is mutually agreed upon. If either the Client or the Engineer initiates a lawsuit before mediation and/or refuses or resists mediation then they shall not be entitled to recover prevailing party attorneys' fees as otherwise allowed herein.

If any party hereto commences a legal action (other than mediation) to interpret or enforce this Agreement or any provision hereof, the prevailing party shall be entitled to an award of its reasonable costs, attorney's fees and expert witness fees, in addition to all other amounts awarded by the court or arbitrator.

The Engineer is and at all times shall be an independent contractor with respect to the Work and the Project. This Agreement shall not be interpreted as creating, nor shall it be deemed to create, any employer employee, partnership or other relationship between the Client and Engineer. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or Engineer.

The provisions of this Agreement shall be construed in accordance with the fair meaning of the language used and shall not be strictly construed against either party. The parties hereto acknowledge that each party and its counsel have reviewed and approved this Agreement (or have voluntary elected not to have counsel review this Agreement).

THE PARTIES HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT.

All exhibits attached to the Agreement are incorporated as if set forth in full.

REIMBURSABLE EXPENSES

Unless stated otherwise, all reimbursable expenses associated with the project (travel and all travel related expenses, mileage, parking, shipping, reproduction, and in-house plotting of electronic files) have been included as part of the fee noted below.

Expenses for additional items such as mock-ups, sample equipment, etc., are not included in the fee noted below. Expenses associated with those items, if any, will be itemized and billed separately, at cost plus 10% handling charge.

FEE

Payment and Deliverables:

- Payment by Client is due within 30 days of receipt of invoice.
- Payment may be made via check (preferred) or via credit card. For credit card payments a 3% surcharge shall be added to the invoiced amount for processing.
- No deliverable items will be provided for this project before a valid contract is executed by both parties.
- Services will be provided on a fixed fee basis

The Client shall compensate the Engineer for the services and work described above for a lump sum fee as described in the table below.

Phase/Task	Fee	Approved (Initial)
Construction Documents	**$3,600**	

Changes in the scope of work, revisions after the submission of substantially completed documents, and/or review of change orders not initiated by, or as a result of actions by, this firm that results in additional work by this firm will require additional services. Additional proposals shall be provided and approved for these additional services prior to the commencement of work.

The Client and Engineer agree in accordance with the Terms and Conditions of this Agreement that if the scope of Project or of the Engineer's services is changed materially, the amounts of compensation shall be equitably adjusted.

APPROVAL

To accept this proposed Agreement and all the terms and conditions therein, please initial or place an "X" in the appropriate box to reject or approve any the appropriate services noted above, then date and sign below and return a copy to us via mail, or digitally via email. Any services listed above not initialed, X'd, or otherwise indicated to be rejected shall be considered approved per the Terms and Conditions of this Agreement.

CLIENT:

Phan Dung Date
Noll & Tam

ENGINEER:

07.22.21
J. David Maino Date
Atium Engineering, Inc., President

STH Contract: 2021-071

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on April 10, 2021 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Noll and Tam Architects (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Consulting Services to assist the City with Phase I of the Napa Valley College Tenant Improvements.

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

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

SECTION 1 – BASIC SERVICES

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

SECTION 2 – ADDITIONAL SERVICES

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

SECTION 3 – TIME FOR COMPLETION

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

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in Exhibit B, "Compensation" attached hereto and made a part hereof. Total compensation shall not exceed $41,235 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 claim, 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 general and auto liability 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 mail 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, but not 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"), but only to the extent actually caused by 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 has no other obligation to pay for any indemnitiees' defense related cost prior to a final determination of liability or to pay any amount that exceeds Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.

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 indemnity apply only to claims to the extent actually caused by 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.

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, sent by facsimile, email, or first class mail, addressed as follows:

To City:
City Manager
1572 Railroad Avenue
St. Helena, California 94574

To Consultant:
Noll and Tam Architects
Attn: Janet Tam
729 Heinz Avenue #7
Berkeley, CA 94710
Janet.tam@nollandtam.com
510-542-2200

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, email, 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: janet tam Digitally signed by janet tam DN: C=US, E=janet.tam@nollandtam.com, O=Noll & Tam Architects, CN=janet tam Reason: I am approving this document Date: 2021.04.11 16:59:11-07'00'

Name: Janet Tam
Title: Principal

City:

By: Mark T. Prestwich Digitally signed by Mark T. Prestwich Date: 2021.04.14 14:58:02 -07'00'

Name: Mark T. Prestwich
Title: City Manager

Approved as to Form:

By: Ethan Walsh Digitally signed by: Ethan Walsh DN: CN = Ethan Walsh email = ethan.walsh@bbklaw.com C = AD Date: 2021.04.14 16:37:46 -07'00'

Name: Ethan Walsh
Title: City Attorney

Exhibit A

St Helena City Offices at Napa Valley College
Noll & Tam Fee Proposal
March 26, 2021

Tenant Improvement Scope to include:

Phase I- City Administration Offices through Construction

A. Space Planning for Administration and Police (1-2 week process)

1. **Administration:** Confirm floor plan layout with City Manager and staff
   (1-2) zoom meetings to review space requirements and floor plan layouts
   Confirm any special equipment and space requirements

2. **Police:** Confirm floor plan layout with City Manager and staff
   (1-2) zoom meetings to review space requirements and floor plan layouts
   Confirm any special equipment and space requirements including dispatch equipment requirements, test fit existing dispatch equipment

3. (1) site visit to tour NVC building site
4. Review city provided furniture inventory to confirm test fits
5. Code Review, including incorporation of CASP identified deficiencies for ADA compliance
6. Prepare space plan layout that will proceed to construction documents and review by NVC identify new construction items and what will remain

Deliverables:

- Floor plan layout and demolition notes
- Space program list summary of spaces accommodated for Admin and Police

B. Construction Documents for Administration (approx. 4-week process)

Assumptions:

1. Drawings will be for public bid
2. City or NVC will provide “Front End” Division 1 Specifications
3. No City Building Dept Review or permitting/
   No Dept of State Architect (DSA) Review or permitting
4. CVS cursory review, incorporate comments
5. Mechanical, Electrical and Plumbing will be Design/Build by the General Contractor.

Construction Documents Scope:

1. General: Unless specifically identified, there will be no work to the following items that will remain as is:
   - Exterior building shell and associated site and courtyard areas
   - Existing partitions and built-in items including case work
   - Existing wall, floor and ceiling finishes
   - Existing MEP systems

2. New breakroom at existing Lobby- provide new sink & ref, new partition with door and interior glazing, adjustment to sprinklers and lighting if required.
3. (1) new provide offices for HR manager – new partitions, door, adjustment to sprinklers and lighting if required.
4. Add window to existing corridor door near office A (alternate- new door and frame with lite)
5. New lactation room- Close existing opening and add door with privacy hardware, add privacy film to existing exterior door (no change to existing casework or sink)
6. ADA toilet room minor adjustments per CASP report
7. Existing Classroom 1 + 2: Fix shut existing movable wall.
8. Select public lobby seating furniture for City to procure

Deliverables:

- Cover Sheet with site vicinity map, code notes, including ADA- attach CASP report
- Floor plan indicating new construction, demolition notes, and rest to remain as is
- Final furniture/office layout (For information only)
- Enlarged plans + Reflected plans at new office and break room
- ADA upgrades at toilet room per CASP (enlarged plan of rest rooms)
- Finish schedule
- Interior Details: Interior door, new partition, sink casework at break room
- Specification notes on drawings/ MEP notes only on drwgs for D/B
- Front end Div 1 by City

Exclusions: (But can be added if required)

1. Front End Division 1 Specifications (Owner's requirements, including instructions to bidders
2. MEP Engineering will be design/build by General Contractor
3. IT consultant services
4. Security Consultant services
5. A/V Consultant services
6. Structural engineering is not anticipated for the Admin office tenant improvements
7. Signage
8. Cost Estimating
9. Permitting process, including back check
10. Phase II Construction Documents and Construction Administration for Police TI, to be added after Space Planning Phase 1 task

Phase II: Includes Completion of Police Construction Documents and Construction Administration
Fees to follow after completion of the Space Programming task.
In addition to Architectural fees, work will most likely require the following engineers:

- Civil for the site utilizes required by the modular shower trailer
- Structural for foundations required by the modular shower trailer
- Signage consultant to complete the overall building signage to identify the City Offices
- Assuming that MEP and IT consultants can still be design/build by the General Contractor

Noll & Tam Architects
729 Heinz Avenue
Berkeley, CA 94710

St Helena City offices

Napa Valley College
3/26/2021

PHASE I		SPACE PLANNING ADMIN + POLICE	CONSTRUCTION DOCUMENTS	BIDDING AND NEGOTIATION	CONSTRUCTION ADMINISTRATION	TOTALS
		← ADMIN OFFICES ONLY →				
Basic Service	**Consultant**					
Architectural Services	Noll & Tam Architects	$9,210	$23,690	$1,155	$1,320	$35,375
Structural Engineering	NIC					
Mechanical/Plumbing Engineering	Design /Build					
Electrical Engineering	Design /Build					
Landscape Architect	Not included					
Civil Engineering (Site ADA)	BKF		$5,500			$5,500
Cost Estimating	Not included					
Signage	tbd					
Subtotal Basic Services		**$9,210**	**$29,190**	**$1,155**	**$1,320**	**$40,875**
Reimbursable Expense Allowance			$500			$500
						$41,375

STH Contract: FY2021-071·

AMENDMENT #1

AUTHORIZING: (1) THE CITY MANAGER TO EXECUTE AMENDMENT No. 1 TO PROFESSIONAL SERVICES AGREEMENT WITH NOLL & TAM ARCHITECTS IN THE AMOUNT OF $117,622 TO STH CONTRACT NO: FY 2021-071 FOR PHASE I OF THE NAPA VALLEY COLLEGE TENANT IMPROVEMENTS AT THE CITY OF ST. HELENA FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED $158,997; AND (2) AUTHORIZING USE OF GENERAL FUND NET POSITION IN AN AMOUNT NOT-TO-EXCEED $117,622

This First Amendment to Professional Services Agreement STH Contract: FY 2021-071 dated April 10, 2021 ("Agreement") is made as of this 8th day of June 2021 by and between the City of St. Helena, a municipal corporation ("City"), and Noll & Tam Architects ("Consultant").

RECITALS

A. On April 13, 2021, the City and Consultant entered into the Agreement for Consultant to provide professional services in connection with the project described tenant improvements at the Napa Valley College Upper Campus for Phase I; and

B. On May 25, 2021, the City Council approved resolution authorizing the City Manager or designees to execute a lease regarding a portion of the Napa Valley Community College District Upper Valley Campus; and

C. Based on the required identified tenant improvements, the City and Consultant now desire to amend the Agreement with the Consultant to provide additional fees for permitting the Division of State Architect; and

E. Permitting for the Division of the State Architect requires full engineering consultant drawings and construction administraton protocols that were not included in the original scope of work with Noll and Tam Architects; and

D. Amendment No. 1 is for an additional $117,622 for a total not-to-exceed amount of $158,997

AGREEMENT

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

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

   "Total compensation shall not exceed $158,997…" and;

2. Authorizing an increase of $117,622 and;

3. Authorizing use of General Fund Net Position in an amount not-to-exceed $117,622.

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: Janet Tam

Title: Principal

CITY OF ST. HELENA
a Municipal Corporation

By: Mark T. Prestwich Digitally signed by Mark T. Prestwich Date: 2021.07.02 17:06:22 -07'00'

Print Name: Mark T. Prestwich

Title: City Manager

APPROVED AS TO FORM:

ethan.walsh@bbklaw.com Digitally signed by: ethan.walsh@bbklaw.com DN: CN = ethan.walsh@bbklaw.com Date: 2021.07.02 16:23:17 -07'00'

Ethan Walsh, City Attorney

ATTEST:

Cindy Tzafopoulos Digitally signed by Cindy Tzafopoulos Date: 2021.07.02 17:48:10 -07'00'

Cindy Tzafopoulos, City Clerk

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and Proposed Approval of a Resolution Authorizing Amendment No. 1 to Napa County Professional Services Agreement for a multi-agency, grant funded Gang Violence Suppression Program.**

CEQA Determination: **Not a CEQA project**

Prepared By: Chris Hartley, Chief of Police

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The County of Napa has been operating a multi-agency grant funded Gang Violence Suppression program since Fiscal Year 2001-2002 using funds received by a grant from the State of California in order to provide ongoing gang violence suppression program activities through a grant operational agreement in partnership with Napa County departments, local law enforcement agencies, and non-profit organizations in a collaborative effort to address gang suppression, intervention, and prevention in Napa County. The Gang Violence Suppression Program grant is now an ongoing program funded annually through 2011 Public Safety Realignment funds received from the State of California.

On July 1, 2017, the City of St. Helena and the County of Napa entered into Napa County Professional Services Agreement No. 180351B ("Agreement") to continue to specialized Gang Violence Suppression program services, as authorized by Government Code section 31000 and as provided by the City under the previous grant operational agreement (Attachment 1). The initial term of the agreement was one year and, as provided in the Agreement, the term will automatically renew for an additional year, not to exceed three additional years.

The Agreement provides the County will compensate the City for participating in the Gang Violence Suppression program.

DISCUSSION

Professional Services Agreement No 180351B between the City of Saint Helena and the County of Napa for the Gang Suppression Grant has now expired. Amendment No. 1 will extend the grant agreement as is between the City of Saint Helena and the County of Napa for five additional years. This will allow the City of Saint Helena to continue the program with the grant funding.

FISCAL IMPACT

The proposed action allow the City to receive annual grant funding up to $8,484 each fiscal year for the purpose of Gang Suppression.

RECOMMENDED ACTION

Recommend approval of resolution.

ATTACHMENTS

Attachment 1 - St. Helena GVS Contract
Attachment 2 - ExtGVS_StH Agreement 180351 Amend 1
Attachment 3 - Resolution Gang Violence Suppression Program

NAPA COUNTY AGREEMENT NO. 180351B

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into, effective as of the 1st day of July 2017, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and CITY OF SAINT HELENA, whose mailing address is 1480 Main Street, St. Helena, CA 94574, hereinafter referred to as "CITY;"

RECITALS

WHEREAS, COUNTY has been operating a multi-agency grant funded Gang Violence Suppression program since Fiscal Year 2001-2002 using funds received by a grant from the State of California in order to provide ongoing gang violence suppression program activities through a grant operational agreement in partnership with COUNTY departments, local law enforcement agencies, and non-profit organizations in a collaborative effort to address gang suppression, intervention and prevention in Napa County; and

WHEREAS, the Gang Violence Suppression Program grant is now an ongoing program funded annually through 2011 Public Safety Realignment funds received from the State of California; and

WHEREAS, COUNTY and CITY now desire to enter into an Agreement to continue the specialized Gang Violence Suppression program services, as authorized by Government Code section 31000, and as provided by CITY under the previous grant operational agreement; and

WHEREAS, CITY is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein;

TERMS

NOW, THEREFORE, COUNTY hereby engages the services of CITY, and CITY agrees to serve COUNTY in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the effective date as first written above and shall expire on June 30, 2018, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination), or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CITY to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes), and 21 (Access to Records/Retention). The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, not to exceed three (3) additional years,

unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

2. **Scope of Services.** CITY shall provide COUNTY those services set forth in Exhibit "A," attached hereto, and incorporated by reference herein.

3. **Compensation.**

(a) Rates. In consideration of CITY's fulfillment of the promised work, COUNTY shall pay CITY at the rates set forth in Exhibit "B," attached hereto and incorporated by reference herein.

(b) Expenses. Travel and other expenses will be reimbursed by COUNTY upon submission of an invoice in accordance with Paragraph 4 at the rates and/or in accordance with the provisions set forth in Exhibit "B."

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of eight thousand four hundred eighty four dollars ($8,484.00) for professional services and expenses per fiscal year; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CITY to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CITY's name, address, Social Security, or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Expenses. If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) Fixed Price. If the Agreement provides for a fixed price, if CITY presents interim invoices, CITY must state the percentage of work completed, which must be verified by COUNTY, i.e., 35% design, 95% design, draft report, et cetera, at which time CITY shall be paid the equivalent percentage of the fixed price.

(d) CITY shall submit invoices not more often than once per quarter to the District Attorney's Office Accounting Department who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C."

(e) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CITY is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the District Attorney's Office Accounting Department upon request in a form satisfactory to the Napa County Auditor. Such proof shall

include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CITY within the State of California.

5. **Independent Contractor.** CITY shall perform this Agreement as an independent contractor. CITY and the officers, agents and employees of CITY are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CITY shall, at CITY's own risk and expense, determine the method and manner by which duties imposed on CITY by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CITY. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CITY, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CITY shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CITY, including the agents or employees of CITY, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CITY under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CITY.

7. **Insurance.** CITY shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CITY shall provide workers' compensation insurance for the performance of any of CITY's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CITY shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, **issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance**:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CITY or any officer, agent, or employee of CITY under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CITY arising out of or in connection with this

Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) per claim. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CITY's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CITY owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CITY or CITY's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CITY shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CITY with the District Attorney's Office Accounting Department prior to commencement of performance of any of CITY's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CITY shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents, and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CITY shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CITY not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CITY under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CITY shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CITY by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents, and volunteers or CITY shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CITY agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CITY shall defend at its own expense, indemnify, and hold harmless COUNTY and its officers, agents, employees, volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages, or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all acts or omissions of CITY or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages, or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees, volunteers, representatives, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records, or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CITY accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CITY under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CITY shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CITY's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party

describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty (30) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

11. **Disposition of, Title to and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent CITY has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CITY. In addition, to the extent CITY maintains COUNTY data on those portions of digital software hosted by CITY and not controlled by COUNTY ("COUNTY data"), CITY shall promptly return COUNTY data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge COUNTY data from CITY's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CITY.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CITY may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CITY under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights, and trade secrets in the products developed or improved under this Agreement, shall remain with CITY or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CITY shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CITY's expense, from which the source code may be withdrawn and used by COUNTY for the

sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(b) CITY shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CITY shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CITY whether or not the Agreement expired or otherwise terminated, and COUNTY may withhold any payments not yet made to CITY for purpose of setoff until such time as the exact amount of damages due to COUNTY from CITY is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY	CITY
Napa County District Attorney Allison Haley, District Attorney 1127 First St., Ste. C Napa, CA 94559	City of Saint Helena Police Department William Imboden, Chief of Police 1480 Main Street St. Helena, CA 94574

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CITY hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CITY also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective August 23, 2005.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and

subcontractors of CITY whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995, and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CITY which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CITY shall hold all such information as CITY may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its District Attorney. Upon cancellation or expiration of this Agreement, CITY shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CITY may retain for its files a copy of CITY's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CITY is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CITY shall adhere to all federal, state, and local laws, rules, and regulations protecting the privacy of such information. CITY shall adhere to all existing and future federal, state and local laws, rules, and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CITY. Additionally, CITY shall only access, use or disclose COUNTY Protected Information if such access, use, or disclosure is expressly permitted by the terms of its agreement with COUNTY. Any other access, use or disclosure of COUNTY Protected Information is prohibited. Examples of prohibited accesses, uses and disclosures include, but are not limited to: the removal of confidential files, documents or devices containing COUNTY Protected Information from a COUNTY facility; the unauthorized transmission of COUNTY Protected Information via email, fax or other means; and the discussion of such information with other individuals (including other CITY or COUNTY employees) who do not have a COUNTY approved business reason to obtain the information.

(2) CITY shall ensure that its staff and any third party organizations or individuals that it engages to perform services in conjunction with the terms if this agreement are trained to its privacy and security policies, as well as Paragraph 15 of this agreement; and procedures and that appropriate physical, technological, and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information. Upon request, CITY shall make available to COUNTY its policies and procedures, staff training records, and other documentation of compliance with this Paragraph 15.

(3) CITY agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of. This includes instances wherein CITY encounters unsecured Protected Information in areas where CITY employees are performing services.

(4) CITY will be responsible for all costs associated with CITY's breach of the security and privacy of COUNTY's Protected Information, or its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the COUNTY of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules, or regulations applicable at the time of the breach.

(c) Protection of COUNTY Data. If CITY will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CITY shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CITY shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CITY shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CITY shall purge all COUNTY data from all CITY systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CITY shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

16. **No Assignments or Subcontracts.**

(a) In General. A consideration of this Agreement is the personal reputation of CITY; therefore, CITY shall not assign any interest in this Agreement or subcontract any of the services CITY is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CITY, or to perform any of the remaining services required under this Agreement within the same time frame required of CITY shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the District Attorney.

(b) Effect of Change in Status. If CITY changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CITY. Failure of CITY to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties.

Failure of CITY to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CITY shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CITY and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV, and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV, and AIDS), use of family care leave, or political affiliation or belief. CITY shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CITY shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CITY services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CITY and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CITY agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CITY performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CITY shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CITY under this Agreement are subcontracted to a third party, CITY shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

(d) Prevailing Wages. [RESERVED]

20. **Taxes.** CITY agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CITY agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CITY's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CITY agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers, and records of CITY which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Except where longer retention is required by any federal or state law, CITY shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CITY and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CITY hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CITY of such conflict. CITY further warrants that it is unaware of any financial or economic interest of any public officer or employee of COUNTY relating to this Agreement. CITY agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement

immediately upon giving written notice without further obligation by COUNTY to CITY under this Agreement.

(b) Statements of Economic Interest. CITY acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CITY to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office,, "annual," and "leaving office" Statements of Economic Interest as a "consultant," as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CITY, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

By executing this Agreement, the COUNTY hereby determines in writing that CITY has been hired to perform a range of duties so limited in scope as to not be required to comply with such disclosure obligation.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings, and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

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28. **Special Terms and Conditions.** [RESERVED]

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

CITY OF SAINT HELENA

By _____ 6/11/18
MARK PRESTWICH, City Manager

"CITY"

NAPA COUNTY, a political subdivision of the State of ~~California~~

By _____
BRAD WAGENKNECHT, Chair
Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel By: *Shana A. Bagley* (e-sign) County Counsel Date: June 7, 2018	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: 6/19/2018 Processed By: Deputy Clerk of the Board	ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors By: _____

EXHIBIT "A"

SCOPE OF WORK

CITY shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

CITY shall participate in a Gang Violence Suppression (GVS) program activities in partnership with the following COUNTY departments, local law enforcement agencies, and non-profit organizations in a collaborative effort to address gang suppression, intervention and prevention in Napa County: **Napa County District Attorney's Office, Napa Police Department, Napa County Sheriff's Department, Napa County Probation Department, St. Helena Police Department, Calistoga Police Department, Napa County Office of Education,** and **On The Move**. COUNTY District Attorney's Office shall be the lead agency for the GVS program's administrative and fiscal responsibilities.

CITY shall carry out Gang Violence Suppression program activities in accordance with the most current annual operating budget, and in accordance with the following specific terms:

LAW ENFORCEMENT COMPONENT:

CITY shall perform law enforcement activities that apply pressure to suppress gang activity, collect gang intelligence, and heighten community presence and awareness. As part of the GVS Program, CITY may provide a summer alternate activity program for at risk youth designed to offer a support system in a non-gang environment to youths that could become potential gang members.

CITY shall participate in the local Gang Violence Suppression Coordination Committee with the involved agencies.

CITY shall provide an Annual Operating Budget to the District Attorney's Office, with sufficient detail to describe the GVS activities to be performed and the expenditures to be incurred during the fiscal year within the 1st quarter of the Fiscal Year. CITY shall provide an annual report of GVS program activities performed within sixty (60) days of the end of each fiscal year.

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550.

As required by Government Code section 7550, each document or report prepared by CITY for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

EXHIBIT "B"

COMPENSATION AND EXPENSE REIMBURSEMENT

I. CITY shall provide COUNTY District Attorney's Office Analyst with an annual operating budget for each Fiscal Year, which shall be attached, and automatically incorporated by reference herein. CITY shall submit a written request to the District Attorney for approval of any line item variances in excess of ten percent (10%) of the amount included in the annual operating budget.

II. In accordance with the annual operating budget, CITY shall provide a quarterly Expenditure and Activity report to the District Attorney's Office detailing the items of expense for GVS program funded activities within 15 business days of the end of each fiscal quarter, (e.g. for the fiscal quarter ending September 30th, a quarterly expenditure report shall be provided by October 15th). Quarterly Expenditure and Activity reports shall include sufficient backup to support the expenditures claimed (e.g. payroll reports, payment vouchers, ledger reports, etc.).

III. Upon submission of a claim with appropriate supporting documentation for services actually performed and expenses actually incurred, the District Attorney's Office shall disburse payments in full, not to exceed the total annual maximum amount.

IV. If any of the partnering agencies is unable to present a claim for the balance of budgeted expenditures within fifteen (15) days of the end of the fiscal year, the unclaimed amount may be re-allocated to another participating agency or reserved in a designated Special Revenue Fund, at the discretion of the lead agency. In order to address annual variances in GVS Realignment revenues for each fiscal year, the COUNTY District Attorney's Office shall reserve excess annual revenues received in a designated Special Revenue Fund to ensure sustainability of GVS programs for future years; COUNTY District Attorney shall have discretion to appropriate the funds for allowable GVS activities and expenditures.

EXHIBIT "C"

[Company Name]
[Street Address]
[City, ST ZIP Code]
Phone [phone] Fax [fax]

SAMPLE INVOICE

INVOICE #_____
DATE:_____

TO:
[Customer Name]
[Street Address]
[City, ST ZIP Code]

FOR:
[Project or service description]
Contract No.

Date	DESCRIPTION	Employee & Title	HOURS	RATE	AMOUNT
1/1/15		Smith,			
1/1/15	Site visit/investigation 123 Main St,	Engineer	1.5	$165.00	247.50
1/1/15	Napa.	Smith,	1	$165.00	165.00
	Conf w/Owner	Engineer	4	$165,00	660.00
	AutoCad, Bldg X, 3rd Floor	Smith,			
		Engineer			
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	$195.00	341.25
1/2/15		Smith,			
1/2/15	AutoCad Bldg X, 3rd Floor	Engineer	4	$165.00	660.00
	Conf w/Owner re 2nd Floor	Smith,	.5	$165.00	82.50
		Engineer			
1/3/15	Mtg w/Jones re 2nd Floor; conf	Smith,			
1/3/15	w/Owner	Engineer	1.5	$165.00	247.50
	Mtg w/Smith; conf w/Owner re 2nd	Jones, PE	1.5	$195.00	292.50
	Floor				
				TOTAL	

AMENDMENT NO. 1
NAPA COUNTY AGREEMENT NO. 180351

PROFESSIONAL SERVICES AGREEMENT

THIS AMENDMENT NO. 1 TO AGREEMENT 180351 is effective as of the 1st day of July 2021, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and CITY ST HELENA, whose mailing address is 1480 Main Street, St. Helena, CA 94574, hereinafter referred to as "CITY."

RECITALS

WHEREAS, COUNTY has been operating a multi-agency grant funded Gang Violence Suppression program since Fiscal Year 2001-2002 using funds received by a grant from the State of California in order to provide ongoing gang violence suppression program activities through a grant operational agreement in partnership with COUNTY departments, local law enforcement agencies, and non-profit organizations in a collaborative effort to address gang suppression, intervention and prevention in Napa County; and

WHEREAS, the Gang Violence Suppression Program grant is now an ongoing program funded annually through 2011 Public Safety Realignment funds received from the State of California; and

WHEREAS, on July 1, 2017, COUNTY and CITY entered into an Agreement No. 180351 to continue the specialized Gang Violence Suppression program services, as authorized by Government Code section 31000, and as provided by CITY under the previous grant operational agreement; and

WHEREAS, CITY is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein;

WHEREAS, COUNTY and CITY now desire to amend the Agreement to extend the term for an additional 5 years.

TERMS

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, COUNTY and CITY agree to amend the Agreement as follows:

1. Paragraph 1"**Term of the Agreement**" is hereby amended to read in full as follows:

The term of this Agreement commence on the effective date first above written and shall expire on June 30, 2023, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination), or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall

continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CITY to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes), and 21 (Access to Records/Retention). The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, not to exceed three (3) additional years, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

IN WITNESS WHEREOF, this Amendment No. 1 to the Agreement was executed by the Parties hereto as of the date first above written.

CITY OF SAINT HELENA

By_____
MARK PRESTWICH, City Manager

"CITY"

NAPA COUNTY, a political subdivision of
the State of California

By_____
ALFREDO PEDROZA, Chair
Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors
By: *Douglas Parker (via e-sign)* Deputy County Counsel Date: June 24, 2021	Date: _____ Processed By: _____ Deputy Clerk of the Board	By:_____

CITY OF ST. HELENA

RESOLUTION NO. 2021-___

A RESOLUTION AUTHORIZING AMENDMENT NO. 1 TO NAPA COUNTY PROFESSIONAL SERVICES AGREEMENT FOR A MULTI-AGENCY, GRANT FUNDED GANG VIOLENCE SUPPRESSION PROGRAM

RECITALS

A. The County of Napa has been operating a multi-agency grant funded Gang Violence Suppression program since Fiscal Year 2001-02 using funds received by a grant from the State of California; and

B. The purpose of the grant is to provide ongoing gang violence suppression program activities in partnership with various Napa County departments, local law enforcement agencies, and non-profit organizations; and

C. On July 1, 2017, the City of St. Helena and the County of Napa entered into Napa County Professional Services Agreement No. 180351B to continue to specialize gang violence suppression program services; and

D. The initial term of the agreement was one year and, as provided in the Agreement, the term will automatically renew for an additional year, not to exceed three additional years; and

E. Professional Services Agreement No. 180351B between the City of St. Helena and the County of Napa for the Gang Suppression Grant has now expired. Amendment No. 1 will extend the grant agreement for five additional years; and

F. Extending the term of the Agreement will allow the City of St. Helena to continue the program with the grant funding and will allow the City to receive annual grant funding up to $8,484 each fiscal year for the purpose of Gang Suppression.

RESOLUTION

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

1. Grant Consideration is not a CEQA project; and
2. Approves Amendment No. 1 to Professional Services Agreement No. 180351B extending the term for an additional five years.

Approved at a Regular Meeting of the St. Helena City Council on September 14, 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

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and proposed approval of a resolution approving Amendment #1 STH Contract: FY2021-081 with Star Staffing in an amount of $25,000 for a total not-to-exceed amount of $50,000 for continued temporary staffing due to the City of St. Helena's water emergency.**

CEQA Determination: **Not a CEQA project**

Prepared By: April Mitts, Administrative Services Director

Reviewed By: April Mitts, Administrative Services Director

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.

To assist with the increase in work load due to the Water Emergency, the City executed STH Contract: FY2021-081 on May 11, 2021 with Star Staffing for $25,000 to provide temporary staffing for the Finance Department during the water emergency (Attachment 1). Star Staffing has been providing services to the City five days per week.

DISCUSSION

As the water emergency continues, the City has found the work performed by Star Staffing very beneficial during the water emergency due to increases in call volume and customer inquiries. Because of this staff recommends Amendment #1 to STH Contract: FY2021-081 with Star Staffing in an amount of $25,000 for a total not-to-exceed amount of $50,000 for continued temporary staffing for the Finance Department during the water emergency.

It is estimated this amendment will provide continued support through December 31, 2021.

FISCAL IMPACT

The total cost of this amendment is an additional $25,000 for a total not-to-exceed amount of $50,000. The overall fiscal impact to the Water Fund is an increase of $25,000 from the current fund balance. Use of fund balance in the amount of $25,000 will leave an estimated fund balance in the Water Operations Fund (561) of $7,031,335, or 110%. The estimated fund balance includes penalties incurred, of which a portion may be forgiven through the City Council approved Penalty Forgiveness Program.

RECOMMENDED ACTION

Approve the attached resolution.

ATTACHMENTS

Attachment 1 - STH Contract FY2021-081
Attachment 2 - STH Contract FY2021-081 Amendment #1
Attachment 3 - Resolution Star Staffing Amendment

STH Contract: FY2021-081

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on May 11, 2021 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Star Staffing (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Temporary Staffing for Finance Department.

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 $25,000 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.

G. Further, Consultant will defend and indemnify City, and hold it harmless, from any claim, demand or liability that is related to, or results from an assertion that as a result of providing services to City, a Consultant employee or a person performing work pursuant to this Agreement is entitled to benefits from, or is covered by, the Social Security retirement system or the California Public Employee Retirement Systems. Notwithstanding the foregoing, however, Consultant's obligation for any payments to such a claimant shall be limited to those payments which the City may be required to pay. This indemnity obligation shall survive the termination or expiration of this Agreement.

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

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

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

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

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

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

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

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

Consultant may discover, and will cooperate in any fraud or corruption investigation conducted, with respect to Consultant's service provided pursuant to this Agreement.

SECTION 11 – OWNERSHIP OF DOCUMENTS

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

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

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

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

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

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

D. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery

request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.

SECTION 13 – SUSPENSION OF WORK

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

SECTION 14 – COMPLIANCE WITH LAW

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

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

SECTION 16 – 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, emailed, sent by facsimile, or first class mail, addressed as follows:

To City:
City Manager
1572 Railroad Avenue
St. Helena, California 94574

To Consultant:
Star Staffing
Vanessa Salazar
707-265-9911
vanessa@starhr.com
1822 Jefferson St.
Napa, CA 94559

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, email, 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

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: _____
Name: Barbara J. Davis
Title: Director Risk Control

City:

By: Mark T. Prestwich
Digitally signed by Mark T. Prestwich
Date: 2021.05.11 11:09:54 -07'00'
Name: Mark T. Prestwich
Title: City Manager

Approved as to Form:

By: ethan.walsh@bbklaw.com
Digitally signed by: ethan.walsh@bbklaw.com
DN: CN = ethan.walsh@bbklaw.com
Date: 2021.05.17 07:00:20 -07'00'
Name: Ethan Walsh
Title: City Attorney

Exhibit A
CITY OF ST. HELENA

2021

Rate Schedule for Temp and Temp-to-Hire

Job Title or Description	Shift	Pay Rate/Hour	Bill Rate/Hour	Mark Up
CLERICAL: Accounting Technician I	Any	$26.30-31.97	$40.77-49.55	1.55
CLERICAL: Bilingual Office Assistant	Any	$22.07	$34.21	1.55

Pay Rates are subject to change via CLIENT. All Pay Rate changes must be confirmed in writing.

The calculation below will apply:
Bill Rate = Pay Rate x Mark Up

Bill Rate shown on this Exhibit is specific to job titles and pay rates listed.

Conversion = 720 Hours

Background and Drug Screening included in Mark Up.

Rate Schedule for Direct Hire

Job Title or Description	Shift	Department	Fee
Pay rates up to $20/hr	Any	Any	20% of annual salary
Pay rates from $20.01/hr+	Any	Any	23% of annual salary

This rate schedule was prepared and effective April 26, 2021.

CITY OF ST. HELENA	STAR STAFFING
CLIENT NAME	STAFFING FIRM
Mark T. Prestwich (Digitally signed by Mark T. Prestwich Date: 2021.05.11 12:12:42 -07'00')	
Signature	Signature
Mark T. Prestwich	
Printed Name	Printed Name
City Manager	
Title	Title
05/11/21	
Date	Date

Initials

The information contained in this document (version 1.1.2021) is confidential, privileged, and only for the information of the intended recipient and may not be used, published, or redistributed without the prior consent of Star H-R dba Star Staffing.

AMENDMENT #1
TO PROFESSIONAL SERVICES AGREEMENT WITH STAR STAFFING; STH CONTRACT NO: FY2021-081 FOR FOR TEMPORARY STAFFING FOR FINANCE DEPARTMENT DUE TO THE WATER EMERGENCY FOR AN ADDITIONAL $25,000 FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED $50,000.

This First Amendment to Professional Services Agreement STH Contract: FY2021-081 dated May 11, 2021 ("Agreement") is made as of this 14th day of September, 2021 by and between the City of St. Helena, a municipal corporation ("City"), and Star Staffing ("Consultant").

RECITALS

A. On May 11, 2021, the City and Consultant entered into the Agreement for Consultant to provide temporary staffing for the finance department to help with water emergency calls and traffic; and

B. As the water emergency continues, it is necessary for the support to continue; and

C. City and Consultant desire to amend the agreement to increase the contract amount by $25,000 for a not-to-exceed amount of $50,000.

AGREEMENT

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

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

"Total compensation shall not exceed $50,000…"

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

Entered as of the day and year first above stated.

CONSULTANT:	**CITY OF ST. HELENA** a Municipal Corporation
Signatures of Authorized Persons:	By:_____
By: _____	Print Name: Mark T. Prestwich
Print Name:_____	Title: City Manager
Title: _____	APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

CITY OF ST. HELENA

RESOLUTION NO. 2021-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA AUTHORIZING: AMENDMENT #1 TO STH CONTRACT: FY2021-081 WITH STAR STAFFING FOR THE AMOUNT OF $25,000, WITH A TOTAL CONTRACT NOT-TO-EXCEED $50,000, FOR CONTINUED TEMPORARY STAFFING FOR THE FINANCE DEPARTMENT TO ASSIST WITH THE WATER EMERGENCY.

WHEREAS, 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; and

WHEREAS, on October 13, 2020, emergency water conditions continued, and the City Council declared Phase II Water Restrictions; and

WHEREAS, to assist with the increase in work load due to the Water Emergency, on May 11, 2021, the City executed STH Contract: FY2021-081 with Star Staffing for $25,000 to provide temporary staffing for the Finance Department to assist with the water emergency; and

WHEREAS, Star Staffing has been providing services to the City five days per week; and

WHEREAS, as the water emergency continues, the City has found the work performed by the staff from Star Staffing very beneficial during the water emergency; and

WHEREAS, City and Consultant desire to amend the Agreement an additional $25,000 for a total not-to-exceed amount of $50,000; and

WHEREAS, it will be necessary to utilize Water Operations Fund Balance to accommodate this amendment.

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: FY2021-081 with Star Staffing for an additional $25,000 for a total not-to-exceed amount of $50,000.

SECTION 3. The City Council of the City of St. Helena hereby authorizes a budget increase not-to-exceed $25,000 to 561-5000-2150.

SECTION 4. The City Council of the City of St. Helena hereby authorizes use of Water Operations Fund balance in an amount not-to-exceed $25,000.

SECTION 5. The City Council of the City of St. Helena hereby authorizes the City Manager to execute the Amendment.

Approved at a Regular Meeting of the St. Helena City Council on September 14, 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

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **CONSENT ITEMS**

Subject: **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, October 26, 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.**

CEQA Determination: **Not a CEQA project**

Prepared By: Martin Beltran, Management Analyst

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

LMR Destinations LLC, owners of 1000 Mills Lane, St Helena, CA, Napa County Assessor Parcel Number (APN) 009-070-049, 009-070-052, 009-070-053, and 009-070-054("Property"), have applied to be annexed into the St. Helena Municipal Sewer District No. 1 ("District"), MSD Annexation No. 141. A location map and description for the property is shown in Attachment 2. City Council approval of the annexation is the formal administrative process to change the property's tax rate area code from septic to sanitary sewer for tax purposes.

On September 14, 2020, and September 17, 2020, the Planning Commission held a noticed public hearing for Resolution PC2020-009, PC2020-010, and PC2020-011, Use Permit, Design Review, Lot Line Adjustment, Lot Merger, Variance, and Water Agreement for the Farmstead at Long Meadow Ranch Project of 1000 Mills Lane.

On October 13, 2020, the City Council held a noticed public hearing for Resolution No. 2020-100, Use Permit, Design Review, Lot Line Adjustment, Lot Merger, Variance, Water

Agreement, and Development Agreement for the Farmstead at Long Meadow Ranch Project (PL20-002) of 1000 Mills Lane conditioning the property owner to annex into the City of St. Helena Municipal Sewer District No. 1. Per the City of St. Helena Municipal Code Sections 13.020.040 and 13.020.070, the property owner is required to annex into the City of St. Helena Municipal Sewer District No. 1, pay all annexation, connection, and impact fees prior to building their project.

This item was first considered at the July 27, 2021, City Council meeting, however the meeting to approve the sewer annexation was not properly noticed for the public hearing to take place at the September 14th City Council meeting. The public hearing needed to properly be noticed; therefore the hearing date is proposed to be reset to October 26th to consider the approval of the sewer annexation.

DISCUSSION

The attached resolution (Attachment 1) ordering the public hearing is the first step of the process to annex the Property into the District. The resolution requires a vote of at least two-thirds of all the members of the City Council (at least four affirmative votes) to order the public hearing (Health and Safety. Code § 4643[1]). Further, per Section 4644, the resolution is required to contain the following information and finding:

(a) Describe the boundaries of the territory proposed to be annexed.
(b) Designate the proposed annexation by an appropriate number.
(c) Declare that the area to be annexed to the district will be benefited by such annexation.
(d) Name the time and place for the hearing of objections by any person interested in the proposed annexation, to the inclusion in the district of any land described in the resolution.

Once adopted, the resolution, together with the names of the members of the City Council voting for and against it, must be published, posted, and mailed as provided in Sections 4610 and 4610.5. As noted, Section 4610 requires the resolution, together with the names of the members of the City Council voting for and against it to be published once a week for at least two successive weeks in a newspaper of general circulation printed and published in the City. The first publication shall not be more than 60 days nor less than 30 days prior to the date fixed for the hearing.

Accordingly, if the City Council adopts the enclosed resolution (Attachment 1) on September 14th, the 1st publication of the hearing notice cannot be any sooner than 30 days thereafter and the notice must be published once a week for two successive weeks. Thus, to comply with the publication requirements, the hearing to consider objections to the proposed annexation is proposed to be set for Tuesday, October 26, 2021, and staff will cause the first notice to be published on October 14th and the second notice on October 21st.

Also, per Section 4610.5, copies of the resolution shall also be posted in three public places within the area to be annexed not earlier than the 60th day or later than the 30th day prior to the hearing. Not earlier than 60 days nor later than 30 days prior to the hearing, a copy of the resolution shall also be mailed, postage prepaid, to each person to whom land in the area to be annexed is assessed as such owner is shown on the last equalized county assessment roll, at the address as shown upon the roll, and to each person who has any interest in any land within the area to be annexed whose name and address and a designation of the land in which they are interested is on file in the office of the City Clerk.

At the time established for the public hearing, the City Council will hear and consider any objections to the annexation and exclude any territory which in the Council's opinion will not be benefited by the annexation (Section 4646). After making changes to the boundaries of the area to be annexed, if any, the City Council may then adopt a resolution approving the annexation of the Property into the District (which will also require at least four affirmative votes). Upon a determination by the Council that the Property will be benefited by the annexation; certified copies of the resolution will then be recorded and filed in the manner and with the same force and effect as provided in Section 4613. (See Section 4647). Upon recordation of the resolution, the Property annexed becomes a part of the District and is subject to all the liabilities and entitled to all the benefits of the District. (See Section 4648).

If the City Council approves the resolution following the hearing on October 26, 2021, City staff will then process the annexation with Napa County and the State Board of Equalization to change the tax rate area code for the property. Staff will work with the applicant to obtain required encroachment and building permits. [1] Unless otherwise noted, all further section references are to the California Health and Safety Code.

FISCAL IMPACT

There is no fiscal impact associated with this report. The Applicant is responsible to construct the sewer lateral and connection; pay annexation, connection, impact fees, and any applicable Building Department fees.

RECOMMENDED ACTION

It is recommended the City Council adopt a Resolution setting a Public Hearing for 6:00 p.m. on Tuesday, October 26, 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.

ATTACHMENTS

Attachment 1: Resolution_1000 Mills Lane (Farmstead)
Attachment 2: Map and Legal Description
Attachment 3: Sewer Annexation Application
Attachment 4: Receipt_Sewer Annexation and Impact Fees

Attachment 5: Planning Commission Resolution PC2020-009
Attachment 6: Planning Commission Resolution PC2020-010
Attachment 7: Resolution No. 2020-100

RESOLUTION NO. 2021-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA SETTING A HEARING FOR 6:00 P.M., TUESDAY, OCTOBER 26, 2021, TO CONSIDER OBJECTIONS TO THE PROPOSED ANNEXATION OF TERRITORY, KNOWN AS 1000 MILLS LANE, ST HELENA, CA. 94574 (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

RECITALS

A. The owner of 1000 Mills Lane, St Helena, CA (APN 009-070-049, 009-070-052, 009-070-053, AND 009-070-054) ("Property") has requested annexation into the St. Helena Municipal Sewer District No. 1 ("District"); and

B. The legal description and boundary for the Property to be annexed is described in the attached Exhibit A – Annexation Description; and

C. The proposed annexation is hereby designated as MSD Annexation No. 141.

RESOLUTION

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

1. The Property, as legally described and depicted in Exhibit A – Annexation Description, will benefit from the proposed annexation into the District; and

2. A hearing to consider any objections to the proposed annexation of the Property into the District is hereby set for Tuesday, October 26, 2021, commencing virtually using Zoom at 6:00 p.m. or as soon thereafter as the matter can be heard. 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; and

3. The City Clerk shall cause a certified copy of this Resolution, together with the names of the members of the City Council voting for and against it, to be published once a week for at least two successive weeks in a newspaper of

general circulation printed and published in the city, and the first publication shall not be more than 60 nor less than 30 days prior to the date fixed for the hearing in accordance with Health and Safety Code Section 4310; and

4. The City Clerk shall cause a certified copy of this Resolution to be posted in three public places within the area to be annexed not earlier than the 60th day or later than the 30th day prior to the hearing in accordance with Health and Safety Code Section 4310.5; and

5. The City Clerk shall cause a certified copy of this Resolution to be mailed, postage prepaid, to each person to whom land in the area to be annexed is assessed as such owner is shown on the last equalized county assessment roll, at the address as shown upon the roll, and to each person who has any interest in any land within the area to be annexed whose name and address and a designation of the land in which they are interested is on file in the office of the city clerk in accordance with Health and Safety Code Section 4310.5.

Approved at a Regular Meeting of the St. Helena City Council held on Tuesday, September 14, 2021, by the following vote:

Mayor Ellsworth: _____

Vice Mayor Dohring: _____

Councilmember Chouteau: _____

Councilmember Hall: _____

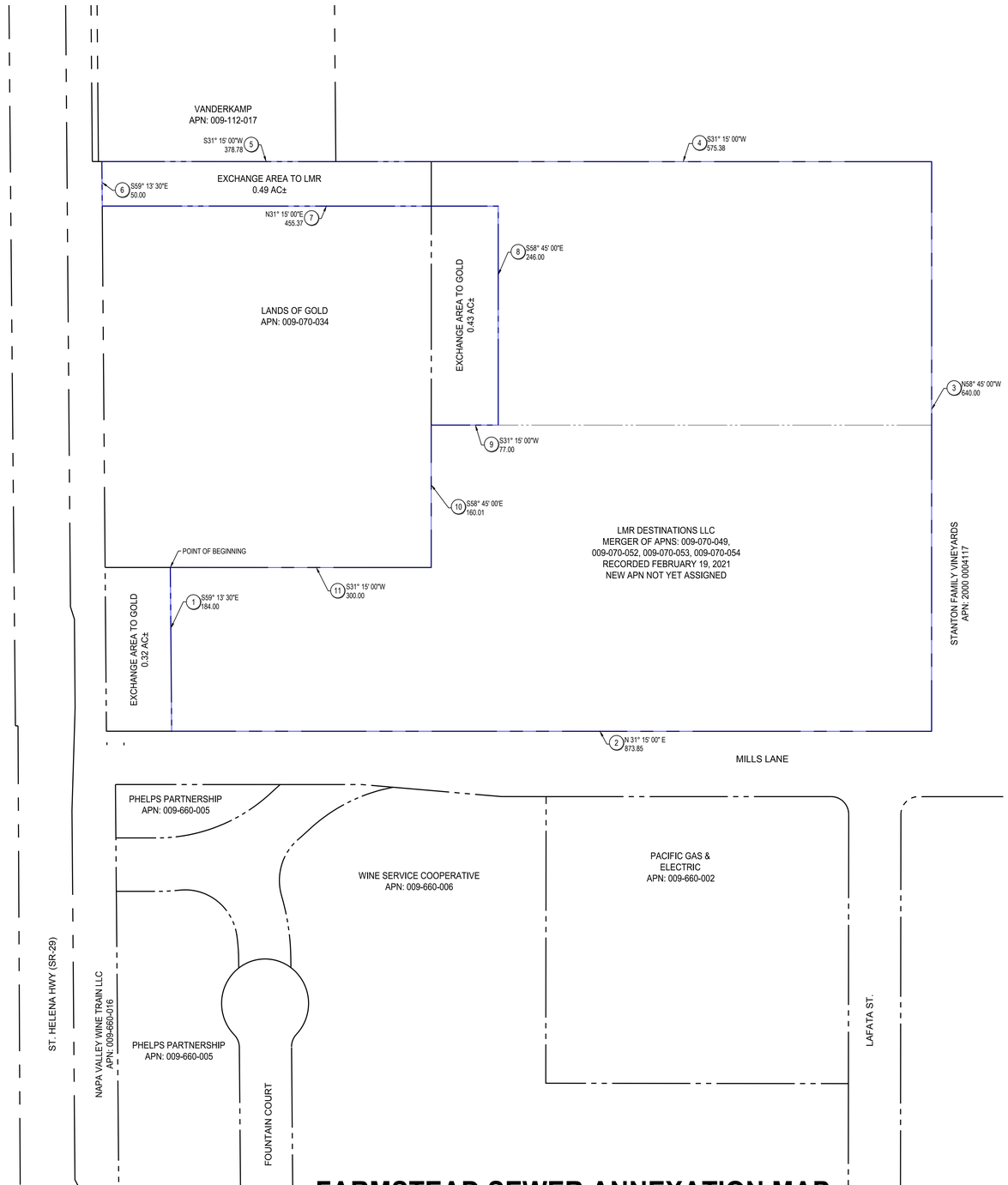
Councilmember Hardy: _____

APPROVED:

_____
Geoff Ellsworth, Mayor

ATTEST:

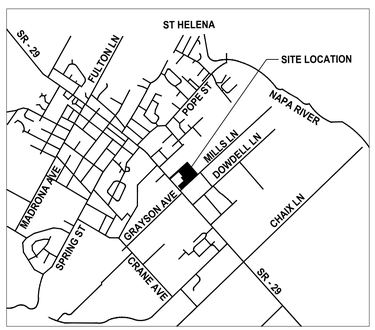
_____
Cindy Tzafopoulos, City Clerk



COURSES

	BEARING	DISTANCE
1	S 59°13' 30" E	184.00'
2	N 31°15' 00" E	873.85'
3	N 58°45'00" W	640.00'
4	S 31°15' 00" W	575.38'
5	S 31°15' 00" W	378.78'
6	S 59°13' 30" E	50.00'
7	N 31° 15' 00" E	455.37
8	S 58° 45' 00" E	246.00'
9	S 31° 15' 00" W	77.00'
10	S 58° 45' 00" E	160.01'
11	S 31° 15' 00" W	300.00'

PROJECT AREA 9.7 ACRES



VICINITY MAP
NOT TO SCALE

SHERWOOD
DESIGN ENGINEERS
2548 Mission Street
San Francisco, CA 94110
www.sherwoodengineers.com

FARMSTEAD SEWER ANNEXATION MAP

FARMSTEAD LODGING
ST HELENA, CALIFORNIA

NORTH 0 30' 60' 120'

JUNE 14, 2021

P:\2016\16-163_Farmstead\04_Design\Exhibits\Sewer Annexation Boundary Map\CAD\Sewer Annexation Map.dwg|Sewer Annexation Map|Shannon Browne,4/14/2021 12:38:49 PM,Letter(2)|6.1.8.33

GEOGRAPHIC DESCRIPTION

Annexation to St. of St. Helena Municipal District #1
ANNEXATION NO. XXXX-XX

All that real property situate in the City of St Helena, County of Napa, State of California, being a portion of the lands described in the Grant Deed to David A. Gold and Katherine A. Gold, Trustees of the David A. Gold and Katherine A. Gold Living Trust recorded November 3, 2002 as instrument number 2002-0044827 in the Official Records of Napa County and also being portions of Parcel One, Parcel Two, Parcel Three and Parcel Four as shown on the map entitled, "Parcel Map of the Lands of Carl Doumani" recorded March 18, 2009 and filed in Book 26 of Parcel Maps, at Pages 22 and 23 of Official Records of Napa County, said portions being more particularly described as a whole as follows:

Beginning at a point on the northwest line of Parcel Two as shown on the map entitled, "Parcel Map of the Lands of Carl Doumani" recorded March 18, 2009 and filed in Book 26 of Parcel Maps, at Pages 22 and 23 of Official Records of Napa County, said point being North 31º15'00" East 75.00 feet along said northwest line from the most western corner of said Parcel Two and thence leaving said northwest line and running along a line which runs parallel with, and lies 75.00 feet northerly of the southwest line of said Parcel Two;

Thence, (1)South 59º13'30" East 184.00 feet to the intersection with the southeast line of said Parcel Two;
Thence, (2) North 31º15'00" East 873.85 feet to the most eastern corner of said Parcel One,
Thence, (3) North 58º45'00" West 640.00 feet,
Thence, (4) South 31º15'00" West 575.38 feet to the most western corner thereof, said western corner also being the most northern corner of said lands of Gold,
Thence, (5) South 31º15'00" West 378.78 feet to the most western corner thereof,
Thence, (6) South 59º13'30" East 50.00 feet,
Thence, (7) North 31º15'00" East 455.37 feet,
Thence, (8) South 58º45'00" East 246.00 feet,
Thence, (9) South 31º15'00" West 77.00 feet,
Thence, (10) South 58º45'00" East 160.01 feet,
Thence, (11) South 31º15'00" West 300.00 feet to the **Point of Beginning** and containing **9.70** acres of land more or less.

The Basis of Bearings of this description is the map entitled, "Parcel Map of the Lands of Carl Doumani" recorded March 18, 2009 and filed in Book 26 of Parcel Maps, at Pages 22 and 23 of Official Records of Napa County

End of Description

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CITY OF ST. HELENA

DEPARTMENT OF PUBLIC WORKS

1572 RAILROAD AVENUE
ST. HELENA, CA .
94574
707-968-2658

Sewer Annexation and/or Connection Application Packet and Instructions

The City of St. Helena Municipal Sewer District No. 1 is considered a "community sanitary sewer" which is a sanitary sewer system owned and operated by the City of St. Helena. The municipal sewer district is not defined by a geographical boundary or city limit line it is simply those properties that are connected to the public system and are considered users of the system. A property located within the city limits does not necessarily imply that the property has been annexed to the sewer district. A Tax Rate Area (TRA) on the Assessor's Tax Roll will indicate if the property is in or out of the district. A TRA 3002 indicates the property is located within the sewer district, a TRA 3000 indicates it is not part of the sewer district.

Any project, property or person wishing to connect the municipal sewer district and become a user of the system is required to be annexed into the district if the property generating the wastewater is not already a part of the district as indicated by TRA 3000.

Procedures for Annexation into the Municipal Sewer District No. 1 are as follows:

1. To process the application process **ALL** of the following items must be completed and submitted to the St. Helena Public Works Director:
   - Application
   - St. Helena Application Fee, Process Fee and Connection Fee
   - Board of Equalization (BOE): Statement of Boundary Change Form
   - Board of Equalization Fee
     For more information of the BOE requirements please visit:
     https://www.boe.ca.gov/proptaxes/pdf/jurboundaryreq.pdf and
     https://www.boe.ca.gov/proptaxes/pdf/400ta.pdf
   - Napa County Mapping Flat Fee

2. Upon receipt of the application forms and appropriate fees, staff will review packet and determine if the proposed application meets the annexation requirements, and notify the applicant of determination.

3. Complete application meeting all annexation requirements will then be submitted for City Council review.
   - If the annexation is **denied** by City Council, applicant shall be refunded the State Board of Equalization Fee and the Napa County Mapping Fee.
   - If the annexation is **approved** by City Council, the applicant shall submit a written geographic description of the project area and map (both hard copy and digital format) depicting the projected area prepared by a Licensed Land Surveyor per BOE guidelines.

4. Upon receipt of the required geographic description of the project area and map, staff will prepare and submit the required information and fees to the State Board of Equalization and Napa County.

Updated 2/2018

DocuSign Envelope ID: 3A53BAF6-710A-4FC5-9508-AE0A133855C4

5. Prior to user physically connecting to the City's sewer system:
    - Staff shall confirm with the applicant that the annexation proceedings are complete and all fees have been paid
    - Prior to backfill of the trench at the connection point both Building and Public Works Staff will inspect applicable work and connections before final approval is given to applicant

FY 2020/2021	
City Sewer Annexation Fees (Resolution 2012-21)	
Sewer Connection Application Fee	$900
Annexation Process	$2,000
Connection Fee Inspection	$400
City Sewer Impact Fees (per habitable square foot) Municipal Code § 3.32.080	
Single Family Residential	$.45
Multi-family Residential	$.66
Office	$.44
Industrial	$.59
Commercial/Retail	$.88
Lodging	$.87
$(type of building) x (Habitable SF) = Sewer Impact Fee	
State Board of Equalization (BOE) Fee (Acreage Per Single Annexation)	
Less than 1 acre	$300
1.00 – 5.99 (most St. Helena properties)	$350
6.00 – 10.99	$500
11.00 – 20.99	$800
21.00 – 50.99	$1,200
51.00 – 100.99	$1,500
Greater than 101 acres	Refer to BOE
Napa County Mapping Flat Fee	$162
TOTAL TO BE PAID WITH APPLICATION SUBMITTAL	$ _____

See "Sewer Annexation Fee Breakout" in folder 09

Additional Costs	
Construction cost of sewer line from curb to home	Home owner pays independently
Cost to abandon the existing septic system	Home owner pays independently
Geographic description/map by licensed surveyor	Home owner pays independently
Monthly Sewer Service	Home owner pays independently

If you have additional questions please contact the Public Works Department at 707-968-2658.

Updated 09/2018

DocuSign Envelope ID: 3A53BAF6-710A-4FC5-9508-AE0A133855C4

CITY OF ST. HELENA

DEPARTMENT OF PUBLIC WORKS

1572 RAILROAD AVENUE, ST. HELENA, CA. 94574

707- 968-2658

Application for Sewer Annexation and/or Connection

APPLICANT INFORMATION

Applicant(s) Name			Phone
LMR Destinations LLC / Sherwood Design Engineers (Mike Hastings)			(415) 677-7300
Applicant(s) Street Address	**City**	**State**	**Zip**
PO Box 477	Rutherford	CA	94573
Property Owner Name			**Phone**
LMR Destinations LLC / Ted Hall			

PROPERTY INFORMATION

Property Address seeking sewer annexation	City	State	Zip
1000 Mills Lane	St. Helena	CA	94574

Assessor's Parcel No (APN)	Dwelling Square Footage	Existing Land Use
009-070-049, -052, -053, -054	Commercial Resort (See Building Permit Documents)	Pasture

Subsequent Development Plans, if any, and Timing

Commercial Resort to begin construction in the fall of 2021, with target completion date of February, 2023.

REQUIRED SIGNATURE

I hereby certify that this application and all other documents submitted are true and correct to the best of my knowledge and belief**. I also certify that I am the owner of the above property and have full legal rights to the property.**

DocuSigned by:

Ted W. Hall — AB40EDAF95584CB...

Property Owner Signature

6/15/2021

Date

**** FOR OFFICE USE ONLY ****

Application Received By	Date Application Received
Present Zoning	**General Plan Designation**

Application Checklist	Date Completed
St. Helena Application for Sewer Annexation	
Statement of Boundary Change Application: BOE	
Fees submitted	
Staff Report/Resolution Drafted	
City Council Approved	
Legal Description and Map	
Confirm Tax Area Rate	
Submission to BOE	
Submission to Napa County Auditor	
Submission to Napa County Assessor's office	
Napa County Tax Rate Area Change Received	
Grading Permits Approved	
Encroachment Permits Approved	
Finance Notified	
Date Service Began	

Fee Calculation Worksheet	
Sewer Connection Application Fee (St. Helena)	$900
Annexation Process (St. Helena)	$2000
Connection Fee Inspection (St. Helena)	$400
Sewer Impact Fee (St. Helena)	
State Board of Equalization (BOE) Fee	
Napa County Mapping Flat Fee	$162
Total Due at Application	
Sewer Impact Fee: $ _____* X _____(Habitable SF)	
(18/19) *PER SF $.51 SFR | $.77 MFR | $.51 Office| $.69 Industrial | $1.02 Com/Retail | $1.01 Lodging	
Total Collected with Application	
Pending Amount Due	
Fees to other agencies:	
State Board of Equalization Fee (Check # _____)	
Napa County Mapping Flat Fee (Check # _____)	$162.00

Please note there may be additional Building Department fees due for final hookup.
Contact the City of St Helena Building Department at 707.967.2779 with questions.

Updated 09/2018

CITY OF ST. HELENA
1480 Main St.
St. Helena, CA 94574

Date: 06/17/2021 Time: 10:14 AM
Receipt No. 00234217

Account:CR 3,300.00

Sewer Connection Inspect - Mills Lane	400.00
Sewer Connection App Fee - Mills Lane	900.00
Sewer Annexation Fees - Mills Lane	2,000.00

Total		3,300.00
Check	1186	3,300.00
Cash		0.00

Total	3,300.00
Change	0.00

Bal Forward:

LMR Destinations LLC
Customer #: 018489
PO Box 477

Rutherford, CA 94573

Cashier: JenniferW
Station: CITYHALL-VPN-03

CITY OF ST. HELENA PLANNING COMMISSION

RESOLUTION NO. PC2020-009

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ST. HELENA RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF ST. HELENA ADOPT A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM, AND RECOMMENDING THAT THE CITY COUNCIL ADOPT A RESOLUTION APPROVING DESIGN REVIEW AND A USE PERMIT AMENDMENT FOR THE FARMSTEAD AT LONG MEADOW RANCH PROJECT AT 738 MAIN STREET IN THE CITY OF ST.HELENA, CALIFORNIA

PROPERTY OWNER: Dixie & Martin Vanderkamp **APN:** 009-112-017

Recitals

1. On May 23, 2017, LMR Main Street Partners LLC submitted applications for a Use Permit Amendment and Design Review approval to memorialize all uses currently occurring on-site and to make several small additions to existing buildings at 738 Main Street in the Service Commercial district as described below:

   - A 160-seat restaurant; and
   - A wine tasting room, retail sales and offices in the historic Logan-Ives house; and
   - A covered open-air produce market; and
   - A café serving breakfast items and coffee (open from 7 a.m. to 12 p.m. with 40 outdoor seats); and
   - Various business and private social events occurring throughout the year. Events would occur between 9 am and 10 pm. Events up to 75 persons would occur daily while events of 76 to 200 persons are limited to four (4) per week. Outdoor live and recorded amplified music is included with these events; and
   - Local community events up to 6 times per year with up to 300 attendees;
   - Fitness classes including yoga and Pilates beginning at 9 a.m. (offered 2-3 times per week with up to 12 attendees); and
   - Film screenings. Films are screened four times per year, with four showings each day. Twenty to 40 attendees at each screening; and
   - A 408 sf addition to the farmer's market building for the addition of a butcher shop; and
   - A 355 sf expansion of dry storage space off the restaurant kitchen; and
   - A 510 sf expansion of storage space on the back side of the south wing events building on the southeast corner; and
   - A sound barrier approximately 4 ft. in height to an existing air-conditioning unit on the restaurant building; a sound attenuator to the exhaust outlet on the primary air conditioning unit on the restaurant building; and a sound barrier to the kitchen exhaust fan on the events building.
   - Approximately 255 ft of 8 ft fence will be installed on the east side of the property to buffer the adjacent property from noise and light.

2. Pursuant to CEQA Guidelines Sections 15072 and 15073, a Draft Mitigated Negative Declaration and included Initial Study was circulated for public review and comment from May 29, 2020 until June 29, 2020; and
3. The Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in a number of potentially significant effects on the environment and identified mitigation measures that would reduce the significant effects to a less-than-significant level; and
4. Whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a Mitigation Monitoring and Reporting Program to ensure compliance with the mitigation measures during project implementation; and
5. A public notice was published in the Napa Valley Register and mailed to residents and occupants within 300 feet of the project site in compliance with state and local law; and
6. The Planning Commission of the City of St. Helena, State of California, considered the project, staff report, and all testimony, written and spoken, at a duly noticed public hearing on September 14, 2020 and September 17, 2020; and
7. Now, therefore let it be found that, the Planning Commission recommends that the City Council of the City of St. Helena adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and approve a Use Permit Amendment and Design Review thereby authorizing the modifications described in the staff report and the reviewed plans based on the findings below and subject to the conditions of approval enumerated herein.

Resolution

A. In reviewing the findings in this Resolution, the Planning Commission relied upon and hereby incorporates by reference all of the documents referenced in this Resolution and the associated staff reports, City files for this matter, correspondence, presentations and other materials.

B. CEQA Findings:

1. The Planning Commission has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project; and
2. The Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and consistent with state and local guidelines implementing CEQA; and
3. On the basis of the whole record, there is no substantial evidence that the Project as designed, conditioned, and mitigated, will have a significant effect on the environment; and
4. The Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City as lead agency for the Project; and
5. Based on the foregoing, the Planning Commission recommends that the City Council approve the Initial Study/Mitigated Negative Declaration and adopt the Mitigation Monitoring and Reporting Program for the Project.

C. In accordance with the design review criteria identified in SHMC Section 17.164.030, in making their recommendation the Planning Commission finds that the project demonstrates the following:

1. *Consistency and compatibility with applicable elements of the general plan in that the proposed structures are consistent with the intent of applicable General Plan policies pertaining to development in the Service Commercial District.*
2. *Compatibility of design with the immediate environment of the site in that the project has been designed to be compatible with the surrounding environment.*
3. *Relationship of the design to the site is found to be consistent in that the project has been designed to be compatible with the site and the surrounding area.*
4. *That the design is compatible in areas considered by the board as having a unified design or historical character in that the project has been designed to be compatible with the site and the surrounding area.*
5. *That the design promotes harmonious transition in scale and character in areas between different designated land uses in that the project would not alter the scale or transition between different land uses inasmuch as it is surrounded by commercial and residential structures of a similar style.*
6. *Compatibility with future construction both on and off the site in that the proposed minor additions will blend in with existing and future construction in the immediate vicinity.*
7. *That the architectural design of structures and their materials and colors are appropriate to the function of the project in that the project has been professionally designed to suit the site and its surroundings.*
8. *That the planning and siting of the various functions and buildings on the site create an internal sense of order and provide a desirable environment for occupants, visitors and the general community in that the improvements have been designed to be compatible with the site and its surroundings.*
9. *That the amount and arrangement of open space and landscaping are appropriate to the design and the function of the structures in that landscaping and open space will enhance the overall appearance of the property and general vicinity.*
10. *That access to the property and circulation systems are safe and convenient for pedestrians, cyclists and vehicles in that access to the site will remain via Charter Oak Avenue. No changes are proposed that would impact access to the site.*
11. *That natural features are appropriately preserved and integrated with the project in that the project has been designed to be compatible with the site and its surroundings.*
12. *That the materials, textures, colors and details of construction are an appropriate expression of its design concept and function and whether they are compatible with the adjacent and neighboring structure and functions in that the proposed siding, colors, and roofing materials are consistent with the site context and compatible with surrounding design.*
13. *That the landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors*

create a desirable and functional environment and whether the landscape concept depicts an appropriate unity with the various buildings on the site in that project landscaping and open space will enhance the project site and its surroundings.

14. *That sustainability and climate protection are promoted through the use of green building practices such as appropriate site/architectural design, use of green building materials, energy efficient systems and water efficient landscape materials in that project related construction is required to meet all California Building Codes and City of St. Helena development standards.*

D. In accordance with SHMC Section 17.168.050, the Planning Commission recommends the following use permit findings to support the motion to recommend approval of the use permit amendment:

1. *That the proposed uses would not generate odors, fumes, dust, light, glare, radiation or refuse that would be injurious to surrounding uses or to the community in that proposed uses are related to the existing restaurant, would largely occur indoors within existing buildings, and are subject to review and approval by the Napa County Environmental Health Department.*
2. *That the proposed uses would not generate levels of noise that adversely affect the health, safety, or welfare of neighboring properties in that the proposed project is subject to City noise regulations and is not anticipated to produce frequent noise audible beyond the property line.*
3. *That the proposed use would not generate traffic noise in excess of the "normally acceptable" range identified in the General Plan as traffic related impacts have been identified in the Mitigated Negative Declaration and been determined to be less than significant.*
4. *That the proposed use would not make excessive demands on the provision of public services including water supply, sewer capacity, energy supply, communication facilities, police protection, and fire protection in that impacts to these services have been identified in the Mitigated Negative Declaration and been determined to be less than significant.*
5. *That the proposed uses would provide adequate ingress and egress to and from the proposed location in that ingress and egress to the project site would not change as a result of the proposed project.*
6. *That allowing the proposed uses would not conflict with the City's goal of maintaining the economic viability of a local serving economy in that the proposed project would be consistent with General Plan Update 2040 policies.*
7. *That the proposed uses would be compatible with surrounding land uses and would not conflict with the purpose established for the district within which it would be located as the proposed project is consistent with the intent of the Service Commercial zoning district.*
8. *That the proposed uses would not be in conflict with the City's General Plan in that the project would support both a local and visitor serving component to the City's economy by providing jobs, tax revenue, and additional amenities.*
9. *That the proposed uses would not be injurious to public health, safety, or welfare in that the proposed uses are related to the existing restaurant, would largely occur*

indoors within existing buildings, and are subject to review and approval by the Napa County Environmental Health Department.

10. *That granting the use permit would not set a precedent for the approval of similar uses whose incremental effect would be detrimental to the City or would be in conflict with the General Plan in that this use permit amendment only applies to this property and to these specific uses.*
11. *That, as demonstrated on a detailed plan submitted by the applicant, adequate off-street parking to accommodate the long term parking needs of employees and business owners and customers is available in that the proposed project has provided required off-street parking.*
12. *That the capacity of surrounding streets is adequate to serve the automobile and delivery truck traffic generated by the proposed uses in that the project site can adequately be served by existing streets (Highway 29 and Charter Oak Avenue).*

Planning Department Conditions of Approval

E. The Planning Commission recommends approval of design review and a use permit amendment for the above-described project with the following conditions of approval. The conditions noted below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

1. The project shall be in conformance with all city ordinances, rules, regulations and policies in effect at the time of issuance of a building permit.
2. This approval shall be vested within one (1) year from the date of final action. A building permit application for the use allowed under this approval shall have been submitted within one (1) year from the effective date of this action or the approval shall expire, provided however that the approval may be extended for up to two (2) one-year periods pursuant to the St. Helena Municipal Code, Section 17.08.130, Extension of Permits and Approvals.
3. Any request for an extension of this approval shall be justified in writing and received by the Planning Department at least thirty (30) days prior to expiration.
4. The approvals shall not become effective until fourteen (14) calendar days after approval, providing that the action is not appealed by the City Council or any other interested party within that 14-day period.
5. All required fees, including planning fees, development impact fees, residential in-lieu housing fees, building fees, toilet retrofit fees, and St. Helena Unified School District fees shall be paid prior to issuance of a building permit. Fees shall be those in effect at the time of the issuance of the building permit.
6. Pursuant to City Council Resolution 2003-65, the owner and applicant are informed of the following:

   In recognition of the need for additional affordable housing, and to mitigate the effects of this development on the supply and demand of affordable housing, the permitee shall be subject to a Housing Impact Fee, an inclusionary requirement, an in-lieu fee, and/or similar fair and appropriate mechanisms, to provide funds for or to develop

additional affordable housing. This fee must be paid prior to a certificate of occupancy being issued.

7. Compliance with all permit conditions shall occur in accordance with specific regulations but in all cases no later than prior to occupancy or initiation of use unless another time is set by law or by this approval. Occupancy or final inspection of a project may be withheld if all conditions, including payment of fees for services rendered by the City, are not met.
8. In any action or proceeding to attack, challenge, invalidate, set aside, void or annul the City's approval of applicant's Project, in whole or in part, applicant shall defend, at its own expense and without any cost to the City, and with counsel acceptable to the City, and shall fully and completely indemnify and hold the City, its agents, officers, and employees harmless from and against any and all claims, causes of action, damages, costs, attorney's fees and liability of any kind, so long as the City reasonably promptly notifies the applicant of any such claim, action, or proceedings and the City cooperates fully in the defense of the action or proceedings.
9. Provided they are in general compliance with this approval, minor modifications may be approved by the Planning Director.
10. Pursuant to St. Helena Municipal Code Section 17.08.110, this permit shall run with the land and shall be binding upon all parties having any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to their benefit and benefit of the City of St. Helena.
11. The primary purpose of this review is for compliance with the General Plan and Zoning Ordinance. The property owners or their designee shall be responsible for meeting with the Building Official, Fire Inspector and or Public Works Department to review compliance with Building Codes, Fire Codes and specific Public Works Standards including fire protection systems and any applicable accessibility standards of Title 24.
12. All conditions and requirements contained in Resolution #2009-30 remain in effect unless otherwise superseded by this approval.
13. If the property is sold or otherwise conveyed to new owners, the owner or successor in interest is required to notify the Planning Director in writing within 30 days of the change in ownership. The use permit shall then be brought before the Planning Commission for review in order for the City to assess whether operational practices that are different than what is approved in this use permit may occur and whether a use permit amendment is required.
14. Construction shall be in compliance with plans submitted and reviewed by the Planning Commission on September 14, 2020 and September 17, 2020, except as modified herein.
15. With the exception of handicapped employees, all employees shall park in the off-site supplemental lot; employees shall not park on-site or on neighboring streets.
16. Planters and tree wells must be bordered by a six-inch high concrete curb or equivalent barrier approved by the City.
17. A minimum of 20% of the subject property must remain maintained landscaping and shall be kept in a weed-free condition.

18. If the lease option for the off-site parking lot to be used for employee parking at Dowdell/McCormick is lost or the lease is otherwise terminated or expires, the applicant shall provide evidence that a parking lot with a similar number of parking spaces has been secured (and is approximately the same distance from the project site or applicant provides appropriate transportation from parking to project site).
19. During construction, the areas under construction on project site shall be adequately fenced and secured to prevent trespassing.
20. Exterior lighting shall be directed or shielded to prevent glare onto the public roadway or adjacent properties.
21. To reduce disturbance of residents in the project vicinity, construction activities which generate noise that can be heard at the property line of any parcel of real property within the City limits shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Saturday. Delivery of materials/equipment and cleaning and servicing of machines/equipment shall be limited to 7:00 a.m. to 6:00 p.m. Exceptions to these time restrictions may be granted by the Public Works Director for one of the following reasons: (1) inclement weather affecting work, (2) emergency work, or (3) other work, if work and equipment will not create noise that may be unreasonably offensive to neighbors as to constitute a nuisance. The City Engineer must be notified and give approval in advance of such work. No construction activities shall occur on Sundays or federal or local holidays that generate noise that can be heard at the property line of any parcel of real property within the City limits.
22. Any seating used for the café is considered part of the 160 seat maximum not in addition to it. Café hours of operation are limited to 7:00 am to 12 pm.
23. The Farmers Market hours of operation shall be limited to daily from 10 am to 6 pm.
24. The events on the site may not exceed:
    a. Daily events up to 75 persons;
    b. Four (4) events per week, up to 200 persons with amplified outdoor live and recorded music;
    c. Six (6) community events per year with up to 300 guests; and
    d. Four (4) film screenings per year with 4 showings per day with a maximum of 40 attendees at each screening.
25. All onsite events shall be limited to the hours of 9 am to 10 pm. Fitness classes shall end by 11 am.
26. There shall be no events or community events scheduled concurrently on dates when film screenings occur. In no case shall multiple events (with persons in excess of 200 for all events totaled together) be concurrently scheduled.
27. All live and amplified music must comply with applicable City noise regulations.
28. The property shall maintain complimentary on or offsite valet parking service or a parking attendant when one or more private parties under 40 persons require parking above available onsite parking (consistent with past and existing parking operations).
29. For events with 40-200 persons, client hosts are required to use buses, vans or shuttles for transporting their guests to and from the site and the buses, vans and shuttles are required to park offsite after drop off.

30. An annual compliance review shall evaluate applicant's operations to determine compliance with all conditions of approval. City Planning and Building Director shall direct such review annually for five (5) years after approval. Any compliance issues shall be resolved either through applicant's voluntary action or, if necessary, City enforcement action consistent with St. Helena Municipal Code.

31. All noise attenuating features approved as part of the project must be installed within 120 days of building permit approval of such features.

Public Works Department Conditions of Approval

32. Approval of this project shall be subject to the requirements of, and all improvements shall be designed and constructed in accordance with, the most current version at the time of improvement plan submittal, Caltrans Standards and Specifications, the City of St. Helena Municipal Code, the St. Helena Water and Sewer Standards, the St. Helena Street, Storm Drain and Sidewalk Standards, and all current federal, state and county codes governing such improvements.

33. Prior to the issuance of a building permit, for any improvements outside the existing building envelope, a grading and drainage plan showing topographic data, all easements, infrastructure onsite and directly adjoining, and an erosion control plan shall be submitted for review and approval by the City Engineer.. If the project entails more than 50 cubic yards of soil disturbance, 10,000 square feet of disturbance area, a cut or fill of 3 feet or more, or alteration of any drainage pattern, a grading permit shall be required.

34. Improvement plans shall incorporate all grading, drainage, and utilities shown on the approved Use Permit package, those improvements agreed to in public hearings, the requirements of these conditions of approval, and those improvements required by any codes in effect at the time of plan submittal.

35. Drainage needs to be routed to prevent inundation of neighboring properties. Grading and/or site improvement plans shall show how 2-year and 10-year storm flows shall be infiltrated on site and/or diverted at the property lines to prevent inundation of neighboring properties.

36. Erosion and sediment control plans shall conform to the latest State and City codes at a minimum

37. Site plans submitted for the building permit review shall identify the location of any trees within the project area. Additionally, all existing vegetation including location, species, and sizes shall be identified and indicate what vegetation is to be protected or removed. If proposed/new landscaping involves an area greater than 500 square feet or rehabilitation of more than 2,500 square feet, the proposed landscaping shall comply with the State's Model Water Efficient Landscape Ordinance (MWELO). MWELO compliance shall be demonstrated as part of the building permit submittal.

38. Prior to issuance of a Certificate of Occupancy, any new and modified existing water laterals, meters and backflow prevention devices shall be required and constructed in accordance with the current requirements of the City of St. Helena's Water Standards and the California Department of Health Standards. Existing meter boxes located within a driveway shall be retrofitted with a traffic-rated box. New laterals shall be located perpendicular to the water main and outside any driveway/drive aisle.

39. Prior to issuance of a Certificate of Occupancy, remodels or new construction which require fire sprinklers shall install an appropriately-sized water service with appropriate backflow and meter devices. Fire system calculations shall be submitted with the Building Permits to verify fire service lateral and meter sizing. Deferred submittals are not accepted.

40. Proposed separations between public water facilities and other utilities shall meet the minimum separations as specified by the Department of Health and the City of St. Helena Public Works Standards.

41. No construction may commence until adequate access to fire water supply is available to building sites as approved by the Fire Chief.

42. Wastewater discharged is subject to all of the requirements and limitations set forth in Chapter 13.24, Wastewater Discharge, of the St. Helena Municipal Code.

43. The developer's existing onsite force main system shall provide protection from accidental discharge of prohibited materials or other wastes regulated as defined in Chapter 13.24, Wastewater Discharge, of St. Helena Municipal Code. Such facilities shall be provided and maintained at the Owner's expense.

    a. Owner shall continuously maintain records of all daily flows for a rolling three year period. Said records shall be made available to the City for review upon request.

    b. The City shall have the right to inspect all parts of the onsite force main system at anytime during normal business hours. Failure to take immediate corrective actions on any deficiencies found may result in enforcement actions as provided under the St. Helena Municipal Code or other applicable law.[Reserved]

44. Prior to the issuance of a Certificate of Occupancy, the Developer is required to install a wastewater flow meter measuring the total volume of wastewater leaving the project site, into the City's sewage collection infrastructure, and after installation, have the wastewater flow meter calibrated yearly. Annual wastewater flow meter calibration records are to be maintained by the project ownership and made available to City staff upon request. The style, design, manufacturer, and location of this meter must be of a form found to be acceptable by the City. The costs associated with the installation and calibration of this meter are required to be fully borne by the Developers, and the results of the flow measurement are to be utilized to determine the amount of the wastewater bills for the uses on site.

45. Prior to the issuance of a certificate of occupancy, trash areas, dumpsters and recycling containers shall be enclosed and roofed per State and County standards to prevent water run-on to the trash area and water runoff from the area, to contain litter and trash so that it is not dispersed by the wind or run-off during waste removal. In the event that wine or food is disposed in these areas, the enclosed trash area shall drain to the sanitary sewer system. An area drain connected to the sanitary sewer shall be installed in the enclosure area and a structural control such as an oil/water separator or sand filter shall be included. No other area shall drain into the trash enclosure. A sign shall be posted prohibiting the dumping of hazardous materials into the sanitary sewer.

46. Where applicable, the applicant shall be required to submit to the requirements for annual inspections of food/beverage service establishments and businesses that handle hazardous wastes for illicit stormwater discharges as required by the State National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges. The annual stormwater illicit discharge inspections are performed and invoiced by Napa County Department of Environmental Management.

47. Provide details of all proposed fencing, walls, and gates on all plans submitted for building permit review.

48. Prior to issuance of a Certificate of Occupancy, the Developer shall repair all public improvements that are damaged by the construction process in accordance with the City Water/Sewer/Street/Storm Drain/Sidewalk Standards.

49. Existing streets being cut by new utility services will require edge grinding and an A.C. overlay per City standards, extent to be determined by the Public Works Department.

50. Prior to issuance of a grading or building permit, the Developer shall be required to obtain a City encroachment permit for improvements on public right-of-way authorizing site work or construction activities on the site.

51. The Developer shall be required to obtain a Caltrans encroachment permit for improvements on and immediately adjacent to Highway 29 as necessary to complete any required offsite improvements.

52. The Developer shall be required to obtain permits necessary to complete work on the railroad right-of-way as necessary in conjunction with any required offsite improvements.

Building Department Conditions of Approval

53. A building permit is required for all onsite demolition, construction and/or change of occupancy.
54. The applicant will be required to comply with the codes adopted at the time the applicant applies for a building permit. At this time the City of St. Helena utilizes the 2019 Title 24 codes.
55. When submitting plans for a building permit, the plans shall include all documentation listed on the building permit application checklist.
56. The applicant shall provide a construction waste management plan with the building permit application.
57. The plans for construction shall include a checklist for compliance with the California Green Buildings Standards Code, mandatory measures. Provide a reference on the checklist indicating where the mandatory measures can be found on the plans.
58. When submitting plans, the title page shall include all information referenced on the building permit application checklist Title Page requirements.
59. Building Permit application materials and plans shall include any documentation pertaining to special loads applicable to the design and the specified section of the code that addresses the condition; special inspections for any systems or components requiring special inspection; requirements for seismic resistance; and a complete list of deferred submittals at time of application. Any deferral of the required submittal items shall have prior approval of the Building Official however deferral of fire sprinkler design is not allowed.
60. Properties which are on septic systems and proposing substantial renovations may require approval from the Napa County Environmental Health Department. Applicants are encouraged to engage with the County early in the building permit review process to reduce the potential for delay.

Fire Department Conditions of Approval

61. Plans submitted for building permit shall exhibit compliance with the current St. Helena Fire Code, as adopted and codified in St. Helena Municipal Code Chapter 15.36.
62. Fire sprinklers and fire hydrants shall be installed as required by Fire Code and the Fire Department.
63. One hour minimum fire resistant construction on all exterior walls within 10' of property boundary is required. Fire resistant construction of interior walls shall be determined by type of occupancy.
64. Any gates installed to control vehicular access to a property are required to be setback 30-feet from the property line and/or edge of pavement, whichever is greater. No vehicle gates may be installed without Fire Department and Public Works Department review and explicit approval.

I HEREBY CERTIFY that the City of St. Helena Planning Commission recommends that the City of St. Helena City Council approve the foregoing design review and use permit amendment applications at a regular meeting of said Planning Commission held on September 17, 2020 by the following roll call vote:

AYES: Commissioners Ponte, Hale, Anderson and Hardy
NOES: Commissioner Monnette
ABSENT: None
ABSTAIN: None

APPROVED:

Lester Hardy
Chair, Planning Commission

ATTEST:

Maya DeRosa, AICP
Planning and Building Director

CITY OF ST. HELENA PLANNING COMMISSION

RESOLUTION NO. PC2020-010

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ST. HELENA RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF ST. HELENA ADOPT A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM, AND RECOMMENDING THAT THE CITY COUNCIL ADOPT A RESOLUTION APPROVING DESIGN REVIEW, A USE PERMIT, A LOT LINE ADJUSTMENT, A LOT MERGER, A VARIANCE, AND A WATER AGREEMENT FOR THE FARMSTEAD AT LONG MEADOW RANCH PROJECT AT 1000 MILLS LANE IN THE CITY OF ST. HELENA, CALIFORNIA

PROPERTY OWNER: LMR Property Acquisition Partners LLC **APN:** 009-070-49,52,53,54

Recitals

1. LMR Main Street Partners LLC has submitted applications to the City of St. Helena for a Use Permit, Design Review, Lot Line Adjustment, Lot Merger, Variance, Water Agreement and Development Agreement approval in order to construct an new 65 room hotel and associated facilities at 1000 Mills Lane in the Service Commercial and Twenty-acre Agriculture districts as described below:
    - A 9,882 sf multi-purpose building; and
    - A 3,452 sf utility and service building; and
    - A 3,114 sf spa building; and
    - A 2,652 sf pool and fitness building; and
    - Two outdoor pools, including one children's pool; and
    - Two (2) 1,000 sf agricultural barns.
2. Pursuant to CEQA Guidelines Sections 15072 and 15073, a Draft Mitigated Negative Declaration and included Initial Study was circulated for public review and comment from May 29, 2020 until June 29, 2020; and
3. The Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in a number of potentially significant effects on the environment and identified mitigation measures that would reduce the significant effects to a less-than-significant level; and
4. Whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a Mitigation Monitoring and Reporting Program to ensure compliance with the mitigation measures during project implementation; and
5. A public notice was published in the Napa Valley Register and mailed to residents and occupants within 300 feet of the project site in compliance with state and local law; and
6. The Planning Commission of the City of St. Helena, State of California, considered the project, staff report, and all testimony, written and spoken, at a duly noticed public hearing on September 14, 2020 and September 17, 2020; and

7. Now, therefore let it be found that, the Planning Commission recommends that the City Council of the City of St. Helena adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and approve a Use Permit, Design Review, Lot Line Adjustment, Lot Merger, Variance, and Water Agreement approving a Development Agreement thereby authorizing the modifications described in the staff report and the reviewed plans based on the findings below and subject to the conditions of approval enumerated herein.

Resolution

A. In reviewing the findings in this Resolution, the Planning Commission relied upon and hereby incorporates by reference all of the documents referenced in this Resolution and the associated staff reports, City files for this matter, correspondence, presentations and other materials.

B. CEQA Findings:

1. The Planning Commission has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project; and
2. The Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and consistent with state and local guidelines implementing CEQA; and
3. On the basis of the whole record, there is no substantial evidence that the Project as designed, conditioned, and mitigated, will have a significant effect on the environment; and
4. The Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City as lead agency for the Project.
5. Based on the foregoing, the Planning Commission recommends that the City Council approve the Initial Study/Mitigated Negative Declaration and adopt the Mitigation Monitoring and Reporting Program for the Project.

C. In accordance with the design review criteria identified in SHMC Section 17.164.030, in making their recommendation the Planning Commission finds that the project demonstrates the following:

1. *Consistency and compatibility with applicable elements of the general plan in that the proposed structures are consistent with the intent of applicable General Plan policies pertaining to development in the Service Commercial and Agricultural Districts.*
2. *Compatibility of design with the immediate environment of the site in that the project has been designed to be compatible with the surrounding environment.*
3. *Relationship of the design to the site is found to be consistent in that the project has been designed to be compatible with the site and the surrounding area.*
4. *That the design is compatible in areas considered by the board as having a unified design or historical character in that the project has been designed to be compatible with the site and the surrounding area.*

5. *That the design promotes harmonious transition in scale and character in areas between different designated land uses in that the project is of a similar scare and character to other development in the immediate area.*
6. *Compatibility with future construction both on and off the site in that the proposed project will blend in with existing and future construction in the immediate vicinity.*
7. *That the architectural design of structures and their materials and colors are appropriate to the function of the project in that the project has been professionally designed to suit the site and its surroundings.*
8. *That the planning and siting of the various functions and buildings on the site create an internal sense of order and provide a desirable environment for occupants, visitors and the general community in that the improvements have been designed to be compatible with the site and its surroundings.*
9. *That the amount and arrangement of open space and landscaping are appropriate to the design and the function of the structures in that landscaping and open space will enhance the overall appearance of the property and the immediate vicinity.*
10. *That access to the property and circulation systems are safe and convenient for pedestrians, cyclists and vehicles in that access to the site will be provided via a realigned Mills Lane. Additional pedestrian connectivity will be provided by new sidewalks on LaFata Street and a pedestrian path connecting the property to 738 Main Street.*
11. *That natural features are appropriately preserved and integrated with the project in that the project has been designed to be compatible with the site and its surroundings.*
12. *That the materials, textures, colors and details of construction are an appropriate expression of its design concept and function and whether they are compatible with the adjacent and neighboring structure and functions in that the proposed siding, colors, and roofing materials are consistent with the site context and compatible with surrounding design.*
13. *That the landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment and whether the landscape concept depicts an appropriate unity with the various buildings on the site in that project landscaping and open space will enhance the project site and its surroundings.*
14. *That sustainability and climate protection are promoted through the use of green building practices such as appropriate site/architectural design, use of green building materials, energy efficient systems and water efficient landscape materials in that project related construction is required to meet all California Building Codes and City of St. Helena development standards.*

D. In accordance with SHMC Section 17.168.050, the Planning Commission recommends the following use permit findings to support the motion to recommend approval of the use permit:

1. *That the proposed uses would not generate odors, fumes, dust, light, glare, radiation or refuse that would be injurious to surrounding uses or to the community*

in that proposed uses are related to a new hotel and would largely occur indoors within new buildings.

2. *That the proposed uses would not generate levels of noise that adversely affect the health, safety, or welfare of neighboring properties in that the proposed project is subject to City noise regulations and is not anticipated to produce frequent noise audible beyond the property line.*
3. *That the proposed use would not generate traffic noise in excess of the "normally acceptable" range identified in the General Plan as traffic related impacts have been identified in the Mitigated Negative Declaration and been determined to be less than significant.*
4. *That the proposed use would not make excessive demands on the provision of public services including water supply, sewer capacity, energy supply, communication facilities, police protection, and fire protection in that impacts to these services have been identified in the Mitigated Negative Declaration and been determined to be less than significant.*
5. *That the proposed uses would provide adequate ingress and egress to and from the proposed location in that ingress and egress to the project site would be provided via a realigned Mills Lane.*
6. *That allowing the proposed uses would not conflict with the City's goal of maintaining the economic viability of a local serving economy in that the proposed project would be consistent with General Plan Update 2040 policies.*
7. *That the proposed uses would be compatible with surrounding land uses and would not conflict with the purpose established for the district within which it would be located as the proposed project is consistent with the intent of the Service Commercial and A-20 zoning districts.*
8. *That the proposed uses would not be in conflict with the City's General Plan in that the project would support both a local and visitor serving component to the City's economy by providing jobs, tax revenue, and additional amenities.*
9. *That the proposed uses would not be injurious to public health, safety, or welfare in that the proposed uses consist of a new hotel and ancillary facilities and would largely occur indoors within new buildings.*
10. *That granting the use permit would not set a precedent for the approval of similar uses whose incremental effect would be detrimental to the City or would be in conflict with the General Plan in that this use permit only applies to this property and to this specific use.*
11. *That, as demonstrated on a detailed plan submitted by the applicant, adequate off-street parking to accommodate the long term parking needs of employees and business owners and customers is available in that the proposed project has provided required off-street parking.*
12. *That the capacity of surrounding streets is adequate to serve the automobile and delivery truck traffic generated by the proposed use in that the project site can adequately be served by existing streets and a realigned Mills Lane.*

E. In accordance with SHMC Section 17.172.050, the Planning Commission recommends the following findings to support the motion to recommend approval of the variance:

1. *A hardship peculiar to the property, not created by the owner, exists as this requirement doesn't follow modern operational models and creates operational inefficiencies and therefore constitutes a peculiar hardship that is appropriately addressed and may be resolved through consideration of a Variance.*
2. *Other hotels in the SC district are not burdened by this requirement, therefore, the variance is necessary for the preservation and enjoyment of substantial property rights available to other properties in the same district and vicinity; and that a variance, if granted, would not constitute a special privilege of the recipient not enjoyed by his or her neighbors.*
3. *The authorization of the variance will not be a substantial detriment to adjacent properties and will not materially impair the purpose and intent of this title or the public interest, or adversely affect the general plan.*
4. *Inasmuch as there are not a significant number of similar properties in the vicinity or zoning district, it is not reasonably practicable to formulate a general regulation for such condition or situation. In other words, there are not enough hotels to make it necessary or practical to amend the zoning code to address this peculiar situation.*
5. *An approval of this Variance to allow for a 24/7 365 day/year on-site manager opposed to requiring that a manage physically live on-site will enhance the public health, safety and welfare of the community.*

F. In accordance with the requirements of SHMC Chapter 16.08, the Planning Commission recommends that the City Council approve the lot line adjustment and lot merger as described in the staff report.

Planning Department Conditions of Approval

G. The Planning Commission recommends that the City Council approve a design review, a use permit, a variance, a lot line adjustment, a lot merger, and a water agreement, for the above-described project located at 1000 Mills Lane with the following conditions of approval. The conditions noted below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

1. The project shall be in conformance with all city ordinances, rules, regulations and policies in effect at the time of issuance of a building permit.
2. This approval shall be vested pursuant to the development agreement, provided however that the approval may be extended under the terms of the development agreement or for up to two (2) one-year periods pursuant to the St. Helena Municipal Code, Section 17.08.130, Extension of Permits and Approvals.
3. Any request for an extension of this approval shall be justified in writing and received by the Planning Department at least thirty (30) days prior to expiration.
4. All required fees, unless otherwise specified in the development agreement, including planning fees, development impact fees, building fees, and St. Helena Unified School District fees shall be paid prior to issuance of a building permit except as expressly

provided herein. Fees shall be those in effect at the time of the issuance of the building permit.

5. Developer shall make a payment for the purpose of furthering the City's affordable housing goals in accordance with the requirements of Section 5.1.6 entered into by and between Developer and the City for this project. The Development Agreement requires $1,000,000 to be paid to the City prior to issuance of the building permit, and the remaining $2,200,000 to be paid at the earlier of (i) Transfer of the Property by Developer, other than a Permitted Transfer ("Transfer" and "Permitted Transfer" are defined in the Development Agreement); (ii) conversion of Developer's construction financing for the Project to permanent financing, or (iii) sixty (60) months after issuance of a final certificate of occupancy for the Project.
6. Compliance with all permit conditions shall occur in accordance with specific regulations but in all cases no later than prior to occupancy or initiation of use unless another time is set by law or by this approval. Occupancy or final inspection of a project may be withheld if all conditions, including payment of fees for services rendered by the City, are not met.
7. In any action or proceeding to attack, challenge, invalidate, set aside, void or annul the City's approval of applicant's Project, in whole or in part, applicant shall defend, at its own expense and without any cost to the City, and with counsel acceptable to the City, and shall fully and completely indemnify and hold the City, its agents, officers, and employees harmless from and against any and all claims, causes of action, damages, costs, attorney's fees and liability of any kind, so long as the City reasonably promptly notifies the applicant of any such claim, action, or proceedings and the City cooperates fully in the defense of the action or proceedings.
8. Provided they are in general compliance with this approval and the development agreement, minor modifications may be approved by the Planning and Building Director.
9. Pursuant to St. Helena Municipal Code Section 17.08.110, this permit shall run with the land and shall be binding upon all parties having any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to their benefit and benefit of the City of St. Helena.
10. The primary purpose of this review is for compliance with the General Plan and Zoning Ordinance. The property owners or their designee shall be responsible for meeting with the Building Official, Fire Inspector and or Public Works Department to review compliance with Building Codes, Fire Codes and specific Public Works Standards including fire protection systems and any applicable accessibility standards of Title 24.
11. Construction shall be in compliance with plans submitted and reviewed by the Planning Commission on September 14, 2020 and September 17, 2020, except as modified herein.
12. If the property is sold or otherwise conveyed to new owners, the owner or successor in interest is required to notify the Planning Director in writing within 30 days of the change in ownership. The use permit shall then be brought before the Planning Commission for review in order for the City to assess whether operational practices that are different than what is approved in this use permit may occur and whether a use permit amendment is required.

13. For attendees who are not lodging guests, 1) the chef's table and demonstration classes shall occur during off-peak hours, 2) the chef's table is limited to 20 persons per event and 3) the demonstration classes are limited to 40 persons per event.
14. The spa, fitness building, pools, and outdoor seating areas are for the use of guests only.
15. Bar and lounge activities shall comply with the City's noise ordinance.
16. All live and amplified music must comply with applicable City noise regulations.
17. With the exception of handicapped employees, all employees shall park in the off-site supplemental lot; employees shall not park on-site or on neighboring streets.
18. All guests and visitors must park on-site or at applicant provided off-site parking.
19. Planters and tree wells must be bordered by a six-inch high concrete curb or equivalent barrier approved by the City.
20. A minimum of 20% of the subject property must remain maintained landscaping and shall be kept in a weed-free condition.
21. If the lease option for the off-site parking lot to be used for employee parking at Dowdell/McCormick is lost or the lease is otherwise terminated or expires, the applicant shall provide evidence that a parking lot with a similar number of parking spaces has been secured (and is approximately the same distance from the project site or applicant provides appropriate transportation from parking to project site).
22. Prior to issuance of a Certificate of Occupancy, the applicant shall designate a Transportation Demand Management (TDM) coordinator to establish programs to ensure VMT by guests and employees are reduced, including, but not limited to, employee car and vanpooling, employer-sponsored transit passes, bicycle-sharing, showers, lockers, secure bike storage, and winery tours for guests with pickup and drop-off at the lodge.
23. Prior to issuance of a Certificate of Occupancy, the developer shall provide verification that an on-call shuttle service is available during all hours as long as there is an off-site employee parking lot.
24. Prior to issuance of a Certificate of Occupancy, the developer shall install a shelter at the off-site Dowdell Lane parking lot.
25. Prior to issuance of a grading permit, the project site shall be adequately fenced and secured to prevent trespassing.
26. Exterior lighting shall be directed or shielded to prevent glare onto the public roadway or adjacent properties.
27. Prior to issuance of a Certificate of Occupancy, the applicant shall provide two (2) courtesy bicycles per guest room.
28. To reduce disturbance of residents in the project vicinity, construction activities which generate noise that can be heard at the property line of any parcel of real property within the City limits shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Saturday. Delivery of materials/equipment and cleaning and servicing of machines/equipment shall be limited to 7:00 a.m. to 6:00 p.m. Exceptions to these time restrictions may be granted by the Public Works Director for one of the following reasons: (1) inclement weather affecting work, (2) emergency work, or (3) other work, if

work and equipment will not create noise that may be unreasonably offensive to neighbors as to constitute a nuisance. The City Engineer must be notified and give approval in advance of such work. No construction activities shall occur on Sundays or federal or local holidays that generate noise that can be heard at the property line of any parcel of real property within the City limits.

Public Works Department Conditions of Approval

29. Approval of this project shall be subject to the requirements of, and all improvements shall be designed and constructed in accordance with, the most current version at the time of improvement plan submittal, Caltrans Standards and Specifications, the City of St. Helena Municipal Code, the St. Helena Water and Sewer Standards, the St. Helena Street, Storm Drain and Sidewalk Standards, and all current federal, state and county codes governing such improvements.
30. For any improvements outside the existing building envelope, a grading and drainage plan showing topographic data, all easements, infrastructure onsite and directly adjoining, and an erosion control plan shall be submitted for review and approval by the City Engineer prior to the issuance of a building permit. If the project entails more than 50 cubic yards of soil disturbance, 10,000 square feet of disturbance area, a cut or fill of 3 feet or more, or alteration of any drainage pattern, a grading permit shall be required.
31. Improvement plans shall incorporate all grading, drainage, and utilities shown on the approved Use Permit package, those improvements agreed to in public hearings, the requirements of these conditions of approval, and those improvements required by any codes in effect at the time of plan submittal.
32. Drainage needs to be routed to prevent inundation of neighboring properties. Grading and/or site improvement plans shall show how 2-year and 10-year storm flows shall be infiltrated on site and/or diverted at the property lines to prevent inundation of neighboring properties. The Developer shall submit a storm drain system design calculations for the project in accordance with City of St. Helena, Napa County and State of California codes in effect at the time of improvement plan submittal. The calculations shall include a hydrology map, hydrology and hydraulic calculations, pipe size calculations, inlet capacity calculations, and other information necessary to support the proposed design.
33. Prior to the issuance of a Certificate of Occupancy, the Developer shall install storm drain Detention system improvements as required to maintain post development 10-year runoff from the pre-development levels. The Developer shall submit storm drain detention system supporting calculations for review and approval prior to improvement plan approval.
34. Prior to the issuance of a Certificate of Occupancy, the Developer shall install detention system inlets sized to pass at minimum the 25-year flows.
35. A grading and drainage plan shall be prepared for the project that includes a design that allows for a 100-year overland release. All graded building pads shall be above the 100-year overland release elevation.
36. The grading plans provided by the Developer for review shall include the existing topography shown with contour lines labeled at one-foot intervals and extending a

minimum of 100-feet beyond the limits of the site, or sufficient distance to indicate impacts on adjacent properties.

37. Erosion and sediment control plans shall conform to the latest State and City codes at a minimum

38. Prior to the issuance of a grading permit or building permit (whichever occurs first), the project property owner shall file a Notice of Intent (NOI) with the State Water Resources Control Board and prepare a Construction Storm Water Pollution Prevention Plan (SWPPP).This is required because the overall project grading involves an area of disturbed surface soil that is greater than or equal to one acre, .

39. The Developer shall execute a City of St. Helena Water Agreement with an annual water use cap of 1,953,928 gallons per year prior to issuance of a Building Permit.

40. Due to the new water demand on the City system in the amount of 1,953,928 gallons per year, the Developer shall implement an alternative innovative method of mitigating water use as allowed under Section 13.12.030(B) of the SHMC, and approved by City Council in the Development Agreement prior to certificate of occupancy. The required offsite improvements to offset water demand as required pursuant to the Development Agreement is as follows: The Developer shall construct and install $256,549 worth of water infrastructure (i.e., purple pipe) in Mills Lane between Highway 29 easterly to the eastern end of Mills Lane. This purple pipe is intended to connect to a future wastewater treatment facility and deliver recycled water to Crane Park's irrigation infrastructure by November 1, 2022, significantly reducing the City's use of potable water. No certificate of occupancy for the Lodging component may be issued, until either the Developer has demonstrated or City has confirmed that either: (a) the water savings from the irrigation of Crane Park with recycled water from the wastewater treatment facility offsets the Lodging component's anticipated water demand, or (b) the Developer has identified and implemented other measures calculated to save potable water in amounts equal to the Project's anticipated use of City water permanently or until recycled water is delivered to Crane Park. Such improvements shall be constructed and approved by the City Engineer in accordance with the terms of the Development Agreement prior to the issuance of a final certificate of occupancy for the Project. Developer may be eligible for partial reimbursement of the costs of construction of the improvements required under this condition in accordance with the terms of the Development Agreement.

41. The Developer shall adhere to the executed Water Agreement with the City and shall incorporate water conservation practices into the proposed project per the Water Availability Analysis prepared by Sherwood Design Engineers, dated May 2, 2017 and the revision dated September 2, 2020. The water conservation requirements shall be replicated in full on the architectural plans.

42. Prior to issuance of a Certificate of Occupancy, all parcels shall be connected to the City of St. Helena municipal water system and installed per City of St. Helena standards.

43. Prior to issuance of a grading or building permit (whichever occurs first) a detailed Post-Construction Stormwater Control Plan (SWCP) that identifies and sizes all permanent post-construction stormwater treatment BMPs shall be prepared by the applicant's engineer and submitted for review approval. The Plan shall be prepared

in accordance with the latest edition of the *Bay Area Stormwater Management Agencies Association (BASMAA) Post-Construction Manual* and the requirements of the State Water Resources Control Board Phase II Municipal Separate Storm Water System (MS4) General Permit (Order 2013-0001 DWQ).

44. Prior to the issuance of a Certificate of Occupancy, a Post Construction Stormwater Operations and Maintenance Plan that provides a color-coded plan sheet showing all storm drain and water quality infrastructure that is to be maintained, along with detailed instructions and schedules for the ongoing maintenance and operation of all post-construction stormwater BMPs shall be submitted by the applicant's engineer for review and approval by the City Engineer. Once approved, the property owner shall enter into an agreement with the City that provides the terms, conditions, and security associated with the ongoing requirements of the Post Construction Stormwater Best Management Practices.

45. If proposed/new landscaping involves an area greater than 500 square feet or rehabilitation of more than 2,500 square feet, the proposed landscaping shall comply with the State's Model Water Efficient Landscape Ordinance (MWELO). MWELO compliance shall be demonstrated as part of the building permit submittal.

46. Prior to issuance of a grading permit, a detailed Soils Investigation/Geotechnical Report shall be prepared by the developer and submitted for review. The report shall address, at a minimum, potential for liquefaction, R-values, expansive soils and seismic risk. The improvement plans shall incorporate all design and construction criteria recommended in the Geotechnical Report.

47. Prior to issuance of a grading permit, unless otherwise explicitly permitted, all existing abandoned wells, septic tanks/systems and/or underground fuel storage tanks shall be abandoned under permit and inspection of Napa County Department of Environmental Services or other designated agency. If there are none, the Developers project engineer shall provide a letter describing the scope of the search done to make this determination.

48. Per the September 14, 2020 Technical Memo titled "Hydrogeologic Evaluation of Possible Impact of Proposed Irrigation-Supply Pumping on Local Aquifer Systems Proposed Farmstead Lodge Property" by Richard Slade and Associates, the applicant shall adhere to the following:

    a) Prior to certificate of occupancy, the applicant shall initiate a groundwater monitoring program for the three active onsite wells. This will include frequent, consistent, and accurate monitoring of water levels, frequent monitoring of pumping rates and pumped volumes of groundwater and could also include verifying the accuracy of the existing flow meters in Well #1- PWS and Well #2-IRR. Water level monitoring should continue to utilize pressure transducers set to a depth just above the depth setting of the new pump in Well #1-PWS and Well #2-IRR. A new transducer should be installed and properly calibrated in the Shared well, along with a proper dual reading flow meter that is installed at an appropriate location on the discharge pipe near its wellhead. These transducer installations must include occasional corroboration using a manual water level sounder. The acquired data shall be downloaded and reviewed on a quarterly basis by the applicant and submitted to the City Public Works Department on an annual basis by June 30; and

b) Prior to certificate of occupancy, the applicant shall have completed one of the following options on the inactive well:

   i. Shall demolish the inactive well per State and County standards (DWR, Bulletin 74-90); or

   ii. Leave the inactive well on the parcel as part as a permanent groundwater monitoring well. The acquired data shall be downloaded and reviewed on a quarterly basis by the applicant and submitted to the City Public Works Department on an annual basis by June 30; or

   iii. Submit the appropriate permit applications to the City and the County to rehabilitate the inactive well in order to utilize it for an emergency back-up supply well. The well will be required to be monitored similarly as the three active wells and submitted to the City Public Works Department on an annual basis by June 30.

49. Prior to the issuance of a grading permit, the site plan shall show the location of any trees within the project area. Provide a tree protection plan for approval by the Public Works Director prior to approval of the building permit. The plan shall be coordinated with any civil grading/drainage/improvement plans.

50. The Developer shall keep adjoining public streets free and clean of project dirt, mud, materials, and debris during the construction period, as is found necessary by the City Engineer.

51. Prior to the issuance of a Certificate of Occupancy, the Developer shall underground all on-site utility lines per St. Helena Municipal Code. The cost of undergrounding shall be the responsibility of the Developer.

52. Due to the economic and engineering infeasibility of undergrounding regional serving overhead power lines, such existing lines may remain on overhead power poles.

53. Any new and modified existing water laterals, meters and backflow prevention devices shall be required and constructed in accordance with the current requirements of the City of St. Helena's Water Standards and the California Department of Health Standards. Existing meter boxes located within a driveway shall be retrofitted with a traffic-rated box. New laterals shall be located perpendicular to the water main and outside any driveway/drive aisle.

54. Remodels or new construction which require fire sprinklers shall install an appropriately-sized water service with appropriate backflow and meter devices prior to Certificate of Occupancy. Fire system calculations shall be submitted with the Grading and Drainage Plan to verify fire service lateral and meter sizing. Deferred submittals are not accepted.

55. Proposed separations between public water facilities and other utilities shall meet the minimum separations as specified by the Department of Health and the City of St. Helena Public Works Standards.

56. No construction may commence until adequate access to fire water supply is available to building sites as approved by the Fire Chief.

57. Wastewater discharged is subject to all of the requirements and limitations set forth in Chapter 13.24, Wastewater Discharge, of the St. Helena Municipal Code.

58. Prior to the issuance of the first building permit for 1000 Mills Lane, the Developer shall apply for annexation to the St. Helena Municipal Sewer District No. 1. The application shall be completed in accordance with the City of St. Helena's Sewer Annexation Procedures including all annexation, impact, connection, and sewer fees.

59. Prior to issuance of a building permit, in order to confirm the theoretical assumptions in the Theoretical Sewer Capacity provided by Sherwood Design Engineers dated May 2, 2017, the Developer is required to perform 7-day flow monitoring at the downstream sanitary sewer manholes (No. 1-89 and No. 1-94) to verify that the existing sewer pipe has adequate capacity to accommodate the proposed additional flows. Peak sewer flows will not be allowed to exceed 2/3 full pipe. If the proposed wastewater discharge regimen increases peak flows to greater than 2/3 full pipe at the monitored locations and with the current infrastructure, the owner may be subject to paying a share of the cost of sewer upgrades with a dollar amount proportional to the increase in wastewater flow as a result of the site development.

    c) Concurrent with the building permit application, the Developer shall apply for and obtain a Wastewater Discharge Permit from the Department of Public Works as specified in St Helena Municipal Code Section 13.24.50. The permit conditions will require:

        a. Discharge flow rate shall not exceed 5,150 gallons per day.

        b. The onsite force main system shall provide protection from accidental discharge of prohibited materials or other wastes regulated as defined in Chapter 13.24, Wastewater Discharge, of St. Helena Municipal Code. Such facilities shall be provided and maintained at the Owner's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City for review and approval prior to building permit approval.

        c. Owner shall continuously maintain records of all daily flows for a rolling three year period. Said records shall be made available to the City for review upon request.

        d. The City shall have the right to inspect all parts of the onsite force main system at anytime during normal business hours. Failure to take immediate corrective actions on any deficiencies found may result in enforcement actions as provided under the St. Helena Municipal Code or other applicable law.

60. Prior to the issuance of a Certificate of Occupancy, the Developer is required to install a wastewater flow meter measuring the total volume of wastewater leaving the project site, into the City's sewage collection infrastructure, and after installation, have the wastewater flow meter calibrated yearly. Annual wastewater flow meter calibration records are to be maintained by the project ownership and made available to City staff upon request. The style, design, manufacturer, and location of

this meter must be of a form found to be acceptable by the City. The costs associated with the installation and calibration of this meter are required to be fully borne by the Developers, and the results of the flow measurement are to be utilized to determine the amount of the wastewater bills for the uses on site. Said meter is required to be installed and functional prior to occupancy of the project.

61. Prior to issuance of a certificate of occupancy, trash areas, dumpsters and recycling containers shall be enclosed and roofed per State and County standards to prevent water run-on to the trash area and water runoff from the area, to contain litter and trash so that it is not dispersed by the wind or run-off during waste removal. In the event that wine or food is disposed in these areas, the enclosed trash area shall drain to the sanitary sewer system. An area drain connected to the sanitary sewer shall be installed in the enclosure area and a structural control such as an oil/water separator or sand filter shall be included. No other area shall drain into the trash enclosure. A sign shall be posted prohibiting the dumping of hazardous materials into the sanitary sewer.

62. Where applicable, the applicant shall be required to submit to the requirements for annual inspections of food/beverage service establishments and businesses that handle hazardous wastes for illicit stormwater discharges as required by the State National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges. The annual stormwater illicit discharge inspections are performed and invoiced by Napa County Department of Environmental Management.

63. Provide details of all proposed fencing, walls, and gates on all plans submitted for building permit review.

64. Prior to Certificate of Occupancy, the Developer shall repair all public improvements that are damaged by the construction process in accordance with the City Water/Sewer/Street/Storm Drain/Sidewalk Standards.

65. Existing streets being cut by new utility services will require edge grinding and an A.C. overlay per City standards, extent to be determined by the Public Works Department.

66. Prior to issuance of building permits, the Developer shall be required to pay a fair share fee contribution in the amount of 28.8% to a "HAWK" pedestrian hybrid flashing beacon for the Highway 29 at Charter Oak Avenue crosswalk identified in the Traffic Study by the Crane Transportation Group dated November 21, 2019 proposed for the SR 29/Charter Oak Avenue.

67. The Developer shall be required to pay a fair share fee contribution in the amount of 23.3% towards the Dowdell Lane and Highway 29 signalization at the time such improvement is constructed by the City.

68. The Developer shall construct those certain storm drain improvements necessary to extend and improve the storm drain along Mills Lane. These storm drain improvements will serve properties on Mills Lane, La Fata Street, Fountain Street, Grayson Avenue, Main Street (to Charter Oak Avenue), and Vidovich Avenue and to construct an outfall for said storm drain into the Napa River. The Storm Drain Improvements shall be designed by City in accordance with the City's long-standing plan for this separate project is contained in City's Storm Drain Master Plan dated September 2000 (*see* Table 4-1) and the Highway 29 Specific Plan (*see* pages 37-

39, Exhibit 11). City shall further be responsible for permitting required for the Storm Drain Project, which shall likely include permits from the California Department of Fish and Wildlife, San Francisco Regional Water Quality Control Board, and the United States Army Corp of Engineers. Developer shall commence construction of the Storm Drain Improvements after the City has secured the permits required for the Storm Drain Improvements, provided, however, that the Storm Drain Improvements shall be completed before the Developer receives final certificate of occupancy for the Project. Upon completion of the storm drain improvements described in this condition, Developer shall be eligible for reimbursement of costs in excess of its proportionate share of costs in accordance with the terms of the Development Agreement.

69. Developer shall construct improvements to Mills Lane, which are consistent with City's Highway 29 Specific Plan, prior to or concurrently with the development of the Project and shall complete the Mills Lane Improvements prior to the issuance of the first certificate of occupancy for the Project by the City. Construction shall be completed in accordance with improvements plans as approved by the City Engineer, and before Developer receives a final certificate of occupancy for the Project.

70. The Developer shall construct all on and offsite improvements in accordance with the improvement plans and supporting calculations that are prepared by a registered civil engineer and reviewed by the City of St. Helena Public Works Department. The improvement plans and supporting calculations shall include detailed designs for all utilities, water, grading, drainage, erosion control and paving.

71. Prior to issuance of a grading or building permit, the Developer shall be required to obtain a City encroachment permit for improvements on public right-of-way.

72. The following offsite improvements shall be installed by the Developer, completed prior to the issuance of a Certificate of Occupancy and will be provided on a separate offsite improvement plan set:

    - In accordance with civil site plans prepared by Sherwood Design Engineers, dated May 6, 2019, all required public frontage and street improvements shall be designed and built in accordance with City of St. Helena ordinances, Public Works Department Standard Specifications, and Caltrans requirements.
    - Specific offsite improvements include, in general, pavement widening, realignment of Mills Lane in accordance with the Highway 29 Specific Plan, signal upgrade at Highway 29/Main Street/Grayson Avenue/Mills Lane, signage, striping, street lighting, required accessible pedestrian curb ramps, and a new railroad crossing.
    - The typical half cross section of Mills Lane shall consist of a landscape strip, 10' path, curb and gutter, 8' parking strip, and 12' travel lane.
    - In accordance with civil site plans prepared by Sherwood Design Engineers, dated May 6, 2019, the Developer shall extend the City water main from La Fata to the City's 12" water main on Highway 29 and install adequately spaced fire hydrants per the approval of the City's Fire Chief.

- In accordance with civil site plans prepared by Sherwood Design Engineers, dated May 6, 2019, the Developer shall extend the sewer main on La Fata to the project site.
- As identified in the 2019 Traffic Study by Crane Transportation Group, the Developer shall extend the sidewalk from La Fata Street to Mills Lane with a crosswalk to the project site. The La Fata Sidewalk improvements shall further be completed in accordance with the terms of the Development Agreement.
- The improvement plans shall include a Construction Traffic Control Plan.
- The improvement plans shall include an Erosion and Sediment Control Plan.
- The improvement plans shall include a Joint Trench Plan (as necessary).

73. The Developer shall be required to obtain a Caltrans encroachment permit for improvements on and immediately adjacent to Highway 29 as necessary to complete the offsite improvements as outlined above.
74. The Developer shall be required to obtain permits necessary to complete work on the railroad right-of-way as necessary in conjunction with the offsite improvements as outlined above.
75. The Developer shall construct all on and offsite improvements which are consistent with City's Highway 29 Specific Plan, prior to or concurrently with the development of the Project and shall complete the Mills Lane Improvements prior to the issuance of the final certificate of occupancy for the Project by the City. Construction shall be completed in accordance with improvements plans as approved by the City Engineer and before the Developer receives a final certificate of occupancy for the Project.
76. Prior to issuance of a certificate of occupancy, the Developer shall pay traffic impact fees based on the Master Fee Schedule, and the fee will assume all square footage calculated at the lodging rate.
77. Prior to issuance of a certificate of occupancy, the Developer shall demonstrate that water to fill the swimming pools came from outside St. Helena.

Building Department Conditions of Approval

78. A building permit is required for all onsite demolition, construction and/or change of occupancy.
79. The applicant will be required to comply with the codes adopted at the time the applicant applies for a building permit. At this time the City of St. Helena utilizes the 2019 Title 24 codes.
80. When submitting plans for a building permit, the plans shall include all documentation listed on the building permit application checklist.
81. The applicant shall provide a construction waste management plan with the building permit application.
82. The plans for construction shall include a checklist for compliance with the California Green Buildings Standards Code, mandatory measures. Provide a reference on the checklist indicating where the mandatory measures can be found on the plans.

83. When submitting plans, the title page shall include all information referenced on the building permit application checklist Title Page requirements.

84. Building Permit application materials and plans shall include any documentation pertaining to special loads applicable to the design and the specified section of the code that addresses the condition; special inspections for any systems or components requiring special inspection; requirements for seismic resistance; and a complete list of deferred submittals at time of application. Any deferral of the required submittal items shall have prior approval of the Building Official however deferral of fire sprinkler design is not allowed.

85. Properties which are on septic systems and proposing substantial renovations may require approval from the Napa County Environmental Health Department. Applicants are encouraged to engage with the County early in the building permit review process to reduce the potential for delay.

Fire Department Conditions of Approval

86. Plans submitted for building permit shall exhibit compliance with the current St. Helena Fire Code, as adopted and codified in St. Helena Municipal Code Chapter 15.36.

87. Fire sprinklers and fire hydrants shall be installed as required by Fire Code and the Fire Department.

88. One hour minimum fire resistant construction on all exterior walls within 10' of property boundary is required. Fire resistant construction of interior walls shall be determined by type of occupancy.

89. Any gates installed to control vehicular access to a property are required to be setback 30-feet from the property line and/or edge of pavement, whichever is greater. No vehicle gates may be installed without Fire Department and Public Works Department review and explicit approval.

I HEREBY CERTIFY that the City of St. Helena Planning Commission recommends that the City of St. Helena City Council approve the foregoing design review, use permit, lot line adjustment, lot merger, variance, water agreement applications and development agreement ordinance at a regular meeting of said Planning Commission held on September 17, 2020 by the following roll call vote:

AYES: Commissioners Ponte, Hale, Anderson and Hardy
NOES: Commissioner Monnette
ABSENT: None
ABSTAIN: None

APPROVED:

Lester Hardy
Chair, Planning Commission

ATTEST:

Maya DeRosa, AICP
Planning and Building Director

CITY OF ST. HELENA

RESOLUTION NO. 2020-100

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM, AND ADOPTING A RESOLUTION APPROVING DESIGN REVIEW, A USE PERMIT, A LOT LINE ADJUSTMENT, A LOT MERGER, A VARIANCE, AND A WATER AGREEMENT FOR THE FARMSTEAD AT LONG MEADOW RANCH PROJECT AT 1000 MILLS LANE IN THE CITY OF ST. HELENA, CALIFORNIA

PROPERTY OWNER: LMR Destinations LLC **APN:** 009-070-49,52,53,54

Recitals

1. LMR Destinations LLC has submitted applications to the City of St. Helena for a Use Permit, Design Review, Lot Line Adjustment, Lot Merger, Variance, Water Agreement and Development Agreement approval in order to construct an new 65 room hotel and associated facilities at 1000 Mills Lane in the Service Commercial and Twenty-acre Agriculture districts as described below:
    - A 9,882 sf multi-purpose building; and
    - A 3,452 sf utility and service building; and
    - A 3,114 sf spa building; and
    - A 2,652 sf pool and fitness building; and
    - Two outdoor pools, including one children's pool; and
    - Two (2) 1,000 sf agricultural barns.
2. Pursuant to CEQA Guidelines Sections 15072 and 15073, a Draft Mitigated Negative Declaration and included Initial Study was circulated for public review and comment from May 29, 2020 until June 29, 2020; and
3. The Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in a number of potentially significant effects on the environment and identified mitigation measures that would reduce the significant effects to a less-than-significant level; and
4. Whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a Mitigation Monitoring and Reporting Program to ensure compliance with the mitigation measures during project implementation; and
5. A public notice was published in the Napa Valley Register and mailed to residents and occupants within 300 feet of the project site in compliance with state and local law; and
6. The Planning Commission of the City of St. Helena, State of California, considered the project, staff report, and all testimony, written and spoken, at a duly noticed public hearing on September 14, 2020 and September 17, 2020; and
7. At conclusion of the meeting on September 17, 2020, the Planning Commission recommended that the City Council of the City of St. Helena adopt the Mitigated

Negative Declaration and Mitigation Monitoring and Reporting Program and approve a Use Permit, Design Review, Lot Line Adjustment, Lot Merger, Variance, and Water Agreement approving a Development Agreement thereby authorizing the modifications described in the staff report and the reviewed plans based on the findings below and subject to the conditions of approval enumerated herein.

Resolution

A. In reviewing the findings in this Resolution, the City Council relied upon and hereby incorporates by reference all of the documents referenced in this Resolution and the associated staff reports, City files for this matter, correspondence, presentations and other materials.

B. CEQA Findings:

1. The City Council has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration, public comments, and all other information in the record and has considered the information contained therein, prior to acting upon or approving the Project; and
2. The Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and consistent with state and local guidelines implementing CEQA; and
3. On the basis of the whole record, there is no substantial evidence that the Project as designed, conditioned, and mitigated, will have a significant effect on the environment; and
4. The Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City as lead agency for the Project.
5. Based on the foregoing, the City Council approves the Initial Study/Mitigated Negative Declaration and adopts the Mitigation Monitoring and Reporting Program for the Project.
6. The custodian of the documents and other materials that constitute the record of proceedings is Cindy Izatopoulos, City Clerk and may be inspected at 1572 Railroad Avenue, St. Helena, CA 94574.

C. In accordance with the design review criteria identified in SHMC Section 17.164.030, the City Council finds that the project demonstrates the following:

1. *Consistency and compatibility with applicable elements of the General Plan and Highway 29 Specific Plan in that the proposed structures are consistent with the intent of applicable General Plan and Highway 29 Specific Plan policies pertaining to development in the Service Commercial and Agricultural Districts.*
2. *Compatibility of design with the immediate environment of the site in that the project has been designed to be compatible with the surrounding environment.*
3. *Relationship of the design to the site is found to be consistent in that the project has been designed to be compatible with the site and the surrounding area.*

4. That the design is compatible in areas considered by the board as having a unified design or historical character in that the project has been designed to be compatible with the site and the surrounding area.
5. That the design promotes harmonious transition in scale and character in areas between different designated land uses in that the project is of a similar scare and character to other development in the immediate area.
6. Compatibility with future construction both on and off the site in that the proposed project will blend in with existing and future construction in the immediate vicinity.
7. That the architectural design of structures and their materials and colors are appropriate to the function of the project in that the project has been professionally designed to suit the site and its surroundings.
8. That the planning and siting of the various functions and buildings on the site create an internal sense of order and provide a desirable environment for occupants, visitors and the general community in that the improvements have been designed to be compatible with the site and its surroundings.
9. That the amount and arrangement of open space and landscaping are appropriate to the design and the function of the structures in that landscaping and open space will enhance the overall appearance of the property and the immediate vicinity.
10. That access to the property and circulation systems are safe and convenient for pedestrians, cyclists and vehicles in that access to the site will be provided via a realigned Mills Lane. Additional pedestrian connectivity will be provided by new sidewalks on LaFata Street and a pedestrian path connecting the property to 738 Main Street.
11. That natural features are appropriately preserved and integrated with the project in that the project has been designed to be compatible with the site and its surroundings.
12. That the materials, textures, colors and details of construction are an appropriate expression of its design concept and function and whether they are compatible with the adjacent and neighboring structure and functions in that the proposed siding, colors, and roofing materials are consistent with the site context and compatible with surrounding design.
13. That the landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment and whether the landscape concept depicts an appropriate unity with the various buildings on the site in that project landscaping and open space will enhance the project site and its surroundings.
14. That sustainability and climate protection are promoted through the use of green building practices such as appropriate site/architectural design, use of green building materials, energy efficient systems and water efficient landscape materials in that project related construction is required to meet all California Building Codes and City of St. Helena development standards.

D. In accordance with SHMC Section 17.168.050, the City Council adopts the following use permit findings to support the motion to recommend approval of the use permit:

1. That the proposed uses would not generate odors, fumes, dust, light, glare, radiation or refuse that would be injurious to surrounding uses or to the community in that proposed uses are related to a new hotel and would largely occur indoors within new buildings.
2. That the proposed uses would not generate levels of noise that adversely affect the health, safety, or welfare of neighboring properties in that the proposed project is subject to City noise regulations and is not anticipated to produce frequent noise audible beyond the property line.
3. That the proposed use would not generate traffic noise in excess of the "normally acceptable" range identified in the General Plan as traffic related impacts have been identified in the Mitigated Negative Declaration and been determined to be less than significant.
4. That the proposed use would not make excessive demands on the provision of public services including water supply, sewer capacity, energy supply, communication facilities, police protection, and fire protection in that impacts to these services have been identified in the Mitigated Negative Declaration and been determined to be less than significant.
5. That the proposed uses would provide adequate ingress and egress to and from the proposed location in that ingress and egress to the project site would be provided via a realigned Mills Lane.
6. That allowing the proposed uses would not conflict with the City's goal of maintaining the economic viability of a local serving economy in that the proposed project would be consistent with General Plan Update 2040 policies.
7. That the proposed uses would be compatible with surrounding land uses and would not conflict with the purpose established for the district within which it would be located as the proposed project is consistent with the intent of the Service Commercial and A-20 zoning districts.
8. That the proposed uses would not be in conflict with the City's General Plan in that the project would support both a local and visitor serving component to the City's economy by providing jobs, tax revenue, and additional amenities.
9. That the proposed uses would not be injurious to public health, safety, or welfare in that the proposed uses consist of a new hotel and ancillary facilities and would largely occur indoors within new buildings.
10. That granting the use permit would not set a precedent for the approval of similar uses whose incremental effect would be detrimental to the City or would be in conflict with the General Plan in that this use permit only applies to this property and to this specific use.
11. That, as demonstrated on a detailed plan submitted by the applicant, adequate off-street parking to accommodate the long term parking needs of employees and business owners and customers is available in that the proposed project has provided required off-street parking.
12. That the capacity of surrounding streets is adequate to serve the automobile and delivery truck traffic generated by the proposed use in that the project site can adequately be served by existing streets and a realigned Mills Lane.

E. In accordance with SHMC Section 17.172.050, the City Council adopts the following findings to support the motion to recommend approval of the variance:

1. *A hardship peculiar to the property, not created by the owner, exists as this requirement doesn't follow modern operational models and creates operational inefficiencies and therefore constitutes a peculiar hardship that is appropriately addressed and may be resolved through consideration of a Variance.*
2. *Other hotels in the SC district are not burdened by this requirement, therefore, the variance is necessary for the preservation and enjoyment of substantial property rights available to other properties in the same district and vicinity; and that a variance, if granted, would not constitute a special privilege of the recipient not enjoyed by his or her neighbors.*
3. *The authorization of the variance will not be a substantial detriment to adjacent properties and will not materially impair the purpose and intent of this title or the public interest, or adversely affect the general plan.*
4. *Inasmuch as there are not a significant number of similar properties in the vicinity or zoning district, it is not reasonably practicable to formulate a general regulation for such condition or situation. In other words, there are not enough hotels to make it necessary or practical to amend the zoning code to address this peculiar situation.*
5. *An approval of this Variance to allow for a 24/7 365 day/year on-site manager opposed to requiring that a manage physically live on-site will enhance the public health, safety and welfare of the community.*

F. In accordance with the requirements of SHMC Chapter 16.08, the City Council approves the lot line adjustment and lot merger as described in the staff report.

G. The City Council approves design review, a use permit, a variance, a lot line adjustment, a lot merger, and a water agreement, for the above-described project located at 1000 Mills Lane subject to the following conditions of approval. The conditions noted below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

Planning Department Conditions of Approval

1. The project shall be in conformance with all city ordinances, rules, regulations and policies in effect at the time of issuance of a building permit.
2. This approval shall be vested pursuant to the development agreement, provided however that the approval may be extended under the terms of the development agreement or for up to two (2) one-year periods pursuant to the St. Helena Municipal Code, Section 17.08.130, Extension of Permits and Approvals.
3. Any request for an extension of this approval shall be justified in writing and received by the Planning Department at least thirty (30) days prior to expiration.
4. All required fees, unless otherwise specified in the development agreement, including planning fees, development impact fees, building fees, and St. Helena Unified School District fees shall be paid prior to issuance of a building permit except as expressly

provided herein. Fees shall be those in effect at the time of the issuance of the building permit.

5. Developer shall make a payment for the purpose of furthering the City's affordable housing goals in accordance with the requirements of Section 5.1.6 entered into by and between Developer and the City for this project. The Development Agreement requires $1,000,000 to be paid to the City prior to issuance of the building permit, and the remaining $2,200,000 to be paid at the earlier of (i) Transfer of the Property by Developer, other than a Permitted Transfer ("Transfer" and "Permitted Transfer" are defined in the Development Agreement); (ii) conversion of Developer's construction financing for the Project to permanent financing, or (iii) sixty (60) months after issuance of a final certificate of occupancy for the Project.
6. Compliance with all permit conditions shall occur in accordance with specific regulations but in all cases no later than prior to occupancy or initiation of use unless another time is set by law or by this approval. Occupancy or final inspection of a project may be withheld if all conditions, including payment of fees for services rendered by the City, are not met.
7. In any action or proceeding to attack, challenge, invalidate, set aside, void or annul the City's approval of applicant's Project, in whole or in part, applicant shall defend, at its own expense and without any cost to the City, and with counsel acceptable to the City, and shall fully and completely indemnify and hold the City, its agents, officers, and employees harmless from and against any and all claims, causes of action, damages, costs, attorney's fees and liability of any kind, so long as the City reasonably promptly notifies the applicant of any such claim, action, or proceedings and the City cooperates fully in the defense of the action or proceedings.
8. Provided they are in general compliance with this approval and the development agreement, minor modifications may be approved by the Planning and Building Director.
9. Pursuant to St. Helena Municipal Code Section 17.08.110, this permit shall run with the land and shall be binding upon all parties having any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to their benefit and benefit of the City of St. Helena.
10. The primary purpose of this review is for compliance with the General Plan and Zoning Ordinance. The property owners or their designee shall be responsible for meeting with the Building Official, Fire Inspector and or Public Works Department to review compliance with Building Codes, Fire Codes and specific Public Works Standards including fire protection systems and any applicable accessibility standards of Title 24.
11. Construction shall be in compliance with plans submitted and reviewed by the Planning Commission on September 14, 2020 and September 17, 2020, and by the City Council on October 13, 2020 except as modified herein.
12. If the property is sold or otherwise conveyed to new owners, the owner or successor in interest is required to notify the Planning Director in writing within 30 days of the change in ownership. The use permit shall then be brought before the Planning Commission for review in order for the City to assess whether operational practices that are different than what is approved in this use permit may occur and whether a use permit amendment is required.

13. For attendees who are not lodging guests, 1) the chef's table and demonstration classes shall occur during off-peak hours, 2) the chef's table is limited to 20 persons per event and 3) the demonstration classes are limited to 40 persons per event.
14. The spa, fitness building, pools, and outdoor seating areas are for the use of guests only.
15. Bar and lounge activities shall comply with the City's noise ordinance.
16. All live and amplified music must comply with applicable City noise regulations.
17. With the exception of handicapped employees, all employees shall park in the off-site supplemental lot; employees shall not park on-site or on neighboring streets.
18. All guests and visitors must park on-site or at applicant provided off-site parking.
19. Planters and tree wells must be bordered by a six-inch high concrete curb or equivalent barrier approved by the City.
20. A minimum of 20% of the subject property must remain maintained landscaping and shall be kept in a weed-free condition.
21. The owner or successor in interest shall notify the City in writing if the lease option for the off-site parking lot to be used for employee parking at Dowdell/McCormick is lost or the lease is otherwise terminated or expires. The owner or successor in interest shall provide evidence that a parking lot with a similar number of parking spaces has been secured (and is approximately the same distance from the project site or applicant provides appropriate transportation from parking to project site).
22. Prior to issuance of a Certificate of Occupancy, the applicant shall designate a Transportation Demand Management (TDM) coordinator to establish programs to ensure VMT by guests and employees are reduced, including, but not limited to, employee car and vanpooling, employer-sponsored transit passes, bicycle-sharing, showers, lockers, secure bike storage, and winery tours for guests with pickup and drop-off at the lodge.
23. Prior to issuance of a Certificate of Occupancy, the developer shall provide verification that an on-call shuttle service is available during all hours as long as there is an off-site employee parking lot.
24. Prior to issuance of a Certificate of Occupancy, the developer shall install a shelter at the off-site Dowdell Lane parking lot.
25. Prior to issuance of a grading permit, the project site shall be adequately fenced and secured to prevent trespassing.
26. Exterior lighting shall be directed or shielded to prevent glare onto the public roadway or adjacent properties.
27. Prior to issuance of a Certificate of Occupancy, the applicant shall provide two (2) courtesy bicycles per guest room.
28. To reduce disturbance of residents in the project vicinity, construction activities which generate noise that can be heard at the property line of any parcel of real property within the City limits shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Saturday. Delivery of materials/equipment and cleaning and servicing of machines/equipment shall be limited to 7:00 a.m. to 6:00 p.m. Exceptions to these time restrictions may be granted by the Public Works Director for one of the following

reasons: (1) inclement weather affecting work, (2) emergency work, or (3) other work, if work and equipment will not create noise that may be unreasonably offensive to neighbors as to constitute a nuisance. The City Engineer must be notified and give approval in advance of such work. No construction activities shall occur on Sundays or federal or local holidays that generate noise that can be heard at the property line of any parcel of real property within the City limits.

~~Public Works Department Conditions of Approval~~

29. Approval of this project shall be subject to the requirements of, and all improvements shall be designed and constructed in accordance with, the most current version at the time of improvement plan submittal, Caltrans Standards and Specifications, the City of St. Helena Municipal Code, the St. Helena Water and Sewer Standards, the St. Helena Street, Storm Drain and Sidewalk Standards, and all current federal, state and county codes governing such improvements.
30. For any improvements outside the existing building envelope, a grading and drainage plan showing topographic data, all easements, infrastructure onsite and directly adjoining, and an erosion control plan shall be submitted for review and approval by the City Engineer prior to the issuance of a building permit. If the project entails more than 50 cubic yards of soil disturbance, 10,000 square feet of disturbance area, a cut or fill of 3 feet or more, or alteration of any drainage pattern, a grading permit shall be required.
31. Improvement plans shall incorporate all grading, drainage, and utilities shown on the approved Use Permit package, those improvements agreed to in public hearings, the requirements of these conditions of approval, and those improvements required by any codes in effect at the time of plan submittal.
32. Drainage needs to be routed to prevent inundation of neighboring properties. Grading and/or site improvement plans shall show how 2-year and 10-year storm flows shall be infiltrated on site and/or diverted at the property lines to prevent inundation of neighboring properties. The Developer shall submit a storm drain system design calculations for the project in accordance with City of St. Helena, Napa County and State of California codes in effect at the time of improvement plan submittal. The calculations shall include a hydrology map, hydrology and hydraulic calculations, pipe size calculations, inlet capacity calculations, and other information necessary to support the proposed design.
33. Prior to the issuance of a Certificate of Occupancy, the Developer shall install storm drain Detention system improvements as required to maintain post development 10-year runoff from the pre-development levels. The Developer shall submit storm drain detention system supporting calculations for review and approval prior to improvement plan approval.
34. Prior to the issuance of a Certificate of Occupancy, the Developer shall install detention system inlets sized to pass at minimum the 25-year flows.
35. A grading and drainage plan shall be prepared for the project that includes a design that allows for a 100-year overland release. All graded building pads shall be above the 100-year overland release elevation.

36. The grading plans provided by the Developer for review shall include the existing topography shown with contour lines labeled at one-foot intervals and extending a minimum of 100-feet beyond the limits of the site, or sufficient distance to indicate impacts on adjacent properties.

37. Erosion and sediment control plans shall conform to the latest State and City codes at a minimum

38. Prior to the issuance of a grading permit or building permit (whichever occurs first), the project property owner shall file a Notice of Intent (NOI) with the State Water Resources Control Board and prepare a Construction Storm Water Pollution Prevention Plan (SWPPP).This is required because the overall project grading involves an area of disturbed surface soil that is greater than or equal to one acre, .

39. The Developer shall execute a City of St. Helena Water Agreement with an annual water use cap of 1,953,928 gallons per year prior to issuance of a Building Permit.

40. Due to the new water demand on the City system in the amount of 1,953,928 gallons per year, the Developer shall implement an alternative innovative method of mitigating water use as allowed under Section 13.12.030(B) of the SHMC, and approved by City Council in the Development Agreement prior to certificate of occupancy. The required offsite improvements to offset water demand as required pursuant to the Development Agreement is as follows: The Developer shall construct and install $256,549 worth of water infrastructure (i.e., purple pipe) in Mills Lane between Highway 29 easterly to the eastern end of Mills Lane. This purple pipe is intended to connect to a future wastewater treatment facility and deliver recycled water to Crane Park's irrigation infrastructure by November 1, 2022, significantly reducing the City's use of potable water. No certificate of occupancy for the Lodging component may be issued, until either the Developer has demonstrated or City has confirmed that either: (a) the water savings from the irrigation of Crane Park with recycled water from the wastewater treatment facility offsets the Lodging component's anticipated water demand, or (b) the Developer has identified and implemented other measures calculated to save potable water in amounts equal to the Project's anticipated use of City water permanently or until recycled water is delivered to Crane Park. Such improvements shall be constructed and approved by the City Engineer in accordance with the terms of the Development Agreement prior to the issuance of a final certificate of occupancy for the Project. Developer may be eligible for partial reimbursement of the costs of construction of the improvements required under this condition in accordance with the terms of the Development Agreement.

41. The Developer shall adhere to the executed Water Agreement with the City and shall incorporate water conservation practices into the proposed project per the Water Availability Analysis prepared by Sherwood Design Engineers, dated May 2, 2017 and the revision dated September 2, 2020. The water conservation requirements shall be replicated in full on the architectural plans.

42. Prior to issuance of a Certificate of Occupancy, all parcels shall be connected to the City of St. Helena municipal water system and installed per City of St. Helena standards.

43. Prior to issuance of a grading or building permit (whichever occurs first) a detailed Post-Construction Stormwater Control Plan (SWCP) that identifies and sizes all

permanent post-construction stormwater treatment BMPs shall be prepared by the applicant's engineer and submitted for review approval. The Plan shall be prepared in accordance with the latest edition of the *Bay Area Stormwater Management Agencies Association (BASMAA) Post-Construction Manual* and the requirements of the State Water Resources Control Board Phase II Municipal Separate Storm Water System (MS4) General Permit (Order 2013-0001 DWQ).

44. Prior to the issuance of a Certificate of Occupancy, a Post Construction Stormwater Operations and Maintenance Plan that provides a color-coded plan sheet showing all storm drain and water quality infrastructure that is to be maintained, along with detailed instructions and schedules for the ongoing maintenance and operation of all post-construction stormwater BMPs shall be submitted by the applicant's engineer for review and approval by the City Engineer. Once approved, the property owner shall enter into an agreement with the City that provides the terms, conditions, and security associated with the ongoing requirements of the Post Construction Stormwater Best Management Practices.

45. If proposed/new landscaping involves an area greater than 500 square feet or rehabilitation of more than 2,500 square feet, the proposed landscaping shall comply with the State's Model Water Efficient Landscape Ordinance (MWELO). MWELO compliance shall be demonstrated as part of the building permit submittal.

46. Prior to issuance of a grading permit, a detailed Soils Investigation/Geotechnical Report shall be prepared by the developer and submitted for review. The report shall address, at a minimum, potential for liquefaction, R-values, expansive soils and seismic risk. The improvement plans shall incorporate all design and construction criteria recommended in the Geotechnical Report.

47. Prior to issuance of a grading permit, unless otherwise explicitly permitted, all existing abandoned wells, septic tanks/systems and/or underground fuel storage tanks shall be abandoned under permit and inspection of Napa County Department of Environmental Services or other designated agency. If there are none, the Developers project engineer shall provide a letter describing the scope of the search done to make this determination.

48. Per the September 14, 2020 Technical Memo titled "Hydrogeologic Evaluation of Possible Impact of Proposed Irrigation-Supply Pumping on Local Aquifer Systems Proposed Farmstead Lodge Property" by Richard Slade and Associates, the applicant shall adhere to the following:

    a) Prior to certificate of occupancy, the applicant shall initiate a groundwater monitoring program for the three active onsite wells. This will include frequent, consistent, and accurate monitoring of water levels, frequent monitoring of pumping rates and pumped volumes of groundwater and could also include verifying the accuracy of the existing flow meters in Well #1- PWS and Well #2-IRR. Water level monitoring should continue to utilize pressure transducers set to a depth just above the depth setting of the new pump in Well #1-PWS and Well #2-IRR. A new transducer should be installed and properly calibrated in the Shared well, along with a proper dual reading flow meter that is installed at an appropriate location on the discharge pipe near its wellhead. These transducer installations must include occasional corroboration using a manual water level sounder. The acquired data shall be

downloaded and reviewed on a quarterly basis by the applicant and submitted to the City Public Works Department on an annual basis by June 30; and

b) Prior to certificate of occupancy, the applicant shall have completed one of the following options on the inactive well:

   i. Shall demolish the inactive well per State and County standards (DWR, Bulletin 74-90); or

   ii. Leave the inactive well on the parcel as part as a permanent groundwater monitoring well. The acquired data shall be downloaded and reviewed on a quarterly basis by the applicant and submitted to the City Public Works Department on an annual basis by June 30; or

   iii. Submit the appropriate permit applications to the City and the County to rehabilitate the inactive well in order to utilize it for an emergency back-up supply well. The well will be required to be monitored similarly as the three active wells and submitted to the City Public Works Department on an annual basis by June 30.

49. Prior to the issuance of a grading permit, the site plan shall show the location of any trees within the project area. Provide a tree protection plan for approval by the Public Works Director prior to approval of the building permit. The plan shall be coordinated with any civil grading/drainage/improvement plans.

50. The Developer shall keep adjoining public streets free and clean of project dirt, mud, materials, and debris during the construction period, as is found necessary by the City Engineer.

51. Prior to the issuance of a Certificate of Occupancy, the Developer shall underground all on-site utility lines per St. Helena Municipal Code. The cost of undergrounding shall be the responsibility of the Developer.

52. Due to the economic and engineering infeasibility of undergrounding regional serving overhead power lines, such existing lines may remain on overhead power poles.

53. Any new and modified existing water laterals, meters and backflow prevention devices shall be required and constructed in accordance with the current requirements of the City of St. Helena's Water Standards and the California Department of Health Standards. Existing meter boxes located within a driveway shall be retrofitted with a traffic-rated box. New laterals shall be located perpendicular to the water main and outside any driveway/drive aisle.

54. Remodels or new construction which require fire sprinklers shall install an appropriately-sized water service with appropriate backflow and meter devices prior to Certificate of Occupancy. Fire system calculations shall be submitted with the Grading and Drainage Plan to verify fire service lateral and meter sizing. Deferred submittals are not accepted.

55. Proposed separations between public water facilities and other utilities shall meet the minimum separations as specified by the Department of Health and the City of St. Helena Public Works Standards.

56. No construction may commence until adequate access to fire water supply is available to building sites as approved by the Fire Chief.

57. Wastewater discharged is subject to all of the requirements and limitations set forth in Chapter 13.24, Wastewater Discharge, of the St. Helena Municipal Code.

58. Prior to the issuance of the first building permit for 1000 Mills Lane, the Developer shall apply for annexation to the St. Helena Municipal Sewer District No. 1. The application shall be completed in accordance with the City of St. Helena's Sewer Annexation Procedures including all annexation, impact, connection, and sewer fees.

59. Prior to issuance of a building permit, in order to confirm the theoretical assumptions in the Theoretical Sewer Capacity provided by Sherwood Design Engineers dated May 2, 2017, the Developer is required to perform 7-day flow monitoring at the downstream sanitary sewer manholes (No. 1-89 and No. 1-94) to verify that the existing sewer pipe has adequate capacity to accommodate the proposed additional flows. Peak sewer flows will not be allowed to exceed 2/3 full pipe. If the proposed wastewater discharge regimen increases peak flows to greater than 2/3 full pipe at the monitored locations and with the current infrastructure, the owner may be subject to paying a share of the cost of sewer upgrades with a dollar amount proportional to the increase in wastewater flow as a result of the site development.

    c) Concurrent with the building permit application, the Developer shall apply for and obtain a Wastewater Discharge Permit from the Department of Public Works as specified in St Helena Municipal Code Section 13.24.50. The permit conditions will require:

        a. Discharge flow rate shall not exceed 5,150 gallons per day.

        b. The onsite force main system shall provide protection from accidental discharge of prohibited materials or other wastes regulated as defined in Chapter 13.24, Wastewater Discharge, of St. Helena Municipal Code. Such facilities shall be provided and maintained at the Owner's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City for review and approval prior to building permit approval.

        c. Owner shall continuously maintain records of all daily flows for a rolling three year period. Said records shall be made available to the City for review upon request.

        d. The City shall have the right to inspect all parts of the onsite force main system at anytime during normal business hours. Failure to take immediate corrective actions on any deficiencies found may result in enforcement actions as provided under the St. Helena Municipal Code or other applicable law.

60. Prior to the issuance of a Certificate of Occupancy, the Developer is required to install a wastewater flow meter measuring the total volume of wastewater leaving the project site, into the City's sewage collection infrastructure, and after installation,

have the wastewater flow meter calibrated yearly. Annual wastewater flow meter calibration records are to be maintained by the project ownership and made available to City staff upon request. The style, design, manufacturer, and location of this meter must be of a form found to be acceptable by the City. The costs associated with the installation and calibration of this meter are required to be fully borne by the Developers, and the results of the flow measurement are to be utilized to determine the amount of the wastewater bills for the uses on site. Said meter is required to be installed and functional prior to occupancy of the project.

61. Prior to issuance of a certificate of occupancy, trash areas, dumpsters and recycling containers shall be enclosed and roofed per State and County standards to prevent water run-on to the trash area and water runoff from the area, to contain litter and trash so that it is not dispersed by the wind or run-off during waste removal. In the event that wine or food is disposed in these areas, the enclosed trash area shall drain to the sanitary sewer system. An area drain connected to the sanitary sewer shall be installed in the enclosure area and a structural control such as an oil/water separator or sand filter shall be included. No other area shall drain into the trash enclosure. A sign shall be posted prohibiting the dumping of hazardous materials into the sanitary sewer.

62. Where applicable, the applicant shall be required to submit to the requirements for annual inspections of food/beverage service establishments and businesses that handle hazardous wastes for illicit stormwater discharges as required by the State National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges. The annual stormwater illicit discharge inspections are performed and invoiced by Napa County Department of Environmental Management.

63. Provide details of all proposed fencing, walls, and gates on all plans submitted for building permit review.

64. Prior to Certificate of Occupancy, the Developer shall repair all public improvements that are damaged by the construction process in accordance with the City Water/Sewer/Street/Storm Drain/Sidewalk Standards.

65. Existing streets being cut by new utility services will require edge grinding and an A.C. overlay per City standards, extent to be determined by the Public Works Department.

66. The Developer shall be required to pay a fair share fee contribution in the amount of 23.3% towards the Dowdell Lane and Highway 29 signalization at the time such improvement is constructed by the City.

67. The Developer shall construct those certain storm drain improvements necessary to extend and improve the storm drain along Mills Lane. These storm drain improvements will serve properties on Mills Lane, La Fata Street, Fountain Street, Grayson Avenue, Main Street (to Charter Oak Avenue), and Vidovich Avenue and to construct an outfall for said storm drain into the Napa River. The Storm Drain Improvements shall be designed by City in accordance with the City's long-standing plan for this separate project is contained in City's Storm Drain Master Plan dated September 2000 (*see* Table 4-1) and the Highway 29 Specific Plan (*see* pages 37-39, Exhibit 11). City shall further be responsible for permitting required for the Storm Drain Project, which shall likely include permits from the California Department of

Fish and Wildlife, San Francisco Regional Water Quality Control Board, and the United States Army Corp of Engineers. Developer shall commence construction of the Storm Drain Improvements after the City has secured the permits required for the Storm Drain Improvements, provided, however, that the Storm Drain Improvements shall be completed before the Developer receives final certificate of occupancy for the Project. Upon completion of the storm drain improvements described in this condition, Developer shall be eligible for reimbursement of costs in excess of its proportionate share of costs in accordance with the terms of the Development Agreement.

68. Developer shall construct improvements to Mills Lane, which are consistent with City's Highway 29 Specific Plan, prior to or concurrently with the development of the Project and shall complete the Mills Lane Improvements prior to the issuance of the first certificate of occupancy for the Project by the City. Construction shall be completed in accordance with improvements plans as approved by the City Engineer, and before Developer receives a final certificate of occupancy for the Project.

69. The Developer shall construct all on and offsite improvements in accordance with the improvement plans and supporting calculations that are prepared by a registered civil engineer and reviewed by the City of St. Helena Public Works Department. The improvement plans and supporting calculations shall include detailed designs for all utilities, water, grading, drainage, erosion control and paving.

70. Prior to issuance of a grading or building permit, the Developer shall be required to obtain a City encroachment permit for improvements on public right-of-way.

71. The following offsite improvements shall be installed by the Developer, completed prior to the issuance of a Certificate of Occupancy and will be provided on a separate offsite improvement plan set:

    - In accordance with civil site plans prepared by Sherwood Design Engineers, dated May 6, 2019, all required public frontage and street improvements shall be designed and built in accordance with City of St. Helena ordinances, Public Works Department Standard Specifications, and Caltrans requirements.
    - Specific offsite improvements include, in general, pavement widening, realignment of Mills Lane in accordance with the Highway 29 Specific Plan, signal upgrade at Highway 29/Main Street/Grayson Avenue/Mills Lane, signage, striping, street lighting, required accessible pedestrian curb ramps, and a new railroad crossing.
    - The typical half cross section of Mills Lane shall consist of a landscape strip, 10' path, curb and gutter, 8' parking strip, and 12' travel lane.
    - In accordance with civil site plans prepared by Sherwood Design Engineers, dated May 6, 2019, the Developer shall extend the City water main from La Fata to the City's 12" water main on Highway 29 and install adequately spaced fire hydrants per the approval of the City's Fire Chief.
    - In accordance with civil site plans prepared by Sherwood Design Engineers, dated May 6, 2019, the Developer shall extend the sewer main on La Fata to the project site.

- As identified in the 2019 Traffic Study by Crane Transportation Group, the Developer shall extend the sidewalk from La Fata Street to Mills Lane with a crosswalk to the project site. The La Fata Sidewalk improvements shall further be completed in accordance with the terms of the Development Agreement.
- The improvement plans shall include a Construction Traffic Control Plan.
- The improvement plans shall include an Erosion and Sediment Control Plan.
- The improvement plans shall include a Joint Trench Plan (as necessary).

72. The Developer shall be required to obtain a Caltrans encroachment permit for improvements on and immediately adjacent to Highway 29 as necessary to complete the offsite improvements as outlined above.
73. The Developer shall be required to obtain permits necessary to complete work on the railroad right-of-way as necessary in conjunction with the offsite improvements as outlined above.
74. The Developer shall construct all on and offsite improvements which are consistent with City's Highway 29 Specific Plan, prior to or concurrently with the development of the Project and shall complete the Mills Lane Improvements prior to the issuance of the final certificate of occupancy for the Project by the City. Construction shall be completed in accordance with improvements plans as approved by the City Engineer and before the Developer receives a final certificate of occupancy for the Project.
75. Prior to issuance of a certificate of occupancy, the Developer shall pay traffic impact fees based on the Master Fee Schedule, and the fee will assume all square footage calculated at the lodging rate.
76. Prior to issuance of a certificate of occupancy, the Developer shall demonstrate that water to fill the swimming pools came from outside St. Helena.

~~Building Department Conditions of Approval~~

77. A building permit is required for all onsite demolition, construction and/or change of occupancy.
78. The applicant will be required to comply with the codes adopted at the time the applicant applies for a building permit. At this time the City of St. Helena utilizes the 2019 Title 24 codes.
79. When submitting plans for a building permit, the plans shall include all documentation listed on the building permit application checklist.
80. The applicant shall provide a construction waste management plan with the building permit application.
81. The plans for construction shall include a checklist for compliance with the California Green Buildings Standards Code, mandatory measures. Provide a reference on the checklist indicating where the mandatory measures can be found on the plans.
82. When submitting plans, the title page shall include all information referenced on the building permit application checklist Title Page requirements.

83. Building Permit application materials and plans shall include any documentation pertaining to special loads applicable to the design and the specified section of the code that addresses the condition; special inspections for any systems or components requiring special inspection; requirements for seismic resistance; and a complete list of deferred submittals at time of application. Any deferral of the required submittal items shall have prior approval of the Building Official however deferral of fire sprinkler design is not allowed.

84. Properties which are on septic systems and proposing substantial renovations may require approval from the Napa County Environmental Health Department. Applicants are encouraged to engage with the County early in the building permit review process to reduce the potential for delay.

Fire Department Conditions of Approval

85. Plans submitted for building permit shall exhibit compliance with the current St. Helena Fire Code, as adopted and codified in St. Helena Municipal Code Chapter 15.36.

86. Fire sprinklers and fire hydrants shall be installed as required by Fire Code and the Fire Department.

87. One hour minimum fire resistant construction on all exterior walls within 10' of property boundary is required. Fire resistant construction of interior walls shall be determined by type of occupancy.

88. Any gates installed to control vehicular access to a property are required to be setback 30-feet from the property line and/or edge of pavement, whichever is greater. No vehicle gates may be installed without Fire Department and Public Works Department review and explicit approval.

I HEREBY CERTIFY that the City of St. Helena City Council approved the foregoing at a Regular Meeting of the St. Helena City Council on October 13, 2020, by the following vote:

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

APPROVED:

Geoff Ellsworth, Mayor

CITY OF ST. HELENA Incorporated March 24, 1878 Re-incorporated May 14, 1886 STATE OF CALIFORNIA

ATTEST:

Cindy Tzafopoulos, City Clerk

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and proposed approval of a resolution approving the the Mexican flag to be flown on the City's ceremonial flagpole from Wednesday, September 15 through Wednesday, September 29, 2021 Recognizing Napa County Latino Heritage Month starting September 15, 2021 and Mexican Independence Day on Thursday, September 16, 2021**

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

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

Per City Council adopted policy Mayor Ellsworth formally requested in writing for this matter to be considered at a regular City Council meeting.

DISCUSSION

Mayor Ellsworth requested the Mexican flag be raised on the ceremonial flagpole on Wednesday, September 15 through Wednesday, September 29, 2021, recognizing Napa County Latino Heritage Month starting September 15, 2021, and Mexican Independence Day on Thursday, September 16, 2021.

FISCAL IMPACT

There is no fiscal impact.

RECOMMENDED ACTION

Approve Resolution authorizing the Mexican flag to be flown on the City's ceremonial flagpole from Wednesday, September 15 through Wednesday, September 29, 2021.

ATTACHMENTS

Mayor Request to Raise Mexican Flag
Resolution Mexican Flag 2021
2019-66 Rescinding Resolution 2017-75 and Amending the Policy P-CC-0001 Outdoor Display of Governmental and Non-Governmental Flags on City Property and Authoriz

Cindy Tzafopoulos

From: Geoff Ellsworth
Sent: Wednesday, September 8, 2021 12:11 PM
To: Cindy Tzafopoulos
Subject: Mexican Flag September 15th

Hi Cindy,

Per our conversation I would like to request to have the Mexican Flag raised at the ceremonial flag pole from September 15th to September 29th.

Thank you,

Geoff

Sent from my iPhone

CITY OF ST. HELENA

RESOLUTION NO. 2021-

Authorizing a Ceremonial Flag to be flown from Wednesday, September 15 through Wednesday, September 29, 2021, Recognizing Napa County Latino Heritage Month starting September 15, 2021, and Mexican Independence Day on Thursday, September 16, 2021

RECITALS

A. On May 28, 2019, the St. Helena City Council adopted policy P-CC-0001 Outdoor Display of Governmental and Non-Governmental Flags on City Property, which authorizes the display of non-governmental flags on City property.

B. Mayor Ellsworth formally requested in writing for the Mexican flag to be flown on the City's ceremonial flagpole from Wednesday, September 15 through Wednesday, September 29, 2021, recognizing Napa County Latino Heritage Month starting September 15, 2021, and Mexican Independence Day on Thursday, September 16, 2021.

RESOLUTION

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

1. Authorizes a Mexican flag to be flown on the City's ceremonial flagpole from Wednesday, September 15 through Wednesday, September 29, 2021.

Approved at a Regular Meeting of the St. Helena City Council on September 14, 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

RESOLUTION NO. 2019-66

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

RECITALS

A. On June 13, 2017, the St. Helena City Council established a uniform policy to govern the flying of the National, State, and City flags on City-owned properties at half-staff to pay homage to the deceased and to govern the display of non-governmental flags on specified City-owned flagpoles; and

B. The City Council desires to amend the current policy establishing a more prominent place to display non-governmental flags; and

C. The more prominent location will be a flag pole installed beside the existing governmental designated flag pole outside of St. Helena City Hall; and

D. A request has been made for the LGBTQ Pride Month flag to be flown the first half of the month of June and the Transgender flag will be flown the second half of June in recognition of LGBTQ Pride Month.

RESOLUTION

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

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

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

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

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

APPROVED:

Geoff Ellsworth, Mayor

ATTEST:

Cindy Tzafopoulos, City Clerk

CITY OF ST. HELENA
Incorporated March 24, 1876
Re-incorporated May 14, 1883
STATE OF CALIFORNIA

	City of St. Helena Council Policy Administration	Policy Outdoor Display of Governmental and Non-Governmental Flags on City Property Page 1 of 2

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

I. Purpose, Overview and Scope of this Policy

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

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

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

II. Authority

The City Council has authority to update this policy.

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

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

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

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

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration of approval of a Resolution authorizing: 1) acceptance of a bank proposal for financing CIP S-52 Wastewater Treatment Plant Phase I Upgrades, and 2) hiring of professionals for a financing transaction.**

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

As a part of the City's efforts to secure low interest funding to implement projects for the City's wastewater system, the City has a draft Letter of Conditions ("LOC") from the United States Department of Agriculture Rural Utilities Service ("USDA Loan") to fund $9,362,000 of the project costs. The USDA Loan has a proposed term of 40 years and a proposed interest rate of 2.25%. The City Council will be given the opportunity to review and discuss the proposed USDA Loan at an upcoming meeting. Under the proposed USDA Loan, LOC, Section III.8. Interim Financing is required as follows:

> For all loans exceeding $500,000, where loan funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be used to preclude the necessity for multiple advances of Agency loan funds. The recipient must provide the Agency with a copy of the interim loan financing agreement for review prior to advertising for bids. The Agency approving official may make an exception when interim financing is cost prohibitive or unavailable.

City staff and the City's Municipal Advisor, Del Rio Advisors, LLC, approached USDA staff about waiving the requirement for interim financing and USDA staff denied the request.

DISCUSSION

City staff and the City's Municipal Advisor discussed the need for interim financing. It was determined that short-term financing sold as a direct placement would be the most cost-efficient structure. A direct placement is the sale of a bond or loan to a commercial bank or other lender that operates in the municipal lending space. The City assembled the rest of the financing team that worked on the City's direct placement water refunding in 2019. These professionals include Jones Hall as Bond Counsel and Brandis Tallman, A Division of Oppenheimer & Co., Inc. as Placement Agent. On Friday, August 20, 2021, a Request for Proposal ("RFP") was circulated to seventeen (17) lenders with responses due by Thursday, September 2, 2021. The City requested a loan with a final maturity date of October 1, 2024 and stated it would consider both fixed rate and variable rate alternatives. The City received four (4) RFP responses summarized as follows:

	Bank of the West	**CoBank**	**First Foundation**	**Western Alliance**
Interest Rates	Variable: 80% of One Month LIBOR plus 0.55% (currently 0.6825%) Fixed: 1.10%	Variable: One Month LIBOR plus 0.85% (currently 0.93%) Fixed: 1.38% - 1.60% (Forward Fix Agreement)	2.41%	2.53%
Draws	Variable: $500K minimum, up to 2 draws per month Fixed: at closing	Variable: Unlimited Fixed: Per set draw schedule	12 months, max 5 draws	1 per month
Rate Locks	Variable: N/A Fixed: +0.10% (1.20%)	Variable: N/A Fixed: Forward Fix Agreement	60 days	Upon credit approval
Prepayment	Variable: 100% at end of each month Fixed: Any date on or before 10/1/23	Variable: 100% Fixed: 1-year, 100% Thereafter	2 years, 100% Thereafter	After 10/1/22 @ 100%

	@ 100.50%, 100% Thereafter			
Bank Counsel/Other	$20,000 Variable: 0.125% Commitment Fee on undrawn amounts	$7,500	$10,000	$8,500 0.25% Origination Fee
Rate Covenant/ABT	1.20x	1.20x	1.20x	1.20x
Interest Cost	Variable: $151,727 Fixed: $331,903	Variable: $195,093		

Based on the results above, the City's financing team discussed the pros and cons of the various proposals. The most appealing option appears to be the variable rate RFP response from Bank of the West, attached hereto as Exhibit 1.

While a variable rate carries with it a certain amount of interest rate risk, the interest rate would need to move immediately to 1.55% to be equivalent to the best fixed rate proposal. While short-term rates can move quickly, any period the interest rate remains low means the rate would need to move even higher to be equivalent to the fixed rate option. The term of this loan is only for a period of 3 years (October 1, 2024) but is expected to be repaid much earlier upon USDA Loan reimbursement. The repayment could begin happening as soon as 12 to 18 months. Therefore, even if interest rates move higher, the loan is expected to be outstanding for only a short period of time. Exhibit 2 shows a ten-year graph and summary data for One Month LIBOR.

The Bank of the West proposal carries with it a proposed 0.125% commitment fee which is the interest rate paid on any undrawn balance. The interest cost comparison in the table includes the payment of those fees based on the City's estimated draw schedule. In addition, the comparison in the table also includes the estimated costs of issuance.

The Bank of the West variable rate option allows for up to two (2) draws per month in amounts of not less than $500,000 each. The Bank of the West fixed rate option requires a full draw of the amount at closing, meaning the City begins paying interest immediately on the amount borrowed.

The action tonight is as a briefing to the City Council seeking direction to move forward with the Bank of the West variable rate option as the recommended alternative. To be

clear, this action does not bind the City. The City Council will be given the opportunity to review the final documentation and approve the formal interim financing at a future meeting. However, this action will satisfy the USDA that the City has an interim funding alternative available allowing for bidding the project to commence. The City needs to receive bids to make sure that the USDA Loan and the City resources contributed to the project will be sufficient to move forward.

FISCAL IMPACT

Below is a table comparing the leading RFP responses.

	Bank of the West (Variable Rate)	Bank of the West (Fixed Rate)	CoBank (Variable Rate)
Estimated Amount	$9,492,000	$9,492,000	$9,479,500
Project Fund	$9,362,000	$9,362,000	$9,362,000
Costs of Issuance (1)	$130,000	$130,000	$117,500
Total Interest	$151,727 (2,3)	$331,904	$195,093 (2)
Total Debt Service	$9,643,727 (2,3)	$9,823,904	$9,674,593 (2)
"All-In" TIC	1.0255% (2,3)	1.6837%	1.1374% (2)

Notes

(1) Amounts differ based on the respective RFP response

- Bond Counsel $35,000
- Municipal Advisor $32,500
- Placement Agent $32,500
- Bank Counsel $20,000
- Miscellaneous $10,000

(2) Estimated based on the estimated current market variable rate, subject to change

(3) Includes estimated amounts paid on undrawn balance at 0.125%

RECOMMENDED ACTION

Recommendation of approval of the attached Resolution.

ATTACHMENTS

Exhibit 1 - Bank of the West Term Sheet 9-7-2021
Exhibit 2 - 1-Month Libor Rate Historical Chart
Resolution WWTP Interim Financing
Attachment 1 - 21ISA3(STHELENA) 2021 Installment Sale Agreement (Bank of the West Variable)
Attachment 2 - 2021ISA(STHELENA) 2021 Installment Sale Agreement BOTW Fixed Rate
Attachment 3 - CoBank Proposal St Helena
Attachment 4 - 2021ISA2(STHELENA) 2021 Installment Sale Agreement (CoBank Variable)

Attachment 5 - First Foundation Term Sheet - St Helena - 09-02-21
Attachment 6 - Western Alliance--USDA Construction Loan Letter of Interest

Exhibit 1

BANK OF THE WEST

The bank for a changing world

CITY OF ST. HELENA, CALIFORNIA

RESPONSE TO REQUEST FOR PROPOSAL
FOR 2021 INSTALLMENT SALE
AGREEMENT

DUE: SEPTEMBER 2, 2021; 1:00 PM PT

Prepared for:
City of St. Helena, CA

Prepared by:
Ted Neu
Managing Director
Bank of the West
180 Montgomery Street
San Francisco, CA 94101
C: 415-765-4938
ted.neu@bankofthewest.com

Victor Shin
Senior Relationship Manager
Bank of the West
180 Montgomery Street
San Francisco, CA 94104
510-285-0848
victor.shin@bankofthewest.com

BANK OF THE WEST
BNP PARIBAS

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BANK OF THE WEST
BNP PARIBAS

COVER LETTER

September 2, 2021

Brandis Tallman as placement agent via email

Nolan Blair, nolan.blair@opco.com
Nicki Tallman, nicki.tallman@opco.com

RE: Request for Proposals for 2021 Installment Sale Agreement

Dear Finance Team:

Bank of the West (the "Bank" or "BOTW") is pleased to submit our proposal to the City of St. Helena, CA (the "City") to provide a term loan to the City pursuant to a 2021 Installment Sale Agreement (the "Agreement"), to provide interim financing for various improvements to the City's wastewater enterprise system in an amount up to $9,482,000.

Bank of the West is a member of BNP Paribas Group, one of the largest and healthiest banks in the world. We are a financially sound, California State-Chartered bank and California State approved depository bank, headquartered in San Francisco, California. BOTW Public Finance is a major provider of credit facilities in the form of letters of credit, private placements, direct purchase facilities, lines of credit, funded loans, and leases to municipal borrowers.

We have provided approximately $300 million in credit facilities to municipal borrowers over the last 12 months, including a $110 million line of credit to back the San Diego County Water Authority's commercial paper program and a $100 million line to back Los Angeles County Department of Water & Power's bonds. Additional municipal borrowers include the State of California, LA County, Tri-County Metropolitan Transportation District, and the City of Portland.

In choosing Bank of the West as your financial partner, the City will be selecting a bank with an **Outstanding CRA** rating. We appreciate this opportunity to submit our proposal and to support the City's financing needs by providing this Term Loan.

Sincerely,

Edward C. Neu
Managing Director
ted.neu@bankofthewest.com

Victor Shin
Senior Relationship Manager
victor.shin@bankofthewest.com

$9,482,000
City of St. Helena, California
2021 Installment Sale Agreement

The proposed terms and conditions are provided for discussion purposes only and do not constitute an offer, agreement, or commitment to lend by Bank of the West (the "Bank"). The actual terms and conditions upon which Bank of the West might extend credit to the City of St. Helena, California (the "City") are subject to satisfactory completion of due diligence, internal credit approval, satisfactory documentation and other such terms and conditions as determined solely by Bank of the West.

Lender:	Bank of the West (the "Bank")
Borrower:	City of St. Helena, California (the "City")
Commitment Amount:	$9,482,000
Structure: **Purpose:**	The Bank is proposing to provide a Tax-Exempt Bank Qualified $9.482 million drawdown Term Loan to the City pursuant to a 2021 Installment Sale Agreement, by and between the City and a financing counterparty, and a 2021 Assignment Agreement, by and between such financing counterparty and the Bank (the "Term Loan"). The Term Loan will be used provide interim financing for various improvements to the City's Wastewater Enterprise system prior to receipt of the proceeds of long-term financing from the USDA's Rural Utility Services (the "USDA Loan"). The Term Loan shall be repaid or prepaid immediately following receipt of the proceeds of the USDA Loan.
Term:	The Term Loan shall have a final maturity of October 1, 2024. The principal amount of the Term Loan shall be paid in full on the final maturity date. Interest on the Term Loan shall be payable semiannually on each April 1 and October 1, commencing on April 1, 2022.
Security:	The principal of and interest on the Term Loan and other amounts due to the Bank shall be payable from and secured by a pledge of (i) net revenues of the City's Wastewater

Enterprise and (ii) the proceeds of the USDA Loan. The Bank is willing to accept a subordinate lien on the Net Revenues.

The City shall covenant to prepay the Term Loan immediately following receipt of the proceeds of the USDA Loan.

No Reserve Fund is required.

Interest Rate and Fees:

Variable Rate Option

Draws on the Term Loan will bear interest at 80% of one month LIBOR plus 0.55%, calculated on an actual/360 day basis. LIBOR interest will be due quarterly in arrears.[1] (As of today, one month LIBOR is 8.25bps, making the all-in-rate 68.25bps).

The undrawn portion of the Commitment Amount will accrue a Commitment Fee of 0.125% per annum, calculated on an actual/360 day basis. Commitment Fees are due quarterly in arrears.

In the event that LIBOR is not ascertainable or does not adequately and fairly reflect the cost of making or maintaining the Term Loan borrowing and such circumstances are unlikely to be temporary, the Bank's standard language regarding any replacement rate shall be included.

Not later than May 15, 2023, the Bank shall provide written notice to the City of the terms of any such replacement rate. The City and the Bank agree that the intent of the foregoing notice is solely to assist the City in managing its financing costs and that the Bank shall have no liability of any kind for failure to timely provide such notice. Notwithstanding the foregoing, a failure or delay by the Bank to timely deliver to the City the notice described above shall in no event relieve any obligation of the City under Term Loan.

Fixed Rate Option

The Bank will offer a fixed rate borrowing option, but the Term Loan must be fully drawn at closing. The Fixed Rate of interest will be 1.10%, calculated on an actual/360 day basis.

The above rate is not locked and will be adjusted based on any extraordinary changes in market rates. The Bank is willing to enter into a rate lock agreement once credit approval has been obtained. The rate lock will increase the coupon by 0.10% per

[1] Floor?

annum.

If the City decides not to lock the rate, the Bank is willing to informally hold the rate quoted above until the earlier of the transaction closing or September 30, 2021.

Drawdown Provisions:

Variable Rate Option

The City may request to drawdown on the Term Loan at any time, provided there is no event of default. Initial and any subsequent draws shall be in an amount of $500,000 or greater. There shall be no more than two draws per month. Any amounts drawn and repaid shall not be subject to re-borrowing. Appropriate conditions precedent for each draw will be required, including timely submission of a request for advance, no termination of the available commitment and the existence of no default or event of default. No governing body action will be required by the Bank to drawdown on the Term Loan once it has been established.

Fixed Rate Option

A full draw down of the Term Loan will be required at closing. If the full amount is not initially required, the proceeds may be held in an escrow account at Bank of the West and may be accessed as necessary.

Prepayment:

The City may prepay amounts drawn on the Term Loan on any date prior to final maturity, upon 30 days' prior written notice, with payment of the breakage costs and prepayment premium set forth below and together with payment of any other amounts due and payable to the Bank.

If the Variable Rate Option is selected, LIBOR breakage costs may apply.

If the Fixed Rate Option is selected, a prepayment premium of 0.50% will apply to payments made prior to [October] 1, 2023. No prepayment premium will apply on and after [October] 1, 2023.

Key Documents:	The 2021 Installment Sale Agreement, the Assignment Agreement, and a Supplemental Agreement between the City and the Bank. Such documents shall be in form and substance satisfactory to the Bank and will contain key Bank provisions including events of default, covenants, representations and warranties, conditions precedent, increased costs/ capital adequacy, indemnification and costs and expenses. The 2021 Installment Sale Agreement shall include the events of default set forth in the Supplemental Agreement. The Bank will not sign a bond purchase agreement or similar document in advance of closing. If the City desires to lock the rate, the City shall sign the rate lock agreement described above.
Events of Default:	Usual and customary for this type of financing and otherwise acceptable to the Bank, including but not limited to: failure to make payments when due; cross-default to Wastewater Enterprise Fund debt of the City; breach of covenants (including reporting covenants); breach of representations and warranties; invalidity; loss of tax exemption; bankruptcy/insolvency; and withdrawal, suspension or downgrade of the long term unenhanced ratings assigned to any Enterprise Wastewater Fund obligation below BBB-/Baa3.
Default Rate:	The Default Rate will be the Bank's Base Rate + 3%.
Base Rate:	The Bank's Base Rate is equal to the greater of the Bank's Prime Rate or Fed Funds plus 50 basis points.
Conditions Precedent:	Customary for transactions of this nature and otherwise acceptable to the Bank. The City shall provide the Bank with a copy of the signed Obligation Letter from USDA. The Bank will require legal opinions of Special Counsel related to the Installment Sale Agreement, Assignment Agreement and Supplemental Agreement being valid and binding and tax-exemption, legal opinions of counsel to the City and the financing counterparty and any other financing parties and

	other customary conditions precedent. The Term Loan shall have no CUSIP number assigned to it, shall be in a single denomination, and will not be divisible or transferable except to a bank, financial institution, or a qualified investor. The Term Loan shall not be rated. No official statement or other offering materials shall be prepared for the Term Loan. If requested, the Bank will execute a "sophisticated lender" letter at closing.
Representations and Warranties:	Customary for transactions of this nature and otherwise acceptable to the Bank.
Covenants:	The City shall comply with a Rate Covenant of 1.20x annual debt service substantially similar to the Rate Covenant for the City's existing Series 2005B and Series 2012B Water and Wastewater Revenue Bonds. The City may not issue or incur any new indebtedness senior to the Term Loan. The City may issue or incur indebtedness on a parity with the Term Loan only in compliance with an Additional Bonds Test of 1.20x Maximum Annual Debt Service substantially similar to the Additional Bonds Test for the City's existing Series 2005B and Series 2012B Water and Wastewater Revenue Bonds. For the purposes of debt service calculations, amounts outstanding under the Term Loan shall be assumed to amortize over a ten year period at prevailing ten-year municipal tax-exempt rates.
Fees, Costs and Charges:	Bank of the West's outside counsel fee will be capped at $20,000, provided there are no prolonged discussions. Provided that the City awards the Term Loan to the Bank and bank counsel commences documentation, legal costs incurred will be the responsibility of the City, whether or not the Term Loan closes. The Bank envisions no other upfront costs. CDIAC's fee for public sector financings, if any, will be payable by the City.

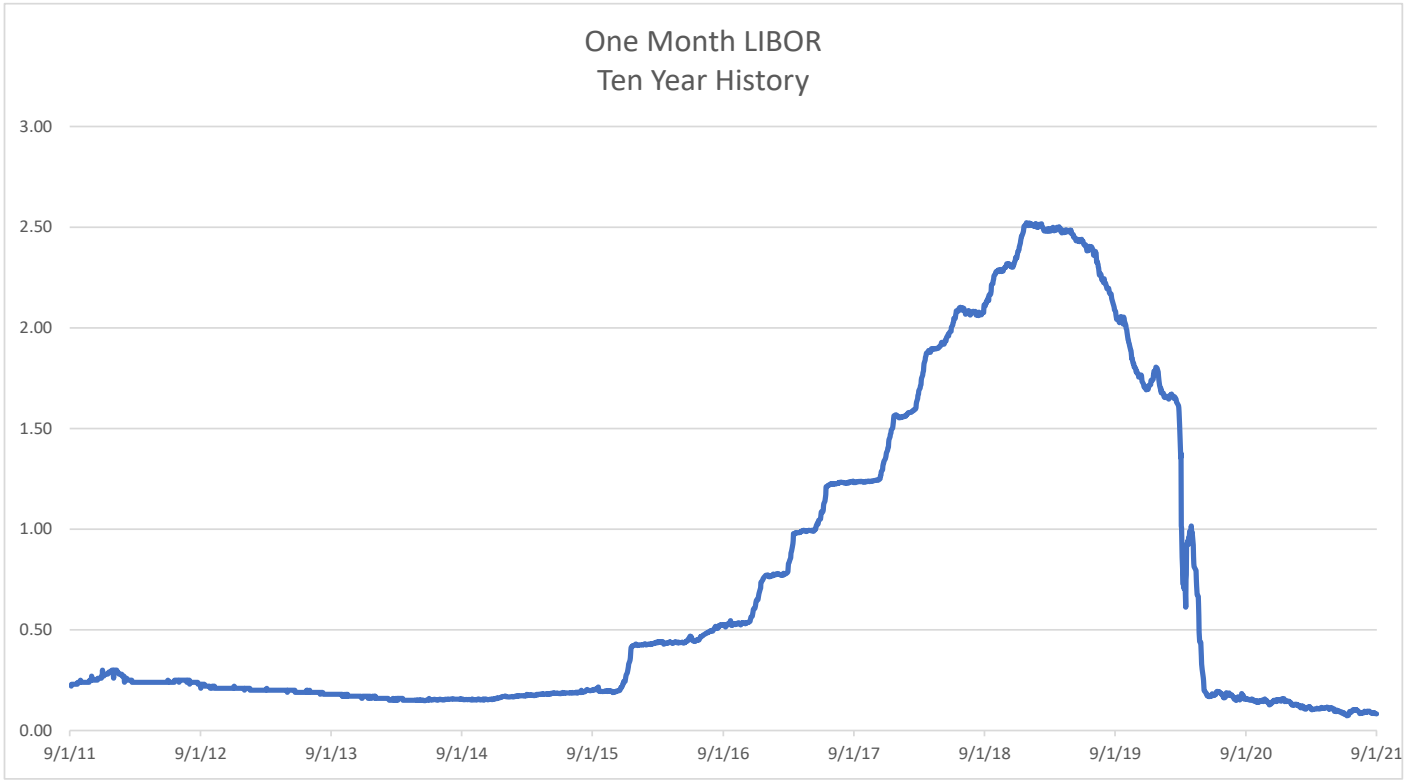
Reporting Requirements:	The City's audited financial statements shall be due within 210 days after the close of each fiscal year. The City's Annual Adopted Budget shall be due within 60 days of adoption. Other information shall be provided upon request of the Bank.
Bank Counsel:	The Bank proposes using the following law firm to review the Installment Sale Agreement and Assignment Agreement and to draft the Supplemental Agreement on behalf of the Bank and to otherwise represent the Bank in the transaction: **Melanie S. Murakami, Esq.** Hawkins Delafield & Wood LLP 333 So. Grand Avenue, 36th Floor Los Angeles, CA 90071 Office: (213) 236-9063 Mobile: (213) 393-9441 Temporarily working from home mmurakami@hawkins.com
Governing Law:	State of California
Bank Representatives:	**Edward C. (Ted) Neu** Public Finance-Managing Director 180 Montgomery Street San Francisco, CA 94101 (415) 572-7054 Ted.Neu@bankofthewest.com **Victor Shin** Senior Relationship Manager Bank of the West 180 Montgomery Street San Francisco, CA 94104 510-285-0848 victor.shin@bankofthewest.com
Credit Approval:	This facility is subject to final credit approval by the Bank. Additional terms and conditions may be requested at the time of final credit approval.
Other:	Additional terms and conditions may be requested at the time of final credit approval.

Expiration:

This proposal expires September 30, 2021 unless the proposal is accepted in writing by the City or the proposal expiration is extended by the Bank.

Confidentiality:

The terms contained in this document are confidential and, except for disclosure to your governing body, officers and employees, to professional advisors retained by you in connection with the transaction, or as may be required by law, may not be disclosed in whole or part to any other person or entity without prior written consent from the Bank. **Bank of the West understands that, ultimately, results of the selection process are public information.**



10 Year Average	0.73
10 Year Maximum	2.52
10 Year Minimum	0.07

CITY OF ST. HELENA

RESOLUTION NO. 2021-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA AUTHORIZING: (1) ACCEPTANCE OF A BANK PROPOSAL FOR FINANCING CIP S-52 WASTEWATER TREATMENT PLANT PHASE I UPGRADES, AND (2) HIRING OF PROFESSIONALS FOR A FINANCING TRANSACTION.

WHEREAS, the City of St. Helena (the City) owns and operates a system for the collection, treatment, and disposal of wastewater within the service area of the City (the "Wastewater System"); and

WHEREAS, the City desires to finance a membrane bioreactor treatment system and various other improvements to the Wastewater System through CIP S-52 Wastewater Treatment Plant Phase I Upgrades the Project); and

WHEREAS, the City has received a Letter of Conditions from the United States Department of Agriculture (USDA) for long-term financing of the Project in an amount not to exceed $9,362,000, which financing requires the Project be completed prior to disbursement of the USDA loan; and

WHEREAS, it will be necessary to secure short-term construction financing to fund the Project for the duration of the construction period; and

WHEREAS, in order to provide short-term construction financing for the Project, the City has caused solicitation of commercial banks for short-term financing proposals; and

WHEREAS, City staff, with the assistance of City consultants and legal counsel, has evaluated financing terms offered by banks responding to the request for proposals and recommends entering into a loan transaction with Bank of the West according to terms it submitted, which staff concludes best serves the interests of the City; and

WHEREAS, the City Council desires to authorize City staff to move forward with financing for short-term financing of the Project.

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

SECTION 1. Direction to facilitate Short-Term Financing. The Council hereby directs the Administrative Services Director of the City to accept the proposal of Bank of the West and cause to be undertaken the preparation of financing documentation, as necessary and appropriate for short-term financing of the Project. At a subsequent Council meeting documents needed to accomplish the financing will be presented to the Council for consideration of approval.

SECTION 2. Financing Professionals. In connection with financing, the Council hereby approves, authorizes, and ratifies the engagement of Brandis Tallman, a Division of Oppenheimer & Co., as placement agent to the City, and Jones Hall, A Professional Law Corporation as special counsel to the City, on such terms as the Administrative Services Director deems appropriate, provided payment of the fees of said firms shall be contingent on the successful closing of the financing and shall be paid from the proceeds thereof or other available funds of the City. Similarly, any other costs of issuance related to the financing, including fees payable to Bank of the West, shall be payable contingent on the successful closing of the financing from the proceeds thereof or other available funds of the City.

SECTION 3. Official Actions. The Administrative Services Director is hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions which she may deem necessary or advisable in order to consummate any of the actions contemplated by this resolution.

SECTION 4. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

Approved at a Regular Meeting of the St. Helena City Council on September 14, 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

SOURCES AND USES OF FUNDS

St. Helena
2021 Installment Sale Agreement (Bank of the West Variable)

Sources:	
Bond Proceeds:	
Par Amount	9,492,000.00
	9,492,000.00

Uses:	
Project Fund Deposits:	
Project Fund	9,362,000.00
Delivery Date Expenses:	
Cost of Issuance	130,000.00
	9,492,000.00

BOND SUMMARY STATISTICS

St. Helena
2021 Installment Sale Agreement (Bank of the West Variable)

Dated Date	11/02/2021
Delivery Date	11/02/2021
Last Maturity	10/01/2024
Arbitrage Yield	0.547879%
True Interest Cost (TIC)	0.547879%
Net Interest Cost (NIC)	0.518543%
All-In TIC	1.025554%
Average Coupon	0.518543%
Average Life (years)	2.914
Duration of Issue (years)	2.900
Par Amount	9,492,000.00
Bond Proceeds	9,492,000.00
Total Interest	143,421.83
Net Interest	143,421.83
Total Debt Service	9,635,421.83
Maximum Annual Debt Service	9,524,391.45
Average Annual Debt Service	3,306,722.46
Underwriter's Fees (per $1000)	
Average Takedown	
Other Fee	
Total Underwriter's Discount	
Bid Price	100.000000

Bond Component	*Par Value*	*Price*	*Average Coupon*	*Average Life*
Bond Component	9,492,000.00	100.000	0.519%	2.914
	9,492,000.00			2.914

	TIC	All-In TIC	Arbitrage Yield
Par Value	9,492,000.00	9,492,000.00	9,492,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense		-130,000.00	
- Other Amounts			
Target Value	9,492,000.00	9,362,000.00	9,492,000.00
Target Date	11/02/2021	11/02/2021	11/02/2021
Yield	0.547879%	1.025554%	0.547879%

COST OF ISSUANCE

St. Helena
2021 Installment Sale Agreement (Bank of the West Variable)

Cost of Issuance	*$/1000*	*Amount*
Bond Counsel	3.68732	35,000.00
Municipal Advisor	3.42394	32,500.00
Placement Agent	3.42394	32,500.00
Misc	1.05352	10,000.00
Bank Counsel	2.10704	20,000.00
	13.69574	130,000.00

BOND DEBT SERVICE

St. Helena
2021 Installment Sale Agreement (Bank of the West Variable)

Period Ending	*Principal*	*Coupon*	*Interest*	*Debt Service*	*Annual Debt Service*
04/01/2022			4,498.96	4,498.96	
06/30/2022					4,498.96
10/01/2022			12,769.57	12,769.57	
04/01/2023			28,978.95	28,978.95	
06/30/2023					41,748.52
10/01/2023			32,391.45	32,391.45	
04/01/2024			32,391.45	32,391.45	
06/30/2024					64,782.90
10/01/2024	9,492,000	0.6825%	32,391.45	9,524,391.45	
06/30/2025					9,524,391.45
	9,492,000		143,421.83	9,635,421.83	9,635,421.83

PROJECT FUND

St. Helena
2021 Installment Sale Agreement (Bank of the West Variable)

Project Fund (PROJ)

Date	*Deposit*	*Interest*	*Principal*	*Scheduled Draws*	*Balance*
11/02/2021	9,362,000		1,362,000	1,362,000	8,000,000
03/01/2022			500,000	500,000	7,500,000
06/01/2022			2,000,000	2,000,000	5,500,000
09/01/2022			2,500,000	2,500,000	3,000,000
12/01/2022			3,000,000	3,000,000	
	9,362,000	0	9,362,000	9,362,000	

Arbitrage Yield:	0.5478790%
Value of Negative Arbitrage:	36,264.75

NET DEBT SERVICE

St. Helena
2021 Installment Sale Agreement (Bank of the West Variable)

Date	*Total Debt Service*	*Committment Fee Exp.*	*Net Debt Service*
03/01/2022		3,305.55	3,305.55
04/01/2022	4,498.96		4,498.96
06/01/2022		2,343.75	2,343.75
09/01/2022		1,718.75	1,718.75
10/01/2022	12,769.57		12,769.57
12/01/2022		937.50	937.50
04/01/2023	28,978.95		28,978.95
10/01/2023	32,391.45		32,391.45
04/01/2024	32,391.45		32,391.45
10/01/2024	9,524,391.45		9,524,391.45
	9,635,421.83	8,305.55	9,643,727.38

SOURCES AND USES OF FUNDS

St. Helena
2021 Installment Sale Agreement

Sources:	
Bond Proceeds:	
Par Amount	9,492,000.00
	9,492,000.00

Uses:	
Project Fund Deposits:	
Project Fund	9,362,000.00
Delivery Date Expenses:	
Cost of Issuance	130,000.00
	9,492,000.00

BOND SUMMARY STATISTICS

St. Helena
2021 Installment Sale Agreement

Dated Date	11/02/2021
Delivery Date	11/02/2021
Last Maturity	10/01/2024
Arbitrage Yield	1.200089%
True Interest Cost (TIC)	1.200089%
Net Interest Cost (NIC)	1.200000%
All-In TIC	1.683741%
Average Coupon	1.200000%
Average Life (years)	2.914
Duration of Issue (years)	2.872
Par Amount	9,492,000.00
Bond Proceeds	9,492,000.00
Total Interest	331,903.60
Net Interest	331,903.60
Total Debt Service	9,823,903.60
Maximum Annual Debt Service	9,548,952.00
Average Annual Debt Service	3,371,406.38
Underwriter's Fees (per $1000)	
Average Takedown	
Other Fee	
Total Underwriter's Discount	
Bid Price	100.000000

Bond Component	*Par Value*	*Price*	*Average Coupon*	*Average Life*
Bond Component	9,492,000.00	100.000	1.200%	2.914
	9,492,000.00			2.914

	TIC	All-In TIC	Arbitrage Yield
Par Value	9,492,000.00	9,492,000.00	9,492,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense		-130,000.00	
- Other Amounts			
Target Value	9,492,000.00	9,362,000.00	9,492,000.00
Target Date	11/02/2021	11/02/2021	11/02/2021
Yield	1.200089%	1.683741%	1.200089%

COST OF ISSUANCE

St. Helena
2021 Installment Sale Agreement

Cost of Issuance	*$/1000*	*Amount*
Bond Counsel	3.68732	35,000.00
Municipal Advisor	3.42394	32,500.00
Placement Agent	3.42394	32,500.00
Misc	1.05352	10,000.00
Bank Counsel	2.10704	20,000.00
	13.69574	130,000.00

BOND DEBT SERVICE

St. Helena
2021 Installment Sale Agreement

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
04/01/2022			47,143.60	47,143.60	
06/30/2022					47,143.60
10/01/2022			56,952.00	56,952.00	
04/01/2023			56,952.00	56,952.00	
06/30/2023					113,904.00
10/01/2023			56,952.00	56,952.00	
04/01/2024			56,952.00	56,952.00	
06/30/2024					113,904.00
10/01/2024	9,492,000	1.200%	56,952.00	9,548,952.00	
06/30/2025					9,548,952.00
	9,492,000		331,903.60	9,823,903.60	9,823,903.60

CoBANK

6340 South Fiddlers Green Circle
Greenwood Village, CO 80111
800-542-8072
www.cobank.com

September 1, 2021

TO: Nicki Tallman and Nolan Blair on behalf of Borrower.

Subject: CoBank Proposal for USDA Interim Financing – Wastewater Projects

On behalf of CoBank, ACB ("**Lender**" or "**CoBank**"), I am pleased to present for your review the following Non-Binding Summary of Terms and Conditions.

Borrower	City of St. Helena
Loan Purpose	Interim construction financing for USDA RD wastewater project
Interim Loan Amount	Up to $9,482,000 (not to exceed RD Direct Loan Amount as provided in executed Letter of Conditions).
Variable Interest Rate Option (Multiple Advance)*	Monthly LIBOR resetting weekly plus 0.85% (currently 0.93%) on actual/360 basis. Unlimited draws. Lender will adopt the industry standard benchmark rate upon the discontinuance of a referenced rate.
Tax-exempt	Yes (BQ not necessary)
Closing Date (est.)	TBD November 2021
Maturity Date	October 1, 2024
Prepayment penalty	None for variable rate.
Lender Legal Fee	Amount capped at $7,500 as provided by Sherman & Howard LLC.
Loan Fees to CoBank	N/A
Payment Frequency	Semi-annual interest only paid on amount advanced due April 1 and October 1, beginning April 1, 2022.
Repayment	Principal due at maturity or immediately upon receipt of USDA RD direct loan funds.
Security	Net revenues from WW Enterprise on parity with existing debt.
Debt Service Coverage & ADT	120%
Debt Reserve	Not required
Reporting Covenants	Audit within 270 days and interims as requested.
Conditions to Closing	Executed RD Letter of Conditions and RD Interim Commitment Letter.

*Intertest Rates quoted are subject to interest rate changes that may occur based upon market conditions.

This Non-Binding Summary of Terms and Conditions (this "**Summary**") is being presented to the **Borrower** by **CoBank** for information and discussion purposes. This Summary is not a commitment or offer to provide the credit outlined above but an expression of interest on the part of CoBank in providing the credit. A commitment to provide credit will only arise upon CoBank's issuance, and the Borrower's acceptance, of a formal Commitment Letter.

Sincerely,

Bentley Hodges
Vice President – Water Financing Division
bhodges@cobank.com; 303-330-4171

Proud Member of the Farm Credit System

Tallman, Nicki

From: Hodges, Bentley <BHodges@cobank.com>
Sent: Thursday, September 2, 2021 11:35 AM
To: Tallman, Nicki
Subject: RE: Proposal Due Date--St. Helena (CoBank)

Hi Nicki, was just responding to Nolan prior to jumping on a flight.

Given the USDA take-out is conditioned on their approval of interim construction advances (a nice credit enhancement), which timing and amount is unknown, we typically prefer to set up like a multiple advance non-revolving line where unlimited advances may be done as needed during the construction term and on variable rate. We do a lot of these and that's generally the customer's preference, particularly given the unlimited draws and with short-term rates projected where they are over the next ~18+ months and below the current fixed rate equivalent.

We do have the ability to forward fix up to 12 months out on predetermined draw amounts. We'd need to work with the city to set up the draw schedule for amounts/timing. Below are the current and 3-12 month forward fixed rates with a 10/1/2024 maturity. We'd need to determine the amounts to forward fix and the rates can be forward fixed through execution of a one-page forward fix agreement. These rates include a 1-year call option after which the amounts are fully pre-payable without penalty. During the 1-year call option period, a make-whole provision does apply (which would allow prepayments without penalty should the rate environment at the time of prepay be above the rates locked) which is an added benefit vs. a typical lock-out.

Draw By Date	Maturity Date	Draw Amount	Fixed Rate*
9/2/2021	10/1/2024	TBD	1.38%
12/1/2021	10/1/2024	TBD	1.40%
3/1/2022	10/1/2024	TBD	1.47%
6/1/2022	10/1/2024	TBD	1.53%
9/1/2022	10/1/2024	TBD	1.60%

** Forward Fixed Rate as of 9/2/2021*

** Rates include a 1-year call option from date of forward fix*

I land at ~3pm PDT and can discuss should there be any questions.

Best,
Bentley

Bentley Hodges
Vice President
CoBank | Water Financing Division
6340 South Fiddlers Green Circle
Greenwood Village, CO 80111
Mobile 303.330.4171
Fax 303.221.9893
bhodges@cobank.com
www.cobank.com

CoBank is currently operating remotely, meaning I will not be available on my office line. Please use my mobile number above and feel free to call or text.

SOURCES AND USES OF FUNDS

St. Helena
2021 Installment Sale Agreement (CoBank Variable)

Sources:	
Bond Proceeds:	
Par Amount	9,479,500.00
	9,479,500.00
Uses:	
Project Fund Deposits:	
Project Fund	9,362,000.00
Delivery Date Expenses:	
Cost of Issuance	117,500.00
	9,479,500.00

BOND SUMMARY STATISTICS

St. Helena
2021 Installment Sale Agreement (CoBank Variable)

Dated Date	11/02/2021
Delivery Date	11/02/2021
Last Maturity	10/01/2024
Arbitrage Yield	0.704753%
True Interest Cost (TIC)	0.704753%
Net Interest Cost (NIC)	0.706291%
All-In TIC	1.137489%
Average Coupon	0.706291%
Average Life (years)	2.914
Duration of Issue (years)	2.896
Par Amount	9,479,500.00
Bond Proceeds	9,479,500.00
Total Interest	195,093.24
Net Interest	195,093.24
Total Debt Service	9,674,593.24
Maximum Annual Debt Service	9,523,579.68
Average Annual Debt Service	3,320,165.46
Underwriter's Fees (per $1000)	
Average Takedown	
Other Fee	
Total Underwriter's Discount	
Bid Price	100.000000

Bond Component	*Par Value*	*Price*	*Average Coupon*	*Average Life*
Bond Component	9,479,500.00	100.000	0.706%	2.914
	9,479,500.00			2.914

	TIC	All-In TIC	Arbitrage Yield
Par Value	9,479,500.00	9,479,500.00	9,479,500.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense		-117,500.00	
- Other Amounts			
Target Value	9,479,500.00	9,362,000.00	9,479,500.00
Target Date	11/02/2021	11/02/2021	11/02/2021
Yield	0.704753%	1.137489%	0.704753%

COST OF ISSUANCE

St. Helena
2021 Installment Sale Agreement (CoBank Variable)

Cost of Issuance	*$/1000*	*Amount*
Bond Counsel	3.69218	35,000.00
Municipal Advisor	3.42845	32,500.00
Placement Agent	3.42845	32,500.00
Misc	1.05491	10,000.00
Bank Counsel	0.79118	7,500.00
	12.39517	117,500.00

BOND DEBT SERVICE

St. Helena
2021 Installment Sale Agreement (CoBank Variable)

Period Ending	*Principal*	*Coupon*	*Interest*	*Debt Service*	*Annual Debt Service*
04/01/2022			6,082.34	6,082.34	
06/30/2022					6,082.34
10/01/2022			17,342.18	17,342.18	
04/01/2023			39,429.68	39,429.68	
06/30/2023					56,771.86
10/01/2023			44,079.68	44,079.68	
04/01/2024			44,079.68	44,079.68	
06/30/2024					88,159.36
10/01/2024	9,479,500	0.930%	44,079.68	9,523,579.68	
06/30/2025					9,523,579.68
	9,479,500		195,093.24	9,674,593.24	9,674,593.24

PROJECT FUND

St. Helena
2021 Installment Sale Agreement (CoBank Variable)

Project Fund (PROJ)

Date	*Deposit*	*Interest*	*Principal*	*Scheduled Draws*	*Balance*
11/02/2021	9,362,000		1,362,000	1,362,000	8,000,000
03/01/2022			500,000	500,000	7,500,000
06/01/2022			2,000,000	2,000,000	5,500,000
09/01/2022			2,500,000	2,500,000	3,000,000
12/01/2022			3,000,000	3,000,000	
	9,362,000	0	9,362,000	9,362,000	

Arbitrage Yield:	0.7047532%
Value of Negative Arbitrage:	46,597.56

BOND PRICING

St. Helena
2021 Installment Sale Agreement (CoBank Variable)

Bond Component	*Maturity Date*	*Amount*	*Rate*	*Yield*	*Price*
Bond Component:	10/01/2024	9,479,500	0.930%	0.705%	100.000
		9,479,500			

Dated Date	11/02/2021	
Delivery Date	11/02/2021	
First Coupon	04/01/2022	
Par Amount	9,479,500.00	
Original Issue Discount		
Production	9,479,500.00	100.000000%
Underwriter's Discount		
Purchase Price	9,479,500.00	100.000000%
Accrued Interest		
Net Proceeds	9,479,500.00	

September 2, 2021

RE: **City of St. Helena**
2021 Interim Financing

Based upon your request and preliminary review of the information provided to-date, First Foundation Public Finance ("FFPF") would like express its interest in underwriting and obtaining credit approval for the following Credit Facility to the City St. Helena, CA ("Borrower") based on the terms outlined below. This Letter is provided by First Foundation PublicFinance for discussion purposes only. *It is not intended to be binding, does not create any obligation on the part of First Foundation Public Finance to Sponsor or any third party, and is not a commitment to lend or agreement of any kind. No obligation whatsoever on the part of First Foundation Public Finance shall arise until execution and delivery of a formal commitment or loan documentation by a duly authorized officer of First Foundation Public Finance, which obligation shall be subject to all of the conditions contained therein.*

The proposed loan conditions are:

STRUCTURE:	Term
PURPOSE:	Interim financing for various wastewater improvements prior to USDA loan funding
MAX. LOAN AMT:	$9,500,000
INTEREST RATE:	Tax-exempt, BQ: 2.41% (3.35% taxable equivalent)
RATE LOCK:	The Rate will be locked for 60-days. If the Credit Facility fails to close within this period, FFPF reserves the right to adjust the rate.
TERM:	3-years
REPAYMENT:	Semi-annual interest payments, principal due at maturity
AVERAGE LIFE:	3.0-years
DRAW PERIOD:	12-months; maximum 5 draws
PRE-PAYMENT:	Repayable at par beginning in year 2 and thereafter.
COLLATERAL:	Net revenue pledge
COVENANTS:	1.20x annual debt service coverage
ADDITIONAL TERMS:	Documents to be prepared by the Borrower's Bond Counsel for review by FFPF's counsel Nixon Peabody, LLP. Legal fees and expenses of Nixon Peabody, LLP should not exceed $10,000. All other filing fees and related fees shall be paid by the Borrower in connection with the issuance (including applicable CDIAC fees). Periodic financial and collateral reporting by the Borrower, as well as representations and warranties of the Borrower regarding its status and ability to repay, taxability gross-up and covenants and conditions that are appropriate for a Credit Facility of the scope and nature proposed above will be determined as part of FFPF's underwriting and credit approval process. PDF's of all executed and other documents listed on the Closing Index shall be provided to FFPF no later than 24 hours before the time of the requested wire; provided, that if any documents can only be signed after receipt of the wire, those documents shall be provided immediately after receipt of the wire. In an event of default, a default rate equal to the Interest Rate + 3.00% will be required.

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Deposit Insurance Corporation, Consumer Response Center, 1100 Walnut Street, Box #11, Kansas City, MO 64106.

Trevor Mael | SVP, Public Finance | Tel: 916.724.2423 | Email: tmael@ff-inc.com

Western Alliance
Public & Nonprofit Finance

September 2, 2021

City of St. Helena
1572 Railroad Avenue
St Helena, California 94574

Re: City of St. Helena Installment Sale Agreement
(Drawdown – Anticipation of USDA Direct Loans) (the "Construction Loan")

Ladies and Gentlemen:

Western Alliance Business Trust is pleased to provide the following proposal for the Construction Loan (the "Construction Loan), which is subject to the Lender's final credit approval process. It should be emphasized that the following is only a proposal and is not intended, nor should it be construed to be, a commitment to lend money. Rather, this proposal should be viewed as an expression of our interest, to be used as a basis for continued discussions.

Western Alliance Public & Nonprofit Finance group provides financing to municipalities and nonprofit entities with an unmatched level of expertise and responsiveness. The group's team of leading professionals has significant experience, and has structured and closed over 250 municipal and nonprofit loans since 2011, totaling more than $2 billion. The group has been very active in interim construction lending with respect to the USDA-RD Community Facilities Program and Water & Environment Program. Included with this proposal is a summary of the group's USDA-RD Construction Interim Drawdown Loans based on completion and active projects.

This proposal is preliminary and subject to change based on negotiations between the Lender and the Borrower and is provided to you solely for the purpose described herein and may not be disclosed to, or relied upon by, any other party without prior written consent of the Lender.

On behalf of the Western Alliance Business Trust, we are pleased that you have asked us to consider your request. We look forward to assisting you with this transaction and appreciate your business. If you have any questions, please feel free to contact Joshua J. Lentz at (602) 346-7467.

Joshua J. Lentz
Senior Vice President, Commercial Banking

PROPOSED LENDING PARAMETERS

These proposed lending parameters are an expression of interest based on the mutual understanding of the financing request and terms and conditions, all of which are pending the Lender's consideration, analysis, and final credit approval. Any final financing commitments are subject to approval by appropriate administrative authorities of the Lender and other analysis we deem appropriate, with the results of such review and analysis being satisfactory to us in our sole discretion. The Lender is not obligated to provide this financing until such time as you are notified in writing by the Lender of the Lender's commitment and you have executed mutually acceptable loan documents. No action, verbal remarks, or any other communication shall obligate the Lender to provide this financing until the Lender has issued a final, written commitment. The terms and conditions outlined below are not intended to be all-inclusive but rather set forth a framework for further discussions and are subject to change or addition.

Borrower:	City of St. Helena (the "Borrower" and the "City")
Permanent Lender:	United States Department of Agriculture ("USDA")
Lender:	Western Alliance Business Trust, a Delaware statutory trust (the "Lender")
Permanent Loans:	USDA Direct Loans – Approximately $9,362,000 ("USDA Direct Loans")
Commitment Amounts:	Not to Exceed $9,482,000
Lender:	Western Alliance Business Trust, a Delaware statutory trust (the "Lender").
Project:	Improvements to the City's Wastewater System (the "Project").
Purpose:	Proceeds from the Construction Loan will be used for interim financing in order to fund the following: 1) fund a portion of the Project; and 2) pay for costs of issuance associated with the Construction Loan.
Tax Status:	Treatment of interest payments under the Construction Loan as excluded from gross income for federal income tax purposes and exempt from California personal income taxes.
Final Maturity:	October 1, 2024. The Borrower may request an extension of the Construction Loan at least three months prior to the Final Maturity.
Interest Payments:	Semi-annual interest payments on April 1 and October 1, commencing on the April 1, 2022. Interest on Construction Loan is to be computed on the basis of a year comprised of 360 days, consisting of twelve (12) months with thirty (30) days.
Principal Payments:	Principal due in full and payable on October 1, 2024.

Interest Rate Pricing: The Construction Loan will be made without original issue discount or premium and will bear a fixed rate of interest based on the following formula:

77% of sum of the 3-Year USD Semi-Annual Interest Rate Swap Rate (0.529% as of 12:33:54 EDT on Thursday, September 2, 2021) plus 2.75% (tax-exempt fixed rate) ~ **2.53%**[*].

The interest rate will be locked upon credit approval.

Reserve Requirement: Not required for the Construction Loan.

Prepayment Provisions: The Construction Loan may be prepaid from proceeds of the USDA Direct Loans, at the option of the Borrower, in whole, or in part, on any date on or after October 1, 2022, at par, plus accrued interest to the date of prepayment, without premium.

Security: The Construction Loan is an obligation of the Borrower payable from the future proceeds of the USDA Direct Loans and net revenues of the Borrower's Wastewater Enterprise (the "Net Revenues").

Bancontrol Accounts: In connection with the financing of the Construction Loan, there shall be established with Western Alliance Bank (the "Bank") the following Revenue Bancontrol Accounts (the "Bancontrol Accounts"):

1) Construction Fund; and
2) Costs of Issuance Fund.

The Bancontrol Accounts will consist of money market accounts and will be invested in FDIC-insured products.

Costs of Issuance: On the Closing Date, the Lender (at the request of the Borrower) will advance funds for deposit in the Costs of Issuance Fund to pay for the transaction costs of the Construction Loan upon review and approval by the USDA.

Loan Draws: Up to and including April 1, 2024, the Borrower may request disbursements from the Construction Loan on the last business day of the month pursuant to a projected draw schedule delivered at closing. Advances, including all applicable documentation and backup, must be provided to the Lender within 10 days prior to the disbursement.

Advances will be made to the Borrower upon review and approval of Project costs by the USDA and delivery to the Lender of any applicable lien waivers associated with the Project. Advances will be deposited and requested from the Construction Fund, respectively. Each request shall be delivered to the Lender 10 days prior to the last business day of the month.

In the event of a federal shut down or other event causing a delay in USDA operations that prevents the USDA's timely approval of any draw request that is otherwise approved by the Lender, the Lender shall proceed with the deposit of such funds into the Construction Fund, with the general understanding that USDA has agreed to provide its approval of such draw request after operations recommence and to

[*] Preliminary, subject to market conditions.

reimburse the Lender for any additional costs directly attributable to such delay.

Covenant to Obtain Take-Out Financing: The Borrower will covenant to take all actions required to obtain financing from the USDA, and/or any other financing source to provide funds to refund all or a portion of the Construction Loan prior to maturity and apply all such funds upon receipt to prepay the Construction Loan.

Financial Covenants: Debt Service Coverage: 1.20x annual debt service

Additional Bonds Test: 1.20x maximum annual debt service

Legal Opinion(s): Opinions of Bond Counsel, among other things, as to:

1) treatment of interest payments under the Construction Loan as excluded from gross income for federal income tax purpose and exempt from State of California personal income taxes;
2) the Construction Loan is a valid and enforceable obligation of the Borrower;
3) the Net Revenues are pledged to the repayment of the Construction Loan;
4) the Construction Loan creates a valid lien on Net Revenues;
5) the Construction Loan being exempt from registration pursuant to the Securities Act of 1933, as amended; and
6) such other opinions as the Lender may require.

An opinion of City Attorney shall also be provided in form and substance satisfactory to the Lender and the Lender's Counsel.

Documentation: Bond Counsel will prepare all of the legal documentation, which will contain customary affirmative and negative covenants as well as usual representations and warranties for like situated borrowers acceptable to the Lender. Events of Default shall include those that are deemed standard and customary for transactions of this nature all of which shall be subject to satisfactory review by the Lender.

Conditions Precedent: Prior to the funding of the Construction Loan, the following conditions precedent shall have occurred, all of which shall be in form and substance satisfactory to the Lender and the Lender's Counsel:

1) satisfactory review by the Lender's Counsel of any outstanding agreements entered into by the Borrower which may impact the security for the Construction Loan or the obligations of the Borrower with respect to repayment of the Construction Loan;
2) any authorizing resolution of the Borrower as required for the execution, delivery and repayment of the Construction Loan;
3) opinions as required by the Lender and the Lender's Counsel;
4) properly executed loan documents in form and substance satisfactory to the Lender and the Lender's counsel evidencing or supporting the repayment of the Construction Loan;
5) all other conditions as contemplated under the USDA Letter of Conditions;
6) a projected draw schedule delivered prior to closing; and
7) additional conditions precedent that the Lender and the Lender's Counsel consider customary and reasonably appropriate for the funding of the

Construction Loan.

Loan Treatment:	The Lender will book the Construction Loan as a loan, and, therefore, the Construction Loan will be made under the following conditions: 1) the Construction Loan shall not be registered or otherwise qualified for sale under the "Blue Sky" laws; 2) the Lender will satisfy the requirements of Municipal Securities Rulemaking Board Rule G-34(a)(i)(F), such that no CUSIP numbers will be obtained for the Construction Loan(See "Assignment and Participation" herein); 3) no official statement or similar offering document has been prepared in connection with the private placement of the Construction Loan; 4) the Construction Loan will not settle through the DTC or any similar repository and will not be in book entry form; and 5) the Lender will sign a letter of representations in a form acceptable to Lender's Counsel and Bond Counsel.
Fees Due at Closing:	The Borrower shall be obligated to pay all delivery costs, including legal fees of the Lender's Counsel. The Lender's Counsel fee shall not exceed $8,500.
Bond Counsel:	Jones Hall, a Professional Corporation / San Francisco, California
Lender's Counsel:	Stradling Yocca Carlson & Rauth, a Professional Corporation / Newport Beach, California
Placement Agent:	Brandis Tallman, a Division of Oppenheimer and Co. Inc. / San Francisco, California
Municipal Advisor:	Del Rio Advisors, LLC / Modesto, California
Origination Fee:	25 basis points of the commitment amount of the Construction Loan. No termination or other ongoing fees.
Closing Date:	Early November 2021

No Fiduciary Relationship:

Inasmuch as the Construction Loan represents a negotiated transaction, the City understands, and will confirm that the Lender is not acting as a fiduciary to the City, but rather is acting solely in its capacity as a Lender, for its own account.

The City will acknowledge and agree that:

1) the transaction contemplated herein is an arm's length commercial transaction between the City and the Lender and its affiliates;
2) in connection with such transaction, the Lender and its affiliates are acting solely as a principal and not as an advisor including, without limitation, a "Municipal Advisor" as such term is defined in Section 15B of the Securities and Exchange Act of 1934, as amended, and the related final rules (the "Municipal Advisor Rules");
3) the Lender and its affiliates are relying on the bank exemption in the Municipal Advisor Rules;
4) the Lender and its affiliates have not provided any advice or assumed any advisory or fiduciary responsibility in favor of the City with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto;
5) the Lender and its affiliates have financial and other interests that differ from those of the City; and
6) the City has consulted with its own financial, legal, accounting, tax and other advisors, as applicable, to the extent it deemed appropriate.

Reporting Requirements:

Annual Reporting Requirements.
The Borrower shall provide the Lender with the following documentation and information within nine (9) months of the Borrower's fiscal year end Audited financial statements of the Borrower for the preceding fiscal year.

The Borrower shall provide the Lender with its annual approved operating budget within one (1) month after its adoption.

Monthly Reporting Requirements.
The Borrower will provide the Lender with monthly construction progress reports. Monthly construction progress reports shall be available on or around the 15th day of each month.

Other.
The Borrower shall furnish at the Lender's request such additional information that Lender may from time to time reasonably request.

Assignment and Participation: The Lender's intent is to book the Construction Loan as a loan and hold the Construction Loan to maturity or to a prepayment date; however, the Lender retains the right to assign or participate out its interest in the Construction Loan. The Lender acknowledges and agrees that the Construction Loan may only be transferred or participated to a "Qualified Institutional Buyer" or an "Accredited Investor" within the meaning of the Securities Act of 1933, as amended and the Regulations thereunder and new lender or participant must follow the conditions of the Construction Loan.

If the Lender elects to assign or participate all or a portion of the Construction Loan, the Lender will notify the USDA and the City requesting to review such assignment or participation.

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and proposed approval of a resolution approving Amendment #1 STH Contract: FY2021-083 with 4Leaf, Inc. in an amount of $35,000 for a total not-to-exceed amount of $59,890 for continued Water Regulation Code Enforcement and Outreach.**

CEQA Determination: **Not a CEQA project**

Prepared By: April Mitts, Administrative Services Director

Reviewed By: April Mitts, Administrative Services Director

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.

To assist with the increase in work load due to the Water Emergency, the City executed STH Contract: FY2021-083 on May 4, 2021 with 4Leaf for $24,890 to provide water regulation outreach, education, code enforcement, and verification of property/landscape areas (Attachment 1). 4Leaf has been providing services to the City three days per week.

DISCUSSION

As the water emergency continues, the City has found the work performed by 4Leaf very beneficial during the water emergency for services the City is not staffed to provide. Because of this staff recommends approval of Amendment #1 to STH Contract: FY2021-083 with 4Leaf, Inc. in an amount of $35,000 for a total not-to-exceed amount of $59,890 for continued Water Regulation Code Enforcement and Outreach. It is estimated this amendment will provide continued support through October 31, 2021.

FISCAL IMPACT

The total costs of this amendment is an additional $35,000 for a total not-to-exceed amount of $59,890. The overall fiscal impact to the Water Fund is an increase of $35,000 from the current fund balance. Use of fund balance in the amount of $35,000 will leave an estimated fund balance in the Water Operations Fund (561) of $7,066,335, or 111%. The estimated fund balance includes penalties incurred, of which a portion may be forgiven through the City Council approved Penalty Forgiveness Program.

RECOMMENDED ACTION

Approve the attached resolution.

ATTACHMENTS

Attachment 1 - STH Contract FY2021-083 4Leaf Water Regulations Compliance
Attachment 2 - Resolution 4Leaf Amendment
Attachment 3 - STH Contract FY2021-083 Amendment #1

STH Contract: FY2021-083

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on May 4, 2021 by and between the City of St. Helena, located in the County of Napa, State of California (City), and 4Leaf, Inc. (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Water Regulation Code Enforcement.

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

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

SECTION 1 – BASIC SERVICES

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

SECTION 2 – ADDITIONAL SERVICES

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

SECTION 3 – TIME FOR COMPLETION

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

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in **Exhibit B, "Compensation"** attached hereto and made a part hereof. Total compensation shall not exceed $24,890 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 the disputed 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 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 $50,000 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. 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, its agents, officers, officials, employees and volunteers 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.

G. Further, Consultant will defend and indemnify City, and hold it harmless, from any claim, demand or liability that is related to, or results from an assertion that as a result of providing services to City, a Consultant employee or a person performing work pursuant to this Agreement is entitled to benefits from, or is covered by, the Social Security retirement system or the California Public Employee Retirement Systems. Notwithstanding the foregoing, however, Consultant's obligation for any payments to such a claimant shall be limited to those payments which the City may be required to pay. This indemnity obligation shall survive the termination or expiration of 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, emailed, sent by facsimile, or first class mail, addressed as follows:

To City:
City Manager
1572 Railroad Avenue
St. Helena, California 94574

To Consultant:
4Leaf, Inc.
Attn: Raylee Glasser, CBO
Director of Jurisdictional Services
2216 Rheem Drive
Pleasanton, CA 94588
rglasser@4leafinc.com

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, email, 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, which shall be paid to Consultant within thirty (30) days of termination or receipt of said invoice, whichever occurs first.

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: Kevin J. Duggan Digitally signed by Kevin J. Duggan Date: 2021.05.04 09:27:41 -07'00'

Name: Kevin J. Duggan
Title: President

City:

By: Mark T. Prestwich Digitally signed by Mark T. Prestwich Date: 2021.05.04 07:58:56 -07'00'

Name: Mark T. Prestwich
Title: City Manager

Approved as to Form:

By: ethan.walsh@bbklaw.com Digitally signed by: ethan.walsh@bbklaw.com DN: CN = ethan.walsh@bbklaw.com Date: 2021.05.17 06:56:12 -07'00'

Name: Ethan Walsh
Title: City Attorney

EXHIBIT A
SCOPE OF SERVICES

Consultant has 3 key tasks:

1. Water Regulation Education through Code Enforcement.
2. Certification of Water Efficiency.
3. Water Efficiency Consulting

Services

1. **Water Regulation Education through Code Enforcement (As-needed)**

   - The Consultant shall provide educational services and personnel, etc. on an on-call basis for the City of St. Helena.
   - Prepare documents for distribution in relation to Water Regulation.
   - Develop a Water Regulations Phase matrix.
   - All on-call requests for on-site personnel should be made directly to 4LEAF management. 4LEAF's recruiting managers, will handle the placement of all 4LEAF staff. 4LEAF's designated managers are:

     Raylee Glasser, Project Manager
     2126 Rheem Drive
     Pleasanton, CA 94588
     (925) 462-5959 – Office
     (925) 462-5958 – Fax
     (925) 708-4209 – Cell
     rglasser@4leafinc.com

     Mike Leontiades, Project Manager
     2126 Rheem Drive
     Pleasanton, CA 94588
     (925) 462-5959 – Office
     (925) 462-5958 – Fax
     (925) 681-8842 – Cell
     mleontiades@4leafinc.com

2. **Certification of Water Efficiency and/or lot size (as-needed)**

   - The Consultant provide Certification of Water Efficiency and/or lot size in accordance with St. Helena Municipal Code as it relates to Water Regulations.

3. **Water Efficiency Consulting (As-needed)**

   - The Consultant shall verify the area square footage for landscaping as well as the type of landscaping (e.g. mature trees vs lawn, etc.)
   - The Consultant should enforce specific measures of the Municipal Code in regards to Water Efficiency including *"single family residential parcels exceeding seven thousand (7,000) square feet in the area, the quantity of up to twenty (20) gallons per day for each on thousand (1,000) square feet that*

EXHIBIT A
SCOPE OF SERVICES

the property area exceeds seven thousand (7,000) square feet for the purpose of maintaining mature landscape or orchard plants. For purposes of this subsection, multiple parcels maintained and fully landscaped as one property may be computed as being one parcel. An exception granted based on this subsection shall allow the use of no more than an additional two hundred fifty (250) gallons per day for this purpose."

- Perform other Code Enforcement duties for enforcement of the Municipal Code including proper documentation as directed by the City.

- Create Code Enforcement procedures and protocols for the development of a Code Enforcement Program as it relates to Water Regulations.

Exhibit B - Compensation

4LEAF, INC.
ENGINEERING • CONSTRUCTION MANAGEMENT
BUILDING INSPECTION • PLAN CHECK

Task Order: Code Enforcment including Water Efficiency Consulting

DATE: 05/03/21
4LEAF JOB No.: J3894
4LEAF PM: Raylee Glasser, CBO
ASSIGNMENT: **Code Enforcment including Water Efficency Consulting**
PERSONNEL: Sean Flannagan, Senior Code Enforcement Officer

ITEM: I **Code Enforcement Including Water Efficiency Consulting**	**Date**	**Estimated Hours**	**UNIT PRICE**	**ESTIMATED TOTAL**
Code Enforcement Including Water Efficiency Consulting	5/3/2021	262	$95	$24,890
Preliminary Sub-Total of Services provided by 4LEAF				***$24,890***

Preliminary Estimated Fees	***$24,890***
Project Management Mark-up N/A	***$0***
Total Preliminary Estimated Fees Not to Exceed	***$24,890***

Estimate is seeking a task order to perform Code Enforcement Services including Water Efficiency Consulting. 4LEAF will use a Sr. Code Enforcement person.
Services include personnel to work on-site approximately three days per week. Services beyond the proposal will need approval from client in writing.
This is a straight time estimate. 4LEAF will bill on a time and materials basis Per the Terms and Conditions of this proposal.
Should overtime be required by client, 4LEAF will bill 1.5 X the hourly rate for Overtime work, upon request. Staff subject to change with approval from client.
All work will be performed per the terms and conditions provided in the Professional Services Agreement including exhibits A and B revised on May 3, 2021.
Staff to be approved by Cresponsible City Management. This is a Not to Exceed Task Order Proposal without permission from City Management.

CITY OF ST. HELENA

RESOLUTION NO. 2021-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA AUTHORIZING: AMENDMENT #1 TO STH CONTRACT: FY2021-083 WITH 4LEAF, INC. FOR THE AMOUNT OF $35,000, WITH A TOTAL CONTRACT NOT-TO-EXCEED $59,890, FOR CONTINUED WATER REGULATION CODE ENFORCEMENT AND OUTREACH.

WHEREAS, 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; and

WHEREAS, on October 13, 2020, emergency water conditions continued, and the City Council declared Phase II Water Restrictions; and

WHEREAS, to assist with the increase in work load due to the Water Emergency, 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; and

WHEREAS, 4Leaf has been providing services to the City three days per week; and

WHEREAS, as the water emergency continues, the City has found the work performed by 4Leaf very beneficial during the water emergency; and

WHEREAS, City and Consultant desire to amend the Agreement an additional $35,000 for a total not-to-exceed amount of $59,890; and

WHEREAS, it will be necessary to utilize Water Operations Fund Balance to accommodate this amendment.

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: FY2021-083 with 4Leaf, Inc. for an additional $35,000 for a total not-to-exceed amount of $59,890.

SECTION 3. The City Council of the City of St. Helena hereby authorizes a budget increase not-to-exceed $35,000 to 561-5000-2150.

SECTION 4. The City Council of the City of St. Helena hereby authorizes use of Water Operations Fund balance in an amount not-to-exceed $35,000.

SECTION 5. The City Council of the City of St. Helena hereby authorizes the City Manager to execute the Amendment.

Approved at a Regular Meeting of the St. Helena City Council on September 14, 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 PROFESSIONAL SERVICES AGREEMENT WITH 4Leaf, Inc.; STH CONTRACT NO: FY2021-083 FOR FOR WATER REGULATION CODE ENFORCEMENT AND OUTREACH FOR THE WATER EMERGENCY FOR AN ADDITIONAL $35,000 FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED $59,890.

This First Amendment to Professional Services Agreement STH Contract: FY2021-083 dated May 04, 2021 ("Agreement") is made as of this 14th day of September, 2021 by and between the City of St. Helena, a municipal corporation ("City"), and 4Leaf, Inc. ("Consultant").

RECITALS

A. On May 4, 2021, the City and Consultant entered into the Agreement for Consultant to provide temporary staffing for Water Regulation Code Enforcement and Outreach during the current water emergency; and

B. As the water emergency continues, it is necessary for the support to continue; and

C. City and Consultant desire to amend the agreement to increase the contract amount by $35,000 for a not-to-exceed amount of $59,890.

AGREEMENT

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

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

"Total compensation shall not exceed $59,890…"

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

Entered as of the day and year first above stated.

CONSULTANT:	**CITY OF ST. HELENA** a Municipal Corporation
Signatures of Authorized Persons:	By:_____
By: _____	Print Name: Mark T. Prestwich
Print Name:_____	Title: City Manager
Title: _____	APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Receive and file the FY 2020-21 Q4 Financial Report (unaudited).**

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

Municipal Code Title 2, §2.24.030 states the Director of Finance shall deliver to the City Manager and to the Council at a regularly scheduled Council meeting a budget report showing the budget status at the end of the preceding quarter. This report is presented to provide an overview of the revenues and expenses as they relate to various funds. The City has traditionally amended its budget during the year as new and updated information becomes available, or at various times during the year to appropriate funds for expenses that were not anticipated at the time the budget was adopted.

This report includes all transactions for FY 2020-21 which were posted through August 31, 2021 for the previous Fiscal Year.

Staff has prepared the following for City Council for the time period of July 1, 2020 through August 31, 2021:

1. Summary of transactions for the General Fund, Water Fund, and Wastewater Fund
2. Summary of St. Helena CARES Low Income Subsidy and Water Leak Adjustments for FY 2020-21
3. List of checks over $50,000 for FY 2020-21 Q4 (Attachment 1)
4. Balance of all Funds (Attachment 2)

5. Revenues and Expense Summaries - General, Water, and Wastewater Funds (Attachments 3-8)

DISCUSSION

Information presented below reflects transactions posted through August 31, 2021 for FY 2020-21. Additional details for the General Fund, Water Fund, and Wastewater Fund are provided as Attachments 3-8.

Although FY 2020-21 ended June 30, 2021, invoice payments, revenues, and journal entries will continue to be posted to all funds for approximately two months. The City is in the process of year end reconciliation with its auditors.

GENERAL FUND

General Fund Revenues - 8/31/21

General Fund revenue is divided into the following categories:

1. Property Tax
2. Sales Tax
3. Transient Occupancy Tax (TOT)
4. Other Taxes
5. Charges for Service
6. Fines and Forfeits
7. Licenses and Permits
8. Development Fees
9. Intergovernmental
10. Interest and Rents
11. Miscellaneous

Property Tax, Sales Tax, and Transient Occupancy Tax are the primary source of General Fund revenues and typically account for 89% of the total General Fund revenue collected each fiscal year.

General Fund revenue received from July 1, 2020 through August 31, 2021 for Fiscal Year (FY) 2020-21 is $13,112,120, which is 90.6% of the Adjusted Budget of $14,477,960. It is important to note the Adjusted Budget includes the estimated reimbursements for related expenses as a result of both the LNU and Glass fires.

Table 1 - General Fund Revenue Estimates

	Adopted Budget	Adjusted Budget	Actual (unaudited)
Sales Tax	2,500,548	2,500,548	4,384,665
Property Tax	5,121,956	5,690,764	5,897,063
TOT	1,246,359	1,246,359	1,539,067
Federal Relief Funds	75,000	75,000	804,864

LNU/Glass Fire	-	2,511,921	1,589,079*
Other	2,243,368	2,492,368	2,474,103
Totals	***11,187,231***	***14,516,960***	***16,688,842***

*Glass Fire actual revenue includes accruals in the amount of $825,795 for funds obligated by FEMA, but not yet received by the City.

General Fund Expenses - 8/31/2021

General Fund expenses for FY 2020-21 for transactions posted through August 31, 2021 are $14,430,214. This amount includes $106,026 in COVID related expenses and $1,937,453* in LNU and Glass Fire expenses. Spending is at 89.6% of the adjusted amount for the year. Attachment 4 provides a summary of expenditures by Department through August 31, 2021 (FY 2020-21).

*Does not include payroll and strike team expenses related to the LNU and Glass Fire.

Table 2 provides a summary of the updated estimated General Fund Unassigned Net Position.

Table 2 - General Fund Estimated Net Position 6/30/2021 (unaudited)

Ending Fund Balance @ 6/30/2020		7,134,663	Net Position %
Estimated Revenue @ 6/30/2021	16,688,842		
Estimated Expenses @ 6/30/2021**	(16,172,837)		
Purchase Orders (including rollovers)***	(986,382)		
Estimated Unassigned Net Position		6,664,286	39%

**Total expenses include previously approved budget adjustments

***Rollover Purchase Orders from FY 2020-21 are expenses that were budgeted and encumbered, but were not expended by June 30, 2021.

WATER FUND - 8/31/2021

Water Enterprise revenue received is $6,121,498, or 89.4% of the estimated total revenues for FY 2020-21. Attachment 5 provides details for the revenues received. It is important to note, Attachment 5 does not include the billing for May and June 2021 which was done in mid-July. As part of the year-end process staff will prepare the journal entry to move funds to FY 2020-21. The additional revenue billed for May and June is $2,879,744. The additional revenue billed for May and June includes June Penalties in the amount of $1,749,378, of which a portion may be forgiven through the City Council approved Penalty Forgiveness Program.

Water expenses through August 31, 2021 are $5,084,818 for FY 2020-21. Overall Water Fund spending is at 83.7% for the Fiscal Year. Attachment 6 provides a summary of spending by department for FY 2020-21 through August 31, 2021 for the Water Fund.

Table 3 - Water Fund Estimated Net Position 6/30/2021 (unaudited)

Ending Fund Balance @ 6/30/2020		5,157,757	Net Position %
Estimated Revenue @ 6/30/2021	9,001,242		
Estimated Expenses @ 6/30/2021**	(6,224,610)		
Purchase Orders (including rollovers)***	(733,419)		
Estimated Unassigned Net Position****		7,200,970	116%

**Total expenses include previously approved budget adjustments and transfer to capital

***Rollover Purchase Orders from FY 2020-21 are expenses that were budgeted and encumbered, but were not expended by June 31, 2021.

****Estimated Unassigned Net Position includes June Penalties in the amount of $1,749,378, of which a portion may be forgiven through the Penalty Forgiveness Program.

WASTEWATER FUND - 8/31/2021

Wastewater Enterprise revenue received is $2,832,958, or 83.9% of the estimated total revenues for FY 2020-21. Attachment 6 provides details for the revenues received. It is important to note, Attachment 6 does not include the billing for May and June 2021 which was done in mid-July. As part of the year-end process staff will prepare the journal entry to move funds to FY 2020-21. The additional revenue received for May and June is $584,898.

Wastewater expenses through August 31, 2021 are $2,231,475 for FY 2020-21. Overall Water Fund spending is at 71.4% for the Fiscal Year. Attachment 8 provides a summary of spending by department for FY 2020-21 through August 31, 2021 for the Wastewater Fund.

Table 4 - Wastewater Fund Estimated Net Position 6/30/2021 (unaudited)

Ending Fund Balance @ 6/30/2020		4,186,917	Net Position %
Estimated Revenue @ 6/30/2021	3,417,856		
Estimated Expenses @ 6/30/2021**	(2,822,186)		
Purchase Orders (including rollovers)***	(195,856)		
Estimated Unassigned Net Position		4,586,731	142%

* Balance includes $1.15 million settlement not yet transferred to the CIP fund. Once transfer is complete the estimated net position is 38%
**Total expenses include previously approved budget adjustments

Water and Wastewater Funds - Aging Report

Although this section is not part of the regular quarterly report, staff feels the aging report for the utility systems is important to review due to the COVID-19 emergency. Revenues for both the water and wastewater systems are recognized as soon as they are earned as opposed to when they are collected. Therefore, when the bi-monthly utility bill is processed the revenues are recorded in the financial software system. Staff has seen an increase in the number of past due accounts. It can not be determined the exact cause; however, it is believed to be due to the ongoing financial hardships created by COVID-19. Table 5 provides a summary of the past due amounts compared to the same time the previous year.

Table 5 - Aging Report Comparison

Date	30-60 days	60-90 days	90-120 days	Over 120 days
8/31/19	$37,185	$9,814	$5,843	$56,231
8/31/20	$169,344	$32,502	$22,480	$68,650
8/31/21	*$1,387,585	$347,103	$52,846	$206,498

*Amount includes penalties assessed as part of the water emergency

St. Helena CARES Low Income Subsidy

The St. Helena CARES subsidy program currently has 109 participants. The subsidy for FY 2020-21 from April 1 - June 30, 2021 is $14,770.26 for a total FY 2020-21 subsidy of $46,312.77. Funds for the St. Helena CARES program are included in the adopted FY 2020-21 budget. Since the start of COVID-19, five CARES participants have been added.

Leak Adjustment Subsidy

The leak subsidy for FY 2020-21 from April 1 - June 30, 2021 is $2,270.28 for a combined excess of 334 units of water. There were 2 broken irrigation valves, 2 broken pipes, and 1 unknown cause. The total amount of leak adjustments for FY 2020-21 is $5,397.81. Funds for the Leak Adjustment Subsidy program are included in the adopted FY 2020-21 budget.

FISCAL IMPACT

There is no fiscal impact to receive and file the report.

RECOMMENDED ACTION

Receive and file the Q4 FY 2020-21 unaudited financial report.

ATTACHMENTS

Attachment 1 - Checks over $50,000
Attachment 2 - Fund Balance Estimates at 06.30.21

Attachment 3 - General Fund Revenue Worksheet Historical by Type Q4
Attachment 4 - FY 2020-21 Q4 General Fund Expenses
Attachment 5 - FY 2020-21 Q4 Water Fund Revenues
Attachment 6 - FY 2020-21 Q4 Water Expenditures
Attachment 7 - FY 2020-21 Q4 Wastewater Revenues
Attachment 8 - FY 2020-21 Q4 Wastewater Expenditures

Accounts Payable

Checks by Date - Summary by Check Date

User: Mandy
Printed: 9/4/2021 10:48 AM

Check No	Vendor No	Vendor Name	Check Date	Check Amount
111694	NAP05	Westamerica Bank	04/08/2021	67,836.52
			Total for 4/8/2021:	67,836.52
111722	REMIF	REMIF	04/14/2021	87,361.50
111742	GONNEV	Gonneville Inc	04/14/2021	77,983.71
111786	OTS	Operational Technical Services	04/14/2021	50,208.10
111813	NAP05	Westamerica Bank	04/14/2021	66,678.21
			Total for 4/14/2021:	282,231.52
111814	GHILOTTI	Ghilotti Construction	04/15/2021	81,569.00
			Total for 4/15/2021:	81,569.00
111845	REMIF	REMIF	04/21/2021	60,781.32
111867	MCCULL	McCullough Construction, Inc.	04/21/2021	163,295.77
			Total for 4/21/2021:	224,077.09
111916	NAP06	NAPA, CITY OF	04/28/2021	142,571.73
			Total for 4/28/2021:	142,571.73
112024	NAP05	Westamerica Bank	05/12/2021	68,738.08
112030	NAP05	Westamerica Bank	05/12/2021	64,911.27
112063	REMIF	REMIF	05/12/2021	55,715.28
			Total for 5/12/2021:	189,364.63
112140	NAP06	NAPA, CITY OF	05/20/2021	127,567.86
			Total for 5/20/2021:	127,567.86
112175	NAP05	Westamerica Bank	05/27/2021	68,849.95
112211	REMIF	REMIF	05/27/2021	59,611.48
			Total for 5/27/2021:	128,461.43
112231	NAP05	Westamerica Bank	06/09/2021	63,851.35
			Total for 6/9/2021:	63,851.35
112307	GONNEV	Gonneville Inc	06/11/2021	88,945.10
			Total for 6/11/2021:	88,945.10

Check No	Vendor No	Vendor Name	Check Date	Check Amount
112386	KAISER	Kaiser Foundation Health Plan, Inc.	06/17/2021	52,398.94
			Total for 6/17/2021:	52,398.94
112453	ICM01	Vantagepoint Transfer-457	06/24/2021	53,155.86
112454	NAP05	Westamerica Bank	06/24/2021	99,561.01
112464	LISAWISE	Lisa Wise Consulting	06/24/2021	83,082.31
112474	NAP06	NAPA, CITY OF	06/24/2021	133,379.82
			Total for 6/24/2021:	369,179.00
112490	NAP05	Westamerica Bank	06/30/2021	56,521.67
			Total for 6/30/2021:	56,521.67
112558	BBKLAW	Best Best & Krieger, Attorneys at Law	07/08/2021	129,400.58
112611	NAP05	Westamerica Bank	07/08/2021	71,325.58
			Total for 7/8/2021:	200,726.16
112751	NATIONST	National Storage Tank, Inc.	07/29/2021	133,155.90
112754	OTS	Operational Technical Services	07/29/2021	80,150.53
			Total for 7/29/2021:	213,306.43
112904	NAP06	NAPA, CITY OF	08/25/2021	155,384.46
112906	PGE	P G & E	08/25/2021	54,265.72
			Total for 8/25/2021:	209,650.18
			Report Total (29 checks):	2,498,258.61

Fund	Description	Estimated Balance at 06/30/21	Estimated Balance Without Long-term Receivables at 06/30/2021
101	General Fund	6,664,286	6,067,816
209	HOME Grant	403,923	3,969
211	EPA Grant	-	-
212	Dept. of Homeland Security	327	327
213	GVS Grant	23,688	23,688
216	Public Safety Impact	531,446	470,113
218	Public Library Foundation	1,296	1,296
219	CLSA State Library	2,088	2,088
222	Park Bond Act	222	222
223	Skate Park Lighting	1	1
224	Public Safety (COPS)	230,520	230,520
225	Gas Tax 215	28,509	28,509
226	Gas Tax 216	17,497	17,497
227	Gas Tax 2107	25,305	25,305
228	Gas Tax 21075	8,511	8,511
229	Gas Tax 2103	97,324	97,324
230	RMRA	110,975	110,975
235	Measure A	79,300	79,300
237	Emergency Flood Relief	172,380	172,380
238	Police Training Development	26,194	26,194
240	Measure T	1,877,987	1,877,987
241	Measure T - Class I Trails	198,604	198,604
277	Prop 56	20,718	20,718
278	BSCC Grant	2,560	2,560
279	Asset Forfeiture	54,634	54,634
283	Tree City	131,666	131,666
286	Bocce	50,672	50,672
287	Harvest Festival	12,769	12,769
288	Fourth of July	3,619	3,619
289	Recreation Program	38,385	38,385
291	SB-1186 State Fees	19,748	19,748
295	NOAA	2,680	2,680
329	Stabo Land Conservation	36,907	36,907
375	Murray Public Safety	16,058	16,058
380	Friends and Foundation	45,347	45,347
381	Ryan Trust	3,677	3,677
382	Martin Trust	4,396	4,396
384	Tweed Library	743,043	743,043
420	1996 GO Bonds	12,361	12,361
443	South St. Helena Drainage	29,783	29,783
561	Water Enterprise	7,200,970	7,200,970
562	1977 Water Bond	60,230	60,230
571	Wastewater Enterprise	4,586,731	4,586,731

Fund	Description	Estimated Balance at 06/30/21	Estimated Balance Without Long-term Receivables at 06/30/2021
572	Wastewater Bond	25,418	25,418
581	IS Retiree Health	98,051	98,051
582	IS Garage	(57,364)	(57,364)
592	Equipment Replacement	325,965	325,965
593	Fire Dept. Capital Equipment	599,454	599,454
700	Flood Control Capital	154,747	154,747
713	Civic Improvement Impact	728,495	728,495
733	City-wide Capital Project	237,829	237,829
734	Park Impact	1,033,977	1,033,977
740	Traffic Mitigation Impact	2,742,689	2,742,689
741	Street Capital Improvement	295,648	295,648
742	Drainage Impact	793,289	793,289
743	TDA Grant	-	-
745	Parking In-Lieu	640,623	640,623
751	Affordable Housing	374,116	374,116
752	Measure E	257,684	257,684
763	Water Capital Project	406,217	406,217
764	Water Impact	360,053	360,053
773	Wastewater Capital Project	1,032,341	1,032,341
774	Wastewater Impact	647,778	647,778

Nonspendable = Resources that cannot be spent either because the underlying resources are not in spendable form or because the government is legally or contractually required to maintain the resource intact.

Restricted = Resources subject to externally enforceable constraints.

Assigned = Resources that are set aside by the government for a particular purpose.

Unassigned = Resources that are not categorized as nonspendable, restricted, committed or assigned.

Unrestricted Net Position = Difference between total net position and net investment in capital assets and restricted net position.

GF Revenue Update

		Actual	Actual	Actual	Actual	Actual	Actual	Adopted	Adjusted	Q4
Account	**Description**	**2015**	**2016**	**2017**	**2018**	**2019**	**FY 2020**	**FY 2021**	**FY 2021**	**FY 2021**
Property Taxes										
101-30-10-00-00	Property Tax-Secured	2,977,499	3,187,030	3,295,653	3,616,167	3,940,490	4,109,646	4,131,967	4,254,296	4,454,810
101-30-11-00-00	ERAF Shift to State	187,782	89,610	94,115	200,292	342,386	309,857	-	400,795	465,733
101-30-20-00-00	Property Tax-Unsecured	122,911	114,923	117,577	121,534	125,292	127,427	110,275	155,958	22,261
101-30-30-00-00	Prior Year Property Tax		1,506	3,736	1,160	1,035	964	600	600	2,936
101-30-90-00-00	Real Property Transfer Tax	92,290	110,376	111,591	82,829	83,805	67,964	110,000	110,000	128,708
101-32-05-00-00	In Lieu VLF	562,034	593,294	639,236	681,160	726,626	776,392	752,058	752,058	810,122
101-32-20-00-00	Homeowner Property Tax	15,626	15,376	15,533	15,352	15,555	15,260	17,057	17,057	12,492
Property Taxes		**3,958,142**	**4,112,115**	**4,277,441**	**4,718,495**	**5,235,189**	**5,407,511**	**5,121,956**	**5,690,764**	**5,897,063**
Sales Tax										
101-30-40-00-00	Retail Sales/Use Tax	1,962,589	2,511,879	2,868,566	2,950,480	3,159,579	2,822,979	1,559,500	1,559,500	2,740,886
101-30-42-00-00	Public Safety Sales Tax	57,198	57,794	60,197	71,117	61,687	66,742	60,848	60,848	68,464
101-30-43-00-00	Sales Tax In Lieu	694,523	521,022			-	-			-
101-30-44-00-00	Measure D	-	-	296,936	1,726,923	1,743,519	1,650,599	880,200	880,200	1,575,315
Sales Tax		**2,714,310**	**3,090,695**	**3,225,699**	**4,748,520**	**4,964,784**	**4,540,321**	**2,500,548**	**2,500,548**	**4,384,665**
Transient Occupancy Taxes										
101-30-50-00-00	Transient Occupancy Tax	1,863,939	2,014,498	2,281,834	2,841,607	3,296,741	2,470,808	1,237,500	1,237,500	1,524,571
101-30-51-00-00	Transient Tax Penalty	6,241	34,334	54,403	21,973	64,084	11,154	8,859	8,859	14,496
Transient Occupancy Taxes		**1,870,180**	**2,048,832**	**2,336,237**	**2,863,580**	**3,360,825**	**2,481,962**	**1,246,359**	**1,246,359**	**1,539,067**
Other Taxes										
101-30-60-00-00	Franchise Tax	184,215	192,986	209,478	215,346	209,872	215,623	212,930	212,930	210,659
Other Taxes		**184,215**	**192,986**	**209,478**	**215,346**	**209,872**	**215,623**	**212,930**	**212,930**	**210,659**
Charges for Service										
101-30-61-00-00	Comcast PEG Access Fees	16,186	28,302	17,809	23,133	22,698	22,528	22,500	22,500	21,994
101-30-75-00-00	Fire Inspection Fees	5,830	716	1,320	605	1,100	-			1,375
101-31-21-00-00	Building Inspection Fees	2,831	3,818	540		-	-			-
101-31-22-00-00	Building Admin Fees	4,840	4,098	135		-	-			-
101-31-23-00-00	Other Fire Fees	80	25,775		8	2,850	-			2,850
101-33-10-00-00	Planning Fees		103	(4)	(5,703)	-	-	-	-	-
101-33-30-00-00	Sales Of Maps/Publications	563	21	193	163	210	59	150	150	108
101-33-50-00-00	Police Services	27,675	31,833	28,771	24,457	33,439	19,168	30,000	30,000	6,750
101-33-51-00-00	Animal Control Services	(837)				-	-			-
101-33-60-00-00	Administrative Fees	5,588	100	1,500	7,515	-	-			-
101-33-70-00-00	Planning Fees	25,446	14,525	62,345	16,508	(53,936)	-	-	-	6,000
101-33-80-00-00	Engineering Fees	925	812	7,057	7,710	1,800	675	1,800	1,800	-
101-33-90-00-00	Street/Sidewalk/Curb Repair	5,592	-		-	-	-			-
Charges for Service		**94,718**	**110,102**	**119,666**	**74,395**	**8,161**	**42,430**	**54,450**	**54,450**	**39,077**

GF Revenue Update

Account	Description	Actual 2015	Actual 2016	Actual 2017	Actual 2018	Actual 2019	Actual FY 2020	Adopted FY 2021	Adjusted FY 2021	Q4 FY 2021
Fines and Forfeits										
101-31-40-00-00	Vehicle Code Fines	43,215	30,230	40,727	29,160	28,136	22,446	27,583	27,583	22,049
101-31-50-00-00	Other Police Fines	52,130	37,872	24,134	40,613	36,260	24,821	28,279	28,279	9,007
101-31-55-00-00	A/R Late Penalty	641	1,658	4,463	4,427	3,959	215	500	500	144
101-33-63-00-00	Civil Penalties		41,000	65,400	106,778	149,264	92,700	45,000	45,000	-
101-34-20-00-00	Library Fines & Fees	16,170	15,539	7,585	6,032	4,087	86			-
Fines and Forfeits		**112,156**	**126,299**	**142,309**	**187,010**	**221,705**	**140,267**	**101,362**	**101,362**	**31,199**
Licenses and Permits										
101-30-70-00-00	Application & Permit Fees	9,825	1,825	3,975	10,915	5,475	4,250	5,500	5,500	3,375
101-30-80-00-00	Business License	152,615	159,728	149,779	152,551	156,715	155,021	154,896	154,896	149,077
101-30-81-00-00	Business License Penalty	189	906	219	756	1,555	798	1,332	1,332	619
101-31-20-00-00	Building Permits	416,475	486,542	549,240	492,301	482,404	552,044	291,696	430,696	587,287
101-33-15-00-00	Short Term Rental Permit	4,300	17,200	13,500	31,500	15,750	31,500	17,500	17,500	20,250
101-33-74-00-00	Planning App & Permit Fees	168,809	303,472	283,125	235,830	180,329	85,429	100,000	100,000	111,100
101-33-84-00-00	Public Works App & Permit Fees	47,075	37,300	39,725	38,500	39,300	41,175	37,132	37,132	54,300
101-33-86-00-00	Well Permit Fee	1,300	1,300	1,300	1,300	2,600	2,600	1,300	1,300	-
Licenses and Permits		**800,588**	**1,008,273**	**1,040,863**	**963,653**	**884,127**	**872,817**	**609,356**	**748,356**	**926,008**
Development Fees										
101-33-81-00-00	Public Works Land & Dev Fees	17,600	21,600	20,800	20,325	25,600	19,360	20,325	20,325	20,800
Development Fees		**17,600**	**21,600**	**20,800**	**20,325**	**25,600**	**19,360**	**20,325**	**20,325**	**20,800**
Intergovernmental										
101-32-10-00-00	Motor Vehicle In-Lieu	2,476	2,447	4,391	(3,176)	2,937	-	3,130	3,130	-
101-32-40-00-00	Highway Maintenance	(3,700)				0	-			-
101-32-70-00-00	County Fire Contract	28,855	48,855	48,855	48,855	48,855	48,855	48,855	48,855	48,855
101-32-80-00-00	Emergency Relief	148,524	207,525	122,712	301,210	269,490	120,930		2,511,921	1,756,281
101-34-61-49-00	Contrib from Gov - Police	9,332	1,351			9,221	8,484	-	-	-
101-34-71-00-00	Reimb State Mandated Costs	68,268	21,037		7,965	4,538	1,647	2,040	2,040	-
101-34-73-00-00	Other State Revenue	5,000	5,008	19	7	18	1,355			13
101-34-75-00-00	Restitution	7,408	14,186	3,848	9,775	181,227	200			25
101-36-80-00-00	Library Abatement	3,576	3,784	2,903	4,842	3,877	3,302	3,709	3,709	5,522
101-38-00-80-00	Restitution Revenue	16,818				0	-			-
101-38-70-00-00	Allocation from Other Agency	-				1,948	-			-
Intergovernmental		**286,557**	**304,193**	**182,726**	**369,478**	**522,112**	**184,773**	**57,734**	**2,569,655**	**1,810,696**
Interest and Rents										
101-31-70-00-00	Investment Earnings	22,912	50,720	(40,336)	(41,299)	262,296	215,290	70,000	70,000	-
101-34-76-00-00	Cash Overage/Shortage	1,040	(250)	0	(0)	22	61			-
101-31-75-00-00	Interest Income	-	1,569		4,834	(93)	-			-
101-36-10-00-00	Rental Income	187,824	165,340	180,809	214,450	153,805	89,101	70,350	70,350	79,904

GF Revenue Update

		Actual	Actual	Actual	Actual	Actual	Actual	Adopted	Adjusted	Q4
Account	**Description**	**2015**	**2016**	**2017**	**2018**	**2019**	**FY 2020**	**FY 2021**	**FY 2021**	**FY 2021**
101-36-12-00-00	Rec Programs Facility Rental					865	-			-
101-36-11-00-00	Tennis Court Rentals	12,455	5,504	5,827	1,425	1,225	750	1,425	1,425	-
Interest and Rents		**224,231**	**222,883**	**146,300**	**179,410**	**418,120**	**305,202**	**141,775**	**141,775**	**79,904**
Miscellaneous										
101-33-20-00-00	Legal Cost Recovery	27,444	48,052	158,922	10,683	32,726	-	10,000	10,000	-
101-33-21-00-00	Storm Drain Cost Recovery	877	-			-	-			-
101-33-40-00-00	Other Filing/Certification Fee	563	21	193	163	-	200	165	165	-
101-33-85-00-00	Public Wks Violation/Repair Fe	-	-			20	-			-
101-34-21-00-00	TRB Library Revenue	-	-		20,000	5,475	-			-
101-34-22-00-00	Library Copies	-	-	3,431	3,277	2,946	1,585	3,030	3,030	-
101-34-23-00-00	Library Lost Material	-	-	503	313	617	500	500	500	-
101-34-24-00-00	Library Room Rental	-	-	430	110	305	150	354	354	-
101-34-31-00-00	Donations	-	1,743	1,000		0	300			-
101-34-31-48-00	Donations - Fire Department									4,000
101-34-31-49-00	Donations - Police Department									1,500
101-34-51-00-00	Sale of Capital Assets	-	-		18,137	1,155	3,795	-	-	633
101-34-60-00-00	Contributions from non-govt	6,235	-		87,500	0	-			-
101-34-61-00-00	Contributions from Government	-	-			0	-	75,000	235,000	861,777
101-34-61-46-00	Contributions from Gov - Library				5,883	0	2,000			500
101-34-68-00-00	TID Admin Fee	-	-			0	-			-
101-34-70-00-00	Other Revenue	29,456	32,055	22,118	25,166	123,934	41,033	55,000	55,000	34,911
101-34-70-22-47	Other Revenue - Jingle						4,389	14,000	14,000	-
101-34-70-47-00	Other Revenue - Recreation						-	120,000	70,000	123,996
101-34-70-47-01	Other Revenue						-	20,000	20,000	-
101-34-74-00-00	Insurance Refund	1,079	223			0	1,244			-
101-39-98-00-00	Operating Transfers In	51,240	3,043	3,530	3,574	15,319	5,367	822,387	822,387	722,387
Miscellaneous		**116,895**	**85,137**	**190,126**	**174,805**	**182,495**	**60,562**	**1,120,436**	**1,230,436**	**1,749,703**
TOTALS		**10,379,592**	**11,323,118**	**11,891,645**	**14,515,018**	**16,032,990**	**14,270,828**	**11,187,231**	**14,516,960**	**16,688,842**

General Ledger
Quarterly Budget Report
GF Expenses

User: Mandy
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Period 01 - 13
Fiscal Year 2021

Description	Adopted Budget	Encumbered	Adjusted Budget	YTD Spent	Available Budget	% of Budget Available
Non Departmental	1,487,004.00	386,465.43	4,251,370.12	3,108,445.00	756,459.69	17.79
Council	359,272.00	22,369.76	405,094.75	231,569.08	151,155.91	37.31
Administration	938,675.00	8,784.41	1,025,399.62	1,003,705.07	12,910.14	1.26
Administrative Services	381,921.00	51,295.99	432,356.48	379,180.79	1,879.70	0.43
Attorney	311,000.00	0.00	311,000.00	263,017.33	47,982.67	15.43
PlanningBuilding	1,171,809.00	246,949.34	1,470,994.21	1,056,002.23	168,042.64	11.42
Library	944,201.00	17,849.26	937,301.00	928,409.36	-8,957.62	-0.96
Parks & Recreation	785,816.00	0.00	785,816.00	570,125.16	215,690.84	27.45
Fire	1,414,558.00	9,647.70	2,043,458.00	2,115,274.88	-81,464.58	-3.99
Police	2,885,802.00	30,295.85	2,921,902.00	2,865,451.94	26,154.21	0.90
Public Works	2,492,005.00	161,934.37	2,574,526.58	1,909,033.62	503,558.59	19.56
Grand Total	**13,172,063.00**	**935,592.11**	**17,159,218.76**	**14,430,214.46**	**1,793,412.19**	**0.1045**

General Ledger
Quarterly Budget Report
Water Revenues

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Period 01 - 13
Fiscal Year 2021

Account Number	Description	Adopted Budget	Adjusted Budget	YTD Received	Uncollected
561	Water Enterprise				
561-38-10-00-00	Water Revenue	-1,500.00	-1,500.00	-547.79	-952.21
561-38-10-00-01	Residential-Inside CL	-3,023,455.00	-3,023,455.00	-2,623,089.46	-400,365.54
561-38-10-00-50	Residential-Outside CL	-568,035.00	-568,035.00	-394,144.58	-173,890.42
561-38-10-01-00	Multi-Dwelling-Inside CL	-719,590.00	-719,590.00	-584,281.43	-135,308.57
561-38-10-01-50	Multi Dwelling-Outside CL	-20,478.00	-20,478.00	-11,206.45	-9,271.55
561-38-10-10-00	General Commercial-Inside CL	-2,145,372.00	-2,145,372.00	-1,641,506.55	-503,865.45
561-38-10-17-00	Landscape Meter	-209,320.00	-209,320.00	-163,597.76	-45,722.24
561-38-10-99-10	Fire Service-Inside CL	-25,262.00	-25,262.00	-37,336.08	12,074.08
561-38-10-99-20	Fire Service-Outside CL	-12,967.00	-12,967.00	-9,736.34	-3,230.66
561-38-10-99-50	Finance Charges	-25,000.00	-25,000.00	1,339.38	-26,339.38
10	SB2 Planning Grant	-6,750,979.00	-6,750,979.00	-5,464,107.06	-1,286,871.94
561-38-40-00-00	Property Rentals	-8,400.00	-8,400.00	0.00	-8,400.00
40	Property Rentals	-8,400.00	-8,400.00	0.00	-8,400.00
561-34-51-00-00	Sale Of Capital Asset	0.00	0.00	-892.26	892.26
51	Sale Of Capital Asset	0.00	0.00	-892.26	892.26
561-38-60-00-00	Water Meter Install Fee	-5,500.00	-5,500.00	-5,396.36	-103.64
60	Water Meter Install Fee	-5,500.00	-5,500.00	-5,396.36	-103.64
561-31-70-00-00	Investment Earnings	-50,000.00	-50,000.00	0.00	-50,000.00
561-34-70-00-00	Other Revenue	-8,500.00	-8,500.00	-1,499.00	-7,001.00
561-38-70-00-00	CARE Subsidy	-22,700.00	-22,700.00	22,876.17	-45,576.17
70	CARE Subsidy	-81,200.00	-81,200.00	21,377.17	-102,577.17
561-34-71-00-00	Water Emergency Penalties	0.00	0.00	-672,179.90	672,179.90
71	Water Emergency Penalties	0.00	0.00	-672,179.90	672,179.90
561-33-80-00-00	Engineering Fees	-1,000.00	-1,000.00	0.00	-1,000.00
80	Engineering Fees	-1,000.00	-1,000.00	0.00	-1,000.00
561-33-83-00-00	Raw Water Permit Fees	-1,000.00	-1,000.00	-300.00	-700.00
83	Raw Water Permit Fees	-1,000.00	-1,000.00	-300.00	-700.00
561-33-87-00-00	Backflow Testing & Insp Fees	-150.00	-150.00	0.00	-150.00

Account Number	Description	Adopted Budget	Adjusted Budget	YTD Received	Uncollected
87	Backflow Testing & Insp Fees	-150.00	-150.00	0.00	-150.00
Grand Total		**-6,848,229.00**	**-6,848,229.00**	**-6,121,498.41**	**-726,730.59**

General Ledger
Quarterly Budget Report
Water Expenditures

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Period 01 - 13
Fiscal Year 2021

Description	Adopted Budget	Encumbered	Adjusted Budget	YTD Spent	Available Budget	% of Budget Available
Non Departmental	1,272,346.00	43,000.00	1,316,106.00	1,109,035.90	164,070.10	12.47
Council	20,119.00	0.00	19,619.00	15,793.34	3,825.66	19.50
Administration	272,443.00	5,638.84	287,826.62	283,038.42	-850.64	-0.30
Administrative Services	321,814.00	21,947.29	334,914.32	320,670.83	-7,703.80	-2.30
Attorney	130,000.00	0.00	155,000.00	208,717.73	-53,717.73	-34.66
Public Works	4,705,159.00	628,160.41	4,798,067.81	3,147,561.69	1,022,345.71	21.31
Grand Total	**6,721,881.00**	**698,746.54**	**6,911,533.75**	**5,084,817.91**	**1,127,969.30**	**0.1632**

General Ledger
Quarterly Budget Report
WW Revenues

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Period 01 - 13
Fiscal Year 2021

Account Number	Description	Adopted Budget	Adjusted Budget	YTD Received	Uncollected
571-31-70-00-00	**Investment Earnings**	**-20,000.00**	**-20,000.00**	**0.00**	**-20,000.00**
31	SEWER ENTER. INVESTMENT EARNIN	-20,000.00	-20,000.00	0.00	-20,000.00
571-34-51-00-00	**Sale of Capital Assets**	**0.00**	**0.00**	**-15,613.49**	**15,613.49**
571-34-70-00-00	**Other Revenue**	**-9,600.00**	**-9,600.00**	**-12,445.50**	**2,845.50**
571-34-80-00-00	**Annexation Fees**	**-2,600.00**	**-2,600.00**	**-11,634.52**	**9,034.52**
34	SEWER ENTER. OTHER REVENUE	-12,200.00	-12,200.00	-39,693.51	27,493.51
571-35-00-00-00	**Residential**	**-1,472,369.00**	**-1,472,369.00**	**-1,353,876.87**	**-118,492.13**
571-35-00-01-00	**Multiple Dwelling**	**-216,912.00**	**-216,912.00**	**-246,372.53**	**29,460.53**
571-35-00-03-00	**Laundromat**	**-14,531.00**	**-14,531.00**	**-12,179.70**	**-2,351.30**
571-35-00-10-00	**General Commercial**	**-1,251,227.00**	**-1,251,227.00**	**-994,651.32**	**-256,575.68**
571-35-00-11-00	**Restaurants**	**-130,036.00**	**-130,036.00**	**-70,619.17**	**-59,416.83**
571-35-00-12-00	**Service Station**	**-3,213.00**	**-3,213.00**	**-4,715.08**	**1,502.08**
571-35-00-14-00	**Motels-No Food Service**	**-135,765.00**	**-135,765.00**	**-58,626.03**	**-77,138.97**
571-35-00-15-00	**Supermarkets**	**-17,935.00**	**-17,935.00**	**-10,522.70**	**-7,412.30**
571-35-00-18-00	**Mixed Retial-Plus Food Service**	**-19,463.00**	**-19,463.00**	**-12,672.49**	**-6,790.51**
571-35-00-20-00	**Industrial**	**-20,523.00**	**-20,523.00**	**-14,057.65**	**-6,465.35**
571-35-00-30-00	**Libraries & Schools**	**-37,773.00**	**-37,773.00**	**-26,462.87**	**-11,310.13**
571-35-00-60-60	**Car Wash**	**-2,123.00**	**-2,123.00**	**-1,571.28**	**-551.72**
35	SEWER ENTER. SEWER-RESIDENTIAL	-3,321,870.00	-3,321,870.00	-2,806,327.69	-515,542.31
571-38-10-99-50	**Finance Charges**	**-18,500.00**	**-18,500.00**	**657.02**	**-19,157.02**
571-38-65-00-00	**Sewer Connection Fee**	**-1,300.00**	**-1,300.00**	**-3,900.00**	**2,600.00**
571-38-70-00-00	**CARE Subsidy**	**-2,500.00**	**-2,500.00**	**16,306.04**	**-18,806.04**
38	Dept	-22,300.00	-22,300.00	13,063.06	-35,363.06
571	Sewer Enterprise	-3,376,370.00	-3,376,370.00	-2,832,958.14	-543,411.86
Grand Total		**-3,376,370.00**	**-3,376,370.00**	**-2,832,958.14**	**-543,411.86**

General Ledger
Quarterly Budget Report
Wastewater Expenditures

User: Mandy
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Period 01 - 13
Fiscal Year 2021

Description	Adopted Budget	Encumbered	Adjusted	YTD Spent	Available Budget	% of Budget Available
Non Departmental	500,477.00	43,000.00	544,237.00	425,227.10	76,009.90	13.97
Council	20,119.00	0.00	18,859.00	15,793.24	3,065.76	16.26
Administration	191,369.00	3,913.89	204,733.12	200,812.68	6.55	0.00
Administrative Services	262,840.00	13,566.06	274,680.29	230,807.65	30,306.58	11.03
Attorney	25,000.00	0.00	25,000.00	7,868.51	17,131.49	68.53
Public Works	2,261,657.00	137,888.59	2,335,846.48	1,350,965.66	846,992.23	36.26
Grand Total	**3,261,462.00**	**198,368.54**	**3,403,355.89**	**2,231,474.84**	**973,512.51**	**0.286**

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and Proposed Approval of a Resolution Authorizing a Professional Services Agreement with Del Rio Advisors, LLC in an amount not-to-exceed $58,250 for the following (1) $33,250 for Direct Placement services in connection with the interim financing for the Wastewater Treatment Plant Phase I Upgrade project and (2) $25,000 for continued Municipal Advisory Services on an as-needed basis.**

CEQA Determination: **Not a CEQA project**

Prepared By: April Mitts, Administrative Services Director

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Since 2017, the City has retained the services of Del Rio Advisors, LLC to provide Municipal Financial Advisory services. Through multiple agreements, Del Rio Advisors has helped the City, among other things, develop a plan of finance for both the water and wastewater systems, review the rate studies for both the water and wastewater funds, provide information as necessary in relation to any financing assumptions, provide services in connection to Refunding the 2005B water bonds, review official statements and disclosures on EMMA related to any publicly offered bonds, review all bond related covenants, prepare detailed plan of finance for various City projects, and attend and present to City Council, as well as revenue ad hoc committees, various funding options available, the current debt capacity, and various debt scenarios.

DISCUSSION

Staff is recommending the City Council approve an agreement with Del Rio Advisors, LLC for a total not-to-exceed amount of $58,250 for the following:

1. To provide direct placement services in connection with the interim financing required by the United States Department of Agriculture (USDA) for the Wastewater Treatment Plant Upgrades in an amount not-to-exceed $33,250; and
2. To continue providing Municipal Advisory Services on an as-needed basis, based on an hourly rate for a not-to-exceed amount of $25,000.

St. Helena Municipal Code (SHMC) Section 3.04.320 and Section 3.04.330 stipulates that professional services should only be awarded to firms or persons who have demonstrated an adequate level of experience, competence, staffing, and other professional qualifications necessary for more than a satisfactory performance of the services required. The municipal code also states, "the acquiring of professional services shall be procured through negotiated contract and that contracting for professional services is decentralized and shall be the responsibility of the department head requesting the service."

The previous work provided by Del Rio Advisors, LLC has demonstrated they have the adequate level of experience, competence, staffing, expertise, and history with the City of St. Helena to perform the duties listed above.

FISCAL IMPACT

The fiscal impact for award of the Professional Services Agreement is for an amount not-to-exceed $58,250. Funds for the interim financing in the amount of $33,250 are included in the cost-of-issuance of the financing as outlined in the acceptance of bank proposal for financing CIP S-52 Wastewater Treatment Plan Phase I Upgrades staff report. Funds for continued Municipal Advisory services for an amount not-to-exceed $25,000 have been included in the adopted FY 2021-22 budget.

RECOMMENDED ACTION

Approve the attached Resolution.

ATTACHMENTS

Attachment 1 - Del Rio Advisors PSA FY22
Attachment 2 - Resolution Del Rio Advisors, LLC

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 Del Rio Advisors, LLC (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Municipal Advisor Services.

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

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

SECTION 1 – BASIC SERVICES

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

SECTION 2 – ADDITIONAL SERVICES

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

SECTION 3 – TIME FOR COMPLETION

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

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in **Exhibit A, "Scope of Services"** attached hereto and made a part hereof. Total compensation shall not exceed $58,250 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.

G. Further, Consultant will defend and indemnify City, and hold it harmless, from any claim, demand or liability that is related to, or results from an assertion that as a result of providing services to City, a Consultant employee or a person performing work pursuant to this Agreement is entitled to benefits from, or is covered by, the Social Security retirement system or the California Public Employee Retirement Systems. Notwithstanding the foregoing, however, Consultant's obligation for any payments to such a claimant shall be limited to those payments which the City may be required to pay. This indemnity obligation shall survive the termination or expiration of 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, emailed, sent by facsimile, or first class mail, addressed as follows:

To City: City Manager
1572 Railroad Avenue
St. Helena, California 94574

To Consultant: Del Rio Advisors
Ken Dieker
1325 Country Club Drive
Modesto, CA 95356
kdieker@celrioadvisors.com

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, email, 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:	City:
By: _____	By: _____
Name: _____	Name: Mark T. Prestwich
Title:_____	Title: City Manager

Approved as to Form:

By: _____
Name: Ethan Walsh
Title: City Attorney

Attachment A

DRALLC

Del Rio Advisors, LLC

"Independent Registered Municipal Advisor"

August 16, 2021

Ms. Mandy Kellogg
Assistant Administrative Services Director
City of St. Helena
1480 Main Street
St. Helena, CA 94574

RE: Engagement Agreement / Disclosures

Dear Ms. Kellogg:

This letter specifies a proposed Fee Engagement ("Engagement") between Del Rio Advisors, LLC ("MA") and the City of St. Helena including any Joint Exercise of Powers Authority or not-for-profit corporation related to the City and used to issue obligations, collectively the ("City"). This letter also provides certain written policies and disclosures that must be provided by the Municipal Advisor to the Municipal Entity, as required by both the Securities and Exchange Commission ("SEC") and the Municipal Securities Rulemaking Board ("MSRB") based on rules which became effective July 1, 2014.

Scope of Municipal Advisory Activities to be Performed

Under the new regulations, Municipal Advisors are required to provide a specific list of services to be performed. This list may be amended in writing between the parties.

Hourly Related Work

- Either create or actively participate in the development and review of any financing plan, related documents and assumptions
- Determine the most cost effective way to carry out the plan that is being considered including recommending innovative alternatives
- If requested, take primary responsibility for all quantitative bond related analysis including: sources and uses of funds, debt service schedules, yield calculations, savings calculations, etc.
- Review and comment on all documents [(1)]
- Prepare any project related staff reports and presentations

Del Rio Advisors, LLC
1325 Country Club Drive
Modesto, CA 95356
Phone: (209) 543-8704
Mobile: (209) 480-1862
Email: kdieker@delrioadvisors.com

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Del Rio Advisors, LLC

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- Attend all meetings and present materials as requested
- Perform any other tasks or projects, as required, and amend this list as necessary to describe any new tasks

Bond Issuance Work

- Review all underwriter and placement agent proposals for specific transactions and make recommendations
- Develop a detailed financing schedule and interested parties list
- Coordinate the efforts of bond counsel, disclosure counsel, underwriter(s), placement agent(s), trustee/fiscal agent and consultants with respect to the preparation and approval of the financing documents
- If needed, prepare and coordinate comprehensive presentations to the rating agencies and bond insurers
- Prepare detailed costs of issuance and, if public sale, recommend a gross spread level
- Undertake pre-pricing analysis prior to sale; advise the issuer and assist in the negotiation with respect to pricing on the day of sale
- Coordinate the approval, delivery and printing of all legal documents, closing certificates and the final official statement [(1)]
- Review and comment on all documents [(1)]
- Prepare any project related staff reports and presentations
- Attend all meetings and present materials as needed
- Perform any other tasks, as required, and amend this list as necessary to describe any new tasks
- If acting in the capacity of an Independent Registered Municipal Advisor ("IRMA") with regard to the IRMA exemption of the SEC Rule, MA will review all third party recommendations submitted to the MA in writing by the City.

Note:

[(1)] MA will review and comment on all documents and assist in preparing any documents necessary for the sale of a new issue or reoffering of municipal securities, including the official statement, offering memorandum or similar disclosure documents. However, besides tables or charts specifically prepared by MA and footnoted as such, MA takes no responsibility for the accuracy or completeness of any of the data provided by others, including the City, contained therein. MA may rely upon data provided by others in the preparation of tables and charts and takes no responsibility for the accuracy or completeness of the data provided.

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Term of Fee Engagement

The commencement date of the Engagement is the execution date as indicated on the signature page of this letter and the end date is the earlier of successful completion of the contemplated project, termination by either party or December 31, 2024.

Termination of Fee Engagement

This Engagement may be terminated by either party with 30-days written notice delivered by registered mail to the other party. If terminated, City will pay any hourly amounts outstanding and any standard reimbursable expenses accrued to date.

Compensation and Out-of-Pocket Expenses

Del Rio Advisors, LLC proposes an hourly capped "not-to-exceed" amount for Hourly Related Work and, should the City wish to move forward on any particular financing related to Bond Issuance Work, a fee schedule for two issuance options (Public Offering or Private Placement to Institutional Investors and Direct Placement to Commercial Banks or to Other Direct Lenders).

Hourly Related Work

A capped "not-to-exceed" $25,000 amount charged against this amount at an hourly rate of $175/hr. MA will also seek reimbursement for normal expenses such as mileage and other travel related expenses.

Bond Issuance Work

With the permission of the City and upon kickoff of a particular bond issuance, the following proposed fees are based on a range of issue sizes and are contingent upon successful closing of the transaction.

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Option One - Public Offering or Private Placement to Institutional Investors

Public Offering / Private Placement

Low	High	Fee (1, 2)
$0	$5,000,000	$32,500
$5,000,001	$10,000,000	$42,500
$10,000,001	$20,000,000	$52,500
$20,000,001	$50,000,000	$62,500
>$50,000,000		$72,500

(1) Add to this figure up to a "not-to-exceed" $750 for normal reimbursable expenses.
(2) All fees assume negotiated bond sale; add $5,000.00 for competitive sale.

MA will also seek reimbursement for normal expenses items such as mileage and other travel related expenses.

Option Two – Direct Placement to Commercial Banks or to Other Direct Lenders

Direct Placement

Low	High	Fee (1)
$ 0	$5,000,000	$27,500
$5,000,001	$10,000,000	$32,500
$10,000,001	$20,000,000	$37,500
$20,000,001	$50,000,000	$42,500
>$50,000,000		$47,500

(1) Add to this figure up to a "not-to-exceed" $750 for normal reimbursable expenses.

MA will also seek reimbursement for normal expenses items such as mileage and other travel related expenses.

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Fiduciary Duty

MA is registered as a Municipal Advisor with the SEC and Municipal Securities Rulemaking Board (MSRB). As such, MA has a Fiduciary duty to the City and must provide both a Duty of Care and Loyalty that entail the following:

Duty of Care

a) exercise due care in performing its municipal advisory activities;

b) possess the degree of knowledge and expertise needed to provide the City with informed advice;

c) make a reasonable inquiry as to the facts that are relevant to the City determination as to whether to proceed with a course of action or that form the basis for any advice provided to the City; and

d) undertake a reasonable investigation to determine that MA is not forming any recommendation on materially inaccurate or incomplete information; MA must have a reasonable basis for:

   i. any advice provided to or on behalf of the City;

   ii. any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the City, any other party involved in the municipal securities transaction or municipal financial product, or investors in the City securities; and

   iii. any information provided to the City or other parties involved in the municipal securities transaction when participating in the preparation of an official statement.

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Duty of Loyalty

MA must deal honestly and with the utmost good faith with City and act in City's best interests without regard to the financial or other interests of MA. MA will eliminate or provide full and fair disclosure (included herein) to City about each material conflict of interest (as applicable). MA will not engage in municipal advisory activities with City as a municipal entity, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in City's best interests.

Conflicts of Interest and Other Matters Requiring Disclosures:

- As of the date of the Engagement, there are no actual or potential conflicts of interest that MA is aware of, other than listed below, that might impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. If MA becomes aware of any other potential conflict of interest that arises after this disclosure, MA will disclose the detailed information in writing to City in a timely manner.
- The fee paid to MA increases the cost of investment to City. The increased cost occurs from compensating MA for municipal advisory services provided.
- MA does not act as principal in any of the transaction(s) related to this Engagement.
- During the term of the municipal advisory relationship, this Engagement will be promptly amended or supplemented to reflect any material changes in or additions to the terms or information within this Engagement and the revised writing will be promptly delivered to City.
- MA does not have any affiliate that provides any advice, service, or product to or on behalf of the client that is directly or indirectly related to the municipal advisory activities to be performed by MA;
- MA has not made any payments directly or indirectly to obtain or retain the City's municipal advisory business;
- MA has not received any payments from third parties to enlist MA's recommendation to City of its services, any municipal securities transaction or any municipal finance product;

Del Rio Advisors, LLC
1325 Country Club Drive
Modesto, CA 95356
Phone: (209) 543-8704
Mobile: (209) 480-1862
Email: kdieker@delrioadvisors.com

- MA has not engaged in any fee-splitting arrangements involving MA and any provider of investments or services to City;
- MA has a conflict of interest from compensation for municipal advisory activities to be performed, that is contingent on the size or closing of any transactions as to which MA is providing advice;
- MA does not have any other Engagements or relationships that might impair MA's ability either to render unbiased and competent advice to or on behalf of City or to fulfill its fiduciary duty to the City, as applicable; and
- MA does not have any legal or disciplinary events that are material to City's evaluation of the municipal advisory or the integrity of its management or advisory personnel.

Legal Events and Disciplinary History

MA does not have any legal events and disciplinary history on their Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. City may electronically access MA's most recent Forms MA and each most recent Forms MA-I filed with the Commission at the following website: www.sec.gov/edgar/searchedgar/companysearch.html.

There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC.

Registration and Customer Complaints

Pursuant to Municipal Securities Rulemaking Board Rule G-10, on Investor and Municipal Advisory Client Education and Protection, Municipal Advisors are required to provide certain written information to their municipal entity and obligated person clients which include the following:

- Del Rio Advisors, LLC is currently registered as a Municipal Advisor with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board.

DRALLC
Del Rio Advisors, LLC

"Independent Registered Municipal Advisor"

Within the Municipal Securities Rulemaking Board ("MSRB") website at www.msrb.org, Authority may obtain the Municipal Advisory client brochure that is posted on the MSRB website. The brochure describes the protections that may be provided by the MSRB Rules along with how to file a complaint with financial regulatory authorities.

Recommendations

If MA makes a recommendation of a municipal securities transaction or municipal financial product and the recommendation is requested in writing by City or the review of another party's recommendation is requested in writing by City, MA will determine, as long as the work is within the scope of this engagement, based on the information obtained through reasonable diligence, whether a municipal securities transaction or municipal financial product is suitable for the City. MA will inform City of:

- the evaluation of the material risks, potential benefits, structure, and other characteristics of the recommendation;
- the basis upon which MA reasonably believes that the recommended municipal securities transaction or municipal financial product is, or is not, suitable for City; and
- whether MA has investigated or considered other reasonably feasible alternatives to the recommendation that might also or alternatively serve the City's objectives.

If City elects a course of action that is independent of or contrary to the advice provided by MA, MA is not required on that basis to disengage from City.

Record Retention

Effective July 1, 2014, pursuant to the Securities and Exchange Commission (SEC) record retention regulations, MA is required to maintain in writing, all communication and created documents between MA and City for five (5) years.

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DRALLC

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"Independent Registered Municipal Advisor"

Various Matters

Based upon the date of execution below, MA may begin work immediately on the understanding that the City will make every effort to formalize the Engagement Agreement. Once formalized, this letter can act as either an exhibit to any standard form of City contract / purchase order or if one is not available may act as the Engagement Agreement between the parties.

If there are any questions regarding the above, please do not hesitate to contact Kenneth L. Dieker of Del Rio Advisors, LLC. If the foregoing terms meet with your approval, please **acknowledge receipt** by executing this letter, scan and email a copy to kdieker@delrioadvisors.com.

Sincerely,

Del Rio Advisors, LLC

By: _____
Kenneth L. Dieker, Principal

City

By: _____
Mark T. Prestwich, City Manager

Dated as of _____ __, 2021

Del Rio Advisors, LLC
1325 Country Club Drive
Modesto, CA 95356
Phone: (209) 543-8704
Mobile: (209) 480-1862
Email: kdieker@delrioadvisors.com

CITY OF ST. HELENA

RESOLUTION NO. 2021-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH DEL RIO ADVISORS, LLC IN AN AMOUNT NOT-TO-EXCEED $58,250 FOR THE FOLLOWING: (1) $33,250 FOR DIRECT PLACEMENT SERVICES IN CONNECTION TO THE INTERIM FINANCING FOR CIP S-52 WASTEWATER TREATMENT PLANT PHASE I UPGRADE PROJECT AND (2) $25,000 FOR CONTINUED MUNICIPAL ADVISORY SERVICES ON AN AS-NEEDED BASIS

WHEREAS, since 2017, the City has retained the services of Del Rio Advisors, LLC to provide Municipal Financial Advisory services; and

WHEREAS, through multiple agreements, Del Rio Advisors has helped the City with various plan of finance and debt related services; and

WHEREAS, the City has applied for a loan through the United States Department of Agriculture (USDA) to cover a portion of the costs of the Wastewater Treatment Plant Phase I Upgrades; and

WHEREAS, as a condition of approval, USDA requires interim financing; and

WHERAS, the City is in need of continued Municipal Advisory Services on an as-needed basis; and

WHEREAS, Del Rio Advisors, LLC has demonstrated they have the adequate level of experience, competence, staffing, expertise, and history with the City of St. Helena to perform the duties required for the interim financing as well as for continued Municipal Financial Advisory support.

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 a Professional Services Agreement with Del Rio Advisors, LLC in an amount not-to-exceed $58,250 for (1) direct placement services in conjunction with the

interim financing required by the United States Department of Agriculture (USDA) for the Wastewater Treatment Plant Upgrades in an amount not-to-exceed $33,250; and (2) to continue providing Municipal Advisory Services on an as-needed basis, based on an hourly rate for a not-to-exceed amount of $25,000.

SECTION 3. The City Council of the City of St. Helena hereby authorizes the City Manager to execute the Agreement.

Approved at a Regular Meeting of the St. Helena City Council on September 14, 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

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and Proposal Approval of a Resolution Approving a Professional Services Agreement with Fairbank, Maslin, Maullin, Metz & Associates (FM3 Research) in an amount not-to-exceed $32,175 for Opinion Research Services**

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

Several recent City Council commissioned studies document widespread infrastructure challenges confronting the City's General Fund, and Water and Wastewater Enterprise Funds. The May 6, 2020 Financing Civic Infrastructure Task Force Final Report noted, "Unfortunately, over the past several decades, St. Helena, like many cities and states, has accumulated a significant backlog of deferred maintenance. In addition, regulatory pressure has increased in areas like water and wastewater treatment and dam safety, which require major investment in plant and equipment to retain the certifications to operate those services." The report adds there are "no reserve funds set aside for infrastructure repair and replacement."

As noted by the Financing Civic Infrastructure Task Force, "without...capital investments, the City runs the risk of major infrastructure failure and/or the suspension of state and federal authorization to provide water and sewer services – and the City's General Fund does not have money to contribute to these improvements." The report emphasized, "the enormity of the forecasted (and un-forecasted) future investment, the risk of running afoul of regulators if timely investments aren't made, and resistance to past rate increases make us conclude that the Enterprise businesses pose a financial risk to the City. It is quite possible that the Enterprise businesses will have to borrow from the City's General

Fund, especially in an emergency situation involving the failure of major elements of the systems."

Consistent with City Council Goal 4.B, on June 8, 2021, the City Council received a presentation on financing and revenue options to address City infrastructure deficiencies. The report noted City capital needs exceed $65 million and also discussed operational challenges that add pressure to the General Fund and impact City service levels. Several near-term revenue options were discussed, including consideration of a potential June or November 2022 ballot measure. Direction was provided to secure professional opinion research services as an initial next step in developing a community supported funding strategy or other alternatives that could be deployed to accelerate investment in the City's infrastructure and operational challenges.

The City subsequently prepared and released a Request for Proposals (RFP) for opinion research services on August 4, 2021 with proposals due August 20, 2021. The City received proposals from three firms and interviews were conducted the week of August 30, 2021.

DISCUSSION

A review committee consisting of Mayor Ellsworth, Vice Mayor Dohring, City Manager Prestwich, Administrative Services Director Mitts, and Assistant to the City Manager Nixon participated in interviews.

The review committee is recommending the City enter into a professional services agreement with Fairbank, Maslin, Maullin, Metz & Associates (FM3 Research). In addition to extensive demonstrated experience in public policy research and prior research experience with the City of St. Helena, FM3 Research provided a competitive cost-effective proposal for research services. The proposed research methodology includes a dual-mode voter survey, with interviews conducted online and via telephone (landline and wireless). The proposed agreement includes funding for bilingual interviewing services.

FM3 Research Partner and President Dave Metz will serve as Project Manager for the City's opinion research. Mr. Metz received his Bachelor’s degree in Government from Harvard University and his Master’s in Public Policy from the Goldman School of Public Policy at the University of California-Berkeley.

FISCAL IMPACT

The City's FY 2021-22 budget includes an appropriation of $35,000 for opinion research services which covers the cost of the $32,175 proposed agreement.

RECOMMENDED ACTION

It is recommended the City Council adopt the attached resolution.

ATTACHMENTS

Attachment 1 - FM3 Research PSA

Attachment 2 - FM3 Resolution
Public Comment.Jennifer La Liberte

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 Fairbank, Maslin, Maullin, Metz & Associates (FM3 Research) (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Opinion Research Services.

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

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

SECTION 1 – BASIC SERVICES

Consultant agrees to perform the services set forth in **Exhibit A, "Scope of Work and Compensation"** 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 Work and Compensation"** (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 Work and Compensation"**. 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, "Scope of Work and Compensation"** attached hereto and made a part hereof. Total compensation shall not exceed $32,175 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.

G. Further, Consultant will defend and indemnify City, and hold it harmless, from any claim, demand or liability that is related to, or results from an assertion that as a result of providing services to City, a Consultant employee or a person performing work pursuant to this Agreement is entitled to benefits from, or is covered by, the Social Security retirement system or the California Public Employee Retirement Systems. Notwithstanding the foregoing, however, Consultant's obligation for any payments to such a claimant shall be limited to those payments which the City may be required to pay. This indemnity obligation shall survive the termination or expiration of 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, emailed, sent by facsimile, or first class mail, addressed as follows:

To City:
City Manager
1572 Railroad Avenue
St. Helena, California 94574

To Consultant:
Fairbank, Maslin, Maullin, Metz & Associates
Attn: David Metz
1999 Harrison Street, Suite 2020
Oakland, CA 94612
510-451-9521
dave@fm3research.com

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, email, 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:	City:
By: _____	By: _____
Name: _____	Name: Mark T. Prestwich
Title:_____	Title: City Manager

Approved as to Form:

By: _____
Name: Ethan Walsh
Title: City Attorney

Exhibit A – Scope of Work and Compensation

Scope of Work/Deliverables

A. Consult with City on funding needs, research objectives, and communication, and methodical options.

B. Design of a dual-mode survey instrument based on research objectives that will yield statistically valid sampling of registered and likely voters. Include methods used to mitigate language barriers.

C. Review local voter and resident demographics, prior City of St. Helena opinion research, results of past revenue/ballot measures, and other relevant data.

D. Create an opinion research and communication strategy to:
   - Capture voter opinion on and assess likelihood of success of revenue options
   - Ensure voters are accurately informed and understand the outcome of their vote(s) associated with any potential ballot measure.

E. Obtain client sign-off on survey instrument.

F. Conduct public opinion research and test messages in support and opposition of ballot options.

G. Coordinate with City to assess preliminary results of opinion research, discuss implications, related issues, and alternatives.

H. Prepare a written report and presentation of results. Report shall include at minimum:
   - Framework and methodology used
   - Tabulations of all calls and/or contacts made as part of survey
   - Tabulation of survey results, key findings, detailed findings, conclusions, and recommendations
   - Analysis regarding current sentiment towards unfunded public needs, willingness to fund these additional costs, potential funding mechanisms to cover these costs, and options presenting acceptable levels of voter support.

I. Consultant representative shall be available to attend and present to the St. Helena City Council at project inception to describe methodology/project steps, and when reporting findings, analysis, and recommendations.

Compensation

Total compensation for the work performed is $32,175.

CITY OF ST. HELENA

RESOLUTION NO. 2021-

Resolution of the City of St. Helena City Council Approving a Professional Services Agreement with Fairbank, Maslin, Maullin, Metz & Associates in an amount not-to-exceed $32,175 for Opinion Research Services

RECITALS

A. Several recent City Council commissioned studies document widespread infrastructure challenges confronting the City's General Fund, and Water and Wastewater Enterprise Funds; and

B. The May 6, 2020 Financing Civic Infrastructure Task Force Final Report noted, "Unfortunately, over the past several decades, St. Helena, like many cities and states, has accumulated a significant backlog of deferred maintenance. In addition, regulatory pressure has increased in areas like water and wastewater treatment and dam safety, which require major investment in plant and equipment to retain the certifications to operate those services." The report adds there are "no reserve funds set aside for infrastructure repair and replacement."; and

C. Consistent with City Council Goal 4.B, the City Council received a presentation on financing and revenue options to address City infrastructure deficiencies on June 8, 2021; and

D. The report noted City capital needs exceed $65 million and discussed operational challenges that add pressure to the General Fund and impact City service levels; and

E. The City Council provided direction to secure professional opinion research services as an initial next step in developing a community supported funding strategy or other alternatives that could be deployed to accelerate investment in the City's infrastructure and operational challenges; and

F. The City released a Request for Proposals for opinion research services on August 4, 2021; and

G. After reviewing three proposals received and conducting interviews, a review committee is recommending the City enter into a professional services agreement with Fairbank, Maslin, Maullin, Metz & Associates (FM3 Research); and

H. In addition to extensive demonstrated experience in public policy research and prior research experience with the City of St. Helena, FM3 Research provided a competitive cost-effective proposal for opinion research services.

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 a professional services agreement with Fairbank, Maslin, Maullin, Metz & Associates for Opinion Research Services in an amount not-to-exceed $32,175.

Approved at a Regular Meeting of the St. Helena City Council on September 14, 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 *HOUSING AS INFRASTRUCTURE* INITIATIVE

Prepared by Our Town St Helena

September 7, 2021

Goal: Include housing as part of any infrastructure bond issue initiated by the City of St Helena to create a sustainable local funding source for housing.

We will not repeat all the reasons why St Helena is losing housing for individuals, families and seniors making less than $200,000 annual income. However, there is no denying that the imbalance of housing opportunities in our town is negatively affecting its economic vitality.

The biggest obstacle to preserving existing housing and building new housing is the dearth and high cost of land. Any long-term housing strategy will require a sustainable source of local funding to purchase and landbank buildable sites and to purchase and preserve existing housing at affordable prices.

There is not enough projected development activity within our city limits for impact fees or transient occupancy tax (1%) to generate the needed funds and a real estate transfer tax does not appear to be viable unless it is county wide. Another solution for sustainable housing funds is a bond issue, however, a bond for housing alone would not likely pass with voters.

Many communities, and our federal government, are now including *Housing as Infrastructure* as they develop their strategic plans and long-term funding mechanisms. We ask the City of St Helena leaders to do the same as you consider both the purpose and ramifications of issuing a bond for infrastructure improvements.

Here are some suggested questions to begin the discussion:

1. How will our current housing trends (declining population, missing middle class, insufficient local workers, dwindling school enrollment, etc.) affect infrastructure improvements over the next two decades?
2. Does the City want to invest substantial resources in infrastructure for a town that is becoming a town occupied by tourists versus a thriving community with diverse households?
3. What role does the provision of diverse housing opportunities play in rebuilding and sustaining our local economy and infrastructure?
4. Is there consensus that local government could have a positive impact on building a diverse community through a sustainable fund to purchase property for preservation and future development?
5. How could *Housing as Infrastructure* be presented to the community as part of a polling process for a bond issue?

Incorporating housing as part of our future infrastructure plans could be our single most viable option to assuring a thriving local community rather than becoming just another town for tourists.

OTSH board and staff would be happy to continue a discussion on this important issue.

Saint Helena Housing Coalition, Inc.

RE: City of Saint Helena Housing As Infrastructure Initiative

September 13, 2021.

Purpose: Saint Helena Housing Coalition (SCCH) strongly recommends that any water infrastructure General Obligation Bond initiated by the City and passed by the voters include a substantial amount to adequately fund the city's Housing Fund.

Our city consists of 4.83 square miles surrounded mainly by County Ag Protected vineyards.

This makes land available for 'affordable' housing development extremely difficult and expensive.

In past decades Woodbridge, Hunt's Grove and Stonebridge have all been developed; all on the East side of town. This is placing more pressure to develop new 'affordable' housing on the West side which has even less vacant land possible for development.

The city must become pro-active in creating significant funding if any true progress is to be made in reversing the loss of our middle class who used to live and work here. But now commutes long distances instead to work here. That is not healthy for long-term survival of Saint Helena as we now know it.

SHHC looks forward to a continued discussion on the critical issue.

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **PUBLIC HEARINGS**

Subject: **Consideration and proposed approval of a Resolution Approving the Annexation of Territory into the St Helena Municipal Sewer District No. 1 MSD Annexation No. 140, 1386 Community Drive, St. Helena, CA. 94574 (APN 009-432- 025).**

CEQA Determination: **It is determined that the Ordinance is exempt from CEQA pursuant to Guidelines Sections 15061(b)(1), 15061(b)(2), and specifically, the "General Rule" Section 15061(b)(3), where is can be seen with certainty that the proposed action will have no significant effect on the environment.**

Prepared By: Martin Beltran, Management Analyst

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Albert Warmerdam and Lori Clancy, owners of 1386 Community Drive, St. Helena, CA. 94574, Napa County Assessor Parcel Number (APN) 009-432-025("Property"), applied to be annexed into the St. Helena Municipal Sewer District No. 1 ("District"), MSD Annexation No. 140. A location map and description for the property is shown in Attachment 1. City Council approval of the annexation is the formal administrative process to change the property's tax rate area code from septic to sanitary sewer for tax purposes.

On July 27, 2021, City Council adopted Resolution 2021-096 (Attachment 4), ordering the public hearing to annex the Property into the District.

DISCUSSION

The public hearing notices to consider objections to the proposed annexation for September 14, 2021, were first published on August 26, 2021 and the second on

September 2, 2021. Also, per Section 4610.5, copies of the resolution were posted in three public places within the area to be annexed not earlier than the 60th day or later than the 30th day prior to the hearing.

At the time established for the hearing, City Council will hear and consider any objections to the annexation and exclude any territory which in the Council's opinion will not be benefited by the annexation. (See Section 4646). After making changes to the boundaries of the area to be annexed, if any, the City Council may then adopt a resolution approving the annexation of the Property into the District (which will also require at least four affirmative votes) upon a determination by the Council that the Property will be benefited by the annexation; certified copies of the resolution will then be recorded and filed in the manner and with the same force and effect as provided in Section 4613. (See Section 4647). Upon recordation of the resolution the Property annexed becomes a part of the District and is subject to all the liabilities and entitled to all the benefits of the District. (See Section 4648).

If the City Council approves the resolution following the hearing, City staff will then process the annexation with Napa County and the State Board of Equalization to change the tax rate area code for the property. Staff will work with the applicant to obtain required encroachment and building permits.

[1] Unless otherwise noted, all further section references are to the California Health and Safety Code.

FISCAL IMPACT

The Applicant is responsible to construct the sewer lateral and connect to the house; pay annexation, connection, impact fees, and any applicable Building Department fees; and responsible for any repairs to the road caused by the connection to the City's sewer system

RECOMMENDED ACTION

It is recommended the City Council adopt a Resolution approving the Annexation of Territory into the St Helena Municipal Sewer District No. 1 MSD Annexation No. 140, 1386 Community Drive, St. Helena, CA. 94574 (APN) 009-432- 025.

ATTACHMENTS

Attachment 1: Map and Legal Description
Attachment 2: Sewer Annexation Application
Attachment 3: Receipt for Sewer Annexation and Impact Fees
Attachment 4: Resolution 2021-96 Setting a Public Hearing for 1386 Community Drive
Attachment 5: Resolution

EXHIBIT "A"

Lands of Albert G. Warmerdam & Lori L. Clancy

Real Property situated in the City of St. Helena, County of Napa, State of California, being a portion of Ranch Carne Humana, and being that certain tract of land described in the Grant Deed to Albert G. Warmerdam & Lori L. Clancy in Grant Deed Document number 2015-0016920, recorded on July 1, 2015 in the Office of the Napa County Recorder. For Assessment purposes the Parcel is described as follows: the Commencing at the most Northerly corner of LOT 2 as shown on the map of record in Book 7 RM at Page 4, Napa County Records; thence North 47° 58' 00" East 75.00 feet to the Point of Beginning; thence along the following six (6) courses:

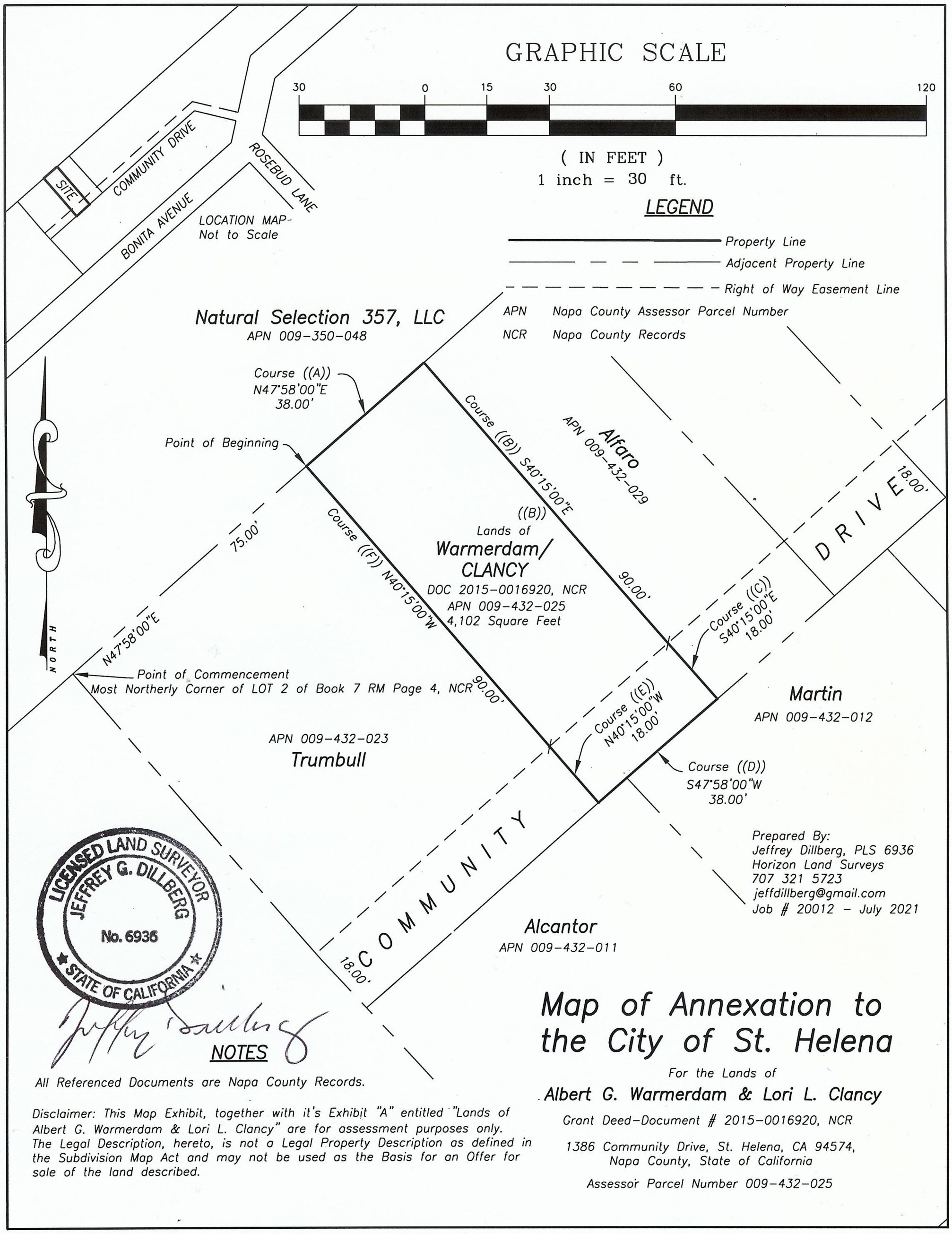
Course ((A)), North 47° 58' East 38.00 Feet, thence
Course ((B)), South 40° 15' East 90 Feet, thence
Course ((C)), South 40° 15' East 18.00 Feet, thence
Course ((D)), South 47° 58' West 38.00 Feet, thence
Course ((E)), North 47° 58' West 18.00 Feet, thence
Course ((F)), North 40° 15' East 90.00 Feet, to the aforementioned Point of Beginning.

Containing 4,102 Square Feet, more or less.

For Assessment purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the Basis for an offer for sale of the land described.



Jeffrey Dillberg, PLS 6936



NOTES

All Referenced Documents are Napa County Records.

Disclaimer: This Map Exhibit, together with it's Exhibit "A" entitled "Lands of Albert G. Warmerdam & Lori L. Clancy" are for assessment purposes only. The Legal Description, hereto, is not a Legal Property Description as defined in the Subdivision Map Act and may not be used as the Basis for an Offer for sale of the land described.

Prepared By:
Jeffrey Dillberg, PLS 6936
Horizon Land Surveys
707 321 5723
jeffdillberg@gmail.com
Job # 20012 - July 2021

Map of Annexation to the City of St. Helena

For the Lands of

Albert G. Warmerdam & Lori L. Clancy

Grant Deed-Document # 2015-0016920, NCR

1386 Community Drive, St. Helena, CA 94574,
Napa County, State of California

Assessor Parcel Number 009-432-025

CITY OF ST. HELENA

DEPARTMENT OF PUBLIC WORKS
1572 RAILROAD AVENUE, ST. HELENA, CA. 94574
707- 968-2658

Application for Sewer Annexation and/or Connection

APPLICANT INFORMATION			
Applicant(s) Name ALBERT G. WARMERDAM			Phone (510) 504-0172 (PRIMARY)
Applicant(s) Street Address 1138 ORCHARD ROAD	City LAFAYETTE	State CA	Zip 94549
Property Owner Name ALBERT G. WARMERDAM			Phone (510) 504-0042 (ALTERNATE)

PROPERTY INFORMATION				
Property Address seeking sewer annexation 1386 COMMUNITY DRIVE		City ST. HELENA	State CA	Zip 94574
Assessor's Parcel No (APN) 009-432-025	Dwelling Square Footage 803	Existing Land Use SINGLE FAMILY RESIDENTIAL		
Subsequent Development Plans, if any, and Timing ANNEXATION INTO THE CITY SEWER				

REQUIRED SIGNATURE

I hereby certify that this application and all other documents submitted are true and correct to the best of my knowledge and belief. **I also certify that I am the owner of the above property and have full legal rights to the property.**

Property Owner Signature — Date: 6/14/21

****** FOR OFFICE USE ONLY ******

Application Received By	Date Application Received
Present Zoning	General Plan Designation

Application Checklist	Date Completed
St. Helena Application for Sewer Annexation	
Statement of Boundary Change Application: BOE	
Fees submitted	
Staff Report/Resolution Drafted	
City Council Approved	
Legal Description and Map	
Confirm Tax Area Rate	
Submission to BOE	
Submission to Napa County Auditor	
Submission to Napa County Assessor's office	
Napa County Tax Rate Area Change Received	
Grading Permits Approved	
Encroachment Permits Approved	
Finance Notified	
Date Service Began	

Fee Calculation Worksheet	
Sewer Connection Application Fee (St. Helena)	$900
Annexation Process (St. Helena)	$2000
Connection Fee Inspection (St. Helena)	$400
Sewer Impact Fee (St. Helena)	
State Board of Equalization (BOE) Fee	
Napa County Mapping Flat Fee	$162
Total Due at Application	
Sewer Impact Fee: $ _____ * X _____ (Habitable SF)	
(18/19) *PER SF $.51 SFR | $.77 MFR | $.51 Office| $.69 Industrial | $1.02 Com/Retail | $1.01 Lodging	
Total Collected with Application	
Pending Amount Due	
Fees to other agencies:	
State Board of Equalization Fee (Check # _____)	
Napa County Mapping Flat Fee (Check # _____)	$162.00

Please note there may be additional Building Department fees due for final hookup.
Contact the City of St Helena Building Department at 707.967.2779 with questions.

Updated 09/2018

CITY OF ST. HELENA
1480 Main St.
St. Helena, CA 94574

Date: 06/15/2021 Time: 10:33 AM
Receipt No. 00234059

Account:CR		3,719.12
Sewer Connection Inspect	400.00	
Sewer Impact Fees	419.12	
Sewer Connection App Fee	900.00	
Sewer Annexation Fees	2,000.00	
Total	3,719.12	
Check 1600	3,719.12	
Cash	0.00	
Total	3,719.12	
Change	0.00	

Bal Forward:

Al & Lori Warmerdam/Clancy
Customer #: 015952
4361 Technology Dr. Ste. C

Livermore, CA 94551

Cashier: JenniferW
Station: CITYHALL-VPN-03

CITY OF ST. HELENA

RESOLUTION NO. 2021-96

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA SETTING A HEARING FOR 6:00 P.M., TUESDAY, JULY 27, 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

RECITALS

A. The owner of 1386 Community Drive, St Helena, CA (APN 009-432-025-000) ("Property") has requested annexation into the St. Helena Municipal Sewer District No. 1 ("District"); and

B. The legal description and boundary for the Property to be annexed is described in the attached Exhibit A – Annexation Description; and

C. The proposed annexation is hereby designated as MSD Annexation No. 140.

RESOLUTION

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

1. The Property, as legally described and depicted in Exhibit A – Annexation Description, will benefit from the proposed annexation into the District; and

2. A hearing to consider any objections to the proposed annexation of the Property into the District is hereby set for Tuesday, July 27, 2021, commencing virtually using Zoom at 6:00 p.m. or as soon thereafter as the matter can be heard. 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; and

3. The City Clerk shall cause a certified copy of this Resolution, together with the names of the members of the City Council voting for and against it, to be published once a week for at least two successive weeks in a newspaper of general circulation printed and published in the city, and the first publication shall not be more than 60 nor less than 30 days prior to the date fixed for the hearing in accordance with Health and Safety Code Section 4310; and

4. The City Clerk shall cause a certified copy of this Resolution to be posted in three public places within the area to be annexed not earlier than the 60th day or later than the 30th day prior to the hearing in accordance with Health and Safety Code Section 4310.5; and

5. The City Clerk shall cause a certified copy of this Resolution to be mailed, postage prepaid, to each person to whom land in the area to be annexed is assessed as such owner is shown on the last equalized county assessment roll, at the address as shown upon the roll, and to each person who has any interest in any land within the area to be annexed whose name and address and a designation of the land in which they are interested is on file in the office of the city clerk in accordance with Health and Safety Code Section 4310.5.

Approved at a Regular Meeting of the St. Helena City Council held on Tuesday, July 27, 2021, by the following vote:

Mayor Geoff Ellsworth:	**Yes**
Vice Mayor Paul Dohring:	**Yes**
Council Member Anna Chouteau:	**Recused**
Council Member Lester Hardy:	**Yes**
Council Member Eric Hall:	**Yes**

APPROVED:

Geoff Ellsworth, Mayor

ATTEST:

Cindy Tzafopoulos, City Clerk

CITY OF ST. HELENA
Incorporated March 24, 1878
Re-incorporated May 14, 1888
STATE OF CALIFORNIA

RESOLUTION NO. 2021-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA TO APPROVE THE 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

RECITALS

A. The property at 1386 Community Drive, St. Helena, CA (APN) 009-432-025-000 will benefit from annexation into the St. Helena Municipal Sewer District No. 1; and

B. The owner of 1386 Community Drive, St Helena, CA (APN) 009-432-025-000 ("Property") has requested annexation into the St. Helena Municipal Sewer District No. 1 ("District"); and

C. The legal description and boundary for the Property to be annexed is described in the attached Exhibit A – Annexation Description; and

D. A public hearing regarding this proposed annexation was ordered on July 27, 2021, and duly noticed and held on September 14, 2021, at a regular meeting of the City Council of the City of St. Helena; and

E. All annexation fees have been paid; and

F. The City has complied with all laws applicable to these annexation proceedings, including without limitation Health & Safety Code sections 4641 et seq.

RESOLUTION

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

1. The territory described in the attached Exhibit A – Annexation Description, commonly known as 1386 Community Drive, St Helena, CA., Napa County Assessor Parcel Number (APN) 009-432-025-000 is hereby ordered annexed; and

2. The City Clerk shall cause a certified copy of this Resolution to be recorded with the official records of the County of Napa, pursuant to section 4647 of the Health & Safety Code.

Approved at a Regular Meeting of the St. Helena City Council held on Tuesday, September 14,2021 by the following vote:

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

APPROVED:

_____
Geoff Ellsworth, Mayor

ATTEST:

_____
Cindy Tzafopoulos, City Clerk

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **OLD BUSINESS**

Subject: **Informational Presentation on CalPERS Investment Return for Fiscal Year 2020-21 and Impacts on City Finances (Presentation Forthcoming).**

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 offers eligible employees a defined benefit pension plan through the California Public Employee Retirement System (CalPERS).

The City contracts with GovInvest to assist with pension modeling that assist with planning for pension costs into the future. GovInvest has reviewed the status of the City's unfunded accrued liability and the impacts of CalPERS' strong investment returns of 21.3% for the fiscal year ended June 30, 2021. These strong returns have triggered the CalPERS Funding Risk Mitigation Policy, which will increase future employer contributions.

The purpose of this presentation is to provide the City with a brief background and an understanding of the impacts that CalPERS' performance will have on the City's finances.

RECOMMENDED ACTION

Receive and file.

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **OLD BUSINESS**

Subject: **Consideration and adoption of an urgency ordinance amending Chapter 13.04 of the Municipal Code to establish a permitting system for groundwater exports during water emergencies**

CEQA Determination: **Exempt**

Prepared By: Ethan Walsh, City Attorney

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

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

St. Helena Municipal Code (SHMC) provides that any time the City Council finds and determines that a water shortage emergency condition meeting the criteria of Phase I water emergency (SHMC 13.04.230), Phase II water emergency (SHMC 13.04.240), or Phase III water emergency (SHMC 13.04.250), and it is necessary to limit water use, the City Council must adopt a resolution setting forth the applicable phase. One of the criteria for establishing a Phase I water emergency under SHMC 13.04.230 includes when the Director of Public Works determines that the conditions requiring the establishment of a Phase II water emergency appears imminent.

On June 23, 2020, the City Council adopted Resolution 2020-72 establishing Phase I water regulations, and the City Clerk published a notice declaring the establishment of a Phase I water emergency. The notice set forth the limitations of water use applicable to a Phase I water emergency. At the time of the Phase I water emergency, the City had extremely low annual cumulative rainfall (20"), a forecast for a potential multi-year drought, and the Bell Canyon Reservoir was at 60% capacity. Public Works had also implemented changes to conserve Bell Canyon Reservoir water by optimizing Stonebridge Wells and City of Napa water use. In June 2020, the forecast for when a potential Phase II water emergency would be triggered by was November 2020.

On October 13, 2020, the Public Works Director informed the City Council that a Phase II water emergency had been triggered on October 1, 2020. The trigger system utilizes data the water treatment operators submit in a monthly water production report. The September 2020 water report was delayed due to the September 27, 2020 Glass Fire and was not available in time to bring a Phase II water emergency for discussion and consideration to City Council. As of October 13, 2020, Bell Canyon Reservoir was at 399.8' and 39.4% capacity.

City staff has implemented Phase II regulations, including imposing limitations on water usage for residential and commercial users in accordance with the Municipal Code, adopting a penalty structure for violations of the City's Phase II and Phase III water regulations, and imposing penalties pursuant to that structure.

The City of St. Helena, and all of Napa County, continues to be in Exceptional Drought Conditions, according to the monitoring by the National Integrated Drought Information System. This is the most severe category of drought, and corresponds to an area experiencing exceptional and widespread crop and pasture losses, fire risk and water shortages that result in water emergencies.

As the Council is aware, the City is reliant on three sources for its water supply: the Bell Canyon Reservoir, water purchased through the City of Napa and groundwater provided through the City's Stonebridge Wells. As the Bell Canyon Reservoir capacity has significantly decreased, and the City is forced to be more reliant on groundwater pumping through the Stonebridge Wells. The City is taking significant steps to limit water usage through this water emergency, to preserve its existing water supply and moderate its use of groundwater to the extent possible through this water emergency.

In the period since the City declared a water emergency, the City has received complaints of property owners within the City pumping water from private wells into water trucks, and transporting that water for use on other properties. In the current water emergency, this excessive extraction of groundwater for uses outside of a property owner's own parcel could, if left unchecked, have a significant impact on the availability of groundwater supply and threaten the water supply for the City and its customers, as well as the water supply of other private well owners. In light of the threat that this unreasonable use of water poses to the City's water supply, the City Council directed our office to propose an ordinance that would address the potential risks of groundwater exportation during a declared water emergency.

DISCUSSION

The proposed ordinance provides that during a declared Phase II or Phase III water emergency, no person shall be permitted to export groundwater for use outside of the parcel from which the groundwater originates unless they receive a permit for such water exportation from the City. There are limited exemptions, including to prevent the flood of lands; to prevent the saturation of the root zone for agricultural land; to allow for the movement of water between contiguous parcels having the same owner and consistent

with historical practice; and as necessary to remove contaminated groundwater consistent with governmental compliance orders.

Permit applications are considered by the Public Works Director, and the applicant has the opportunity to request a public hearing if desired. In order to receive a permit, the applicant must provide evidence to the satisfaction of the Public Works Director that:

(1) The proposed export will not adversely affect the long-term ability for storage or transmission of groundwater within the groundwater basin from which the groundwater is exported;

(2) The proposed export will not (together with other extractions) result in chronic lowering of groundwater levels and will not result in well interference with wells owned or relied upon by others or create a cone of depression that extends beyond the applicant's land or otherwise operate to the injury of the reasonable and beneficial uses of overlying groundwater users;

(3) The proposed export will not result in, expand or significantly exacerbate groundwater quality degradation;

(4) The proposed export will not result in injury to a water replenishment or recharge, storage, restoration or conveyance project;

(5) The proposed export will not result in, expand or significantly exacerbate land subsidence;

(6) The proposed export will not result in, expand, or significantly exacerbate depletions of interconnected surface water; and

(7) The proposed export will not otherwise be detrimental to the environment or to the health, safety and welfare of property owners overlying or in the vicinity of the proposed exportation site.

The Public Works Director may also impose appropriate conditions of permit issuance as a means to prevent any significant impacts to groundwater resources. The Public Works Director’s decision is appealable to the City Council. Violations of the ordinance are enforceable as a misdemeanor consistent with the City’s Municipal Code.

This ordinance is an urgency ordinance which will take effect immediately to protect the public health, safety, and welfare based on the findings and recitals set forth in the ordinance. It must pass by a 4/5 vote of the Council.

FISCAL IMPACT

The proposed ordinance would not have a financial impact on the City. The Ordinance calls for the City to adopt a fee for the cost of processing exportation permits under the

new ordinance, which fee would offset the costs of staff and consultant time expended in the review of any permits received.

RECOMMENDED ACTION
Adopt Urgency Ordinance

ATTACHMENTS
ST. HELENA - Urgency Ordinance re Groundwater Export Permitting System-c1

ORDINANCE NO. ___

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ST. HELENA AMENDING CHAPTER 13.04 OF THE ST. HELENA MUNICIPAL CODE TO ESTABLISH A PERMITTING SYSTEM FOR GROUNDWATER EXPORTS DURING WATER EMERGENCIES

WHEREAS, in 2020, California experienced below-average precipitation and above-normal temperatures, resulting in drought conditions; and

WHEREAS, much of the West Coast is still experiencing severe to exceptional drought and California is in its second consecutive year of dry conditions, resulting in drought or near-drought throughout many portions of the State; and

WHEREAS, extreme drought conditions present urgent challenges, including the risk of water shortages in communities, greatly increased wildfire activity, diminished water for agricultural production, and additional water scarcity if drought conditions continue for another year; and

WHEREAS, in response to these severe drought conditions, on April 21, 2021 and May 10, 2021, Governor Gavin Newsom issued proclamations that a state of emergency existed in a total of 41 counties, including the County of Napa; and

WHEREAS, under these emergency proclamations, Governor Gavin Newsom directed state agencies to partner and coordinate with regional and local governments to address issues stemming from continued dry conditions; and

WHEREAS, on July 8, 2021, Governor Gavin Newsom issued another proclamation of state emergency, which expanded the brought a total of 50 of the state's 58 counties under the drought state emergency and called on California residents to voluntarily reduce their water use by 15 percent compared to 2020 levels in order to mitigate the impacts of the intensifying drought; and

WHEREAS, the City of St. Helena ('City") is located within the County of Napa; and

WHEREAS, the National Integrated Drought Information System ("NIDIS") monitors the location and intensity of drought across the United States using a five-category system, from Abnormally Dry to Exceptional Drought Conditions.

WHEREAS, the most severe category, Exceptional Drought, corresponds to an area experiencing exceptional and widespread crop and pasture losses, fire risk, and water shortages that result in water emergencies.

WHEREAS, under this monitoring system, one hundred percent (100%) of the County of Napa is in Exceptional Drought.

WHEREAS, under the Sustainable Groundwater Management Act ('SGMA"), groundwater sustainability plans must be adopted for groundwater basins deemed to be of "high" or "medium" priority and that management strategies be implemented to bring these basins into long-term sustainability.

WHEREAS, the Napa Valley Subbasin lies entirely within Napa County and the Napa River Watershed. The Subbasin is overlain in part by the cities of Napa, St. Helena, Calistoga, and the Town of Yountville.

WHEREAS, the Napa Valley Subbasin has been categorized as a high priority basin by the California Department of Public Resources.

WHEREAS, the Napa County Groundwater Sustainability Agency ("NCGSA") is preparing and intends to adopt a Groundwater Sustainability Plan ("GSP") for the Napa Valley Subbasin, pursuant to Section 10728.4 of the SGMA.

WHEREAS, the NCGSA is currently soliciting comments on the draft GSP, which will not be adopted until January 2022.

WHEREAS, the City has limited water resources and has adopted, required and encouraged water conservation measures to preserve and help to ensure the sustainability of its water resources; and

WHEREAS, the City's water supply currently consists of three sources: the Bell Canyon Reservoir, purchased water from the City of Napa, and groundwater provided through the City's Stonebridge Wells; and

WHEREAS, pursuant to the Water Supply Agreement between the City and the City of Napa, the City may only receive up to 400 acre feet per annum of water from the City of Napa; and

WHEREAS, due to the decreased capacity of the Bell Canyon Reservoir, the City has become more reliant on groundwater provided through the City's Stonebridge Wells, with; and

WHEREAS, to further preserve its water resources during periods of water shortage, the City has adopted criteria for establishing Phase I, Phase II, and Phase III water emergencies, with increasingly stringent water conservation measures for each phase of a water emergency; and

WHEREAS, on June 23, 2020, the City Council adopted Resolution 2020-72 declaring a Phase I water emergency and initiating the implementation of associated regulations. At the time of the declaration of a Phase I water emergency, the City had extremely low annual cumulative rainfall (20"), a forecast for a potential multi-year drought, and the Bell Canyon Reservoir was at 60% capacity; and

WHEREAS, on October 27, 2020, the City Council adopted Resolution No. 2020-107 determining that conditions requiring the establishment of a Phase II water

emergency. At the time, the City Council determined that a Phase II water emergency exists, and that the Bell Canyon Reservoir was at 39.4% capacity; and

WHEREAS, the City has remained in a Phase II water emergency for the duration of 2021; and

WHEREAS, California Constitution, article XI, section 7, provided that a county or city may make and enforce within its limits, all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. The City has the power inherent to government to promote the order, safety morals and general welfare of society; and

WHEREAS, the California Supreme Court has held that the regulation of groundwater is within the municipal police power; and

WHEREAS, Water Code Section 350 provides that local governments may declare a water shortage emergency whenever it determines that the ordinary demands and requirements of water consumers cannot be satisfied; and

WHEREAS, after declaring a water emergency, local governments are empowered to adopt and enforce regulations and restrictions on the quantity of water that may be delivered and used by persons within its service area for the purpose of conserving the water supply of the agency for the greatest public benefit, with particular regard to domestic use, sanitation, and fire protection; and

WHEREAS, the protection of the health, welfare, and safety of the residents of the City require that the groundwater resources of the City be protected from adverse impacts resulting from the export of those resources outside of the parcel from which it originates during times of water emergencies; and

WHEREAS, groundwater is an essential resource for agricultural, municipal, industrial and domestic uses within the City; and

WHEREAS, the effects of the export of groundwater outside of the parcel from which it originates during a water emergency can have adverse environmental impacts on the City, including, but not limited to the possibility of the following: increased groundwater overdraft, the lowering of groundwater levels, and depleted groundwater basins if drought conditions extends into future years; and

WHEREAS, the effects of the export of groundwater outside of the parcel from which it originates, compounded by extreme drought conditions, presents urgent problems, including the following: the potential interruption of utility services provided by infrastructure, potentially placing drinking water supplies at risk, and failure to conserve groundwater supplies for future years; and

WHEREAS, export of water from land from which it is pumped is an appropriation of water, which is only legally authorized where there are surplus conditions; and

WHEREAS, due to declining water levels, surplus conditions currently do not exist; and

WHEREAS, California Constitution, article X, section 2, and Water Code section 100 prohibit the waste, unreasonable use, unreasonable method of use, and

unreasonable diversion of water. The City finds that in times of water emergency, the export of groundwater for use outside of the parcel from which it originates are presumptively unsustainable used within the meaning of the California Constitution and the California Water Code; and

WHEREAS, the risks to health, safety, and well-being in the City from the non-permitted export of groundwater during water emergencies require the City to take immediate action while the County of Napa transitions to the implementation of SGMA, which recognizes and preserves the authority of cities to manage groundwater pursuant to their police powers; and

WHEREAS, pursuant to Government Code section 36937, the City may adopt an urgency ordinance if it is for the immediate preservation of the public peace, health, or safety; and

WHEREAS, the City Council desires to amend Chapter 13.04 to implement a permitting scheme for groundwater exports outside of the City during water emergencies; and

WHEREAS, based on the foregoing facts, immediate action to address groundwater exportation during water emergencies is necessary for the preservation of health, safety, and well-being of City citizens, economy, agricultural resources and environmental resources. Excessive groundwater extraction during water emergencies threatens the City's water supply.

NOW, THEREFORE, the City Council of the City of St. Helena does hereby ordain as follows:

Section 1. Findings and Need for Ordinance.

The City Council of the City of St. Helena hereby finds and declares that this Urgency Ordinance is necessary to help preserve the City's water supply and to protect the health, safety, and welfare of the public as it is essential to implement this groundwater export permitting system as soon as possible to preserve the City's water supply during this period of extreme water shortage.

The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Addition of Section 13.04.260 to St. Helena Municipal Code.

Section 13.04.260 of the St. Helena Municipal Code is hereby added to read as follows:

"Section 13.04.260 - Permitting for Exportation of Groundwater During Water Emergencies

(a) Definitions. As used in this section:

(i) “City” shall mean the City of St. Helena.

(ii) “Contiguous Parcels” means parcels which abut, adjoin or otherwise touch each other at more than one point along a common boundary or which would do so except for separation by a strip of land over which some person or entity, other than the owner of the parcels, has some property interest, including fee title or some lesser interest, such as a leasehold or easement. Examples of such strips of land include, but are not limited to, roads, streets, utility easements, railroad rights-of-way, canals and drainage channels.

(iii) “Department” means the City Department of Public Works.

(iv) “Director” means the City Director of Public Works or his or her designee.

(v) “Contaminated groundwater” means groundwater that has been altered by waste, seawater intrusion or other material to a degree which creates a hazard to the public health through actual or potential poisoning or through actual or potential spreading of disease.

(vi) “Export” means the extraction of groundwater underlying the City for use outside of the parcel from which it originates.

(vii) “Groundwater” means water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water but does not include water that flows in known and definite channels.

(viii) “Groundwater basin” means a groundwater basin or subbasin identified and defined in Bulletin 118 or as modified pursuant to Water Code Section 10722 et seq.

(ix) “Person” means any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, or local public agency, including any city, county, city and county, district or joint powers authority.

(x) “Recharge” means flow to groundwater storage from precipitation, irrigation, infiltration from steams, spreading basins and other sources of water.

(xi) “Site” means any lot or parcel of land or contiguous combination thereof having the same owner, the same lessee or the same controlling entity in existence on the effective date of this chapter.

(xii) “Usable storage capacity” means the quantity of groundwater of acceptable quality that can be economically withdrawn from storage.

(xiii) “Water year” means the year beginning January 1 and ending December 31.

(b) Permit. Unless otherwise exempt, during a Phase II or Phase III water emergency, no person shall export groundwater underlying the City without first obtaining a permit as provided in this section. In order to apply for a permit, the person must be in compliance with any conditional use permits or other City land use regulations applicable to the property.

(c) Exemptions. This section shall not apply to the export of groundwater in the following circumstances:

(i) to prevent the flood of lands;

(ii) to prevent the saturation of the root zone for agricultural land;

(iii) movement of groundwater consistent with historical practice within a parcel or between contiguous parcels having the same owner, the same lessee or the same controlling entity in existence on the effective date of this section;

(iv) movement of contaminated groundwater required by compliance orders issued by local, state or federal agencies that is pumped and treated to remove contaminants that are in violation of the standards for beneficial use. The extracted and treated water may be exported without a permit if the release complies with discharge permits issued by the local, state or federal resource agencies.

(d) Application for an Export Permit. An application for an export permit shall be filed with the City on a form specified by the Director, which shall include all information specifically requested thereon and other information required by the Director to address specific aspects of the proposed groundwater export. Information to support the requirements listed in Section 13.04.260(f) must be provided in order for the Director to deem the application complete. The application for an export permit shall be accompanied by the deposit of fees for these purposes, as established by City Council resolution.

(e) Procedures for Processing

(i) As determined in the judgment of the Director, the Director shall review the application with potentially affected City departments, with the staff of applicable state and federal agencies, with local water agencies and with any potentially affected party. In reviewing the application, the Director shall consider any relevant groundwater management plan, including, without limitation, any groundwater management plan adopted pursuant to California Water Code Section 10750 et seq. or Section 10720 et seq., or any other relevant information provided by the applicant.

(ii) Upon completion of the export permit application review process, a public hearing before the Director on the export permit application shall be noticed and conducted as follows:

(1) Notice of Hearing. Notice of public hearing shall be given as provided in Government Code Section 65090 and 65091, except as follows:

a. Content of Notice. In addition to the information required by Government Code Section 65094, the notice shall declare that the application will be acted on without a public hearing if no request for a hearing is made in compliance with subsection (e)(ii)(2) of this Section 13.04.260.

b. Method of Notice Distribution. Notice of public hearings shall be given as provided by Government Code Section 65090 and 65091.

c. Additional Notice Provided. The public notice shall include mailed notice to all owners of property located within a one mile radius of the exterior boundaries of the site from which the export is to occur.

(2) Public Hearing. A public hearing on an export permit shall occur only when a hearing is requested by the applicant. This request shall be made in writing to the Director no later than seven (7) days after the date of the public notice provided in compliance with subsection (e)(ii)(1) of this Section 13.04.260. In the event that a public hearing is required, the export permit application shall be scheduled for a hearing on the date and time as defined in the public notice. Any person may provide written comments relevant to the impact of the exportation of groundwater on the groundwater resources within the City. The hearing shall be conducted under such rules as set by the Director.

(3) Final Decisions on Export Permit Applications. After the conclusion of public testimony in the case of a public hearing, or after the time period within which a hearing may be requested under subsection (e)(ii)(2) of this Section 13.04.260 if no hearing is requested, the Director shall:

a. Announce his or her decision on the export permit application;

b. Announce that his or her decision is final unless appealed pursuant to subsection (e)(iv) of this Section 13.04.260.

Notwithstanding the foregoing, the Director may continue the hearing to a date certain to provide additional time to evaluate information obtained at the hearing prior to a final decision.

(iii) The Director's decision may be appealed to the City Council consistent with subsection (i) of this Section 13.04.260.

(iv) Notice of the Director's decision shall be mailed within five calendar days of final action to the person that has applied for the permit, any person who requested a hearing, and all other persons or entities referred to in subsection (d)(i) of this Section 13.04.260.

(f) Evidence Required for Export Permit Approval

(i) An export permit shall be approved only if the applicant provides evidence demonstrating to the satisfaction of the Director that the proposed export will not cause or contribute to significant detrimental impacts to groundwater resources within the City or on the groundwater basin from which the groundwater is exported. An application must include evidence demonstrating to the satisfaction of the Director the following: (1) The proposed export will not adversely affect the long-term ability for storage or transmission of groundwater within the groundwater basin from which the groundwater is exported;

(2) The proposed export will not (together with other extractions) result in chronic lowering of groundwater levels and will not result in well interference with wells owned or relied upon by others or create a cone of depression that extends beyond the applicant's land or otherwise operate to the injury of the reasonable and beneficial uses of overlying groundwater users;

(3) The proposed export will not result in, expand or significantly exacerbate groundwater quality degradation;

(4) The proposed export will not result in injury to a water replenishment or recharge, storage, restoration or conveyance project;

(5) The proposed export will not result in, expand or significantly exacerbate land subsidence;

(6) The proposed export will not result in, expand, or significantly exacerbate depletions of interconnected surface water; and

(7) The proposed export will not otherwise be detrimental to the environment or to the health, safety and welfare of property owners overlying or in the vicinity of the proposed exportation site.

(g) Conditions of Export Permit Approval. If the export permit is to be approved, the Director may impose appropriate conditions of permit issuance so as to prohibit and prevent any significant detrimental impacts to groundwater resources within the City described in subsection (f) of this Section 13.04.260 or other adverse conditions and may impose other conditions that the Director deems necessary to promote or maintain the health, safety and welfare of the people of the City. The Director may incorporate into each export permit a monitoring and/or reporting program.

(h) Reapplication After Director Denial. Reapplication for an export permit which has been denied by the Director may not be filed with the Director until the

following water year and must be accompanied with information that demonstrates a significant change in circumstances from those which caused the denial of the previous export permit application.

(i) Appeal of Director Action.

(i) The applicant may appeal a decision of the Director by filing a written request with the clerk of the City Council within fifteen days of issuance of the Director's decision. Any such appeal shall specifically set forth the procedural and substantive reasons for the appeal or be deemed incomplete and ineffectual. The clerk shall set a City Council hearing within thirty days of receipt of a complete request for appeal which shall be heard within ninety days of notice thereof. Written notice of appeal shall be given to the Director, the permit applicant, and the appellant, and the appeal hearing shall be published pursuant to Government Code Section 6061.

(ii) The City Council shall hear the appeal de novo except where the appeal is confined to a condition imposed by the Director in which event the hearing and the decision of the City Council shall relate only to such condition. The appeal before the City Council shall be conducted under such rules as set by the City Council. At its discretion, the City Council may impose conditions for approval as it finds necessary to protect the interests of the City and its citizens. The decision of the City Council shall be final.

(j) Review of Export Permit. The permit granted pursuant to this section shall be subject to periodic staff review in consultation with the permittee. In the event that the Department determines that a material violation of the conditions of the permit has occurred, the permittee shall immediately bring itself into compliance. A determination of violation shall be in writing and include specific findings in support of the decision. A determination of violation may be appealed to the City Council by the permittee using the appeal process as described in subsection (i) of this Section 13.04.260.

(k) Export Permit Term. Approved permits shall be valid for a term, as determined by the Director, not to exceed one year from the date of issuance of the export permit. If a permittee presents information demonstrating that there has been no significant change in circumstances from those which caused the approval of the previous export permit application, the export permit may be renewed by the Director for a term, as determined by the Director, not to exceed one year from the date of issuance of the renewed export permit. The permittee shall submit the written request for the renewal to the Director at least ninety days prior to the export permit expiration date along with information as requested by the Director and with the deposit of fees for these purposes, as established by City Council resolution. The Director shall consider the request for renewal in accordance with the procedures set forth in subsections (d) through (g) of this Section 13.04.260. The permittee may appeal the decision of the Director in the manner described in subsection (i) of this Section 13.04.260. The Director may renew a permit an unlimited number of times following the procedures contained herein for each renewal.

(l) Inspection. After providing written notice to the permittee, the Director or designee, with good cause may at any reasonable time enter any and all places, property, enclosures and structures, for the purpose of making examinations and investigations to determine whether any provision of this section or an approved permit is being violated.

(m) Notice of Violation. Upon receiving knowledge of an alleged violation of this section, the City will provide written notice of the alleged violation to the violating party. The notice shall detail the alleged violation and require the violating party to cease and desist immediately upon receipt of such notice from the alleged violating activities or within five working days prove to the City, by meeting with the Director or his or her designee, that the alleged violating activities, in fact, do not violate this section, or that there are mitigating reasons surrounding the alleged violating activities. The notice shall also include details of the potential penalties for violations of this section.

(n) Penalty for Violation.

(i) If, within five working days, after receipt of a notice issued in accordance with subsection (m) of this Section 13.04.260, the violating party has not complied with subsection (m) the City may elect to proceed with any or all of the following remedies for violation of this section:

(1) Any person who exports water during water emergencies without a valid permit issued by the City in violation of this chapter is guilty of a misdemeanor for each day in which such well is used or operated in violation of this chapter. Such violation shall be punishable pursuant to Chapter 1.20 of this code.

(2) Any person who knowingly makes any false statements, representation, record, report, plan or other document filed with the City, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this chapter, shall be punished by a fine of not more than ten thousand dollars ($10,000) or by imprisonment in a county jail for not more than six months, or by both. The City Attorney, upon order of the City Council, shall petition the superior court to impose, assess, and recover such sums.

(o) Limitation of Permit. Nothing contained in this sections or in the conditions of an issued permit shall be construed as giving the permittee an exclusive right to groundwater extraction. Any issued permit shall not exempt, supersede or replace any requirements of federal, state, and local laws and regulations, including but not limited to California Water Code Section 10720 et seq., and California Water Code Section 1200 et seq.

(p) Severability. If any section, subsection, sentence, clause or phrase of this section is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the

remaining portions hereof. The City Council hereby declares that it would have passed this section and each subsection, sentence, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional."

Section 3. Urgency Finding.

The City hereby finds, determines, and declares that this Urgency Ordinance is necessary to help preserve the City's water supply and to protect the health, safety, and welfare of the public as it is essential to stabilize water extractions as soon as possible to preserve the City's water supply during this period of extreme water shortage.

Therefore, the City further finds, determines, and declares that this Ordinance takes effect immediately upon adoption by a four-fifths vote of the City Council under the authority conferred upon it by California Government Code section 36937.

Section 4. CEQA Exemption. This Ordinance is exempt from the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment as it includes regulations to protect groundwater resources within basins in the territory of the City of St. Helena from further depletion (CEQA Guidelines §15061(b)(3)); because it consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of a natural resources, namely the groundwater resources within basins in the territory of the City of St. Helena (Class 7, CEQA Guidelines §15307); and because it consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of the environment, including groundwater resources within basins within the territory of the City of St. Helena (Class 8, CEQA Guidelines §15308). No exceptions to these exemptions are present.

This Ordinance is also exempt from CEQA because it is an urgency Ordinance that prevents or mitigates impacts from the exportation of groundwater from basins within the territory of the City of St. Helena during a water emergency. Such exportations pose a clear and imminent danger to the City and to those that rely on the water from those wells, and which requires immediate action to prevent or mitigate the loss of, or damage to, life, health, property, and essential public services. This urgency Ordinance, therefore, qualifies for an exemption under Public Resources Code section 21080(b)(4) and CEQA Guidelines section 15269(c).

Section 5. City Clerk.

The City Clerk is hereby directed to certify as to the adoption of this Ordinance and cause it to be published in a newspaper of general circulation within 15 days of adoption and post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

Section 6. Severability.

If any provision of this Ordinance or its application to any person or circumstance is held to be invalid, all other provisions and applications of the Ordinance that can be given effect without the invalid provision or application must be given effect, and to this extent, the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

THE FOREGOING ORDINANCE was adopted as an urgency ordinance by a four-fifths vote at a regular meeting of the St. Helena City Council on the ___ day of September, 2021, by the following vote:

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

APPROVED:

_____
Geoff Ellsworth, Mayor

ATTEST:

CITY OF ST. HELENA

_____
Cindy Tzafopoulos, City Clerk

I, CINDY TZAFOPOULOS, CITY CLERK of the City of St. Helena, California, do hereby certify that the foregoing Urgency Ordinance was approved by a four-fifths vote at a regular meeting of the City Council on the ___ day of September, 2021, by the following vote:

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

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **NEW BUSINESS**

Subject: **Update to FY 2021-22 Revenue Forecasts, and Discussion and Direction Regarding the FY 2021-22 Add Back Considerations and Full-Time Fire Department Cost Analysis**

CEQA Determination: **Not a CEQA project**

Prepared By: April Mitts, Administrative Services Director

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The continuing COVID-19 pandemic has led to significant sales tax and hotel tax revenue losses and volatility over the past 18 months. Given the continued uncertainty of revenue performance, on June 8, 2021, staff presented the draft FY 2020-21 budget and following recommendations to the City Council:

1. Utilize any additional use of net position for one-time investments and not for ongoing operational expenses;
2. Net position is not reduced below 35%; and
3. Postpone consideration of add-back list which recognizes discretionary, unfunded expenses until FY 2020-21 actuals are solidified and additional revenue performance for FY 2021-22 is analyzed.

Following discussion, Council provided direction to present the budget for adoption on June 22, 2021 in its current form as California had only recently started experiencing economic recovery from the second wave of COVID. Additionally, the Council postponed consideration of potential "add-back" budget investments to a later date to allow additional time to evaluate emerging revenue trends, confirm actual FY 2021-22 property tax revenues, and better analyze the City's projected net position at the close of the fiscal year.

On June 22, 2021, the City Council adopted the FY 2021-22 Operating and CIP budget. While the adopted budget was balanced, the budget relied on $575,000 of Federal COVID stimulus funds that will not be available in subsequent fiscal years. The adopted budget's estimated net position at June 30, 2022 was projected to be 40%, which exceeds the City Council's 30% reserve policy.

Table 1 - FY 2021-22 Estimated Net Position at Budget Adoption

Estimated Unassigned Fund Balance @ 6/30/21		6,160,269	Net Position %
Estimated Revenues @ 6/30/22	15,675,690		
Estimated Expenses @ 6/30/22	(15,630,449)		
Revenues Less Expenses	45,241		
Use of Reserves	-0-		
Estimated Unassigned Fund Balance @ 6/30/22		6,205,510	40%

It was also noted that while the estimated fund balance is healthy, the net position assumed the following:

1. Receipt of reimbursements for LNU and Glass Fire expenses incurred in FY 21. As of the publishing of this report, staff is still in the process of submitting claims to FEMA, CalOES, and the City's insurance carrier for reimbursement and timing of reimbursements are typically within one year; however, that is not guaranteed.
2. One-time revenues received as part of the Federal COVID stimulus package. The adopted budget assumed $575,000 would be received in FY 21 (this was received on July 13, 2021) and assumed the remaining $575,000 would be received in FY 22.

Additionally, following a June 29, 2021 Special Meeting Review of Fire Department Operations, Emergency Response, and Staffing, the City Council provided direction to analyze the cost of the transitioning the Fire Department from its present seven day per week 10-hour daytime staffing operation to a seven day per week, 24-hour full-time staffing model due to challenges sustaining today's part-time staffing model part-time firefighters respond to the station from their home or work for 14 hours of each day. This report includes the requested cost-analysis and is included in this report given its potential impact on City's General Fund budget.

DISCUSSION

Budget Update

FY 2020-21 Close. Given an unexpected $154,854 in additional Federal COVID relief, and strong sales and hotel tax performance in May and June 2021, the City is forecasting an increase in its June 30, 2021 unassigned General Fund Fund Balance from $6.16 million (34%) to $6.64 million (39%).

FY 2021-22 General Fund Revenue Estimate. Due primarily to improving hotel performance, the City is forecasting the City's FY 2021-22 General Fund revenue estimate can be increased by approximately $200,000. This projected $200,000 is ongoing revenue that can be reliably invested in continuing services. Property tax was adjusted down by $30,974 and sales tax projections are recommended to remain as initially forecasted.

Due to the anticipated receipt of the second half of the COVID relief funding, which is $154,864 higher than anticipated, and one-time unbudgeted Educational Revenue Augmentation Fund (ERAF) property tax revenues of $443,774, the City is projecting the unassigned FY 2021-22 General Fund Fund Balance would rise to $7.5 million (48%) by June 30, 2022 without any additional budget appropriations.

Additional details on the updated projections are included in Attachment 2.

Add-Back Considerations. In short, the forecasted changes to FY 2021-22 City General Fund revenue estimates do not provide the City the opportunity to sustainably restore vacant positions, optimally invest in its civic infrastructure, or support the transition of the Fire Department to full-time station coverage without reducing service levels in other departments or securing new revenue. There is an opportunity to utilize a portion of the improving General Fund net position for approximately $200,000 in ongoing investments and $1.3 million of one-time investments while retaining a 35% net position.

In addition to Fire Department considerations, the City Manager is recommending the following investments be prioritized among the various add-back options should the City Council consider additional General Fund appropriations:

$500,000 Designated Reserve for Unanticipated Expenses
$ 80,000 Napa Valley College (NVC) Moving Expenses/Contingency
$ 64,500 Public Works Engineering Division Manager (to support delivery of CIP projects)*
$ 35,000 Information Technology - Enhanced security scans
$ 35,000 Laserfiche (to move additional files to the cloud and reduce hardware that otherwise would be required to be moved to NVC)

*This amount is the annual amount appropriated from the General Fund. Total cost for the position is estimated at $193,500 which includes all salary and benefits.

Attachment 1 is a list of the add-back considerations presented to City Council in June 2021 as well as additional add-back items identified by staff since that time.

Fire Department
The current 7 day per week, 10 hours per day staffing model included in the adopted FY 2021-22 budget has a total salary and benefit cost of $1,332,838. A full-time staffing

model which will provide station coverage 24 hours a day, 7 days a week is projected to increase the annual costs by $369,708 for a total annual salary and benefit cost of $1,615,796. This does not include any incremental salary and benefit increases in future years or financial support for engine replacement should the Fire Association's support decline in future years.

FISCAL IMPACT

The fiscal impact is dependent on City Council direction.

RECOMMENDED ACTION

Provide direction to the City Manager.

ATTACHMENTS

Attachment 1 - Add-Back List
Attachment 2 - Budget Update Details

FY 2021-22 Add Back Considerations

Add Back List Presented June 2021	Council Goal	Budget Survey	Amount	One-Time
Reserve for Unanticipated Expenses*			500,000	X
Annual Civic Investment	Goal 1	X	500,000	X
Annual Storm Drain Investment	Goal 1		500,000	X
Defensible Space Matching Grant (if awarded) can be split over 2 fiscal years	Goal 1	X	318,750	X
Landscape Architect for Wayfinding, Branding, Alley*	Goal 4	X	250,000	X
Additional Street Paving	Goal 1	X	200,000	X
Continue Funding Sick Leave Conversion Liability	Goal 4	X	152,000	X
Online Plan Submittal Implementation*	Goal 3		120,000	partial
NVC – Moving Expenses/Contingency*	Goal 3	X	80,000	X
Business Recovery – Parklets*	Goal 4	X	70,000	X
Business Recovery – Landscape Architect*	Goal 4	X	50,000	X
Additional Funding for Non-Profits	Goal 3		50,000	X
Code Enforcement (additional)*	Goal 1	X	50,000	X
Information Technology – Enhanced Security Scans*	Goal 3		35,000	
Laserfiche - continue building online access to City Records	Goal 3		35,000	X
Full Restoration of Training Budgets	Goal 3		29,000	
TOTALS			***2,939,750***	

* New item identified by staff and added since the June 22, 2021 City Council Meeting

Budget Update Details

Federal COVID Stimulus Package

The initial estimated Federal relief for the City of St. Helena was just shy of $1.15 million and will be received by the City in two payments of $575,000 each. The estimated net position for FY 2021-22 included a payment of $575,000 in FY 2020-21 with the second payment of $575,000 in FY 2021-22. Both payments were utilized to offset revenue losses associated with the COVID-19 pandemic.

On July 13, 2021, the City received the first of the two relief payments in the amount of just over $729,854 which was $154,854 higher than anticipated. Combining the two payments, it is anticipated the City will receive a total of $1,459,708, which is $309,708 higher than anticipated. The Federal relief package stipulates the second relief payment will be received by the City no sooner than 12 months following the receipt of the first stimulus check.

It is important to note that Governmental funds (e.g. General Fund) are required to use the modified accrual basis of accounting. Under the modified accrual basis revenues are recognized when they become available and measurable. While the amount of the second stimulus relief check is measurable, it is not considered available. Under governmental accounting, revenues are considered available if they are collected within 60 days after the year end. Because the legislation stipulates that the second relief check will not be received until at least 12 months after the first check, there is a possibility the second payment will not be received in time to be booked towards the FY 2021-22 revenues, as budgeted.

FY 2020-21 Q4 Unaudited Financials

On August 23, 2021, the City received its June 2021 actual sales tax, which outperformed initial estimates by $269,000. In consulting with Avenu, the City's Sales Tax Consultants, it is uncertain what caused this uptick in revenues for June 2021. Detailed sales tax information will be provided from the State and the City is working closely with Avenu and should have more information mid-September on what caused the unexpected increase in sales tax. Table 1 provides a four year summary of sales tax collected in May and June for comparison.

Table 1: 4-Year Sales Tax Comparison

	2018	2019	2020	2021
May	311,350	299,841	291,900	326,877
June	309,011	280,016	251,771	518,286

Although the City is still in the process of closing out FY 2020-21, the unaudited financials for FY 2020-21 estimate the ending unassigned fund balance will be $504,017 higher than anticipated. This is due to the additional $154,854 received for the Federal stimulus as well as the actual sales tax and TOT received through June 30, 2021.

Table 2 provides a summary of the FY 2020-21 revised estimated unassigned fund balance.

Table 2: FY 2020-21 Updated Estimated Net Position

	Estimated Fund Balance	Net Position %
Estimated Unassigned Fund Balance @ 6/30/21 Presented June 22, 2021	6,160,269	34%
Estimated Unassigned Fund Balance @ 6/30/21 Updated September 9, 2021	6,664,286	39%

FY 2021-22 Updated Revenue Projections

As noted in the development of the FY 2021-22 budget, it is important to continue to stress the budget forecasting is still volatile and the City, as well as the world, continues to navigate what the post-COVID environment will hold for both the short- and long-term financial situation.

The FY 2021-22 budget was developed with the revenue assumptions outlined in Table 3.

Table 3: FY 2021-22 Revenue Assumptions at June 22, 2021

Revenue	Assumption	Amount
Property	4% increase, not including ERAF	5,476,132
Sales Tax	Avenu Most Conservative	4,929,200
TOT	95% of FY 2018-19 Actuals	3,131,904
Other	Includes $575,000 in Federal COVID relief - 2nd stimulus payment	2,138,454
	Total	***15,675,690***

Since the adoption of the FY 2021-22 budget, the following additional information has been received:

1. Property Tax - On August 10, 2021, the City received notification that the FY 2021-22 Property Tax increase is 3.4%, which is slightly lower than the 4% assumption made in the adopted budget.

2. Property Tax Excess ERAF - On September 7, 2021, the City received notification that it will receive Excess ERAF funding in FY 2021-22. The amount the City will receive is $443,774 and will be booked towards FY 2021-22 General Fund revenues. These funds are unbudgeted and are considered one-time revenues.

3. Sales Tax - On August 3, 2021, the City received its Q1 Sales Tax forecast from Avenu (January through March 2021). Based on the information received, Avenu updated its forecast and slightly lowered the "Mostly Likely" revenue scenario. While for budgeting purposes, the City typically utilizes Avenu's "Most Conservative" revenue scenario, the revised numbers from the "Mostly Likely" scenario are in line with the City's adopted Sales Tax forecast.

4. TOT - The FY 2021-22 adopted budget assumed TOT would perform at 95% of the FY 2018-19 levels. Based on the data received for July and some preliminary information received for August, the City is updating its TOT revenue estimates by $235,087.

5. Other - As noted above, it was estimated the City would receive $575,000 in FY 2021-22 in Federal COVID Relief. After receiving a higher than anticipated first stimulus payment on July 13, 2021, the City is anticipating an additional $154,854 in FY 2021-22.

Based on the information provided above, Table 4 presents the revised estimated General Fund revenues for FY 2021-22. This is a net increase of $802,751 from the adopted budget; however, of this amount only $235,087 is considered ongoing revenue as a result of increased TOT and the remaining $567,664 is considered one-time revenues. Table 5 provides an updated General Fund Unassigned Net Position for FY 2021-22 and Table 6 provides a summary of the 6/22/21 Unassigned Fund Balance estimate as compared to the 9/7/21 updated estimate.

Table 4: FY 2021-22 Updated Draft Revenue Assumptions

Revenue	Assumption	06/22/21 Estimate	09/07/21 Estimate
Property	4% increase, not including ERAF	5,476,132	5,445,158
Property	Excess ERAF	-0-	443,774
Sales Tax	Avenu Most Conservative	4,929,200	4,929,200
TOT	95% of FY 2018-19 Actuals	3,131,904	3,366,991
Other	Includes $575,000 in Federal COVID relief - 2 stimulus payment	2,138,454	2,293,318
	Total	***15,675,690***	***16,478,441***

Table 5 - FY 2021-22 Estimated Net Position Updated 09/07/21

Estimated Unassigned Fund Balance @ 6/30/21		6,664,286	Net Position %
Estimated Revenues @ 6/30/22	16,478,441		
Estimated Expenses @ 6/30/22	(15,630,449)		
Revenues Less Expenses	847,992		
Use of Reserves	-0-		
Estimated Unassigned Fund Balance @ 6/30/22		7,512,278	48%

Table 6 - FY 2021-22 Estimated Unassigned Fund Balance Comparison

	Estimated Unassigned Fund Balance @ 6/30/22	Net Position %
June 22, 2021 Estimate - Budget Adoption	6,205,510	40%
September 7, 2021 Revised Estimate	7,512,278	48%

The revised Net Position of 48% exceeds the City council policy of 30% reserves. As stated in the Background section, this is a healthy fund balance; however, it is important to note the following:

1. The FY 2021-22 beginning fund balance assumes the City receive all reimbursements for costs associated with the LNU and Glass Fires;

2. The FY 2021-22 revenues assume the second COVID Federal stimulus check is received no later than August 30, 2021 and can be booked as a FY 2021-22 revenue;

3. A third wave of COVID does not further diminish the most volatile General Fund revenue sources: Sales Tax and TOT; and

4. Of the $16,478,441 estimated revenues, $1,173,628 is considered one-time revenues and accounts for 7% of the total FY 2021-22 estimated revenues and $204,113 is the updated estimated re-occurring revenues.

Report to the City Council
Regular City Council - 14 Sep 2021

Agenda Section: **NEW BUSINESS**

Subject: **Consideration adoption of an urgency ordinance amending Chapter 13.04 of the Municipal Code to establish water theft regulations, administrative penalties, and enforcement procedures.**

CEQA Determination: **Exempt**

Prepared By: Ethan Walsh, City Attorney

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

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

St. Helena Municipal Code (SHMC) provides that any time the City Council finds and determines that a water shortage emergency condition meeting the criteria of Phase I water emergency (SHMC 13.04.230), Phase II water emergency (SHMC 13.04.240), or Phase III water emergency (SHMC 13.04.250), and it is necessary to limit water use, the City Council must adopt a resolution setting forth the applicable phase. One of the criteria for establishing a Phase I water emergency under SHMC 13.04.230 includes when the Director of Public Works determines that the conditions requiring the establishment of a Phase II water emergency appears imminent.

On June 23, 2020, the City Council adopted Resolution 2020-72 establishing Phase I water regulations, and the City Clerk published a notice declaring the establishment of a Phase I water emergency. The notice set forth the limitations of water use applicable to a Phase I water emergency. At the time of the Phase I water emergency, the City had extremely low annual cumulative rainfall (20"), a forecast for a potential multi-year drought, and the Bell Canyon Reservoir was at 60% capacity. Public Works had also implemented changes to conserve Bell Canyon Reservoir water by optimizing Stonebridge Wells and City of Napa water use. In June 2020, the forecast for when a potential Phase II water emergency would be triggered by was November 2020.

On October 13, 2020, the Public Works Director informed the City Council that a Phase II water emergency had been triggered on October 1, 2020. The trigger system utilizes data the water treatment operators submit in a monthly water production report. The September 2020 water report was delayed due to the September 27, 2020 Glass Fire and was not available in time to bring a Phase II water emergency for discussion and consideration to City Council. As of October 13, 2020, Bell Canyon Reservoir was at 399.8' and 39.4% capacity.

City staff has implemented Phase II regulations, including imposing limitations on water usage for residential and commercial users in accordance with the Municipal Code, adopting a penalty structure for violations of the City's Phase II and Phase III water regulations, and imposing penalties pursuant to that structure.

With water use restricted in the City, as well as other many other jurisdictions throughout the Napa Valley and Northern California generally, there is a significant concern that some may turn to illegally withdrawing water from hydrants or through other illegal connections to the City's water system. This would further exacerbate the City's existing water emergency, and place an increased burden on the City's water system and its customers.

DISCUSSION

The Municipal Code does not clearly address water theft of this type, nor does it provide for express penalties to address water theft. In order to address this threat to the City's water system, this ordinance proposed to expressly prohibit water theft, and establish penalties and other remedies that the City can pursue in the event of a violation of the ordinance.

This ordinance is proposed as an urgency ordinance to immediately put into effect measures that will allow the City to prohibit water theft during the water emergency. The ordinance will take effect immediately to protect the public health, safety, and welfare based on the findings and recitals set forth in the ordinance. It must pass by a 4/5 vote of the Council.

FISCAL IMPACT

The proposed ordinance would not have a financial impact on the City.

RECOMMENDED ACTION

Adopt the urgency ordinance.

ATTACHMENTS

St. Helena Water Theft Urgency Regulations Ordinance-c1 (003)

CITY OF ST. HELENA

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ST. HELENA AMENDING CHAPTER 13.04 OF THE ST. HELENA MUNICIPAL CODE TO ESTABLISH WATER THEFT REGULATIONS, ADMINISTRATIVE PENALTIES, AND ENFORCEMENT PROCEDURES

WHEREAS, in 2020, California experienced below-average precipitation and above-normal temperatures, resulting in drought conditions; and

WHEREAS, much of the West Coast is still experiencing severe to exceptional drought and California is in its second consecutive year of dry conditions, resulting in drought or near-drought throughout many portions of the State; and

WHEREAS, extreme drought conditions present urgent challenges, including the risk of water shortages in communities, greatly increased wildfire activity, diminished water for agricultural production, and additional water scarcity if drought conditions continue for another year; and

WHEREAS, in response to these severe drought conditions, on April 21, 2021 and May 10, 2021, Governor Gavin Newsom issued proclamations that a state of emergency existed in a total of 41 counties, including the County of Napa; and

WHEREAS, under these emergency proclamations, Governor Gavin Newsom directed state agencies to partner and coordinate with regional and local governments to address issues stemming from continued dry conditions; and

WHEREAS, on July 8, 2021, Governor Gavin Newsom issued another proclamation of state emergency, which expanded the drought to a total of 50 of the state's 58 counties under the drought state of emergency and called on California residents to voluntarily reduce their water use by 15 percent compared to 2020 levels in order to mitigate the impacts of the intensifying drought; and

WHEREAS, the City of St. Helena ('City") is located within the County of Napa; and

WHEREAS, the National Integrated Drought Information System ("NIDIS") monitors the location and intensity of drought across the United States using a five-category system, from Abnormally Dry to Exceptional Drought Conditions.

WHEREAS, the most severe category, Exceptional Drought, corresponds to an area experiencing exceptional and widespread crop and pasture losses, fire risk, and water shortages that result in water emergencies.

WHEREAS, under this monitoring system, one hundred percent (100%) of the County of Napa is in Exceptional Drought.

WHEREAS, the City has limited water resources and to preserve its water resources during periods of water shortage, the City has adopted criteria for establishing Phase I, Phase II, and Phase III water emergencies, with increasingly stringent water conservation measures for each phase of a water emergency; and

WHEREAS, on June 23, 2020, the City Council adopted Resolution 2020-72 declaring a Phase I water emergency and initiating the implementation of associated regulations. At the time of the declaration of a Phase I water emergency, the City had extremely low annual cumulative rainfall (20”), a forecast for a potential multi-year drought, and the Bell Canyon Reservoir was at 60% capacity; and

WHEREAS, on October 27, 2020, the City Council adopted Resolution No. 2020-107 determining that conditions requiring the establishment of a Phase II water emergency. At the time, the City Council determined that a Phase II water emergency exists, and that the Bell Canyon Reservoir was at 39.4% capacity; and

WHEREAS, the City has remained in a Phase II water emergency for the duration of 2021; and

WHEREAS, California Penal Code section 498 prohibits the theft of utility services, including water; and

WHEREAS, California Penal Code section 624 prohibits every person from willfully damaging, tampering with, or digging up water pipes or waterworks; and

WHEREAS, California Penal Code section 625 prohibits every person who, with intent to defraud or injure, opens or causes to be opened, or draws water from any disconnected utility connection after having been notified that the same has been closed or shut for specific cause, by order of competent authority; and

WHEREAS, California Civil Code section 1882 *et seq*. authorizes the City to bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts:

(a) Diverts, or causes to be diverted, utility services by any means whatsoever;

(b) Makes, or causes to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility;

(c) Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by any other means;

(d) Tampers with any property owned or used by the utility to provide utility services;

(e) Uses or receives the direct benefit of all, or a portion, of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use, or that the use or receipt, was without the authorization or consent of the utility; and

WHEREAS, pursuant to California Civil Code section 1882 et seq., the City may bring a civil action for the unauthorized use of City water; and

WHEREAS, pursuant to California Government Code section 53069.4, the City may, by ordinance, make the violation of any ordinance enacted by its City Council subject to a civil administrative fine or penalty; and

WHEREAS, because water is a vital resource, the City has determined that it is appropriate to impose civil administrative fines for the theft of water to protect this vital resource; and

WHEREAS, after declaring a water emergency, local governments are empowered to adopt and enforce regulations and restrictions on the quantity of water that may be delivered and used by persons within its service area for the purpose of conserving the water supply of the agency for the greatest public benefit, with particular regard to domestic use, sanitation, and fire protection; and

WHEREAS, the protection of the health, welfare, and safety of the residents of the City require that the water resources of the City be protected from adverse impacts resulting from the theft of those resources as soon as possible; and

WHEREAS, pursuant to Government Code section 36937, the City may adopt an urgency ordinance if it is for the immediate preservation of the public peace, health, or safety; and

WHEREAS, the City Council desires to amend Chapter 13.04 to implement water theft regulations, administrative penalties and enforcement procedures; and

WHEREAS, based on the foregoing facts, immediate action to address water theft during water emergencies is necessary for the preservation of health, safety, and well-being of City citizens, economy, agricultural resources and environmental resources. Water theft during water emergencies threatens the City's water supply.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ST. HELENA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings and Need for Ordinance

The City Council of the City of St. Helena hereby finds and declares that this Urgency Ordinance is necessary to help preserve the City's water supply and to protect the health, safety, and welfare of the public as it is essential to prevent water theft and preserve the City's water supply during this period of extreme water shortage. The

recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Adoption of Article III of Chapter 13.04, Relating to Water Theft Regulations, Penalties and Enforcement Procedures

Article 3, commencing with Section 13.04.400, is hereby added to Chapter 13.04 of the St. Helena Municipal Code, to read as set forth in Exhibit A, attached hereto and incorporated herein.

Section 3. Urgency Finding

The City Council hereby finds, determines, and declares that this Urgency Ordinance is necessary to help preserve the City's water supply and to protect the health, safety, and welfare of the public as it is essential to prevent water theft as soon as possible to preserve the City's water supply during this period of extreme water shortage.

Therefore, the City further finds, determines, and declares that this Ordinance takes effect immediately upon adoption by a four-fifths vote of the City Council under the authority conferred upon it by California Government Code section 36937.

Section 4. CEQA Exemption

This Ordinance is exempt from the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment as it includes regulations to protect the City's water resources from further depletion (CEQA Guidelines §15061(b)(3)); because it consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of a natural resources, namely the water resources within the territory of the City of St. Helena (Class 7, CEQA Guidelines §15307); and because it consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of the environment, including water resources within basins within the territory of the City of St. Helena (Class 8, CEQA Guidelines §15308). No exceptions to these exemptions are present.

This Ordinance is also exempt from CEQA because it is an urgency Ordinance that prevents or mitigates impacts from the theft of water resources within the territory of the City of St. Helena during a water emergency. Such potential theft poses a clear and imminent danger to the City and to those that rely on the City's water resources, and which requires immediate action to prevent or mitigate the loss of, or damage to, life, health, property, and essential public services. This urgency Ordinance, therefore, qualifies for an exemption under Public Resources Code section 21080(b)(4) and CEQA Guidelines section 15269(c).

Section 5. City Clerk

The City Clerk is hereby directed to certify as to the adoption of this Ordinance and cause it to be published in a newspaper of general circulation within 15 days of adoption and post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

Section 6. Severability

If any provision of this Ordinance or its application to any person or circumstance is held to be invalid, all other provisions and applications of the Ordinance that can be given effect without the invalid provision or application must be given effect, and to this extent, the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

THE FOREGOING ORDINANCE was adopted as an urgency ordinance by a four-fifths vote at a regular meeting of the St. Helena City Council on the ___ day of September, 2021, by the following vote:

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

APPROVED:

_____
Geoff Ellsworth, Mayor

ATTEST:

CITY OF ST. HELENA

_____
Cindy Tzafopoulos, City Clerk

I, CINDY TZAFOPOULOS, CITY CLERK of the City of St. Helena, California, do hereby certify that the foregoing Urgency Ordinance was approved by a four-fifths vote at a regular meeting of the City Council on the ___ day of September, 2021, by the following vote:

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

Councilmember Hall: _____

EXHIBIT A

Article 3

Water Theft Regulations, Penalties, and Enforcement

13.04.400 General Provisions Relating to Water Theft

Because water is a vital resource, the city has determined that it is appropriate to adopt a city prohibition on water theft and impose civil administrative penalties for the theft of water.

13.04.410 Prohibition of Water Theft; Administrative Penalties

A. For the purposes of this article, "water theft" means and includes all of the following:

1. the use, diversion, receipt or taking of city water by any means from any public fire hydrant, blow-off valve, water main, water service lateral or other city facility or connection to a city facility to which a city authorized metering device has not been installed or has been removed by the city; and

2. the use, diversion, receipt, or taking of city water by any means without paying the full and lawful city charges for such water, or by tampering with city property or facilities, such as by removing a lock or plug that has been placed on a customer's service or meter or unauthorized use, or by tampering with a service connection or bypassing a meter, or by making an unauthorized connection to any city facilities or any public fire hydrant.

B. For the purposes of this article, "unauthorized use" includes the use of water from a stationary service connection where lawful water service has been discontinued or from a public fire hydrant to supply water outside of the city service area, regardless of whether payment is provided to the city for the water drawn from the public fire hydrant, or any use of a hydrant meter in violation of the terms and conditions of a hydrant meter permit.

C. Water theft is prohibited. Each act of water theft constitutes a misdemeanor.

D. The city may report any water theft to the appropriate prosecuting agency and press for prosecution of said activity pursuant to the Penal Code. In addition to pursuing criminal penalties, the city, upon discovering water theft or tampering with city property, may also pursue the following remedies or any other remedies available at law or equity:

1. require the immediate removal of any equipment, connections or tools used to accomplish the water theft that is attached to city property;

2. charge the customer or perpetrator an administrative penalty for any form of water theft as follows:

    a. $500 for the first violation;

    b. $1,000 for a second violation within two (2) years; and

    c. $2,000 for each violation thereafter within two (2) years.

13.04.420 Other Remedies

In addition to any other remedies provided in this article or available under applicable law, the city may also seek injunctive relief in the superior court or take enforcement action. All remedies provided herein shall be cumulative and not exclusive. If a customer or any other person turns on water service without city authorization, tampers with any locked water meter, tampers with a service connection or city facilities, bypasses a meter, makes an unauthorized connection to city facilities without city permission, or otherwise commits water theft, the city may:

A. discontinue water service pursuant to the applicable provision(s) of Section 13.04.130;

B. charge the customer or perpetrator an estimated amount based upon the historical water use, meter use, or other comparable means of estimation (non-customers shall be charged based upon the highest city water rate at the time of the occurrence);

C. charge the customer for the damage to the city lock, meter or other property;

D. remove the meter and plug the service;

E. terminate and remove the service from its connection to the water main;

F. charge a deposit of two times the amount of the average use to reestablish service; and

G. require the return of any temporary water meter.

13.04.430 Payment and Appeal Procedures

The city shall calculate the amount of damages and penalties to be imposed, and shall send a bill to the customer or, if the offender is not a customer of record, an invoice, for payment of the damages and penalties.

A. All costs relating to the city's processing and handling of the water theft, and investigation and enforcement thereof, shall be borne by the party having responsibility for the water account at the time of the water theft. Charges related to the handling of the water theft and/or reestablishment of the service shall be borne by the party requesting service. These charges include, but are not limited to, service call charges, water charges, turnoff of service, plug and/or termination fees. Before the meter will be replaced and service reestablished, the party requesting service shall deposit twice the average monthly water bill, the cost of a new water meter and installation (if required), any increase in capacity fees between the date of removal of the meter and the date service was resumed, in addition to all service call charges, all charges that were delinquent at the time of removal, and an amount representing any damage to city property. The city may enforce payment of any unpaid amounts through any available legal means, which may include, but not be limited to, placement with an authorized collection agency, transfer of delinquent balances to other active accounts, requiring full payment before establishing future accounts with the city, termination of water service to the account, and/or filing a lien for unpaid amounts.

   Where a water account is not assigned, all charges relating to the city's processing and handling of the water theft, and investigation and enforcement thereof, shall be borne by the party taking the water, including, but not limited to, the cost of any water used inside or outside the city's service area, charges for any damage to city facilities and equipment, and costs of investigation and enforcement. The city may enforce payment of any unpaid amounts through any available legal means, which may include, but not be limited to, placement with an authorized collection agency, transfer of delinquent balances to active accounts, requiring full payment before establishing any account with the city, and/or filing a lien for unpaid amounts.

B. Any person (an "appellant") who wishes to appeal the imposition of damages or penalties imposed by the city pursuant to this article shall comply with the following procedures:

   1. The appellant shall submit a written appeal to the city's director of public works no later than fifteen (15) calendar days from the date of the bill or invoice sent to the customer or offender.

2. A response to the appeal shall be provided by the director of public works within thirty (30) calendar days from receipt of the appeal.

3. If an appeal request is denied, in whole or in part, the appellant may resubmit the appeal for review by the city manager or his or her authorized designee. The appeal shall be resubmitted no later than fifteen (15) calendar days from the date of the denial of the appeal by the director of public works. The appellant may request to provide evidence in writing or in person in support of his or her appeal to the city manager or his or her authorized designee.

4. A response to the appeal shall be provided by the city manager or authorized designee within thirty (30) calendar days from receipt of the appeal. The decision by the city manager or authorized designee shall be final.

5. Within ten (10) days after the denial of the appeal, in whole or in part, the appellant shall pay the damages and penalties imposed by the city.

6. The provisions of Section 1094.6 of the Code of Civil Procedure of the State of California shall be applicable to judicial review of the decision.