City of St. Helena
Regular City Council Meeting
Tuesday, February 8, 2022 @ 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.

This meeting will be conducted pursuant to the provisions of Government Code Section 54953 (as amended by AB 361) which authorizes teleconferenced meetings under the Brown Act during certain proclaimed States of Emergency. The Governor of California proclaimed a State of Emergency related to COVID-19 on March 4, 2020. This teleconferenced meeting is necessary so that the City can conduct essential business and is permitted under Government Code 54953 in order to protect public health and safety of attendees.

Consistent with Government Code Section 54953, this City Council Meeting will be held via teleconference only, and will not be physically open to the public. City Council members and staff will teleconference into the meeting by audio and/or video. The meeting will be conducted via Zoom Webinar.

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.

NEW FEATURE FOR ALTERNATIVE PUBLIC COMMENT VIA TELEPHONE BY RESERVATION
If you would like to provide comments via telephone (not using Zoom) during the Council meeting, you can request a reservation from the City Clerk prior to 12:00 p.m. on the meeting day. The reservation request may be submitted to the City Clerk by emailing publiccomment@cityofsthelena.org, or by calling (707) 968-2752. When submitting the request, please identify your name, your telephone number (including the area code first), and the agenda item number you would like to comment on. During the Council meeting, a representative from the City Clerk's Office will call you when public comment is called for the requested item. You will then be able to provide your comments to the Council via telephone.

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/89834740319
Or One tap mobile :
US: +16699006833,,89834740319# or +13462487799,,89834740319#
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 +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592
Webinar ID: 898 3474 0319
International numbers available: https://us02web.zoom.us/u/koNI2UMga

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Esta reunión será realizada conforme a las provisiones del Código de Gobierno Sección 54953 (modificada por AB 361) la cual autoriza las reuniones de teleconferencia bajo el Acta Brown durante ciertos Estados de Emergencia. El gobernador de California proclamó Estado de Emergencia relacionado con el COVID-19 el 4 de marzo del 2020. Esta reunión por teleconferencia es necesaria para que la Ciudad pueda realizar deberes esenciales y es permitido bajo el Código de Gobierno 54953 en orden de proteger la salud pública y seguridad de los asistentes.

Consistente con el Código de Gobierno Sección 54953, esta reunión del Consejo de la Cuidad será realizada vía teleconferencia y no será físicamente abierta al público. Miembros del Consejo de la Cuidad y personal atenderán la reunión por audio y/ o video. La reunión será transmitida vía Zoom.

La reunión del Consejo de la Cuidad 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 el ID de la reunión o llamando al número ubicado en la agenda e ingrese el ID de la reunión. Se aceptarán comentarios públicos para la reunión del Consejo de la Cuidad por correo electrónico a publiccomment@cityofsthelena.org. Todos los comentarios públicos se harán públicos y se adjuntarán a la agenda, pero no se leerán en voz alta. Todos los comentarios públicos que se reciban después de las 4:00 PM se adjuntarán a la agenda del Consejo de la Cuidad al día siguiente.

Consulte el final de la agenda para obtener instrucciones detalladas de PARTICIPACIÓN PÚBLICA.

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

Habrá traducción en español durante la junta
Haga clic en el enlace a continuación para participar en la reunión:
https://us02web.zoom.us/j/89834740319
O por iPhone one-tap:
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US: +16699006833,,89834740319# or +13462487799,,89834740319#
O por Teléfono: Marque(para mejor calidad, marque número basado en su ubicaciónactual):
US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592
ID de la Reunión: ID: 898 3474 0319
International numbers available:https://us02web.zoom.us/u/koNI2UMga

Page

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE

   Estimated start time: 6:02 p.m.

3. ADOPTION OF THE AGENDA

   Estimated start time: 6:05 p.m.

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

   Estimated start time: 6:02 p.m.

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.

   Estimated start time: 6:10 p.m.

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. Service recognition of outgoing City Manager Mark Prestwich.

   Estimated start time: 6:15 p.m.

8. STAFF BRIEFING
   8.1. None
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)

Estimated start time: 6:30 p.m.

9.1. Consideration and proposed approval of Special Meeting Minutes of January 24, 2022 and January 31, 2022 and Regular Meeting Minutes of January 25, 2022. 15 - 24

01-24-2022 Special City Council - Minutes
01-25-2022 Regular City Council - Minutes
01-31-2022 Special City Council - Minutes

9.2. Consideration and Proposed Approval of a Resolution Authorizing the ~~Ninth~~ Tenth Amendment to Unrepresented Compensation Program Updating Section 11.4 Sick Leave Payout. (~~Staff report forthcoming~~ Provided 2/7/22) 25 - 49

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

Staff Report - Pdf

9.3. Consideration and proposed approval of a resolution approving Amendment No. 2 STH Contract: FY2021-083 with 4Leaf, Inc. in an amount of $3,000 for a total not-to-exceed amount of $62,890 for Water Regulation Code Enforcement and Outreach. 51 - 74

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

Staff Report - Pdf

9.4. Adoption of Resolution Making Findings and Determinations under AB 361 for the Continuation of Virtual Meetings. 75 - 79

CEQA Determination: Not a CEQA project
Prepared By: Ethan Walsh, City Attorney
Recommendation:
Approve the Attached Resolution Making Findings and Determinations Under AB 361.

Staff Report - Pdf

9.5. Consideration and proposed approval of a resolution approving Amendment No. 1 STH Contract: FY2021-066 with Accent on Language in an amount of $10,000 for a total not-to-exceed amount of $41,000 for interpretation services. 81 - 100

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

Recommendation:
Adopt the attached resolution.
Staff Report - Pdf

9.6. Consideration and proposed approval of a resolution: (1) approving Revision No. 3 to City Council Policy P-FI-0016 Financial Policy related to: (a) compliance with GASB Statement No. 98 updating the name, "Comprehensive Annual Financial Report" to "Annual Comprehensive Financial Report" , (b) update language related to financing Capital Improvement Projects and (2) repealing an rescinding any previous policies or administrative memoranda which are inconsistent with City Council Policy P-FI-0016 Financial Policy, Revision No. 3. 101 - 143

CEQA Determination: Exempt
Prepared By: April Mitts, Administrative Services Director
Recommendation:
Adopt the attached Resolution
Staff Report - Pdf
Public Comment.Alan Galbraith
Public Comment.Mark Smithers
Public Comment.Nancy Dervin

9.7. Consideration and Proposed Approval of a Resolution Authorizing: (1) A Permanent Loan to Our Town St. Helena (OTSH) in an amount of $250,000 for the Development of 963 Pope Street St. Helena; (2) Use of Measure E - Affordable Housing Trust Funds (Fund 752) for this Loan; and (3) the City Manager to Execute all Necessary Documents for this Loan. 145 - 193

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

10. PUBLIC HEARINGS

10.1. Second reading and intention to adopt an ordinance amending the St. Helena Municipal Code Chapter 5.40 (Permits for Elder and/or Dependent Adult Caregivers) to transfer responsibility for managing the registration and background check process of individual caregivers from the County, except in special circumstances, to the California Department of Social Services (CDSS) via their Home Care Aide Registry. 195 - 215

Estimated start time: 6:40 p.m.

CEQA Determination: Not a CEQA project
Prepared By: Chris Hartley, Chief of Police
Recommendation:
Approve the second reading and adopt the ordinance by title only and waive further reading.

[Staff Report - Pdf]

10.2. Consideration and proposed adoption of the following:

1. Adopt a resolution recommending that the City Council approve the Mitigated Negative Declaration / Mitigation Monitoring and Reporting Program for the project, make the required findings; and
2. Adopt a resolution making specific findings and recommending City Council approve the proposed Mills Lane Storm Drain Improvements Project.

***This item was noticed to be heard at the November 9, 2021 regular City Council meeting and was subsequently continued to the December 14, 2021, January 11, 2022, January 25, 2022 and February 8, 2022, regular City Council meetings. This item is being continued again to the February 22, 2022 regular City Council meeting.**

11. OLD BUSINESS

11.1. Consideration of a Resolution calling a Special Election on June 7, 2022 to consider changing the Office of Mayor from a directly elected office to an office appointed by the Council. 217 - 227

Estimated start time: 6:45 p.m.

CEQA Determination: Not a CEQA project
Prepared By: Ethan Walsh, City Attorney
Recommendation:
That the Council consider the enclosed resolution, and if desired, adopt the attached resolution to place the matter on the ballot for consideration by the voters of the City.
[Staff Report - Pdf]

12. NEW BUSINESS

12.1. Informational Update on Conceptual 1/4 Cent Countywide Wildfire Prevention and Suppression Transactions and Use Tax 229 - 245

Estimated start time: 7:30 p.m.

CEQA Determination: Not a CEQA project
Prepared By: Mark T. Prestwich, City Manager
Recommendation:
Receive and file.
[Staff Report - Pdf]

12.2. Initiate Proceedings to Place a General Obligation Bond (GO Bond) Measure on the June 7, 2022 Ballot, by Adopting a Resolution of Necessity and Introducing an Ordinance Ordering the Submission of a Proposition to Incur Bonded Indebtedness to the Voters 247 - 275

CEQA Determination: Exempt
Prepared By: April Mitts, Administrative Services Director
Recommendation:
(1) Adopt the Resolution of Necessity for the General Obligation Bond and (2) Introduce the Ordinance Ordering the Submission of a Proposition to Incur Bonded Indebtedness to the Voters

Staff Report - Pdf
Public Comment.Mark Smithers
Public Comment.Nancy Dervin

12.3. Consideration and Proposed Approval of a Resolution Appointing James C. McCann as Interim City Manager and approval of an Employment Agreement for an Interim City Manager (~~Staff report forthcoming~~ Provided 2-7-22) 277 - 288

Estimated start time: 8:50 p.m.

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

Staff Report - Pdf

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

13.1.

February City Council Meetings: **2/8 (Staff reports due 1/21)** **2/22 (Staff reports due 2/4)**
Presentation
2/22 Presentation from Youth Representatives
CONSENT:
2/22 Professional Service Agreement for Water and Wastewater Rate Study
2/22 Quarterly Grant Report FY22 2nd Quarter
PH or OLD / NEW BUSINESS:
2/8 Overview of General Plan Climate Action Initiatives
Mills Lane
2/22 NB - 2nd Quarter Finance Report
2/22 NB - Review and Feedback of Scope for new Diversity, Equity and Inclusion Committee
2/22 OB - Review of General Plan Climate Action Implementing Actions

14. ADJOURNMENT

The next Regular City Council meeting is scheduled for February 22, 2022, at 6:00 p.m.

I do hereby certify that a copy of the foregoing agenda was posted on the City website on February 4, 2022.

Cindy Tzafopoulos

Cindy Tzafopoulos, City Clerk

In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please call the City Clerk's Office (707) 967-2792. Notification 72 hours prior to the meeting as required by Section 202 of the Americans with Disabilities Act will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

CHALLENGING DECISIONS OF CITY ENTITIES

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City of St. Helena is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision, including without limitation Government Code section 65009 applicable to many land use and zoning decisions, Government Code section 66499.37 applicable to the Subdivision Map Act, and Public Resources Code section 21167 applicable to the California Environmental Quality Act (CEQA). Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. Government Code section 65009 and 66499.37, and Public Resources Code section 21167, impose shorter limitations periods and requirements, including timely service in addition to filing.

If a person wishes to challenge the above actions in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of St. Helena, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA

Any supplemental writings or documents distributed to a majority of the City Council regarding any item on this Agenda, after the posting of the Agenda, will be available for public review in the City Clerk's Office located at 1572 Railroad Avenue, St. Helena, California, during normal business hours and by appointment. 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 AB361. 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.

4. **Alternative Public Comment Via Telephone by Reservation**
If you would like to provide comments via telephone (not using Zoom) during the Council meeting, you can request a reservation from the City Clerk prior to 12:00 p.m. on the meeting day. The reservation request may be submitted to the City Clerk by emailing publiccomment@cityofsthelena.org, or by calling (707) 968-2752. When submitting the request, please identify your name, your telephone number (including the area code first), and the agenda item number you would like to comment on. During the Council meeting, a representative from the City Clerk's Office will call you when public comment is called for the requested item. You will then be able to provide your comments to the Council via telephone.

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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
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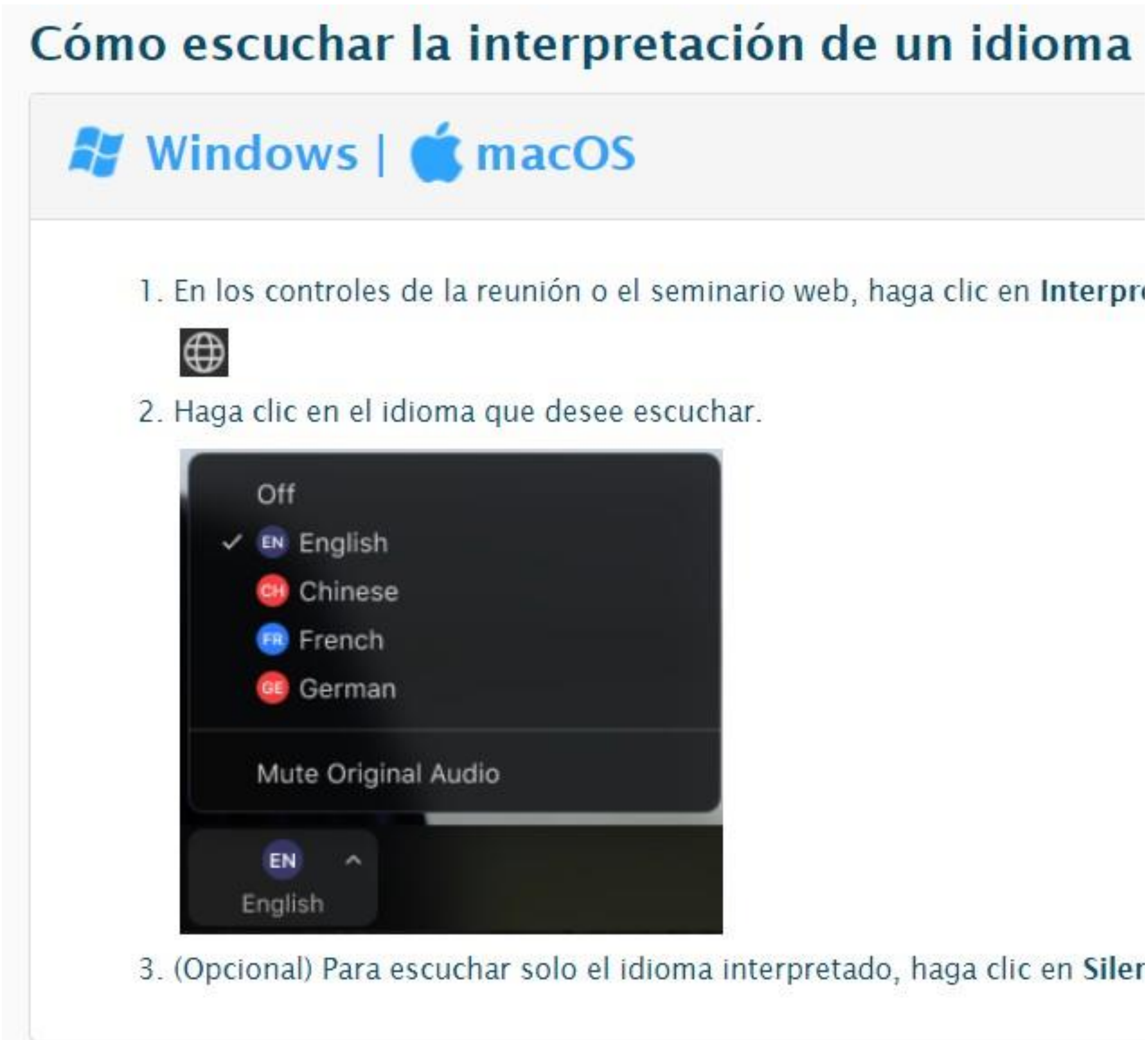
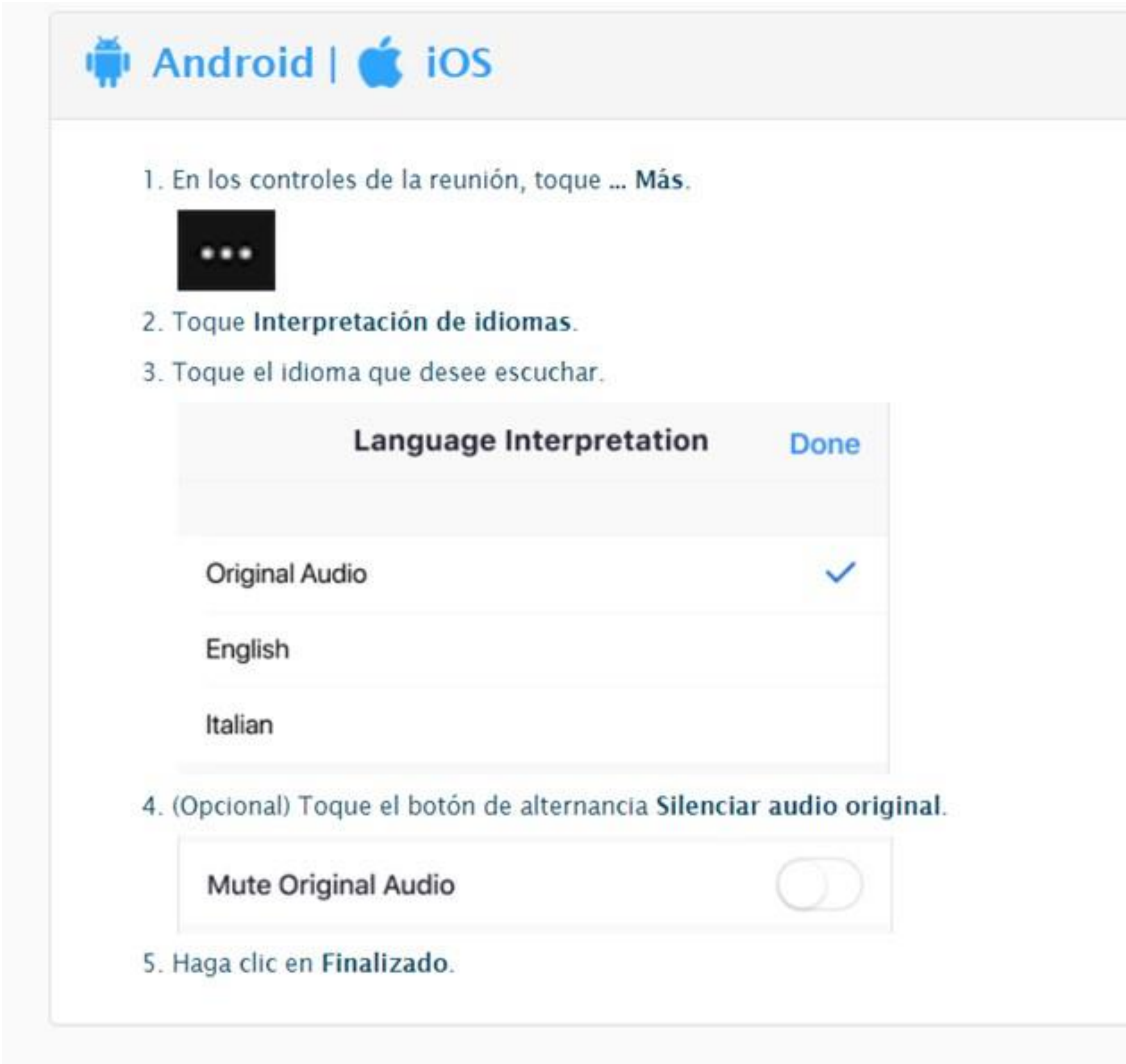
la propagación de COVID-19 en nuestra comunidad. En cumplimiento de estas pautas, el Ayuntamiento de St. Helena organizará una Reunión del Consejo Virtual sobre Zoom; Una herramienta de teleconferencia gratuita que permite a los usuarios mirar y / o llamar a la reunión desde sus computadoras o teléfonos. Esta reunión estará abierta al público y permite comentarios públicos en vivo. La reunión también se grabará, se transmitirá en vivo y se publicará en el sitio web de la Ciudad después de la clausura de la reunión si se presentan dificultades técnicas: https://sthelena.civicweb.net/Portal/

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





Android | iOS

1. En los controles de la reunión, toque ... **Más**.
2. Toque **Interpretación de idiomas**.
3. Toque el idioma que desee escuchar.

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

5. Haga clic en **Finalizado**.

Cómo ver o escuchar las reuniones del Consejo:

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

Vea la reunión del Consejo uniéndose a la reunión Zoom:

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

a. Antes de unirse a la reunión virtual del Ayuntamiento, le recomendamos que descargue la aplicación Zoom. Para registrarse en su propia cuenta gratuita, visite zoom.us/signup e ingrese su dirección de correo electrónico. Recibirá un correo electrónico de Zoom (no-reply@zoom.us) . En este correo electrónico, haga clic en Activar cuenta.

b. Si ha iniciado sesión en su cuenta, ingrese la ID de la reunión que figura en la Agenda del Ayuntamiento. Si no ha creado una cuenta, vaya a: https://zoom.us/join e ingrese la ID de la reunión

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

2. **Escuche solo por teléfono:**

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

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

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

MINUTES
City of St. Helena
Special City Council Meeting
Monday, January 24, 2022 @ 5:00 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

City Clerk Cindy Tzafopoulos reported no new changes to the agenda.

Vice Mayor Paul Dohring 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 COMMENT:

Under California law, public comments at special meetings are limited to subjects on the agenda only. Therefore public comment will take place during consideration of the item.

6. NEW BUSINESS:

6.1 Discussion and Direction Regarding Funding Options to Address City

Infrastructure Deficiencies Including Consideration of Potential General Obligation Bond on the June 2022 Ballot
Prepared By: Mark T. Prestwich, City Manager

City Manager Mark Prestwich reported on the item.

Del Rio Advisors Representative Ken Dieker addressed the City Council.

No public comment was received.

It was the consensus of the City Council to call a special meeting workshop on January 31, 2022 to discuss a potential General Obligation Bond to be placed on the June 7, 2022 Statewide Direct Primary Election. The focus will be on storm drain investment, paving and recycled water projects.

7. ADJOURNMENT

Mayor Ellsworth adjourned the meeting at 6:47 p.m.

The special meeting minutes of January 24, 2022 were adopted at the February 8, 2022 regular City Council meeting.

APPROVED:	**ATTEST:**
______________________________	______________________________
Geoff Ellsworth, Mayor	Cindy Tzafopoulos, City Clerk

MINUTES
City of St. Helena
Regular City Council Meeting
Tuesday, January 25, 2022 @ 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. ADOPTION OF THE AGENDA

3.1 Adoption of the agenda

City Clerk Cindy Tzafopoulos noted no new changes to the agenda.

Council Member Anna Chouteau moved to approve the agenda as presented. 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

4. ROLL CALL

5. PUBLIC FORUM:

William Lyman, Kate Lundquist, and Elaine de Man addressed the City Council.

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

City Attorney Ethan Walsh reported on the Closed Session meeting of January 25, 2022 discussing the existing Picaso litigation and Labor Negotiations, no reportable action was taken from either item.

Council Member Chouteau asked for an agenda item to be added to a date uncertain in February 2022 for a Resolution declaring a climate emergency and including a priority list of actions. Mayor Ellsworth agreed.

Reports were made by Staff and City Council.

7. PRESENTATIONS AND PUBLIC RECOGNITIONS

7.1 Napa Firewise - St. Helena Fire Safe Council Presentation by Chris Warner and Jeff Farmer.

Fire Safe Council Representatives Chris Warner and Jeff Farmer provided a presentation.

8. STAFF BRIEFING

None

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 January 11, 2022.
Prepared By: Cindy Tzafopoulos, City Clerk

9.2 December 2021 Review and Forecasting of City Water Supply Availability

CEQA Determination: Exempt
Prepared By: Martin Beltran, Management Analyst
Recommendation:
Receive and file.

9.3 Consideration and Proposed Approval of the Second Reading and Adoption of an Ordinance Amending Chapter 2.56 of the St. Helena Municipal Code Pertaining to the Parks and Recreation Commission

CEQA Determination: Not a CEQA project
Prepared By: Mark T. Prestwich, City Manager
Recommendation:
Proposed approval of the second reading and adoption of an Ordinance amending Chapter 2.56 of the St. Helena Municipal Code pertaining to the Parks and Recreation Commission, by title only and waive further reading.

Regular City Council
January 25, 2022

9.4 Consideration and proposed adoption of a Resolution Authorizing: (1) the City Manager to execute Amendment No. 1 to STH Contract: FY2021-077 with Operational Technical Services for temporary Wastewater Treatment Operators in the amount of $100,293 for a total amount not-to-exceed $200,913; and (2) a Wastewater Fund budget increase of $100,293 to 571-5029-2020; and (3) the City Manager to execute Amendment No. 2 to STH Contract: FY2021-048 with Operational Technical Services for temporary Water Treatment Operators in the amount of $348,561 for a total amount not-to-exceed $783,491; and (4) a Water Fund budget increase of $152,802 to 561-5034-2020; and (6) use of Water Operations Fund balance of $152,802.

CEQA Determination: Not a CEQA project
Prepared By: Martin Beltran, Management Analyst
Recommendation:
Staff recommends adoption of the attached Resolution.

9.5 Consideration and Proposed Approval of a Resolution Authorizing: (1) Amendment #4 to STH Contract: FY2019-075 with BKF for Additional Vine Trail Route Study for an additional $11,000 for a total not-to-exceed amount of $792,600; (2) authorizing use of General Fund reserves in the amount of $11,000; and (3) authorizing a budget increase of $11,000 in the General Fund (Fund 101) expenses to be transferred to the Civic Capital Fund (Fund 733).

CEQA Determination: Not a CEQA project
Prepared By: Preya Nixon, Asst. to the City Manager
Recommendation:
Staff recommends Council approve the attached Resolution.

9.6 Consideration and approval of a resolution approving an agreement with Liebert Cassidy Whitmore for various employee relations training and services at no cost to the City of St. Helena which is offered through the Sonoma/Marin Employment Relations Consortium.

CEQA Determination: Not a CEQA project
Prepared By: April Mitts, Administrative Services Director
Recommendation:
Staff recommends adopting the resolution and authorizing the City Manager to execute the agreement.

Council Member Anna Chouteau moved to approve Consent items 9.1 through 9.6. The motion was seconded by Council Member Eric Hall and on roll call carried by the following vote:

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

ABSENT: None
ABSTAIN: None
RECUSE: None

10. PUBLIC HEARINGS

10.1 Consideration and proposed adoption of the following:

1. Adopt a resolution recommending that the City Council approve the Mitigated Negative Declaration / Mitigation Monitoring and Reporting Program for the project, make the required findings; and
2. Adopt a resolution making specific findings and recommending City Council approve the proposed Mills Lane Storm Drain Improvements Project.

***This item was noticed to be heard at the November 9, 2021 regular City Council meeting and was subsequently continued to the December 14, 2021, January 11, 2022 and January 25, 2022, regular City Council meetings. This item is being continued again to the February 8, 2022 regular City Council meeting.**

11. OLD BUSINESS

11.1 None

12. NEW BUSINESS

12.1 Discussion and Direction Regarding Potential Ballot Measure to Eliminate a Directly Elected Mayor

Estimated start time: 6:35 p.m.

CEQA Determination: Not a CEQA project
Prepared By: Mark T. Prestwich, City Manager
Recommendation:
Discuss and provide direction to the City Manager.

City Manager Mark Prestwich reported on the item.

Pat Dell, Norma Ferriz, Nancy Dervin, and Elaine de Man addressed the City Council.

It was the consensus of the City Council to support placing a ballot measure to eliminate a directly elected Mayor with consideration of applying a rotational system for the Mayor's seat on City Council.

Council Member Hardy recommended a change in the proposed wording of the ballot question so it would read as follows: "Shall the position of a directly elected Mayor be eliminated so that the St. Helena City Council is composed of five members who select a City Council Member to be Mayor." City Attorney Ethan Walsh agreed.

Council Member Chouteau requested a resolution be brought back at the next Regular City Council meeting of February 8, 2022.

City Council called for a break at 7:45pm and reconvened the meeting at 7:51pm.

12.2 Review of FY 2022-23 Budget Calendar

CEQA Determination: Not a CEQA project
Prepared By: April Mitts, Administrative Services Director
Recommendation:
Receive and File

Administrative Services Director April Mitts reported on the item.

No public comment was received.

The report was received and filed.

12.3 City Council Meeting 2022 Calendar Discussion

CEQA Determination: Not a CEQA project
Prepared By: Cindy Tzafopoulos, City Clerk
Recommendation:
Discuss and provide direction regarding the 2022 City Council meeting schedule.

City Clerk Cindy Tzafopoulos reported on the item.

No public comment was received.

It was the consensus of the City Council to move forward with the proposed City Council Meeting 2022 Calendar. The proposed calendar includes cancelling the first regular meeting in July and the second regular meeting in December.

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

13.1 Will be added prior to the meeting.

14. ADJOURNMENT

Mayor Ellsworth adjourned the meeting at 8:02 p.m.

The regular meeting minutes of January 25, 2022 were adopted at the February 8, 2022 regular City Council meeting.

APPROVED:	**ATTEST:**
______________________________	_________________________
Geoff Ellsworth, Mayor	Cindy Tzafopoulos, City Clerk

MINUTES
City of St. Helena
Special City Council Meeting
Monday, January 31, 2022 @ 5:30 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

City Clerk Cindy Tzafopoulos noted no new changes to the agenda.

Council Member Anna Chouteau moved to move approval of the agenda. The motion was seconded by Council Member Eric Hall and on roll call carried by the following vote:

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

5. PUBLIC COMMENT:

Under California law, public comments at special meetings are limited to subjects on the agenda only. Therefore, public comment will take place during consideration of the item.

6. OLD BUSINESS:

6.1 Discussion and Direction Regarding Funding Options to Address City

Infrastructure Deficiencies Including Consideration of Potential General Obligation Bond on the June 2022 Ballot

City Manager Mark Prestwich reported on the item.

Administrative Services Director April Mitts and Del Rio Advisors Representative Ken Dieker addressed the City Council.

Arlene Corsetti, Nancy Dervin, Mark Smithers, Tom Belt and Oliver Caldwell addressed the City Council.

It was the consensus of the City Council to direct staff to bring back a draft ordinance for a general obligation bond and an edit to the City Council financial policy that allows for voter approved funding strategies at the February 8, 2022 regular City Council meeting. Staff will also bring forward the necessary resolutions to place the item on the June 7, 2022 ballot.

7. ADJOURNMENT

Mayor Ellsworth adjourned the meeting at 7:30 p.m.

The special meeting minutes of January 31, 2022 were approved at the regular meeting of February 8, 2022.

APPROVED:	**ATTEST:**
______________________________	______________________________
Geoff Ellsworth, Mayor	Cindy Tzafopoulos, City Clerk

Report to the City Council
Regular City Council - 08 Feb 2022

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and Proposed Approval of a Resolution Authorizing the Tenth Amendment to Unrepresented Compensation Program Updating Section 11.4 Sick Leave Payout.**

CEQA Determination: **Not a CEQA project**

Prepared By: April Mitts, Administrative Services Director

Reviewed By: Mark T. Prestwich, City Manager

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Compensation and benefit terms for the City's mid-managers and department directors are outlined in an "Unrepresented Compensation" program approved by the City Council. The current program was initially approved on March 8, 2016 and has has eight subsequent amendments.

DISCUSSION

On May 8, 2021, City Council approved the fourth amendment to the Unrepresented Compensation Program. At that time, Section 11.4 Sick Leave Payout was amended to reduce future unfunded liabilities and to further stabilize the City's long-term financial sustainability. The amendment discontinued the sick leave accrual incentive benefit for mid-managers and department directors after May 8, 2018.

The City of St. Helena encourages succession planning, and unintentionally included language in Amendment No. 4 that would preclude any employee moving from another bargaining group to the unrepresented group from receiving a benefit previously earned.

On February 1, 2022, the City Manager met with the unrepresented employees to share this oversight and presented recommended changes which would allow employees promoted into an unrepresented compensation position to retain previously earned sick leave balances in accordance with their prior bargaining group's MOU. The unrepresented employees supported this recommendation.

Additionally, one clean-up item is included in Section 11.4.3.

A summary of the updated language is below and Attachment 1 provides a redlined version of Section 11.4 Sick Leave Payout.

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

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

11.4.3 The City will not pay the employee upon separation in good standing from City employment for unused sick leave accrued on or after July 1, 2020. No new sick leave hours will be eligible for the conversation or payout benefits described in Section 11.4 of the Program beginning July 1, 2020. Those employees who had accrued hours eligible for this benefit on or before June 30, 2020 will have such eligible hours placed into a separate bank and will be permitted to convert them in accordance with the provisions of Section 11.4.

FISCAL IMPACT
None

RECOMMENDED ACTION
Approval of the attached Resolution.

ATTACHMENTS
Attachment 1 - 10 Tenth Amendment Unrepresented Comp Program 2022-02-08 Full Document Redlined
Attachment 2 - Tenth Amendment to Unrepresented Compensation Program 2022-02-08
Attachment 3 - Resolution Tenth Amendment Unrepresented Compensation Program MM-DH

UNREPRESENTED COMPENSATION PROGRAM
~~(Ninth~~ Tenth Amendment~~)~~

~~July 14, 2020~~February 8, 2022 – June 30, 2022

Adopted: March 8, 2016
First Amendment: June 24, 2016
Second Amendment: September 13, 2016
Third Amendment: June 27, 2017
Fourth Amendment: May 8, 2018
Fifth Amendment: October 8, 2019
Sixth Amendment: October 22, 2019
Seventh Amendment: July 14, 2020
Eighth Amendment: October 13, 2020
Ninth Amendment (inadvertently numbered as Eighth): February 9, 2021

CITY OF ST. HELENA
UNREPRESENTED EMPLOYEE COMPENSATION PROGRAM

SECTION 1: INTRODUCTION

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

1.1 Employee Definitions:

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

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

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

1.2 Purpose of the Unrepresented Employee Compensation Program:

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

1.3 Employees Covered:

Employees covered under this program shall include the following:

A. At-Will Executive Management

Administrative Services Director
Fire Chief
Library Director
Planning & Building Director
Police Chief

Public Works Director
Parks & Recreation Director
City Clerk

B. Mid-Management
Assistant Public Works Director
Chief Building Official
Library Manager
Police Lieutenant
Management Analyst
Public Works Assistant Operations Manager
Senior Management Analyst (non-Confidential)
Senior Planner
Operations Manager
Senior Engineer

C. Confidential
Assistant Administrative Services Director
Assistant to the City Manager
Human Resources Manager
Senior Management Analyst

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

1.4 Exempt Status of Employees Covered:

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

SECTION 2: EMPLOYMENT CONTRACTS

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

SECTION 3: EMPLOYMEE SALARY COMPENSATION

3.1 Annual Salary Adjustment:

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

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

3.2 Salary Schedule:

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

3.3 Confidential Pay Differential:

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

3.4 Bilingual Pay:

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

3.5 *Out-Of-Class Pay*

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

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

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

SECTION 4: RETIREMENT BENEFITS

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

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

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

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

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

4.1.3 Required Member Contributions:

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

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

4.2 Tier Two: 2% at 60 Retirement Program (Miscellaneous Group) or 3% at 55 (Safety Group) for Members Hired On or After July 1, 2012, and Before December 31, 2012, and Unit Members Qualified for Reciprocity (Tier Two Classic Members): This Section 4.2 (including subsections) shall apply to members hired on or after July 1, 2012, and before January 1, 2013. In addition, this Section 4.2 shall apply to members hired on or after January 1, 2013, who are qualified for pension reciprocity as stated in Government Code Section 7522.02(c) and related CalPERS reciprocity (Classic Member) requirements:

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

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

4.2.3 Required Member Contributions

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

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

4.3 Tier Three: 2% at 62 PEPRA Retirement Tier (Miscellaneous Group) or 3% at 57 (Safety Group) is Required For Members Hired On or After January 1, 2013 and Not Qualified For Reciprocity (Not a Classic Member):
This Section 4.3 (including subsections) shall apply to members who were hired on or after January 1, 2013, and who do not qualify for pension reciprocity (not a Classic Member) as stated in Government Code Section 7522.02(c).

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

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

4.3.3 Required Member Contributions

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

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

4.4 Cost Sharing Implementation – All Tiers:

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

4.5 Converting Sick Leave Balance:

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

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

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

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

4.8 All Provisions Subject to Requirements of Law:

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

SECTION 5: INSURANCE BENEFITS

5.1 General Provisions:

The City will pay the full cost of the employee's health insurance plan to cover both the employee and the employee's dependents. The City will pay the full cost for dental coverage for the employee and her/his dependents. When an employee commences work with the City, the effective date of coverage of his/her benefits distribution selection shall be established by the individual carrier. In most cases, coverage begins the first of the month following date of hire.

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

5.2 Life Insurance:

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

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

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

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

SECTION 6: HOLIDAYS

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

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

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

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

SECTION 7: VACATION LEAVE

7.1 Vacation Entitlement:

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

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

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

7.2 Vacation Accrual:

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

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

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

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

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

SECTION 8: EXECUTIVE LEAVE

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

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

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

If the employee is hired from:

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

SECTION 9: OTHER LEAVES OF ABSENCE

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

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

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

9.4 Industrial Accident Leave:
The City shall provide paid leave and benefits consistent with the State's Worker's Compensation laws.

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

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

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

9.7 Leave for Pregnancy, Childbirth and Related Medical Conditions (California Government Code Section 12945):
In addition to leave authorized by Section 9.6, eligible employees may take leave based on pregnancy, childbirth, or related medical conditions pursuant to California Government Code Section 12945. Generally, this leave should not exceed six (6) weeks for a normal pregnancy, childbirth, or related conditions, but may be taken for a period of up to a total of four (4) months if the employee is disabled due to pregnancy, childbirth, or other medical conditions. The need for leave beyond six (6) weeks due to disability shall be verified in writing by the employee's physician. The employee may use accrued leave balances during leave taken pursuant to this Section. If the period of leave exceeds the employee's accrued leave balances, the balance of the leave shall be taken as unpaid leave.

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

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

SECTION 10: TRAINING AND PROFESSIONAL GROWTH

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

10.2 Professional Membership Fees:
Most At-will Executive Management, Mid-Management, and Confidential personnel are expected to maintain membership in appropriate professional organizations. These memberships serve to acquaint the City with the current state-of-the-art in these

professional areas by means of publications and special activities. The City will include the costs of these membership fees in the respective department budgets, subject to approval by the City Manager.

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

SECTION 11: OTHER BENEFITS

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

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

11.3 Health Club Membership:
The City will pay a one-time membership fee of $25.00 towards employee enrollment in a health clubs.

11.4 Sick Leave Payout:

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

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

11.4.3 The City will not pay the employee upon separation in good standing from the City employment for unused sick leave accrued on or after July 1, 2020. No new sick leave hours will be eligible for the conversion or payout benefits described in Section 11.4 of the Program beginning July 1, 2020. Those employees who had accrued hours eligible for this benefit on or before June 30, 2020 will have such eligible hours placed into a separate bank and will be permitted to ~~be~~ convert them in accordance with the provisions of Section 11.4.

11.5 St. Helena Charity Based Events:
In recognition of the importance of being engaged with the St. Helena community, Unrepresented Employees are eligible to be reimbursed for charity event tickets related to their employment. To be eligible for reimbursement, the event must be held within the County of Napa and directly benefit the St. Helena community. Event tickets may be purchased only for the employee up to a total reimbursable amount of $750.00 per calendar year.

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

SECTION 12: TERMINATION ALLOWANCE

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

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

Tenth Amendment to Unrepresented Compensation Program

Between

CITY OF ST. HELENA AND MID-MANAGER AND DEPARTMENT HEADS

As authorized by the City Council through Resolution 2022-__, approved on February 8, 2022, this Tenth Amendment to the Unrepresented Compensation Program Dated March 8, 2016 is made and effective February 8, 2022 between the City of St. Helena ("City"), a municipal corporation (City) and Mid-Managers and Department Heads ("Employee"), collectively "the Parties."

RECITALS

WHEREAS, on March 8, 2016, City Council approved Resolution 2016-36 establishing a new Unrepresented Compensation Program for Mid-Managers and Department Heads with an effective date from March 8, 2016 through December 31, 2016; and

WHEREAS, on June 14, 2016, City Council approved Resolution 2016-75 Amendment No. 1 to the Unrepresented Compensation Program for Mid-Managers and Department Heads authorizing at-will executive staff up to an additional 40 hours of executive leave annually; and

WHEREAS, on September 13, 2016, City Council approved Resolution 2016-124 Amendment No. 2 to the Unrepresented Compensation Program for Mid-Managers and Department Heads to amend Section 8 to include the Assistant Public Works Director position as an eligible position to receive 40 additional hours of executive leave per the same conditions as at-will executive positions; and

WHEREAS, on June 27, 2017, City Council approved Resolution 2017-93 Amendment No. 3 to the Unrepresented Compensation Program for Mid-Managers and Department Heads: (1) extending the term of the program to end on December 31, 2017 and (2) updating Section 1.3.B. to include the Utilities Operations Manager as an eligible position; and

WHEREAS, on May 8, 2018, City Council approved Resolution 2018-57 Amendment No. 4 to the Unrepresented Compensation Program for Mid-Managers and Department Heads: (1) covering the period of January 1, 2018 through June 30, 2020, (2) adding Section 3.5 Out-of-Class Pay, (3) amending Section 7.2 Vacation Accrual and Section 7.3 Vacation Usage, (4) updating Section 11.1 Vehicle Reimbursement to $200 per month in accordance with the change to bi-weekly pay schedule, (5) updating section 11.2 Deferred Compensation Plan match to $200 per month in accordance with the change to bi-weekly pay schedule, (6) amending Section 11.4 Sick Leave Payout, and (7) addition of Section 11.6 Uniform Allowance; and

WHEREAS, on October 8, 2019, City Council approved Resolution 2019-119 Amendment No. 5 to the Unrepresented Compensation Program for Mid-Managers and Department Heads to amend Section 8 to include the Assistant to the City Manager position as an eligible position to receive 40 additional hours of executive leave per the same conditions as at-will executive positions and to amend Section 1.3.C. to include the Assistant to the City Manager; and

WHEREAS, on October 22, 2019, City Council approved Resolution 2019-126 Amendment No. 6 to the Unrepresented Compensation Program for Mid-Managers and Department Heads to update Section 1.3 Covered Employees with new classification recommendations based on a classification and compensation study; and

WHEREAS, on July 14, 2020, as a result of the COVID-19 pandemic's impact on the City's finances, City Council approved Resolution 2020-79 Amendment No. 7 to the Unrepresented Compensation Program for Mid-Managers and Department Heads temporarily amending Section 3, Section 7.2, Section 10.3, Section 11.2, Section 11.5, and Section 11.5, adding Section 13, and extending the term of the Program to June 30, 2022; and

WHEREAS, on October 13, 2020, City Council approved Resolution 2020-102 Amendment No. 8 to include the Senior Engineer classification as a covered employee under Section 1.3 of the Unrepresented Compensation Program; and

WHEREAS, on February 9, 2021, City Council approved Resolution 2021-19 Amendment No. 9 (inadvertently numbered as Amendment No. 8) to the Unrepresented Compensation Program for Mid-Managers and Department Heads which, upon the retirement of the HR/IT Director: (1) reorganized personnel positions, roles, and responsibilities consolidating the HR/IT and Finance Departments into a new Administrative Services Department with the Administrative Services Director assuming the responsibilities prescribed in SHMC Chapter 2.24 Director of Finance/Treasurer; (2) included the Human Resources Manager classification as a covered employee under Section 1.3; (3) removed the HR/IT Director and Finance Director classifications as covered employees; (4) included the Administrative Services Director and Assistant Administrative Services Director as covered employees under Section 1.2; and (5) updated Section 8 to include the Assistant Public Works Director, as authorized through Resolution 2016-124, and Assistant Administrative Services Director as eligible to receive up to another five days of Executive Leave annually at the discretion of the City Manager provided on July 1st of each year; and

WHEREAS, on May 8, 2021, City Council approved the fourth amendment to the Unrepresented Compensation Program which included an amendment to Section 11.4 Sick Leave Payout that reduced future unfunded liabilities and further stabilized the City's long-term financial sustainability; and

WHEREAS, the fourth amendment discontinued the leave accrual incentive benefit for mid-managers and department directors after May 8, 2018; and

WHEREAS, the City encourages succession planning, and unintentionally included language in the fourth amendment precluding any employee moving from another bargaining group to the Unrepresented Group from receiving a benefit previously earned; and

WHEREAS, the City desires to update the language to allow employees promoted into the Unrepresented Compensation Program to retain previously earned sick leave balances in accordance with their bargaining group's MOU; and

NOW, THEREFORE, inconsideration of the mutual premises, covenants and conditions herein contained, the Parties agree to amend the Unrepresented Compensation Program as follows:

<u>Section 11.4 Sick Leave Payout</u>

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

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

11.4.3 The City will not pay the employee upon separation in good standing from City employment for unused sick leave accrued on or after July 1, 2020. No new sick leave hours will be eligible for the conversation or payout benefits described in Section 11.4 of the Program beginning July 1, 2020. Those employees who had accrued hours eligible for this benefit on or before June 30, 2020 will have such eligible hours placed into a separate bank and will be permitted to convert them in accordance with the provisions of Section 11.4.

All other terms of the Unrepresented Compensation Program shall remain in full force and effect.

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

CITY OF ST. HELENA
A Municipal Corporation

By:__________________________
Mark T. Prestwich
City Manager

By: _________________________
Cindy Tzafopoulos
City Clerk

Approved as to Form:

By: _________________________
Ethan Walsh, City Attorney

CITY OF ST. HELENA

RESOLUTION NO. 2022-___

APPROVING THE TENTH AMENDMENT OF THE UNREPRESENTED COMPENSATION PROGRAM FOR MID-MANAGERS AND DEPARTMENT HEADS EFFECTIVE FEBRUARY 8, 2022 UPDATING SECTION 11.4 SICK LEAVE PAYOUT ALLOWING EMPLOYEES PROMOTED INTO AN UNREPRESENTED COMPENSATION POSITION TO RETAIN PREVIOUSLY EARNED SICK LEAVE BALANCES IN ACCORDANCE WITH THEIR BARGAINING GROUP'S MOU.

RECITALS

WHEREAS, on March 8, 2016, City Council approved Resolution 2016-36 establishing a new Unrepresented Compensation Program for Mid-Managers and Department Heads with an effective date from March 8, 2016 through December 31, 2016; and

WHEREAS, on June 14, 2016, City Council approved Resolution 2016-75 Amendment No. 1 to the Unrepresented Compensation Program for Mid-Managers and Department Heads authorizing at-will executive staff up to an additional 40 hours of executive leave annually; and

WHEREAS, on September 13, 2016, City Council approved Resolution 2016-124 Amendment No. 2 to the Unrepresented Compensation Program for Mid-Managers and Department Heads to amend Section 8 to include the Assistant Public Works Director position as an eligible position to receive 40 additional hours of executive leave per the same conditions as at-will executive positions; and

WHEREAS, on June 27, 2017, City Council approved Resolution 2017-93 Amendment No. 3 to the Unrepresented Compensation Program for Mid-Managers and Department Heads: (1) extending the term of the program to end on December 31, 2017 and (2) updating Section 1.3.B. to include the Utilities Operations Manager as an eligible position; and

WHEREAS, on May 8, 2018, City Council approved Resolution 2018-57 Amendment No. 4 to the Unrepresented Compensation Program for Mid-Managers and Department Heads: (1) covering the period of January 1, 2018 through June 30, 2020, (2) adding Section 3.5 Out-of-Class Pay, (3) amending Section 7.2 Vacation Accrual and Section 7.3 Vacation Usage, (4) updating Section 11.1 Vehicle Reimbursement to $200 per month in accordance with the change to bi-weekly pay schedule, (5) updating section 11.2 Deferred Compensation Plan match to $200 per month in accordance with the change to bi-weekly pay schedule, (6) amending Section 11.4 Sick Leave Payout, and (7) addition of Section 11.6 Uniform Allowance; and

WHEREAS, on October 8, 2019, City Council approved Resolution 2019-119 Amendment No. 5 to the Unrepresented Compensation Program for Mid-Managers and

Department Heads to amend Section 8 to include the Assistant to the City Manager position as an eligible position to receive 40 additional hours of executive leave per the same conditions as at-will executive positions and to amend Section 1.3.C. to include the Assistant to the City Manager; and

WHEREAS, on October 22, 2019, City Council approved Resolution 2019-126 Amendment No. 6 to the Unrepresented Compensation Program for Mid-Managers and Department Heads to update Section 1.3 Covered Employees with new classification recommendations based on a classification and compensation study; and

WHEREAS, on July 14, 2020, as a result of the COVID-19 pandemic's impact on the City's finances, City Council approved Resolution 2020-79 Amendment No. 7 to the Unrepresented Compensation Program for Mid-Managers and Department Heads temporarily amending Section 3, Section 7.2, Section 10.3, Section 11.2, Section 11.5, and Section 11.5, adding Section 13, and extending the term of the Program to June 30, 2022; and

WHEREAS, on October 13, 2020, City Council approved Resolution 2020-102 Amendment No. 8 to include the Senior Engineer classification as a covered employee under Section 1.3 of the Unrepresented Compensation Program; and

WHEREAS, on February 9, 2021, City Council approved Resolution 2021-19 Amendment No. 9 (inadvertently numbered as Amendment No. 8) to the Unrepresented Compensation Program for Mid-Managers and Department Heads which, upon the retirement of the HR/IT Director: (1) reorganized personnel positions, roles, and responsibilities consolidating the HR/IT and Finance Departments into a new Administrative Services Department with the Administrative Services Director assuming the responsibilities prescribed in SHMC Chapter 2.24 Director of Finance/Treasurer; (2) included the Human Resources Manager classification as a covered employee under Section 1.3; (3) removed the HR/IT Director and Finance Director classifications as covered employees; (4) included the Administrative Services Director and Assistant Administrative Services Director as covered employees under Section 1.2; and (5) updated Section 8 to include the Assistant Public Works Director, as authorized through Resolution 2016-124, and Assistant Administrative Services Director as eligible to receive up to another five days of Executive Leave annually at the discretion of the City Manager provided on July 1st of each year; and

WHEREAS, on May 8, 2021, City Council approved the fourth amendment to the Unrepresented Compensation Program which included an amendment to Section 11.4 Sick Leave Payout that reduced future unfunded liabilities and further stabilized the City's long-term financial sustainability; and

WHEREAS, the fourth amendment discontinued the leave accrual incentive benefit for mid-managers and department directors after May 8, 2018; and

WHEREAS, the City encourages succession planning, and unintentionally included language in the fourth amendment precluding any employee moving from another bargaining group to the Unrepresented Group from receiving a benefit previously earned; and

WHEREAS, the City desires to update the language to allow employees promoted into the Unrepresented Compensation Program to retain previously earned sick leave balances in accordance with their bargaining group's MOU; and

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

1. In consideration of the mutual premises, covenants and conditions herein contained, the Parties agree to amend the Unrepresented Compensation Program as follows:

Section 11.4 Sick Leave Payout

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

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

11.4.3 The City will not pay the employee upon separation in good standing from City employment for unused sick leave accrued on or after July 1, 2020. No new sick leave hours will be eligible for the conversation or payout benefits described in Section 11.4 of the Program beginning July 1, 2020. Those employees who had accrued hours eligible for this benefit on or before June 30, 2020 will have such eligible hours placed into a separate bank and will be permitted to convert them in accordance with the provisions of Section 11.4.

Approved at a Regular Meeting of the St. Helena City Council on February 8, 2022, 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 - 08 Feb 2022

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and proposed approval of a resolution approving Amendment No. 2 STH Contract: FY2021-083 with 4Leaf, Inc. in an amount of $3,000 for a total not-to-exceed amount of $62,890 for 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).

As the water emergency continued, the City continued to have a need for Water Regulation Code Enforcement and Outreach services. On September 14, 2021, City Council authorized Amendment No. 1 to the 4Leaf contract by an additional $35,000 for a total not-to-exceed amount of $59,890 (Attachment 2).

DISCUSSION

Amendment No. 1 to the agreement enabled the City to retain the services of 4Leaf through early December 2021. Upon exhaustion of funds, the City provided notification of the end of the contract. Once notified, it was necessary for 4Leaf to finalize current projects and provide a de-brief to staff. This incurred an additional 24-hours of work beyond the contracted amount.

Staff recommends City Council authorize Amendment No. 2 to the agreement by an additional $3,000 for a total not-to-exceed amount of $62,890 for payment of the final invoice.

FISCAL IMPACT
Approval of Amendment No. 2 for $3,000 will bring the total not-to-exceed contract amount to $62,890. A budget adjustment is not necessary as funds for this amendment can absorbed in the current adopted budget.

RECOMMENDED ACTION
Approve the attached resolution.

ATTACHMENTS
Attachment 1 - STH Contract FY2021-083 4Leaf Water Regulations Compliance
Attachment 2 - STH Contract FY2021-083-01A 09-14-21 4LEAF
Attachment 3 - STH Contract FY2021-083 Amendment #2
Attachment 4 - Resolution 4Leaf Amendment 2

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.

STH Contract FY2022-023

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: 4LEAF, Inc.

Signatures of Authorized Persons:

By: ______________________

Print Name: Kevin Duggan

Title: President

CITY OF ST. HELENA
a Municipal Corporation

By: Mark T. Prestwich Digitally signed by Mark T. Prestwich Date: 2021.10.27 09:30:19 -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: 2021.10.27 06:34:07 -07'00'

City Attorney

ATTEST:

Cindy Tzafopoulos Digitally signed by Cindy
Tzafopoulos
Date: 2021.10.28 14:17:04 -07'00'

City Clerk

AMENDMENT #2
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 $3,000 FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED $62,890.

This Second Amendment to Professional Services Agreement STH Contract: FY2021-083 dated May 04, 2021 ("Agreement") is made as of this 8th day of February, 2022 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. On September 14, 2021, City Council authorized Amendment No. 1 for an additional $35,000 for a total not-to-exceed amount of $59,890 to continue to provide support; and

C. Amendment No. 1 enabled the City to retain the services of 4Leaf through early December and, upon exhaustion of funds, the City provided notification of the end of the contract; and

D. Once notified, it was necessary for 4Leaf to finalize current projects and provide a de-brief to staff, which incurred additional costs; and

C. City and Consultant desire to amend the agreement to increase the contract amount by $3,000 for a not-to-exceed amount of $62,890 for payment of the final invoice.

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 $62,890…"

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

CITY OF ST. HELENA

RESOLUTION NO. 2022-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA AUTHORIZING: AMENDMENT NO. 2 TO STH CONTRACT: FY2021-083 WITH 4LEAF, INC. IN AN AMOUNT OF $3,000 FOR A TOTAL NOT-TO-EXCEED $62,890 FOR 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 continued, the City has found the work performed by 4Leaf very beneficial during the water emergency; and

WHEREAS, On September 14, 2021, City Council authorize Amendment No.1 for an additional $35,000 for a total not-to-exceed amount of $59,890 to continue to provide support; and

WHEREAS, Amendment No. 1 of the agreement enabled the City to retain the services of 4Leaf through early December and upon exhaustion of funds, the City provided notification of the end of the contract; and

WHEREAS, Once notified, it was necessary for 4Leaf to finalize current project and provide a de-brief to staff, which incurred additional costs; and

WHEREAS, City and Consultant desire to amend the agreement for an additional $3,000 for a not-to-exceed amount of $62,890 for payment of the final invoice.

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 No. 2 to STH Contract: FY2021-083 with 4Leaf, Inc. for an additional $3,000 for a total not-to-exceed amount of $62,890.

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 February 8, 2022, 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 - 08 Feb 2022

Agenda Section: **CONSENT ITEMS**

Subject: **Adoption of Resolution Making Findings and Determinations under AB 361 for the Continuation of Virtual Meetings.**

CEQA Determination: **Not a CEQA project**

Prepared By: Ethan Walsh, City Attorney

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On March 17, 2020, in the face of the COVID-19 pandemic, Governor Gavin Newsom issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings completely telephonically or by other electronic means.

The provisions in the Brown Act that were suspended by the Governor's Executive Order are contained at Government Code Section 54953(b)(3) and require that when teleconferencing is used, outside of a statewide emergency, that the following occur:

- An agenda is required to be posted at all locations, including any teleconference locations
- Each teleconference location must be identified on the actual agenda
- Each teleconference location shall be accessible to the public
- A quorum of the legislative body must be in the jurisdiction

With the Governor's Executive Order, the four above requirements were suspended. This allowed City Council and all other meetings of legislative bodies of the City to be conducted by Zoom with councilmembers, commission members, committee members, and staff all joining from remote locations.

The suspension of certain Brown Act provisions was further extended by the Governor on June 11, 2021 through the issuance of Executive Order N-08-21, which continued to allow for complete virtual meetings until September 30, 2021.

With the Governor's Executive Order expiring at the end of September 2021, the State Legislature adopted Assembly Bill 361. On September 16, 2021, the Governor signed AB 361, which allowed legislative bodies to meet virtually provided there was a state of emergency declared by the Governor, and either (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees, subject to certain ongoing findings by the legislative body.

AB 361 also preserves many of the provisions of the earlier executive orders, including the suspension of the four teleconferencing requirements noted above, while also adding new requirements to the management of remote and teleconference public meetings in order to better achieve the levels of transparency that the Brown Act demands. Specifically, AB 361 imposes two new rules on remote public meetings:

1. Local governments and agencies hosting teleconference meetings in lieu of traditional in-person public meetings must permit direct public comment during the teleconference, and must leave open the opportunity for public comment until the comment period for a given item is closed during the ordinary course of the meeting. The opportunity to make public comment must be of a sufficient duration so as to allow actual public participation. The City already complies with this requirement, so it presents no change to our current practice.
2. Any action by the governing body during a public teleconference meeting must occur while the agency is actively and successfully broadcasting to members of the public through a call-in option or an internet-based service option. If a technical disruption within the agency's control prevents members of the public from either viewing the meeting of the public agency, or prevents members of the public from offering public comment, the agency must cease all action on the meeting agenda until the disruption ends and the broadcast is restored. Action taken during an agency-caused disruption may be challenged as a violation of the Brown Act.

The City Council held its first virtual meeting based on the conditions set forth in AB 361 on October 12, 2021. In order to continue to qualify for AB 361's waiver of in-person meeting requirements, the City Council must, within every 30 days of its first meeting under AB 361, make findings that (a) state or local officials recommend measures to promote social distancing, or that (b) an in-person meeting would constitute an imminent risk to the safety of attendees. State officials at Cal-OSHA have, through the adoption of certain regulations, recommended measures to promote social distancing throughout the State. Additionally, Napa County Public Health Officer Dr. Karen Relucio has, through a memo dated September 27, 2021, recommended the continuance of virtual meetings at the present time as a means of promoting social distancing in order to minimize the spread and transmission of COVID-19 in Napa County.

It is important to note that AB 361 does not require the City to continue with virtual meetings, but simply gives the Council that option. If at any time the City Council desires to return to in-person meetings, the Council can agendize that topic for discussion and direct staff to initiate the transition back to in-person or hybrid meetings; however, at this time City staff is recommending adoption of the resolution to allow City Council and all other Commission, Committee, and other Brown Act meetings to continue to be held remotely in order to ensure social distancing consistent with the recommendations of State and local officials.

At the September 28, 2021 regular City Council meeting, the City Council had a discussion item and considered whether to meet in person or continue virtual meetings. It was the consensus of the City Council to continue with the Zoom meeting platform until staff is relocated to Napa Valley College.

DISCUSSION

The City Council held its first virtual meeting based on the conditions set forth in AB 361 on October 12, 2021. The City Council reconsidered and adopted findings by resolution to continue meeting virtually on November 23, 2021, December 14, 2021 and January 11, 2022. This is being reconsidered on February 8, 2022.

The enclosed resolution makes the necessary findings for the City Council and all subordinate legislative bodies of the City that are subject to the Brown Act to continue with virtual meetings for the time being. City staff will return to the City Council with a resolution every 30 days to allow for the continuance of virtual meetings for so long as Council and staff believes that virtual meetings are necessary.

FISCAL IMPACT

There is no fiscal impact.

RECOMMENDED ACTION

Approve the Attached Resolution Making Findings and Determinations Under AB 361.

ATTACHMENTS

Resolution AB361

CITY OF ST. HELENA

RESOLUTION NO. 2022-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA MAKING FINDINGS AND DETERMINATIONS UNDER AB 361 FOR THE CONTINUATION OF VIRTUAL MEETINGS

WHEREAS, the Ralph M. Brown Act (Gov. Code § 54950 *et seq.*) generally requires local agencies meeting via teleconference, including through other virtual or electronic means to, among other things, provide public access at each location in which members of the legislative body are teleconferencing; and

WHEREAS, the Legislature recently enacted Assembly Bill 361 (AB 361), which amended Government Code section 54953 to allow local agencies to meet fully virtually, without fully adhering to the rules otherwise applicable to teleconferencing, during a proclaimed state of emergency if state or local officials have imposed or recommended measures to promote social distancing; and

WHEREAS, the Governor issued a proclamation declaring a state of emergency on March 4, 2020 due to the COVID-19 pandemic, pursuant to section 8625 of the California Emergency Services Act, and this proclaimed state of emergency currently remains in effect; and

WHEREAS, state or local officials continue to recommend measures to promote social distancing to prevent the spread of COVID-19, and in particular, Cal-OSHA regulation 3205 recommends physical distancing in the workplace generally and regulates a “close contact,” defined as being within 6 feet of another under certain circumstances, and Napa County Health Officer Dr. Karen Relucio has recommended that local public agencies refrain from holding in person public meetings, as a means of promoting social distancing; and

WHEREAS, the continuation of virtual meetings will allow for full participation by members of the public and compliance with the recommendations of state and local officials with regard to social distancing; and

WHEREAS, the City Council of the City of St. Helena desires that all City legislative bodies continue to hold virtual meetings pursuant to AB 361 and Government Code section 54953(e).

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 has reconsidered the circumstances of the state of emergency.

SECTION 3. As stated in the recitals, state or local officials continue to recommend measures to promote social distancing.

SECTION 4. The City Council and all other legislative bodies of the City of St. Helena who are required to hold public meetings shall continue to meet virtually in accordance with Government Code section 54953(e) and without compliance with section 54953(b)(3), based upon the findings and determinations hereby made by the City Council.

Approved at a Regular Meeting of the St. Helena City Council on February 8, 2022, 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 - 08 Feb 2022

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and proposed approval of a resolution approving Amendment No. 1 STH Contract: FY2021-066 with Accent on Language in an amount of $10,000 for a total not-to-exceed amount of $41,000 for interpretation services.**

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
Beginning at the October 22, 2020 Special City Council Meeting on Racial and Social Justice, City Council and Planning Commission meetings have offered live simultaneous interpretation services in Spanish over the Zoom platform. The City currently receives these services from Accent on Languages, a firm specialized in language interpretation and translation services. Staff learned about this firm from the St. Helena Unified School District.

DISCUSSION
Accent on Languages provides specialized linguistic services to State and Federal US Government agencies since 1997. The interpreters are certified in interpretation for the services they provide (i.e. HIPPA Compliant, or certified for interpretation in court depositions).

During City Council and Planning Commission meetings, attendees can listen to the meetings in Spanish simultaneously (this is the interpretation of words while they are spoken). In addition, attendees can also make public comment in Spanish, which can be translated consecutively from English to Spanish (the interpreter will interpret after and not while the speaker speaks).

At the recommendation of the St. Helena School District, the City retained the services of Accent on Languages to provide translations services and is currently being invoiced utilizing an hourly rate per session. The City has established an excellent working relationship with Accent on Languages, and the two assigned interpreters who attend the City's assigned meetings. Staff is pleased with their services and recommends an amendment to the current agreement for continued services, but on a reservation basis going forward. Accent on Languages also offers in person interpretation services if necessary.

The City Council has identified language access as a part of its commitment to diversity, equity, and inclusion, which is consistent with one of the City Council directed three-year goals.

Currently, Zoom does not offer any metrics on how many individuals are utilizing the interpretation service, and staff has reached out to the Zoom account representative to request this metric be developed and tracked. To date the interpreters have not interacted virtually with any attendee desiring to provide public comment, but this does not indicate no attendees were present.

Staff recommends Council approve this resolution for the amendment and migrate interpretation services to a reservation system for simultaneous interpretation in Spanish at Regular and Special City Council and Regular Planning Commission meetings when it is requested. Staff recommends community members make a request for a reservation with the City Clerk at least 72 hours prior to a meeting.

FISCAL IMPACT
Amendment No. 1 is in an amount of $10,000 for a total not-to-exceed contract amount of $41,000. Funds for services are included in the adopted FY 2021-22 budget.

RECOMMENDED ACTION
Adopt the attached resolution.

ATTACHMENTS
Attachment 1- STH Contract: FY2021-066 Accent on Languages
Attachment 2 - Amendment No. 1 STH Contract FY2021-066-001A PSA Accent on Languages
Attachment 3 - Amendment No. 1 AOL Resolution

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on March 9, 2021 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Accent on Languages (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as interpretation services for the City of St. Helena.

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

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

SECTION 1 – BASIC SERVICES

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

SECTION 2 – ADDITIONAL SERVICES

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

SECTION 3 – TIME FOR COMPLETION

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

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in Exhibit A, "Compensation" attached hereto and made a part hereof. Total compensation shall not exceed $31,000 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.

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

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

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

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

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

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

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

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

SECTION 11 – OWNERSHIP OF DOCUMENTS

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

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

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

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

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

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

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

SECTION 13 – SUSPENSION OF WORK

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

SECTION 14 – COMPLIANCE WITH LAW

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

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

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

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

B. Nondiscrimination Civil Rights Act of l964. Consultant will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

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

SECTION 16 – COMPLIANCE WITH CALIFORNIA LABOR CODE REQUIREMENTS

A. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

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

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

SECTION 17 – AUDIT AND INSPECTION OF RECORDS

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

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

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

SECTION 18 – LIMITATION OF LIABILITY

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

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

SECTION 19 – COOPERATION BY CITY

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

SECTION 20 – NOTICES

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

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

To Consultant: Accent on Languages
2418 5th Street Suite B
Berkeley, CA 94710
Ph (510) 644-9470

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

SECTION 21 – TERMINATION

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

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

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

SECTION 22 – ATTORNEYS' FEES

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

SECTION 23 – ENTIRE AGREEMENT

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

SECTION 24 – SUCCESSORS AND ASSIGNS

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

SECTION 25 – CONTINUITY OF PERSONNEL

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

SECTION 26 – DEFAULT

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

SECTION 27 – WAIVER

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

SECTION 28 – LAW TO GOVERN; VENUE

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

SECTION 29 – SEVERABILITY

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

SECTION 30 – THIRD PARTY BENEFICIARIES

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

SECTION 31 – STATUTES OF LIMITATION

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

SECTION 32 – SPECIAL PROVISIONS

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

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

Consultant:

By: ______________________

Name: Eduardo P. Martinez, Director

Title: 3/2/2021

City:

By: Mark T. Prestwich Digitally signed by Mark T. Prestwich Date: 2021.03.15 13:10:13 -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: 2021.03.23 16:15:26 -07'00'

Name: Ethan Walsh

Title: City Attorney

Accent on Languages
TECHNICAL & BUSINESS TRANSLATORS AND INTERPRETERS

CITY OF ST. HELENA

ATTACHMENT TO CONSULTANT AGREEMENT

RATE SHEET 2021

Written Translation Services

Spanish: $0.18/word; **Simplified Chinese:** $0.22; **all other languages:** $0.29, consult with PM.

Formatting services: $68/hour.

Minimum charge for written translation services: $100 per job, or $100 per language if the assignment is multi-language.

Interpreting Services

All services will be paid upon invoice. Rates are per hour and per interpreter. All interpreting services have a two (2) hour minimum charge. Mileage if applicable billed at government rate.

(*) ASL services over one (1) hour long will require a team of at least two (2) ASL interpreters. VRI services might require a team of at least two (2) interpreters for appointments during more than 30 minutes.

Hourly rates for simultaneous interpretation (during presentations/conferences/events) and/or other specialty interpretation services differ by language as follows:

- **Spanish: $130**
- **Category I: $135 –** Armenian, Dari, Farsi (Persian), French, Khmer (Cambodian), Gujarati, Hindi, Japanese, Korean, Malay, Marathi, Pashto, Portuguese, Punjabi, Russian, Urdu and Vietnamese.
- **Category II: $160 –** Arabic, Cantonese, Mandarin, Tagalog
- **Category III - All other languages: $180**
- **American Sign Language [ASL] (*): $160**
- **Video remote interpreting: foreign languages $130 | ASL $160**

Services should be scheduled with at least 48 hours notice. Cancellation that is not placed and acknowledged by Accent on Languages at least two (2) business days before the date of the booking will be charged for the full scheduled time.

Audio Equipment Rental

The following items are available for rented use during events:

- **Receivers** (for audience members) **- $8 per unit & day** (includes earphones)
- **Transmitters** (for interpreters) **- $60 per unit & day** (includes earpiece and microphone)
- **Additional equipment available:** amplifiers, microphones, mixers, cables/accessories, interpreters' booth, etc. Please contact our Project Managers for more information.

Shipping fees are incurred if an in-person pick-up at our Berkeley offices cannot be arranged. Replacement fees for damaged/lost/stolen equipment apply.

ACCENT ON LANGUAGES, INC.
2418 5th Street Suite B, Berkeley (CA) 94710
Ph. (510) 644-9470 ◆ FAX 1 (844) 308-9396
info@accentonlanguages.com ◆ www.accentonlanguages.com

AMENDMENT #1

THIS PROFESSIONAL SERVICES AGREEMENT WITH Accent on Language; STH CONTRACT No: FY2021-066, FOR INTERPRETATION SERVICES FOR AN ADDITIONAL $10,000 FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED $41,000.

This first amendment to Professional Services Agreement STH Contract: FY2021-066 dated March 9, 2021 (“Agreement”) is made as of this 8th day of February, 2022 by and between the City of St. Helena, a municipal corporation (“City”), and Accent on Language (“Consultant”).

RECITALS:

A. On March 9, 2021 the City employed Consultant to furnish professional services in connection with the project described as interpretation services for the City of St. Helena.

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

C. City and Consultant desire to amend the agreement to increase the contract by $10,000 for a not-to-exceed amount of $41,000 for the payment of the final invoice.

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 $41,000…”

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

Entered as of the day and year first above stated.

Consultant:

By: ___________________________________

Name: ________________________________

Title:___________________________________

Approved as to Form:

By: ___________________________________
Name: Ethan Walsh
Title: City Attorney

ATTEST:

By: ___________________________________
Name: Cindy Tzafopoulos
Title: City Clerk

City:

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

CITY OF ST. HELENA

RESOLUTION NO. 2022 -

Resolution of the City Council of the City of St. Helena authorizing the City Manager to execute Amendment No. 1 in an amount of $10,000 to STH Contract: FY2021-066 a Professional Services Agreement with Accent on Languages for Interpretation Services for an amount not-to-exceed $41,000.

RECITALS

A. The City Council has identified language access as a part of the commitment to diversity, equity and inclusion, which is listed on the three-year goals, and;

B. Accent on Languages provides specialized linguistic services to State and Federal US Government agencies since 1997, and;

C. During City Council and Planning Commission meetings, attendees can listen to meetings in Spanish simultaneously and attendees can make public comment in Spanish, which can be translated consecutively from English to Spanish; and

D. The City and Consultant desire to amend the agreement for an additional $10,000 for a not-to-exceed amount of $41,000 for payment of the final invoice; and

E. Interpretation services will transition to reservation only for meetings after February 8, 2022. Reservations must be made with the City Clerk at least 72 hours in advance.

RESOLUTION

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

1. The above recitals are true and correct and are incorporated herein by this reference.
2. Adoption of this resolution is not subject to CEQA; and
3. Authorizes the City Manager to execute Amendment No. 1 STH Contract: FY2021-066 a Professional Services Agreement with Accent on Languages for Interpretation Services for an additional $10,000 for an amount not-to-exceed $41,000.

Approved at a Regular Meeting of the St. Helena City Council on February 8, 2022, by the following vote:

Mayor Ellsworth: __________

Vice Mayor Dohring: ___________

Councilmember Chouteau ___________

Councilmember Hall: ___________

Councilmember Hardy: ___________

APPROVED:	ATTEST:
_________________________	_________________________
Geoff Ellsworth, Mayor	Cindy Tzafopoulos, City Clerk

Report to the City Council
Regular City Council - 08 Feb 2022

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and proposed approval of a resolution: (1) approving Revision No. 3 to City Council Policy P-FI-0016 Financial Policy related to: (a) compliance with GASB Statement No. 98 updating the name, "Comprehensive Annual Financial Report" to "Annual Comprehensive Financial Report" , (b) update language related to financing Capital Improvement Projects and (2) repealing an rescinding any previous policies or administrative memoranda which are inconsistent with City Council Policy P-FI-0016 Financial Policy, Revision No. 3.**

CEQA Determination: **Exempt**

Prepared By: April Mitts, Administrative Services Director

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On November 27, 2018 City Council adopted Financial Policy P-FI-0016 which provides a structured, central repository for a variety of fiscal policies which include: General Financial Principals, Annual Operating Budget Policy, Capital Improvement Program, Revenues, Expenditures, Cash Management, Debt Management, Fund Definitions and Classifications, fund Balance Levels, Financial Reporting, and Review and Update requirements.

On February 12, 2019, City Council approved Revision No. 1 to the Policy and on September 10, 2019, City Council approved Revision No. 2.

Updates to this policy requires City Council approval.

DISCUSSION
Staff is recommending City Council approval of two updates to the current Financial Policy P-FI-016.

Compliance with GASB Statement No. 98
On October 19, 2021, the Governmental Accounting Standards Board (GASB) issued a pronouncement that changes the name of the most extensive report prepared following it standards to the Annual Comprehensive Financial Report, or ACFR. Until that time, the name applied to those reports was the Comprehensive Annual Financial Report. This name change was promoted by GASB stakeholders raising concerns that the acronym of the prior name of the report sounds like a profoundly offensive term when spoken. The changes in the name and acronym were widely supported by individuals and stakeholder groups that responded to the April 2021 Exposure Draft proposing the changes.

Statement No. 98, *The Annual Comprehensive Financial Report*, establishes the annual comprehensive financial report and ACFR in generally accepted accounting principles (GAAP) for state and local governments and eliminates the prior name and acronym. Otherwise, no changes were made to the report's structure or content.

Statement No. 98 is available on the GASB website, www.gasb.org.

Financing Capital Improvement Projects
On May 11, 2021, the City Council adopted its Three Year Goals and 2021-22 Workplan, this Work plan includes: Goal 4.B. - Prepare financing and revenue options for City Council review and consideration to address City Infrastructure deficiencies. Following this directive, the City engaged in opinion research on various revenue options.

On January 11, 2022, results of the opinion research were presented to the City Council and, based on Council direction, a workshop was held on January 24, 2022 to further discuss funding options for needed water, sewer, and storm drain infrastructure projection and for consideration of a potential General Obligation Bond (GO Bond) for the June 2022 ballot. Based on Council direction at the January 24, 2022 workshop, a secondary workshop was held on January 31, 2022 which further refined options for possible placement of a GO Bond on the June 7, 2022 ballot.

Part of the discussion included a review of the City's current Financial Policy - P-FI-0016 as it pertains to issuance of debt and Capital Improvement Programs. The current policy Section III. Policy C. Capital Improvement Program subsection 4 states, "Capital improvements that specifically benefit a fee-for-service enterprise operation (such as Water/Wastewater) are to be financed through the service fees generated within that operation and fund. Such fees should be supported by periodic updates to the related utility master plan."

Additionally, Section III. Policy G. Debt Management subsection 4.(iii) states, "total debt does not constitute an unreasonable burden to the City or its taxpayers and ratepayers."

In the current form, the Policy does not allow for other funding mechanisms in the enterprise funds to support critical infrastructure projects which are in need of short-term repair, repair in emergency circumstances, or under government regulations in which the current rate structure may not support the cost of the project or, if included in the current rate structure, may present an unreasonable burden to the City or its taxpayers and ratepayers.

Based on Council direction, Section III. Policy C. Capital Improvement Program subsection 4 is recommended to be updated as follows:

"4. Capital improvements that specifically benefit a fee-for-service enterprise operation (such as Water/Wastewater) are to be financed through the service fees generated within that operation and fund, except in the event the voters of the City approve taxes or assessments for the purpose of financing such capital improvements, in which case revenues from the voter approved taxes or assessments may also be used to finance those capital improvements. Fees charged for enterprise operations should be supported by periodic updates to the rate study prepared for those fees in accordance the California Constitution and all applicable laws.

a. Notwithstanding the above paragraph, the City recognizes there may be emergency situations where enterprise operation capital improvements may need additional funding outside of the service fee structure and outside voter authorized initiatives such as a general obligation bond. For the completion of critical enterprise capital projects, City Council may authorize use of General Fund reserves in the following situations:

- Life and safety emergencies
- Project completion is required (via mandate, cease and desist order, etc) and the current rate structure does not support the full cost to complete project."

Staff recommends City Council approve Revision No. 3 to City Council Policy P-FI-0016 Financial Policy implementing the changes discussed above. The recommended updates are included in Attachment 1 utilizing track changes and a clean version is included as Attachment 2.

FISCAL IMPACT

None

RECOMMENDED ACTION

Adopt the attached Resolution

ATTACHMENTS

Attachment 1 - P-FI-0016 Financial Policy Revision #3 redlined
Attachment 2 - P-FI-0016 Financial Policy Revision #3 clean
Attachment 3 - Resolution Amendment No. 3 to P-FI-0016 Financial Policy

	City of St. Helena Administrative Policy Finance	Policy Financial Policy
		Page 1 of 16

Title: **Financial Policy**		Policy #	P-FI-0016
		Revision #	Revision #~~2~~3
		Implementation Date	2019-09-10
		Last Update Date	2019-09-10
Approval by City Council	September 10, 2019	Date Approved	2018-11-27

I. Purpose, Overview and Scope of this Policy

This document establishes policies of overall financial management, budget development, and fiscal administration for the City of St. Helena. Included herein are statements and principles designed to guide the City in maintaining its financial stability and delivering high-quality services to the public.

Formally adopted financial policies assist elected officials and City staff in the development of fiscal management practices, save time, and provide structure for financial decisions, promote public confidence, enhance transparency, and provide continuity over time. These policies will be updated periodically, but are designed with a long-term perspective and provide the basic framework and road map for addressing a wide variety of financial and economic conditions that the City will encounter. A fiscal policy supports long-term planning and enhances the City's effectiveness in implementing long-term strategies to deliver efficient public services.

This document provides a structured, central repository for a variety of fiscal policies which are organized into the following categories:

A. General Financial Principles
B. Annual Operating Budget Policy
C. Capital Improvement Program
D. Revenues
E. Expenditures
F. Cash Management
G. Debt Management
H. Fund Definitions
I. Fund Balance Classifications
J. Fund Balance Levels
K. Financial Reporting
L. Review and Update

II. Authority

Updates to this policy require City Council approval.

III. Policy

A. General Financial Principals

It is the overall policy of the City of St. Helena to build upon a sound conceptual framework to:

1. Manage its financial resources in a responsible and prudent manner.
2. Provide financial information in a relevant, thorough and timely manner, and in a format that effectively communicates financial status to the Council, citizens, and City employees.
3. Establish and maintain prudent fund balance levels.
4. Maintain financial reporting in compliance with current governmental accounting standards.
5. Promote and implement a relevant and strong system of internal financial controls to manage significant risks and monitor the reliability and integrity of financial and operating reporting.
6. Promote constructive and proactive financial decision making that includes, and is responsive to, citizens input and guidance.
7. Integrate long-term operating and capital resources planning into the annual budget process.
8. Allow for uncertainties and maintain a posture of financial flexibility.
9. Develop programs in a manner that support the City's long-term ability to cover costs and provide the level and quality of service expected by its citizens.
10. Manage debt responsibly.
11. Establish and implement investment policies in accordance with City code and State law.

B. Annual Operating Budget Policy

1. Adoption of Annual Operating Budget
    a. Per Municipal Code 2.12.060.B.9, the City Manager supervises the preparation of a detailed, proposed municipal budget and submit the same to the Council on or before May 15th of each year, and to offer their recommendations as to such increases, decreases, cancellations, transfers, or changes in any of the items included in the proposed budget as in their judgment should be made before the adoption of the budget.
    b. An annual operating budget will be adopted by the City Council no later than June 30th of each fiscal year. The budget will include appropriations that provide expenditure authority to public officials responsible for operating their respective departments to fulfill obligations to provide public services as delegated by the City Council.

c. Funds may not be expended for a new fiscal year until the budget for that fiscal year has been adopted by City Council or special provisions have been adopted by the City Council.

d. The budget presented must be balanced, which is when total projected expenditures do not exceed total estimated revenues. If projected expenditures exceed total estimated revenues, , City Council may approve a planned use of accumulated fund balances in prior years for inclusion in the budget.

e. The City should maintain a multi-year financial forecast (Long Range Financial Forecast) that is updated as part of the annual budget development process.

f. One-time revenue sources are not to be relied upon to fund on-going operations.

2. Controlling and Adjusting the Annual Budget

a. The City structures and controls its budget by use of the following funds:

- General Fund - is the primary operating fund of the City. It accounts for the receipt of property tax, general sales tax, transient occupancy tax, and other general revenues available to finance City operations. The General Fund accounts for all revenues and expenditures that do not fit the criteria to be accounted for in other funds with external restrictions imposed by their respective financing sources.
- Special Funds - account for resources externally restricted for use by their respective funding sources, such as grant programs financed by the State and Federal governments.
- Enterprise Funds - account for water and wastewater systems, and may be used for fee-based programs if the intention is to recoup almost all City costs through fees or other charges.
- Internal Service Funds - account for centralized service costs (such as vehicle services made available to all operating departments). Charges from the internal service funds appear as an expenditure in the user department, and as revenue in the central service department.

b. The City's budget is controlled at the fund level by the City Council.

- The City Council, as representatives of the public, is the sole authority for creating or increasing expenditure appropriations within a fund. The City Council is also the exclusive authority for approving changes in revenue estimates with funds.

c. Department Directors will be held directly responsible and accountable for their budgets as originally adopted by the City Council or as thereafter revised in accordance with this policy. The level of expenditure control for departments is at the departmental level.

d. Departments that operate programs among different funds are limited to the appropriation levels within any one fund. This policy also describes the level of authority needed to amend the adopted budget.

3. Transfers and revisions to the adopted budget:
   a. The City Council approves:
      - All increases in appropriations within a fund.
      - All transfers of appropriations between funds.
      - All decreases in appropriations, with the exception that the City Manager may direct Department Directors to suspend expenditures pending Council consideration of decreases in appropriations needed to respond to fiscal emergency.

   b. The City Manager approves:
      - The City Manager may make budget transfers between departments or programs as long as those changes do not increase overall appropriations within any one given fund. Transfers between funds, overall increases in fund appropriations, and overall increases in project budgets can only be made through City Council action.

   c. Department Directors may authorize the transfer of appropriations within a department, except transfers: (1) that would purport an increase in the number of regular personnel, and (2) that would decrease appropriations for capital outlay.

   d. Finance Department:
      - The Finance Department is responsible for providing forms and instructions for requesting appropriation adjustments, and for analyzing and recommending adjustments to the City Manager. The Finance Department will record approved budgets and adjustments into the City's financial system.
      - The Finance Department will ensure that the City's ~~Comprehensive~~ Annual Comprehensive Financial Report (~~CAFR~~ACFR) includes a comparison of actual expenditures against the final budget, as amended and adjusted under the authorities of this policy.

4. Operating expenditure appropriations not spent during the fiscal year lapse at year-end, except for:
   a. Encumbrances or commitments, as in the form of finalized purchase orders made during the fiscal year that have not been completed at year-end.

b. Appropriations for capital improvement projects and ongoing grants with a life-cycle beyond one year.

5. Governmental funds use the modified accrual basis of accounting while proprietary and fiduciary fund types are budgeted on a full accrual basis of accounting. The ~~CAFR~~ACFR presents City's finances on a Generally Accepted Accounting Principles (GAAP) basis and the City's budget is prepared in conformance with these standards.
6. The City's budget must comply with the annual determination of the City's appropriations limit (GANN Limit) calculated in accordance with Article XIIB of the Constitution of the State of California and the City shall adopt an annual resolution to this effect.

C. Capital Improvement Program

1. The City will develop and maintain a five-year Capital Improvement Program (CIP) to be updated annually in conjunction with the operating budget. The CIP should reflect the current and changing needs of the community as well as enhance the community's quality of life.
2. All projects within the CIP are to be tracked systematically and reports should clearly display budget-to-actual performance by project, fund category, and project status.
3. Capital improvements that specifically benefit a select group of users and/or are fee-for-service based are to be financed through user fees, service charges, special assessments and taxes, or development impact fees.
4. Capital improvements that specifically benefit a fee-for-service enterprise operation (such as Water/Wastewater) are to be financed through the service fees generated within that operation and fund, ~~unless~~except in the event ~~authorized by~~ the voters of the City approve taxes or assessments for the purpose of financing such capital improvements, in which case revenues from the voter approved taxes or assessments may also be used to finance those capital improvements. ~~Such f~~Fees charged for enterprise operations should be supported by periodic updates to the ~~related utility master plan~~rate study prepared for those fees in accordance the California Constitution and all applicable laws.

    a. Notwithstanding the above paragraph, ~~T~~the city recognizes there may be emergency situations where enterprise operation capital improvements may need additional funding outside of the service fee structure and outside voter authorized initiatives such as a general obligation bond. For the completion of critical enterprise capital projects, City Council may authorize use of General Fund reserves in the following situations:

    - Life and safety emergencies

- Project completion is required (via mandate, cease and desist order, etc) and the current rate structure does not support the full cost to complete project

~~4.~~5. Transfers of resources to the CIP fund will be evaluated on an annual basis dependent upon the existence of available surplus dollars.
~~5.~~6. The City should strive to maximize the use of capital grants and State assistance in funding capital improvements before utilizing general revenue sources.

D. Revenues

1. The City will strive to maintain a diversified and stable revenue base to minimize the impact of economic fluctuation.
2. The City will seek out, apply for, and effectively administer Federal, State, and other grants that address the City's current operating and capital priorities in accordance with P-FI-0007 – Grant Application and Management Policy.
3. The City will pursue revenue collection and auditing to assure that funds due to the City are accurately received in a timely manner.
4. The City will seek reimbursement for State mandated costs whenever possible.
5. The City will adopt user fees with appropriate levels of cost recovery.
6. User fee studies should be performed and updated every five years to ensure the proper balance of costs and service charges. The City should strive to cover the full cost of providing non-tax and discretionary fee-based service operations except to the extent that City Council approves defined subsidy levels by program area.
7. Operating departments are to review public services to identify and determine those appropriate for fee collection. Recommendations for new fees are to be presented to the City Council for adoption to ensure fees reflect all direct and reasonable indirect costs of providing such services.
8. Enterprise operations will be self-supporting.

E. Expenditures

1. Expenditures are to be budgeted and controlled so as to not exceed estimated revenues plus the approved and planned use of fund balances accumulated in prior years.
2. The City will conduct a mid-year financial status review to determine if projected revenues and expenditures meet target levels. If an operating deficit is projected at year-end, the City should evaluate the need for immediate corrective and/or mitigating actions, including operating or capital expenditure reductions and/or activate the use of established contingency

balances. The deferral of essential and scheduled operational expenditures into the following fiscal year or the use of short-term loans and transfers to balance the budget should be avoided.

3. The City implements a formal purchasing system, principles, and guidelines to ensure that expenditure levels are monitored throughout the course of any fiscal year.

F. Cash Management

1. Annually the City's Investment Policy P-FI-0002 is reviewed and presented to City Council for adoption.
2. Investments for the City are reported at fair value (generally based on quoted market prices). The State Treasurer's Investment Pool and California Asset Management Program (CAMP) operate in accordance with appropriate state laws and regulations. The reported value of the pool is the same as the fair value of the pool shares.

G. Debt Management

1. The types of debt appropriate for the City include the following: general obligation bonds, bond or grant anticipation notes, lease revenue bonds, certificates of participation and lease-purchase transactions, other revenue bonds and certificates of participation, land-secured financings, such as special tax revenue bonds issued under the Mello-Roos Community Facilities Act of 1982, as amended, and limited obligation bonds issued under applicable assessment statutes, and tax increment financing to the extent permitted under state law. The City may from time to time find that other forms of debt would be beneficial to further its public purposes and may approve such debt without an amendment of this policy.
2. The City should plan the use of debt in a manner that sustains financial payments at manageable levels.
3. The City will strive to integrate its debt issuances with the goals of its capital improvement program by timing the issuance of debt to ensure that projects are available when needed in furtherance of public purposes. Normal wear and tear, upkeep and maintenance of its infrastructure and facilities should be paid from available operating revenues so as to avoid the use of debt to fund infrastructure and facilities improvements that are the result of normal wear and tear.
4. The purposes for which long term debt may be appropriate include the following: (i) the project to be financed is necessary to provide basic services, (ii) the project to be financed will provide benefit to constituents over multiple years, (iii) total debt does not constitute an unreasonable burden to the City or its taxpayers and ratepayers, (iv) the debt is used to refinance

outstanding debt in order to produce debt service savings or to realize the benefits of a debt restructuring. The City will not issue long-term debt to fund current operations and will seek to avoid the use of debt to fund infrastructure and facilities improvements in circumstances when the sole purpose of such debt financing is to reduce annual budgetary expenditures. Debt financing should only be used for long-term capital improvement projects with a useful life exceeding the term of the financing and for which the project revenues or specific identified revenue sources are sufficient to service the long-term debt. Debt Financing can be used if the cost of financing is favorable as compared to the use of City investment holdings over the financing term.

5. It is a policy goal of the Issuer to protect taxpayers, ratepayers and constituents by utilizing conservative financing methods and techniques so as to obtain the highest practical credit ratings (if applicable) and the lowest practical borrowing costs. The City will seek to maintain a high credit rating through sound financial practices as a basis for minimizing borrowing costs.
6. Internal control procedures shall include monitoring all forms of debt annually in conjunction with the budget preparation process and report concerns and remedies, if necessary, to the City Council, to ensure that proceeds of debt will be directed to the intended use.
7. The City will diligently comply with and monitor compliance with all bond covenants.
8. The City will cause to be prepared and will timely post to the Electronic Municipal Market Access database (EMMA) all required annual continuing disclosures and, if needed, any material event notices.
9. The City will monitor all debt obligations for ongoing tax compliance and arbitrage reporting.
10. The City will not incur general obligation indebtedness for public improvements which exceed in aggregate 15% of the assessed value of all real and personal property of the City as specified in the California Government Code Section 43605.
11. The City will maintain a minimum net revenue coverage ratio for the Water and Wastewater funds (all annual revenues remaining after operating and maintenance expenses, net of pass-through grants, to annual debt service requirements net of excess appropriations required for variable rate debt) as required by each funding source.

H. Fund Definitions

1. Governmental Fund Type Definitions

   Governmental fund types include the General Fund, special revenue funds, capital projects funds, debt service funds, and permanent funds. The

Governmental Accounting Standards Board (GASB) has clarified the definitions of these funds as follows:

a. General Fund – The General Fund should be used to account for and report all financial resources not accounted for and reported in another fund.
b. Special Revenue Funds – Special revenue funds are used to account for and report the proceeds of specific revenue sources that are restricted or committed to expenditure for specified purposes other than debt service or capital projects. The restricted or committed proceeds of specific revenue sources should be expected to continue to comprise a substantial portion of the inflows reported in the fund. Other resources (investment earnings and transfers from other funds, for example) also may be reported in the fund if those resources are restricted, committed, or assigned to the specific purpose of the fund. Governments should discontinue reporting a special revenue fund, and instead report the fund's remaining resources in the general fund, if the government no longer expects that a substantial portion of the inflows will derive from restricted or committed revenue sources.
c. Capital Projects Funds – Capital projects funds are used to account for and report financial resources that are restricted, committed, or assigned to expenditure for capital outlays, including the acquisition or construction of capital facilities and other capital assets. Capital projects funds exclude those types of capital-related outflows financed by proprietary funds or for assets that will be held in trust for individuals, private organizations, or other governments.
d. Debt Service Funds – Debt service funds are used to account for and report financial resources that are restricted, committed, or assigned to expenditure for principal and interest, even if it is being accumulated for further years' payments. Debt service funds should be used to report resources if legally mandated.
e. Permanent Funds – Permanent funds should be used to account for and report resources that are restricted to the extent that only earnings, and not principal, may be used for purposes that support the reporting government's programs. Permanent funds do not include private-purpose trust funds, which should be used to report situations in which the government is required to use the principal or earnings for the benefit of individuals, private organizations, or other governments.

2. Proprietary Fund Type Definitions

Proprietary fund types include enterprise funds and internal service funds. GASB has clarified the definitions of these funds as follows:

a. Enterprise Funds – GAAP provide that enterprise funds may be used to report any activity for which a fee is charged to external users for goods or services. Furthermore, a given activity must be accounted for in an enterprise fund if it meets any of the following criteria (in the context of its principal revenue sources):
    a. There is outstanding debt that is backed solely by fees and charges;
    b. Laws or regulations require that fees and charges be set to recover costs, including capital costs (depreciation or debt service); or
    c. There is a pricing policy that fees and charges be set to recover costs, including capital costs (depreciation or debt service).
b. Internal Service Funds – Internal service funds are used to report any activity that provides goods or services to other funds, departments, or agencies of the primary government and its component units, or to other governments, on a cost-reimbursement basis.

3. Fiduciary Fund Type Definitions

Generally Accepted Accounting Principles (GAAP) require fiduciary funds to report assets held in trustee or agency capacity for others cannot be used to support the government's own programs. Fiduciary funds, as reported in GAAP financial statements, never should include resources that can be used to support the government's own programs. Within the fiduciary funds category, funds that involve a trust agreement that affects the degree of management involvement and the length of time that the resources are held are distinguished from funds that involve only the receipt, temporary investment and remittance of fiduciary resources. Fiduciary fund types include pension, investment trust funds, private-purpose trust funds, and agency funds.

c. Pension Funds – Used to report resources that are required to be held in trust for the members and beneficiaries of defined benefit pension plans, defined contribution plans, or other postemployment benefit plans, or other employee benefit plans.
d. Investment Trust Funds – Used to report the external portion of investment pools reported by the sponsoring government.
e. Private-purpose Trust Funds – Used to report all other trust arrangements under which principal and income benefit individuals, private organizations, or other governments.

f. Agency Funds – Used to report resources held by the reporting government in a purely custodial capacity.

I. Fund Balance Classifications

1. Governmental Fund Balances
   a. Fund balance is defined as the difference between assets and liabilities and in Governmental funds is reported as fund balance. GASB No. 54 classified fund balances into the following categories:
      - Nonspendable: The nonspendable fund balance classification includes amounts that cannot be spent because they are either (a) not in spendable form or (b) legally or contractually required to be maintained intact. The "not in spendable form" criterion includes items that are not expected to be converted to cash, for example, inventories and prepaid amounts. It also includes the long-term amount of loans and notes receivable, as well as property acquired for resale.
      - Restricted: The restricted portion of fund balance is restricted to specific purposes. Examples are Gas Tax revenues and grant proceeds.
      - Committed: The committed portion of fund balance is constrained by the limitations imposed through formal City Council action. Only formal City Council action can remove or modify a previously committed account.
      - Assigned: The assigned portion of fund balance is established for intended use by either the City Council or its designee, such as the City Manager. No formal City Council action is needed to remove the intended use. GAAP required reserves, such as the Other Post-Employment Benefits (OPEB) reserve, belong to this category.
      - Unassigned: The unassigned portion of fund balance is that remaining after the non-spendable, the restricted, the committed, and the assigned fund balances are identified and recorded.

The City of St. Helena will use GASB's definitions of fund balance for the annual ~~CAFR~~ACFR and for all other financial reporting. For all financial planning purposes, the term Net Position or Fund Balance will be used and will include any portion of the fund balance that is available for appropriation.

Preferred order of use of governmental fund balances:

The City shall strive to use the most restricted fund balances prior to utilizing those that are less restricted. The following order of use reflects this guideline:

a. Non-spendable (if funds become spendable)
b. Restricted
c. Committed
d. Assigned
e. Unassigned

2. Proprietary and Fiduciary Fund Balances (Net Position)
   a. Fund balance is defined as the difference between assets and liabilities and in Proprietary and Fiduciary fund is reported as net position. GASB No. 63 classified reporting of net position into the following categories:
      - Net Investment in Capital Assets: The net investment in capital assets component of net position consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of bonds, mortgages, notes, or other borrowings that are attributable to the acquisition, construction, or improvement of those assets.
      - Restricted for Capital Projects: The restricted component of net position consists of restricted assets reduced by liabilities and deferred inflows of resources related to those assets. Generally, a liability relates to restricted assets if the asset results from a resource flow that also results in the recognition of a liability or if the liability will be liquidated with restricted assets reported.
      - Unrestricted: The unrestricted component of net position is the net amount of the assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the determination of net investment in capital assets or the restricted component of net position.

J. Fund Balance Levels

The City of St. Helena has enacted the Fund Balance policies in an effort to ensure financial security through the maintenance of a healthy fund contingency balance that guides the creation, maintenance, and use of resources for financial stabilization purposes. The City's primary objective is to maintain a prudent level of financial resources to protect against reducing service levels or raising taxes and fees due to temporary revenue shortfalls or unpredicted one-time expenditures. The City also seeks to maintain the highest possible credit ratings which are dependent, in part, on the City's maintenance of a healthy fund balance.

1. General Fund
   The City's fiscal goal is to maintain annual expenditure increases at a sustainable growth rate, and to limit expenditures to anticipated revenues in order to maintain a balanced budget. The Council's directed target is to maintain an unassigned fund balance of thirty percent (30%) of annual operating expenditures for the fiscal year.
2. Buildings, Facilities, & Infrastructure Reserve
   Building, facilities, and infrastructure replacement reserve should be established and maintained to provide for the timely replacement of City owned fixed assets. The balance is hereby defined as assigned by the City Council to allow the City to maintain an infrastructure reserve with a target balance equivalent to the projected annual cost of the first year Capital Improvement Plan fund expenditures.
3. Equipment, Technology, & Vehicle Replacement Reserve
   The balance is hereby defined as assigned by the City Council to allow the City to set aside an appropriate amount of money to property fund equipment, technology, and vehicle replacement. The City shall set aside funding annually in this reserve based on the vehicle, technology, and equipment replacement schedule.
4. Other Benefit Reserves
   The City's policy permits employees to accumulate earned but unused vacation and sick leave benefits which are eligible for payment upon separation from service. Retiring employees have the option of applying 100% of their unused sick leave accrued towards the payment of continuation insurance premiums, to the extent allowed by law. The City should set aside funding annually in this reserve to match the current liabilities.
5. Unassigned Operating Reserve
   These balances are hereby defined as unassigned by the City Council to allow the City to weather unpredicted cyclical and rapid downturns in the economy. These funds would be available for use in such conditions to mitigate negative economic fiscal impacts or State takeaways and can be activated within any one budget cycle through Council action. An economic downturn would entail a projected and/or sudden drop in core revenues (major tax and service revenue loss) of equal to or greater than 10% (including the impact of inflation) and/or a change in economic parameters (such as interest rates, debt service rates, pension and health rates) that cause a material change in expenditures of 10% or more, or the occurrence of a local natural disaster or unexpected financial claim requiring the immediate use of cash balances.
6. Water and Wastewater Operating Fund Balances

The City should maintain balances in the Water and Wastewater Funds at a level sufficient to accommodate operating and capital needs. City Council's directed target for the Water Fund is 10-14 months (83%-106%) of annual operating expenditures in cash and the Wastewater Fund 6-8 months (50%-67%) of annual operating expenditures in cash. These amounts include cash balances in the Water and Wastewater Capital Improvement Project Funds. Multi-year fee studies for these funds should be updated periodically as a basis for defining the revenue sources necessary to maintain system infrastructure and required service levels. As a result of the periodic fee or master plan studies, adjustments to user charges may be necessary to maintain recommended fund balance levels.

K. Financial Reporting

Budget decisions are of primary concern for the City Council, City Management, the public, and various stakeholders. When considering the budget, staff presents updated projections for revenues and expenditures/expenses and the reports indicate whether prior estimates are tracking with the approved budget. Additionally, the external annual financial reporting for local governments involves producing the ~~Comprehensive Annual Financial Report~~Annual Comprehensive Financial Report (~~CAFR~~ACFR) which is audited and produced by an independent, third party CPA/auditor. Throughout the year, the following reports are to be presented to City Council.

1. The City's accounting and financial reports are to be maintained in conformance with GAAP.
2. Long Range Financial Forecast
   a. A Long Range Financial Forecast (LRFF) for the City's General Fund will be presented to City Council as part of the development of the annual budget.
   b. The LRFF provides a current and long-range financial assessment of revenues, expenditures, fund balance, and emergency reserves. The primary objective is to provide the City Council and the community with a financial forecast and identify any significant issues that may need to be addressed in the annual budget development process.
   c. The LRFF will consist of a baseline forecast, a recession forecast, and any other forecasts deemed necessary.
   d. The LRFF is a ten-year forecast.
   e. The LRFF will be updated as necessary throughout the fiscal year.
3. Internal Financial Reporting
   a. Internal financial reports help City Council, the public, and management to monitor budgetary compliance on a timely basis.

b. Internal financial reports often provide more detail on individual departments than does general purpose external financial reporting (Section 4 below) and does not require an independent auditor review and audit.

c. Internal financial reporting for all funds are to be issued on a periodic and timely basis – no less than quarterly and no more than 30 days after the close of the period. The report will provide detailed information for the General, Water, and Wastewater Funds and summary information for all funds will be included as attachments to the report. The report will include a summary of all checks over $50,000 issued during that quarter.

d. An end of the fiscal year unaudited report will be issued no more than 60 days after the close of Q4 with end of year estimates for revenues and expenditures/expenses for all funds.

e. Periodic reports will compare the adopted budget (Original Budget), adjusted budget (Final Budget), and the year to date actuals (Actual Amounts).

4. External Financial Reporting - ~~Comprehensive Annual Financial Report~~Annual Comprehensive Financial Report (~~CAFR~~ACFR)

   a. An annual financial audit will be performed by an independent public accounting firm familiar with municipal government activities. The independent auditor will issue an audit opinion to be included in the City's ~~Comprehensive Annual Financial Report~~Annual Comprehensive Financial Report (~~CAFR~~ACFR). Additionally, the ~~CAFR~~ACFR and Independent Auditor's Report on Internal Control over Financial Reporting and Compliance will be presented to the City Council.

   b. The ~~CAFR~~ACFR is a set of financial statements for a state, municipality, or other governmental entity that comply with the accounting requirements established by the Governmental Accounting Standards Board (GASB).

   c. In addition to the General, Water, and Wastewater Funds, the City also accounts for activities in approximately 70 special revenue funds that account for monies received from external parties with restrictions on their respective uses. The audit process ensures that the purposes of the various funds were carried out and the relative authorities to spend were honored.

   d. The external auditor prepares financial reports for each fund based on the requirements of the funding source and once all funds are audited, they are accounted for in the financial statements, combining schedules, and notes to the financial statements.

e. Unless extraneous circumstances occur, the City will rotate audit service providers every five years. If an auditor is being retained for longer than five years, the reason must be included in a staff report to City Council at the time of the contract execution or renewal.

f. The ~~CAFR~~ACFR will be completed no later than December 31st following the close of the fiscal year.

g. The City is encouraged to submit the Annual ~~CAFR~~ACFR to State and/or national government finance professional organizations (Governmental Finance Officers' Association's Certification of Achievement for Excellence in Financial Reporting, California Society of Municipal Finance Officers ~~CAFR~~ACFR Award) for independent review and evaluation.

L. Review and Update

This financial policy will be reviewed periodically and updated, if necessary, to reflect any changing requirements.

	City of St. Helena Administrative Policy Finance	Policy **Financial Policy**
		Page 1 of 16

Title: **Financial Policy**		Policy #	P-FI-0016
		Revision #	Revision #3
		Implementation Date	2019-09-10
		Last Update Date	2019-09-10
Approval by City Council	September 10, 2019	Date Approved	2018-11-27

I. Purpose, Overview and Scope of this Policy

This document establishes policies of overall financial management, budget development, and fiscal administration for the City of St. Helena. Included herein are statements and principles designed to guide the City in maintaining its financial stability and delivering high-quality services to the public.

Formally adopted financial policies assist elected officials and City staff in the development of fiscal management practices, save time, and provide structure for financial decisions, promote public confidence, enhance transparency, and provide continuity over time. These policies will be updated periodically, but are designed with a long-term perspective and provide the basic framework and road map for addressing a wide variety of financial and economic conditions that the City will encounter. A fiscal policy supports long-term planning and enhances the City's effectiveness in implementing long-term strategies to deliver efficient public services.

This document provides a structured, central repository for a variety of fiscal policies which are organized into the following categories:

A. General Financial Principles
B. Annual Operating Budget Policy
C. Capital Improvement Program
D. Revenues
E. Expenditures
F. Cash Management
G. Debt Management
H. Fund Definitions
I. Fund Balance Classifications
J. Fund Balance Levels
K. Financial Reporting
L. Review and Update

II. Authority

Updates to this policy require City Council approval.

III. Policy

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c. Department Directors will be held directly responsible and accountable for their budgets as originally adopted by the City Council or as thereafter revised in accordance with this policy. The level of expenditure control for departments is at the departmental level.

d. Departments that operate programs among different funds are limited to the appropriation levels within any one fund. This policy also describes the level of authority needed to amend the adopted budget.

3. Transfers and revisions to the adopted budget:
   a. The City Council approves:
      - All increases in appropriations within a fund.
      - All transfers of appropriations between funds.
      - All decreases in appropriations, with the exception that the City Manager may direct Department Directors to suspend expenditures pending Council consideration of decreases in appropriations needed to respond to fiscal emergency.

   b. The City Manager approves:
      - The City Manager may make budget transfers between departments or programs as long as those changes do not increase overall appropriations within any one given fund. Transfers between funds, overall increases in fund appropriations, and overall increases in project budgets can only be made through City Council action.

   c. Department Directors may authorize the transfer of appropriations within a department, except transfers: (1) that would purport an increase in the number of regular personnel, and (2) that would decrease appropriations for capital outlay.

   d. Finance Department:
      - The Finance Department is responsible for providing forms and instructions for requesting appropriation adjustments, and for analyzing and recommending adjustments to the City Manager. The Finance Department will record approved budgets and adjustments into the City's financial system.
      - The Finance Department will ensure that the City's Annual Comprehensive Financial Report (ACFR) includes a comparison of actual expenditures against the final budget, as amended and adjusted under the authorities of this policy.

4. Operating expenditure appropriations not spent during the fiscal year lapse at year-end, except for:
   a. Encumbrances or commitments, as in the form of finalized purchase orders made during the fiscal year that have not been completed at year-end.

b. Appropriations for capital improvement projects and ongoing grants with a life-cycle beyond one year.

5. Governmental funds use the modified accrual basis of accounting while proprietary and fiduciary fund types are budgeted on a full accrual basis of accounting. The ACFR presents City's finances on a Generally Accepted Accounting Principles (GAAP) basis and the City's budget is prepared in conformance with these standards.
6. The City's budget must comply with the annual determination of the City's appropriations limit (GANN Limit) calculated in accordance with Article XIIB of the Constitution of the State of California and the City shall adopt an annual resolution to this effect.

C. Capital Improvement Program

1. The City will develop and maintain a five-year Capital Improvement Program (CIP) to be updated annually in conjunction with the operating budget. The CIP should reflect the current and changing needs of the community as well as enhance the community's quality of life.
2. All projects within the CIP are to be tracked systematically and reports should clearly display budget-to-actual performance by project, fund category, and project status.
3. Capital improvements that specifically benefit a select group of users and/or are fee-for-service based are to be financed through user fees, service charges, special assessments and taxes, or development impact fees.
4. Capital improvements that specifically benefit a fee-for-service enterprise operation (such as Water/Wastewater) are to be financed through the service fees generated within that operation and fund, except in the event the voters of the City approve taxes or assessments for the purpose of financing such capital improvements, in which case revenues from the voter approved taxes or assessments may also be used to finance those capital improvements. Fees charged for enterprise operations should be supported by periodic updates to the rate study prepared for those fees in accordance the California Constitution and all applicable laws.
   a. Notwithstanding the above paragraph, the city recognizes there may be emergency situations where enterprise operation capital improvements may need additional funding outside of the service fee structure and outside voter authorized initiatives such as a general obligation bond. For the completion of critical enterprise capital projects, City Council may authorize use of General Fund reserves in the following situations:
      - Life and safety emergencies

- Project completion is required (via mandate, cease and desist order, etc) and the current rate structure does not support the full cost to complete project

5. Transfers of resources to the CIP fund will be evaluated on an annual basis dependent upon the existence of available surplus dollars.
6. The City should strive to maximize the use of capital grants and State assistance in funding capital improvements before utilizing general revenue sources.

D. Revenues

1. The City will strive to maintain a diversified and stable revenue base to minimize the impact of economic fluctuation.
2. The City will seek out, apply for, and effectively administer Federal, State, and other grants that address the City's current operating and capital priorities in accordance with P-FI-0007 – Grant Application and Management Policy.
3. The City will pursue revenue collection and auditing to assure that funds due to the City are accurately received in a timely manner.
4. The City will seek reimbursement for State mandated costs whenever possible.
5. The City will adopt user fees with appropriate levels of cost recovery.
6. User fee studies should be performed and updated every five years to ensure the proper balance of costs and service charges. The City should strive to cover the full cost of providing non-tax and discretionary fee-based service operations except to the extent that City Council approves defined subsidy levels by program area.
7. Operating departments are to review public services to identify and determine those appropriate for fee collection. Recommendations for new fees are to be presented to the City Council for adoption to ensure fees reflect all direct and reasonable indirect costs of providing such services.
8. Enterprise operations will be self-supporting.

E. Expenditures

1. Expenditures are to be budgeted and controlled so as to not exceed estimated revenues plus the approved and planned use of fund balances accumulated in prior years.
2. The City will conduct a mid-year financial status review to determine if projected revenues and expenditures meet target levels. If an operating deficit is projected at year-end, the City should evaluate the need for immediate corrective and/or mitigating actions, including operating or capital expenditure reductions and/or activate the use of established contingency

balances. The deferral of essential and scheduled operational expenditures into the following fiscal year or the use of short-term loans and transfers to balance the budget should be avoided.

3. The City implements a formal purchasing system, principles, and guidelines to ensure that expenditure levels are monitored throughout the course of any fiscal year.

F. Cash Management

1. Annually the City's Investment Policy P-FI-0002 is reviewed and presented to City Council for adoption.
2. Investments for the City are reported at fair value (generally based on quoted market prices). The State Treasurer's Investment Pool and California Asset Management Program (CAMP) operate in accordance with appropriate state laws and regulations. The reported value of the pool is the same as the fair value of the pool shares.

G. Debt Management

1. The types of debt appropriate for the City include the following: general obligation bonds, bond or grant anticipation notes, lease revenue bonds, certificates of participation and lease-purchase transactions, other revenue bonds and certificates of participation, land-secured financings, such as special tax revenue bonds issued under the Mello-Roos Community Facilities Act of 1982, as amended, and limited obligation bonds issued under applicable assessment statutes, and tax increment financing to the extent permitted under state law. The City may from time to time find that other forms of debt would be beneficial to further its public purposes and may approve such debt without an amendment of this policy.
2. The City should plan the use of debt in a manner that sustains financial payments at manageable levels.
3. The City will strive to integrate its debt issuances with the goals of its capital improvement program by timing the issuance of debt to ensure that projects are available when needed in furtherance of public purposes. Normal wear and tear, upkeep and maintenance of its infrastructure and facilities should be paid from available operating revenues so as to avoid the use of debt to fund infrastructure and facilities improvements that are the result of normal wear and tear.
4. The purposes for which long term debt may be appropriate include the following: (i) the project to be financed is necessary to provide basic services, (ii) the project to be financed will provide benefit to constituents over multiple years, (iii) total debt does not constitute an unreasonable burden to the City or its taxpayers and ratepayers, (iv) the debt is used to refinance

outstanding debt in order to produce debt service savings or to realize the benefits of a debt restructuring. The City will not issue long-term debt to fund current operations and will seek to avoid the use of debt to fund infrastructure and facilities improvements in circumstances when the sole purpose of such debt financing is to reduce annual budgetary expenditures. Debt financing should only be used for long-term capital improvement projects with a useful life exceeding the term of the financing and for which the project revenues or specific identified revenue sources are sufficient to service the long-term debt. Debt Financing can be used if the cost of financing is favorable as compared to the use of City investment holdings over the financing term.

5. It is a policy goal of the Issuer to protect taxpayers, ratepayers and constituents by utilizing conservative financing methods and techniques so as to obtain the highest practical credit ratings (if applicable) and the lowest practical borrowing costs. The City will seek to maintain a high credit rating through sound financial practices as a basis for minimizing borrowing costs.
6. Internal control procedures shall include monitoring all forms of debt annually in conjunction with the budget preparation process and report concerns and remedies, if necessary, to the City Council, to ensure that proceeds of debt will be directed to the intended use.
7. The City will diligently comply with and monitor compliance with all bond covenants.
8. The City will cause to be prepared and will timely post to the Electronic Municipal Market Access database (EMMA) all required annual continuing disclosures and, if needed, any material event notices.
9. The City will monitor all debt obligations for ongoing tax compliance and arbitrage reporting.
10. The City will not incur general obligation indebtedness for public improvements which exceed in aggregate 15% of the assessed value of all real and personal property of the City as specified in the California Government Code Section 43605.
11. The City will maintain a minimum net revenue coverage ratio for the Water and Wastewater funds (all annual revenues remaining after operating and maintenance expenses, net of pass-through grants, to annual debt service requirements net of excess appropriations required for variable rate debt) as required by each funding source.

H. Fund Definitions

1. Governmental Fund Type Definitions
   Governmental fund types include the General Fund, special revenue funds, capital projects funds, debt service funds, and permanent funds. The

Governmental Accounting Standards Board (GASB) has clarified the definitions of these funds as follows:

a. General Fund – The General Fund should be used to account for and report all financial resources not accounted for and reported in another fund.
b. Special Revenue Funds – Special revenue funds are used to account for and report the proceeds of specific revenue sources that are restricted or committed to expenditure for specified purposes other than debt service or capital projects. The restricted or committed proceeds of specific revenue sources should be expected to continue to comprise a substantial portion of the inflows reported in the fund. Other resources (investment earnings and transfers from other funds, for example) also may be reported in the fund if those resources are restricted, committed, or assigned to the specific purpose of the fund. Governments should discontinue reporting a special revenue fund, and instead report the fund's remaining resources in the general fund, if the government no longer expects that a substantial portion of the inflows will derive from restricted or committed revenue sources.
c. Capital Projects Funds – Capital projects funds are used to account for and report financial resources that are restricted, committed, or assigned to expenditure for capital outlays, including the acquisition or construction of capital facilities and other capital assets. Capital projects funds exclude those types of capital-related outflows financed by proprietary funds or for assets that will be held in trust for individuals, private organizations, or other governments.
d. Debt Service Funds – Debt service funds are used to account for and report financial resources that are restricted, committed, or assigned to expenditure for principal and interest, even if it is being accumulated for further years' payments. Debt service funds should be used to report resources if legally mandated.
e. Permanent Funds – Permanent funds should be used to account for and report resources that are restricted to the extent that only earnings, and not principal, may be used for purposes that support the reporting government's programs. Permanent funds do not include private-purpose trust funds, which should be used to report situations in which the government is required to use the principal or earnings for the benefit of individuals, private organizations, or other governments.

2. Proprietary Fund Type Definitions

Proprietary fund types include enterprise funds and internal service funds. GASB has clarified the definitions of these funds as follows:

a. Enterprise Funds – GAAP provide that enterprise funds may be used to report any activity for which a fee is charged to external users for goods or services. Furthermore, a given activity must be accounted for in an enterprise fund if it meets any of the following criteria (in the context of its principal revenue sources):
    a. There is outstanding debt that is backed solely by fees and charges;
    b. Laws or regulations require that fees and charges be set to recover costs, including capital costs (depreciation or debt service); or
    c. There is a pricing policy that fees and charges be set to recover costs, including capital costs (depreciation or debt service).
b. Internal Service Funds – Internal service funds are used to report any activity that provides goods or services to other funds, departments, or agencies of the primary government and its component units, or to other governments, on a cost-reimbursement basis.

3. Fiduciary Fund Type Definitions

Generally Accepted Accounting Principles (GAAP) require fiduciary funds to report assets held in trustee or agency capacity for others cannot be used to support the government's own programs. Fiduciary funds, as reported in GAAP financial statements, never should include resources that can be used to support the government's own programs. Within the fiduciary funds category, funds that involve a trust agreement that affects the degree of management involvement and the length of time that the resources are held are distinguished from funds that involve only the receipt, temporary investment and remittance of fiduciary resources. Fiduciary fund types include pension, investment trust funds, private-purpose trust funds, and agency funds.

c. Pension Funds – Used to report resources that are required to be held in trust for the members and beneficiaries of defined benefit pension plans, defined contribution plans, or other postemployment benefit plans, or other employee benefit plans.
d. Investment Trust Funds – Used to report the external portion of investment pools reported by the sponsoring government.
e. Private-purpose Trust Funds – Used to report all other trust arrangements under which principal and income benefit individuals, private organizations, or other governments.

f. Agency Funds – Used to report resources held by the reporting government in a purely custodial capacity.

I. Fund Balance Classifications

1. Governmental Fund Balances
   a. Fund balance is defined as the difference between assets and liabilities and in Governmental funds is reported as fund balance. GASB No. 54 classified fund balances into the following categories:
      - Nonspendable: The nonspendable fund balance classification includes amounts that cannot be spent because they are either (a) not in spendable form or (b) legally or contractually required to be maintained intact. The "not in spendable form" criterion includes items that are not expected to be converted to cash, for example, inventories and prepaid amounts. It also includes the long-term amount of loans and notes receivable, as well as property acquired for resale.
      - Restricted: The restricted portion of fund balance is restricted to specific purposes. Examples are Gas Tax revenues and grant proceeds.
      - Committed: The committed portion of fund balance is constrained by the limitations imposed through formal City Council action. Only formal City Council action can remove or modify a previously committed account.
      - Assigned: The assigned portion of fund balance is established for intended use by either the City Council or its designee, such as the City Manager. No formal City Council action is needed to remove the intended use. GAAP required reserves, such as the Other Post-Employment Benefits (OPEB) reserve, belong to this category.
      - Unassigned: The unassigned portion of fund balance is that remaining after the non-spendable, the restricted, the committed, and the assigned fund balances are identified and recorded.

The City of St. Helena will use GASB's definitions of fund balance for the annual ACFR and for all other financial reporting. For all financial planning purposes, the term Net Position or Fund Balance will be used and will include any portion of the fund balance that is available for appropriation.

<u>Preferred order of use of governmental fund balances:</u>

The City shall strive to use the most restricted fund balances prior to utilizing those that are less restricted. The following order of use reflects this guideline:

a. Non-spendable (if funds become spendable)
b. Restricted
c. Committed
d. Assigned
e. Unassigned

2. Proprietary and Fiduciary Fund Balances (Net Position)
   a. Fund balance is defined as the difference between assets and liabilities and in Proprietary and Fiduciary fund is reported as net position. GASB No. 63 classified reporting of net position into the following categories:
      - Net Investment in Capital Assets: The net investment in capital assets component of net position consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of bonds, mortgages, notes, or other borrowings that are attributable to the acquisition, construction, or improvement of those assets.
      - Restricted for Capital Projects: The restricted component of net position consists of restricted assets reduced by liabilities and deferred inflows of resources related to those assets. Generally, a liability relates to restricted assets if the asset results from a resource flow that also results in the recognition of a liability or if the liability will be liquidated with restricted assets reported.
      - Unrestricted: The unrestricted component of net position is the net amount of the assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the determination of net investment in capital assets or the restricted component of net position.

J. Fund Balance Levels

The City of St. Helena has enacted the Fund Balance policies in an effort to ensure financial security through the maintenance of a healthy fund contingency balance that guides the creation, maintenance, and use of resources for financial stabilization purposes. The City's primary objective is to maintain a prudent level of financial resources to protect against reducing service levels or raising taxes and fees due to temporary revenue shortfalls or unpredicted one-time expenditures. The City also seeks to maintain the highest possible credit ratings which are dependent, in part, on the City's maintenance of a healthy fund balance.

1. General Fund
   The City's fiscal goal is to maintain annual expenditure increases at a sustainable growth rate, and to limit expenditures to anticipated revenues in order to maintain a balanced budget. The Council's directed target is to maintain an unassigned fund balance of thirty percent (30%) of annual operating expenditures for the fiscal year.
2. Buildings, Facilities, & Infrastructure Reserve
   Building, facilities, and infrastructure replacement reserve should be established and maintained to provide for the timely replacement of City owned fixed assets. The balance is hereby defined as assigned by the City Council to allow the City to maintain an infrastructure reserve with a target balance equivalent to the projected annual cost of the first year Capital Improvement Plan fund expenditures.
3. Equipment, Technology, & Vehicle Replacement Reserve
   The balance is hereby defined as assigned by the City Council to allow the City to set aside an appropriate amount of money to property fund equipment, technology, and vehicle replacement. The City shall set aside funding annually in this reserve based on the vehicle, technology, and equipment replacement schedule.
4. Other Benefit Reserves
   The City's policy permits employees to accumulate earned but unused vacation and sick leave benefits which are eligible for payment upon separation from service. Retiring employees have the option of applying 100% of their unused sick leave accrued towards the payment of continuation insurance premiums, to the extent allowed by law. The City should set aside funding annually in this reserve to match the current liabilities.
5. Unassigned Operating Reserve
   These balances are hereby defined as unassigned by the City Council to allow the City to weather unpredicted cyclical and rapid downturns in the economy. These funds would be available for use in such conditions to mitigate negative economic fiscal impacts or State takeaways and can be activated within any one budget cycle through Council action. An economic downturn would entail a projected and/or sudden drop in core revenues (major tax and service revenue loss) of equal to or greater than 10% (including the impact of inflation) and/or a change in economic parameters (such as interest rates, debt service rates, pension and health rates) that cause a material change in expenditures of 10% or more, or the occurrence of a local natural disaster or unexpected financial claim requiring the immediate use of cash balances.
6. Water and Wastewater Operating Fund Balances

The City should maintain balances in the Water and Wastewater Funds at a level sufficient to accommodate operating and capital needs. City Council's directed target for the Water Fund is 10-14 months (83%-106%) of annual operating expenditures in cash and the Wastewater Fund 6-8 months (50%-67%) of annual operating expenditures in cash. These amounts include cash balances in the Water and Wastewater Capital Improvement Project Funds. Multi-year fee studies for these funds should be updated periodically as a basis for defining the revenue sources necessary to maintain system infrastructure and required service levels. As a result of the periodic fee or master plan studies, adjustments to user charges may be necessary to maintain recommended fund balance levels.

K. Financial Reporting

Budget decisions are of primary concern for the City Council, City Management, the public, and various stakeholders. When considering the budget, staff presents updated projections for revenues and expenditures/expenses and the reports indicate whether prior estimates are tracking with the approved budget. Additionally, the external annual financial reporting for local governments involves producing the Annual Comprehensive Financial Report (ACFR) which is audited and produced by an independent, third party CPA/auditor. Throughout the year, the following reports are to be presented to City Council.

1. The City's accounting and financial reports are to be maintained in conformance with GAAP.
2. Long Range Financial Forecast
   a. A Long Range Financial Forecast (LRFF) for the City's General Fund will be presented to City Council as part of the development of the annual budget.
   b. The LRFF provides a current and long-range financial assessment of revenues, expenditures, fund balance, and emergency reserves. The primary objective is to provide the City Council and the community with a financial forecast and identify any significant issues that may need to be addressed in the annual budget development process.
   c. The LRFF will consist of a baseline forecast, a recession forecast, and any other forecasts deemed necessary.
   d. The LRFF is a ten-year forecast.
   e. The LRFF will be updated as necessary throughout the fiscal year.
3. Internal Financial Reporting
   a. Internal financial reports help City Council, the public, and management to monitor budgetary compliance on a timely basis.
   b. Internal financial reports often provide more detail on individual departments than does general purpose external financial reporting

(Section 4 below) and does not require an independent auditor review and audit.

c. Internal financial reporting for all funds are to be issued on a periodic and timely basis – no less than quarterly and no more than 30 days after the close of the period. The report will provide detailed information for the General, Water, and Wastewater Funds and summary information for all funds will be included as attachments to the report. The report will include a summary of all checks over $50,000 issued during that quarter.

d. An end of the fiscal year unaudited report will be issued no more than 60 days after the close of Q4 with end of year estimates for revenues and expenditures/expenses for all funds.

e. Periodic reports will compare the adopted budget (Original Budget), adjusted budget (Final Budget), and the year to date actuals (Actual Amounts).

4. External Financial Reporting - Annual Comprehensive Financial Report (ACFR)

   a. An annual financial audit will be performed by an independent public accounting firm familiar with municipal government activities. The independent auditor will issue an audit opinion to be included in the City's Annual Comprehensive Financial Report (ACFR). Additionally, the ACFR and Independent Auditor's Report on Internal Control over Financial Reporting and Compliance will be presented to the City Council.

   b. The ACFR is a set of financial statements for a state, municipality, or other governmental entity that comply with the accounting requirements established by the Governmental Accounting Standards Board (GASB).

   c. In addition to the General, Water, and Wastewater Funds, the City also accounts for activities in approximately 70 special revenue funds that account for monies received from external parties with restrictions on their respective uses. The audit process ensures that the purposes of the various funds were carried out and the relative authorities to spend were honored.

   d. The external auditor prepares financial reports for each fund based on the requirements of the funding source and once all funds are audited, they are accounted for in the financial statements, combining schedules, and notes to the financial statements.

   e. Unless extraneous circumstances occur, the City will rotate audit service providers every five years. If an auditor is being retained for longer than five years, the reason must be included in a staff report to City Council at the time of the contract execution or renewal.

f. The ACFR will be completed no later than December 31st following the close of the fiscal year.
g. The City is encouraged to submit the Annual ACFR to State and/or national government finance professional organizations (Governmental Finance Officers' Association's Certification of Achievement for Excellence in Financial Reporting, California Society of Municipal Finance Officers ACFR Award) for independent review and evaluation.

L. Review and Update
This financial policy will be reviewed periodically and updated, if necessary, to reflect any changing requirements.

CITY OF ST. HELENA

RESOLUTION NO. 2022-__

Resolution approving Revision No. 3 to City of St. Helena City Council Policy P-FI-0016 Financial Policy and repealing and rescinding Resolution 2019-109 and any previous policies or administrative memoranda which are inconsistent with City Council Policy P-FI-0016, Revision No. 3.

RECITALS

A. The City recognizes that fiscal policies and procedures are necessary for efficient, effective, and proper accounting of City spending; and

B. On November 27, 2018, City Council adopted City Council Policy P-FI-0016 Financial Policy via Resolution 2018-161; and

C. On February 12, 2019, City Council adopted Policy P-FI-0016 Revision No. 1 Financial Policy via Resolution 2019-12 updating Section G. Debt Management to ensure compliance with SB 1029; and

D. On September 10, 2019, City Council adopted P-FI-0016 Revision No. 2 Financial Policy via Resolution 2019-109 updating Section B. Annual Operating Budget to add a clear definition of, “balanced budget” and Section K. Financial Reporting has been updated to include a requirement that all checks over $50,000 are report to City Council during the quarterly report; and

E. On October 19, 2021, the Governmental Accounting Standards Board (GASB) issued a pronouncement that changes the name of the most extensive report prepared following it standards to the Annual Comprehensive Financial Report, or ACFR; and

F. On January 31, 2022, at a Special City Council Workshop, Council discussed the Financial Policy which, in it current form, does not allow for other funding mechanisms in the enterprise funds to support critical infrastructure projects which are in need of short-term repair, repair in emergency circumstances, or under government regulations in which the current rate structure may not support the cost of the project or, if included in the current rate structure, may present an unreasonable burden to the City or its taxpayers and ratepayers; and

G. City Council provided direction to staff to work with the City Attorney to update the language in the Financial Policy to allow for other funding mechanisms in certain situations; and

H. The above referenced changes are presented to City Council for adoption; and

I. To avoid any inconsistencies with policy application, it is necessary to repeal and rescind any previous policies and procedures which conflict with City Council Policy P-FI-0016 Financial Policy, Revision No. 2.

RESOLUTION

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

1. Approves Revision No. 2 to City of St. Helena City Council Policy P-FI-0016 Financial Policy; and

2. Repeals and rescinds any previous policies or administrative memoranda which are inconsistent with City Council Policy P-FI-0016 Financial Policy, Revision No. 2.

Approved at a Regular Meeting of the St. Helena City Council on February 8, 2022, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Councilmember Chouteau:

Councilmember Hall:

Councilmember Hardy:

APPROVED: ATTEST:

____
Geoff Ellsworth, Mayor

____
Cindy Tzafopoulos, City Clerk

February 5, 2022

Public Comment Re Proposed Revision to
Financial Policy P-F1-0016
(February 8 Council Meeting, Agenda Item 9.6)

The Council should reject the proposed revisions to Financial Policy P-F1-0016. They are lousy public policy. Indeed, they smack of desperation.

In 2018, when the current policy was approved, there was full Council recognition that taxpayers and ratepayers are not one and the same or otherwise aligned. Hence, in 2018, the Council reviewing team, which included me, tightened the policy wording. The goal in the clear wording that resulted was to ensure that General Fund monies, from taxpayers, were *not* used to support the Water and Wastewater Enterprises. This was in accord with sound and widely recognized municipal finance practice. In unanimously approving the policy the Council was adopting best practices, which is what as a City should always seek to implement.

The proposed revisions are a full retreat from best practice policy. It puts on the backs of taxpayers obligations that should fall squarely on ratepayers, both inside and outside City limits. The long-term effect of Proposition 13 further creates yet further inequities in imposing ratepayer obligations on taxpayers. The revisions are also unbounded; they effectively allow the Council to raid the General Fund in favor of the Enterprises at will.

Now, it may be that rates needed to support Enterprise improvements will place a serious burden on lower income residents. This is an important concern. The proper way to address this issue is through a subsidy to qualifying residents from the General Fund. This is in accord with sound financial practice. It leaves the full burden of capital improvements on ratepayers.

For further reference see my public comment submitted in connection with the April 1, 2021 goal-setting session (urging the City to move forward at that time with the Proposition 218 studies.) Please also see my public comment submitted for the January 24, 2022 Special City Council meeting (reviewing the relevant policy language in Policy P-F1 as passed in 2018.)

Alan Galbraith
Mayor, 2014-18

Cindy Tzafopoulos

From: Mark Smithers <msmithers@tfewines.com>
Sent: Saturday, February 5, 2022 1:41 PM
To: Geoff Ellsworth; Paul Dohring; Lester Hardy; Eric Hall; Anna Chouteau
Cc: Cindy Tzafopoulos
Subject: [External] February 8 Agenda item 9.6 - please post to the agenda

To our mayor and city council persons,

First I request that Agenda item 9.6 be moved from the consent calendar, discussed by the council, and provide our citizens the opportunity to comments.

Second, if you are to make adjustments to the language as proposed in the staff report to Policy P-FI-016 Section III. Policy C. Capital Improvement Program subsection 4, the language should not be specific to General Obligation Bonds only and should appropriately recognize that the proposed language doesn't correctly describe how revenues and assessments are accounted for in the water enterprise and for capital projects.

This proposed language is incorrect: "4. Capital improvements……..except in the event the voters of the City approve taxes or assessments for the purpose of financing such capital improvements, in which case revenues from the voter approved taxes or assessments may also be used to finance those capital improvements." Taxes and assessments in and of themselves would only generate annual amounts that would only allow capital improvements to progress at the rate of the taxes and assessments are received. Borrowings (GO Bond, Revenue Bond, direct borrowings) fund / finance capital improvements. The taxes and assessments repay the borrowings as they "service" the debt. The language should be changed to properly describe the fundamentals of finance.

This proposed language needs to be expanded: "a. Notwithstanding the above paragraph…..outside voter authorized initiatives such as a general obligation bond." This should be expanded to include Revenue Bonds and direct borrowing given that both Revenue Bonds and direct borrowings by the water enterprise are the preferred methods of financing in user fee enterprises. And this proposed language: "For the completion of critical enterprise capital projects, City Council may authorize use of General Fund reserves in the following situations: • Life and safety emergencies • Project completion is required (via mandate, cease and desist order, etc) and the current rate structure does not support the full cost to complete project" needs to include much more direction that provides specifics to the process, analysis, and attempts to fund such emergencies or projects before General Obligation funds are transferred to the water enterprise given recognized issues surrounding these transfers and the differing tax paying constituents.

The drafted policy changes appear to be rushed. There is no presentation of discussions with governmental accounting and policy experts nor examples of language from other municipalities for similar policy areas. The policy changes seem to be proposed to simply fit neatly into the financing discussion currently taking place and not considered from a more well thought through, objective, and unbiased process.

Please consider my comments to better service the future decisions you may be faced with and to provide our citizens with better governance.

Thank you for your continued service.

Mark Smithers

This email is from an employer site. The employer is not connect to and has no knowledge of its content.

Mark Smithers | Senior Vice President, Finance
Trinchero Family Estates
Office: 1-707-302-3027 | Ext. 2612 | Mobile: 1-707-290-4508
msmithers@tfewines.com

PUBLIC COMMENT Item 9.6

February 7, 2022

Dear City Council,

The drafted financial policy changes you have presented are problematic and appear to be crafted with the primary purpose of pushing your agenda through. Why has this not gone through a process wherein the community had opportunity to weigh in before now?

This constitutes poor governance.

I ask that you remove agenda Item 9.6 from the consent calendar.

Sincerely,

Nancy Dervin

Report to the City Council
Regular City Council - 08 Feb 2022

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and Proposed Approval of a Resolution Authorizing: (1) A Permanent Loan to Our Town St. Helena (OTSH) in an amount of $250,000 for the Development of 963 Pope Street St. Helena; (2) Use of Measure E - Affordable Housing Trust Funds (Fund 752) for this Loan; and (3) the City Manager to Execute all Necessary Documents for this Loan.**

CEQA Determination: **Not a CEQA project**

Prepared By: April Mitts, Administrative Services Director

Reviewed By: Mark T. Prestwich, City Manager

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

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

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

The remaining balance of the purchase price and initial pre-development expenses were financed with an interest-only loan in the amount of $543,889 from Rural Community

Assistance Corp (RCAC) which is in first position for repayment. Interest payments average $1,900 per month, a significant amount for OTSH to continue to pay beyond the initial loan term, which ended in October 2021. At the time the loans were made, OTSH assumed it would have construction and permanent financing in place for the project and the loans could be repaid at the two-year term limit.

Both the City loan and RCAC loan had two-year terms, expiring on September 10, 2021 and October 1, 2021, respectively. At that time, both loans were due and payable in full. On August 24, 2021, the City Council adopted a resolution which provided OTSH with a 90-day extension to the loan term. The extension allowed OTSH and the City to evaluate loan options for City Council consideration. Similarly, RCAC extended its loan term to October 1, 2022.

Since the time the loans were made, OTSH:

- Acquired the property;
- Prepared plans and obtained City entitlements for four new apartments on the property;
- Processed a lot line merger;
- Completed construction drawings and submitted the drawings to the City of review and approval;
- Selected a general contractor; recorded a 55-year affordable deed restriction on the existing house; and
- Leased the home to a moderate-income family.

During this timeframe, construction costs have nearly doubled due to materials and supply chain issues, labor shortages, and general economic conditions. The current estimated total development cost for the project is $3.7 million.

It has always been OTSH's intention to secure construction and permanent financing to repay the two loans; however, OTSH reports that securing financing for the project has been more challenging than anticipated. Aside from the impacts the pandemic has had on lending institutions and increasing construction costs, small developments are proving more difficult to finance because public funding sources favor projects of 50+ units. With assistance from Napa Valley Community Housing (NVCH), OTSH applied to the State HOME program, the U.S. Congressional Appropriations Committee, and the Silicon Valley Housing Trust’s Apple Fund. Unfortunately, due to the competitive nature of the funding, OTSH was denied for all funding requests.

On November 9, 2021, OTSH learned the Notice of Funding Availability (NOFA) for the State HOME program will soon be released. OTSH believes that in order to be competitive for this funding round, it will be necessary to have a documented permanent loan commitment from the City, even if the funds are not available today. It is the intent of OTSH to pursue State HOME program funding and other public funds as they become available. NVCH has obtained letters of interest from a few private lenders, but the proposed terms are challenging and difficult to negotiate without other funding secured. Private lender terms will be refined once subsidy sources are committed to the project.

Additionally, in October 2021, OTSH was able to purchase the adjacent property at 951 Pope Street from the St. Helena Hospital Foundation, thanks to a very generous contribution of a private benefactor. Subject to City approval, this acquisition will allow OTSH to expand it current five-unit development to approximately 10 units. OTSH is optimistic this larger project will be more competitive for financing, make a greater positive impact on the community, and assist the City with meetings its RHNA requirements. OTSH will begin preparing plans and submit a new project application in early to mid-2022.

At the City Council meeting on November 23, 2021, OTSH proposed three options to the City Council for consideration to position the project to be competitive for public financing and complete the construction of the affordable housing units. At this meeting the City Council authorized via resolution a one-year loan extension of the current acquisition loan ($450,000 at zero percent interest), extending the maturity date to December 9, 2022. In addition the City Council provided the following direction to staff:

1. Return with a resolution authorizing use of the City's Affordable Housing Trust Funds to pay the RCAC loan interest payments (approximately $1,900 per month) starting in December 2021 and concluding October 31, 2022 when the RCAC loan becomes due; and
2. Return with a resolution authorizing a $250,000 permanent loan from the City's Affordable Housing Trust Fund to OTSH for the development of 963 Pope Street to make the project more competitive for the upcoming HOME funding application.

On December 14, 2021, the City Council authorized via Resolution, the use of Affordable Housing Trust Funds to pay the RCAC loan interest payments from December 2021 through October 31, 2022.

DISCUSSION

Based on City Council direction at the November 23, 2021 Council meeting, staff is recommending approval of a $250,000 permanent loan from the City's Affordable Housing Trust Fund to OTSH for the development of 963 Pope Street St. Helena, CA.

FISCAL IMPACT

The fiscal impact for the adoption of the attached resolution is use of Affordable Housing Trust Funds in an not-to-exceed amount of $250,000. Including the use of $250,000 for the permanent loan, the 6/30/22 estimated fund balance for both the Affordable Housing Trust Fund (Fund 751) and Measure E Fund (Fund 752) are shown in the table below:

	Fund 751	**Fund 752**
6/30/21 Estimated Balance	339,402	225,972
Estimated Revenues FY 22	65,295	196,016

Estimated Expenses FY 22	(112,334)	-0-
RCAC Interest Payments	(21,000)	
Permanent Loan		(250,000)
6/30/22 Estimated Fund Balance	***271,363***	***171,988***

RECOMMENDED ACTION
Staff recommends approval of the attached resolution.

ATTACHMENTS
Attachment 1 - OTSH $250,000 Permanent Loan Agreement (963 Pope St.)
Attachment 2 - Resolution OTSH $250,000 Permanent Loan

AFFORDABLE HOUSING TRUST FUND PERMANENT LOAN AGREEMENT
(Our Town St. Helena—963 Pope Street)

This Affordable Housing Trust Fund Permanent Loan Agreement (the "**Agreement**") is made as of February __, 2022 ("**Effective Date**"), by and between the CITY OF ST. HELENA, a California municipal corporation (the "**City**"), and OUR TOWN ST. HELENA, a California nonprofit corporation ("**Borrower**").

RECITALS

A. The City has established and maintains an affordable housing trust fund (the "**Housing Fund**") into which monies are deposited to be used solely to increase and improve the supply of housing affordable to households of moderate, low and very low income in accordance with the provisions of Section 17.146.030 of the St. Helena Municipal Code.

B. Borrower is a 501(c)(3) nonprofit corporation dedicated to providing housing opportunities in the City of St. Helena and surrounding communities for moderate, low and very low income households.

C. On September 10, 2019, the City and Borrower entered into a short-term Housing Trust Fund Loan Agreement in the amount of Four Hundred Fifty Thousand Dollars ($450,000.00) (the "**City Acquisition Loan**") for the purpose of acquiring that certain property located at 963 Pope Street in the City of St. Helena (the "**Property**") as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference. At the same time, Borrower secured an additional short-term loan for the acquisition of the Property from Rural Community Assistance Corp ("**RCAC**") in the amount of Five Hundred Forty-Three Thousand Eight Hundred Eighty Nine Dollars ($543,889.00) (the "**RCAC Acquisition Loan**"). The RCAC Acquisition Loan is secured by a deed of trust recorded in first lien position against the Property, and the City Acquisition Loan is secured by a deed of trust recorded in second lien position against the Property.

D. The Property is improved with a two bedroom, one bathroom house located near the front portion of the Property (the **"Existing Unit**"). Borrower is currently leasing the Existing Unit to a moderate income household in accordance with the terms of the City Acquisition Loan and will continue to do so as part of the Project (defined below). Borrower has additionally prepared plans and obtained City entitlements for four new units to be developed on the Property (the "**New Units**"), which additional units will be leased to low income households. The Existing Unit and the New Units are collectively referred to herein as the "**Project**".

E. Borrower is in the process of seeking construction and permanent financing for the construction and future operation of the New Units as affordable housing. Borrower has requested, and City desires to provide, an additional long term loan of Two Hundred Fifty Thousand Dollars ($250,000.00) from the Housing Fund to assist with the construction and development of the New Units, subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the Loan, the Borrower and City hereby agree as follows:

AGREEMENTS

ARTICLE 1.
LOAN TERMS

1.1 Loan.

(a) The City agrees to loan and the Borrower agrees to borrow an amount not to exceed a total of TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00) ("**Permanent Loan**"), subject to the conditions and terms of this Agreement. The Loan shall be evidenced by and repayable in accordance with a promissory note (the "**Note**") in substantially the form attached hereto as **Exhibit B** and incorporated herein by reference, and shall be secured by a deed of trust, assignment of rents, security agreement and fixture filing (the "**Deed of Trust**") to be recorded against the Property in substantially the form attached hereto as **Exhibit C**. The Deed of Trust shall be recorded against the Property in a lien position subordinate to the deeds of trust securing the RCAC Acquisition Agreement and the City Acquisition Agreement. The Borrower shall execute and deliver the Note and the Deed of Trust to the City prior to and as a condition to any disbursement of the Loan. The Permanent Loan shall not bear interest, except in an Event of Default, as set forth in this Agreement, the Note, the Deed of Trust, or the Regulatory Agreement (defined below).

(b) The Borrower covenants and agrees for itself, its successors, assigns, and every successor in interest to devote the Project to the operation of affordable housing in accordance with the terms of this Agreement and an Amended and Restated Affordable Housing Regulatory Agreement, the form of which is attached hereto as **Exhibit D** (the "**Regulatory Agreement**"), which will amend, replace and supersede the Affordable Housing Agreement entered into pursuant to the City Acquisition Loan Agreement for the period of time specified therein. The Borrower shall execute and deliver the Regulatory Agreement to the City prior to and as a condition to disbursement of any portion of the Loan.

(c) The Loan shall be used only in accordance with Section 1.3, below. The City shall disburse the Loan funds to the Borrower pursuant to the disbursement process set forth in Section 1.5 of this Agreement.

In the event of any Default (as defined in Section 4.1, below) by the Borrower hereunder, following notice from the City and the expiration of any applicable cure periods, then the entire outstanding principal amount of the Note may, at the option of the City, become immediately due and payable, together with interest at the default interest rate set forth in Section 9 of the Note, commencing on the date of the Default and continuing until such time as all amounts due under the Note and the Deed of Trust are paid in full, or the Default has been cured, whichever occurs first.

1.2 Term of Agreement. The term of this Agreement ("**Term**") shall commence upon the Effective Date and, unless earlier terminated as provided herein, shall remain in full force and effect for a period of fifty-five (55) years from the date of recordation of the Regulatory Agreement against the Property.

1.3 Use of Funds. The Borrower shall use the proceeds of the Loan only to pay out-of-pocket, third-party costs actually incurred by the Borrower, and approved by the City, for development and predevelopment costs for feasibility studies and the planning and development of the Project on the Property, including without limitation predevelopment and entitlement costs of the Project that are listed as eligible uses under the preliminary budget attached hereto and incorporated herein as **Exhibit E** ("**Development Costs**").

1.4 Compliance with City, State and Federal Laws and Regulations. Borrower agrees at all times to observe and comply with, and to cause all of its employees, agents, subcontractors, or others working for or under Borrower to observe and comply with all local, state and federal laws and regulations that pertain to the construction, health and safety, labor, fair employment practices, equal opportunity and all other matters applicable to the Borrower, its subcontractors, and the work.

1.5 Disbursement of Loan Funds. The City shall disburse loan funds from time to time as requested by Borrower, upon satisfaction of each of the following conditions precedent:

(a) All representations and warranties made by the Borrower in this Agreement, the Note, Deed of Trust, Regulatory Agreement, and any other related documents shall be true and correct as of the date of the proposed disbursement;

(b) Borrower is not in Default under the terms of this Agreement or any other agreement relating to the Property or the Project;

(c) Borrower shall have delivered to the City a written request for a disbursement of funds from the Permanent Loan, together with copies of invoices or other documentation satisfactory to the City to evidence the actual Development Costs (as defined in Section 1.4, above) incurred by the Borrower for which Permanent Loan funds are requested.

1.6 City Not Liable. In no event shall the City be liable to Borrower or any other party, including but not limited to any lender, contractor or subcontractor, for any damage whatsoever which may result in whole or in part from any action or inaction of the City hereunder, including without limitation, failure or delay in funding any proceeds of the Loan, except to the extent of the City's gross negligence or willful misconduct.

1.7 Repayment of Loan.

(a) All principal and interest on the Loan shall be due and payable pursuant to the terms of this Agreement upon the earlier of (i) the occurrence of any Default hereunder that remains uncured after the expiration of the applicable cure period, (ii) Borrower's abandonment of the Project or sale or transfer of its interest in this Agreement, the Project or any portion of the Property, other than a transfer permitted under Section 4.02 of the Regulatory Agreement, or (iii) the maturity date of the Note.

(b) In the event the Housing Project is constructed on the Site, the Loan shall be repaid from the Residual Receipts from the Housing Project, as provided in the Note.

ARTICLE 2.
GENERAL REQUIREMENTS

2.1 Records. Borrower shall keep all records, accounts, documentation and all other materials relevant to the Housing Project for a period of not less than three (3) years from the date of termination of this Agreement. Upon reasonable prior notice to Borrower, the City shall have the right to inspect any and all records in connection with the Project.

2.2 Report to City. Borrower shall file with the City periodic status reports on Borrower's progress on the development and construction of the Project. Borrower shall submit the first status report to the City within six months following the Effective Date of this Agreement, and shall submit subsequent status reports every six months thereafter until development of the Project is completed.

2.3 City Review and Inspections.

(a) Upon reasonable prior notice to the Borrower, but not less than fifteen (15) calendar days, the City may at any time during the term of this Agreement, inspect all accounting records pertaining to the planning and development of the Project.

(b) The City may request any other information that it reasonably deems necessary to monitor compliance with the requirements set forth in this Agreement. Such information shall be promptly provided by the Borrower.

2.4 Audit.

(a) All records, accounts, documentation and other materials deemed by the City to be relevant to the planning and development of the Project shall be accessible at any time to the authorized representatives of the City for the purpose of examination or audit.

(b) Any expenditure from the Permanent Loan proceeds that is not authorized by this Agreement or that cannot be adequately documented shall be disallowed and must be reimbursed to the City or its designee by the Borrower. Expenditures not described in this Agreement shall be deemed authorized if the performance of such activities is approved in writing by the City prior to their commencement. Absent fraud or mistake on the part of the City, the determination by the City of the allowability of any expenditures shall be final.

2.5 Insurance and Indemnity.

(a) Indemnity. The Borrower and its successors and assigns shall defend, indemnify, protect and hold harmless the City and its elective and appointed boards, and its officers, attorneys, agents, volunteers and employees, from and against any and all liability, damages, costs, losses, claims, causes of action or expenses (the "**Claims**"), however caused, resulting from the gross negligence or willful misconduct of the Borrower (including any contractor or subcontractor of Borrower or any person or persons employed by or acting as agent for Borrower, its contractor or subcontractor) in connection with the performance of this Agreement or Borrower's (or subcontractor or any person or persons employed by or acting as agent for Borrower or subcontractor) predevelopment, planning or construction for the Project;

except to the extent that any Claim arises out of the City's gross negligence or willful misconduct. Borrower shall pay all reasonable costs of any necessary legal defense and all reasonable attorneys' fees of counsel approved by the City incurred in defending any Claim, whether or not actually filed in any court.

(b) Liability and Property Damage. As applicable, the Borrower, at its own costs and expense, shall at all times cause the Property and the Project to be insured against loss by fire, casualties, liabilities and contingencies, and in such amounts and for such periods as are reasonably acceptable to the City. Borrower, at its own costs and expense, shall also maintain automobile bodily injury and property damage insurance, including all owned, hired and non-owned equipment with combined bodily injury and property damage liability of $2,000,000. The City shall be named as additional insured and loss payee on all insurance policies. During any period of construction, Borrower shall also maintain or cause each and every contractor to maintain a builder's risk form of policy. Borrower shall not be required to maintain earthquake insurance if such insurance premiums are not economically feasible.

(c) Workers' Compensation Insurance. As applicable, Borrower shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Divisions 4 and 5 of the California Labor Code and all amendments thereto, and all similar applicable state or federal acts or laws; and shall indemnify, defend, protect and hold harmless the City, and its respective agents, officers and employees from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including attorney's fees and costs presented, brought or recovered against the City, and its respective agents, officers and employees, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by Borrower under this Agreement.

(d) All insurance policies and renewals thereof shall be issued by carriers and under forms of policies satisfactory in all respects to the City. The policies shall stipulate that this insurance will operate as primary insurance and that no insurance held by the City will be called upon to contribute to a loss suffered by Borrower hereunder.

(e) Borrower agrees to furnish any certificates of insurance evidencing the above-described policies as requested by the City. Such certificates must be approved by the City within ten (10) days of delivery, before any payments will be made under this Agreement. If the City fails to approve such certificates within the aforementioned ten (10) day period, the certificates shall be deemed approved. Borrower shall provide City with immediate notice upon Borrower's receipt of notice of cancellation or a material change in any insurance policy. Borrower shall promptly file with the City a certified copy of the required new or renewal policy, and certificates for such policy.

(f) If, at any time during the term of this Agreement or any extension hereof, Borrower fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately and all payments due or that become due to Borrower will be withheld until notice is received by the City that the required insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to the City. Any failure to maintain the required insurance shall constitute an event of Default.

(g) Use of Insurance Proceeds. As applicable, any proceeds Borrower receives from insurance policies issued to Borrower and/or covering the Project, and any proceeds received from any governmental agency due to a partial or complete condemnation of the Project, shall be applied as follows: If Borrower collects insurance proceeds arising from a fire or other casualty, then the insurance proceeds shall be applied to restore, repair, or rebuild the damage to the Project caused by such casualty if such restoration, repair or rebuilding is economically feasible. If such insurance proceeds are insufficient for such purposes, the City shall not make up the deficiency. If Borrower does not make repairs or cause such repairs to be made to restore the Project to its pre-casualty condition, then any insurance proceeds collected for such damage or destruction shall be used to repay the Loan, subject to the rights of senior lenders approved by the City. If the Project is subject to a partial condemnation or taking, then the proceeds received therefrom shall be applied to restore the Project taken, provided the City determines that such restoration is economically feasible and no Default exists under the Loan, this Agreement, the Note or the Regulatory Agreement following the expiration of all applicable cure periods. If the Project is subject to a total condemnation, or if the City determines that restoration of the Project is not feasible following a partial condemnation, or if a Default exists then the proceeds from any condemnation award or claim for damages shall be used first to repay the Loan, with the excess, if any, paid to Borrower, subject to the rights of senior lenders approved by the City.

2.6 Restrictions on Sale, Encumbrance, and Other Acts. Borrower shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance or transfer (collectively, "**Transfer**") in any form of all or any part of, or any interest in, this Agreement or the Project, except with the prior written approval of the City, which shall not be unreasonably withheld, conditioned or delayed. Borrower shall give the City at least thirty (30) days' prior written notice of any desired transfer and of the proposed terms of such transfer and the City shall approve or deny any such proposed Transfer. Notwithstanding the above, the City agrees that it shall approve any deed of trust given by Borrower to the State of California or an institutional lender providing financing for the Project and the City further agrees to subordinate its deed of trust to any such lender upon request from the Borrower.

2.7 Assignment of City Rights. The City retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of the Borrower's duties and obligations hereunder. In addition, the City may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

2.8 Evidence of Financing. During the Term of this Agreement, Borrower shall submit to the City evidence satisfactory to the City that Borrower is using best efforts, given the Project's site control and discretionary approvals, to secure all construction and development financing that is adequate to complete the planning, construction and development of the Project.

2.9 Prevailing Wages. City makes no representation as to whether prevailing wages are required to be paid in connection with the Development Costs for the Project. In the event that prevailing wages are required to be paid for the Development Costs pursuant to Labor Code Sections 1720 et seq. the Borrower shall and shall cause any contractors and subcontractors to pay prevailing wages in connection with the planning of the Housing Project, as those wages are determined pursuant to Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations ("DIR") and comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the DIR. Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for claims, losses, liabilities, damages (direct or consequential), compensation, fines, penalties, causes of action, administrative and judicial proceedings and orders, judgments, remedial action or requirements, enforcement actions of any kind, and all reasonable costs and expenses incurred therewith (including but not limited to reasonable attorneys' fees and costs) or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Section 1720 et seq. and implementing regulation or comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the DIR in connection with the planning and development of the Housing Project or any other work undertaken or in connection with the Site, if it is determined that the payment of prevailing wages is required and the Borrower or its contractor, subcontractor, assignees or transferees fails to pay such prevailing wages. Borrower in giving this indemnification acknowledges the provisions of Labor Code Section 1781 and specifically waives any protection, rights or claims against the City that may accrue to the Borrower pursuant to Labor Code Section 1781.

ARTICLE 3.
REPRESENTATIONS AND WARRANTIES OF BORROWER

3.1 Representations and Warranties. The Borrower hereby represents and warrants to the City as follows:

(a) Organization. Our Town St. Helena is a duly organized, validly existing California nonprofit corporation and is in good standing under the laws of the State of California.

(b) Authority of Borrower. The Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver this Agreement, the Note, the Deed of Trust and the Regulatory Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement, the Note, the Deed of Trust, the Regulatory Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, by the Borrower pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Borrower, and all actions required under the Borrower's respective organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement, the Note, the Deed of Trust, the Regulatory Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken (to the extent such actions are required as of the date of the executions and delivery of the above-named documents).

(d) Valid Binding Agreements. This Agreement, the Note, the Deed of Trust, the Regulatory Agreement and all other documents or instruments which have been executed and delivered by the Borrower pursuant to or in connection with this Agreement constitute, or if not yet executed or delivered, will constitute when so executed and delivered, legal, valid and binding obligations of the Borrower enforceable by and against it in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and general principals of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement, the Note, the Deed of Trust, or the Regulatory Agreement by the Borrower or of any other documents or instruments executed and delivered, or to be executed and delivered by the Borrower, pursuant to this Agreement, nor the performance by the Borrower of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever, to the knowledge of Borrower, binding on the Borrower, or any provision of the organizational documents of the Borrower, or will conflict with or constitute a breach of or a default under any agreement to which the Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of the Borrower, other than liens established pursuant hereto.

(f) Compliance with Laws; Consents and Approvals. The planning and development of the Project will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency as applicable.

(g) Pending Proceedings. The Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower, or the Housing Project, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Borrower, materially and adversely affect the Borrower's ability to repay the Loan.

(h) Financial Information. All financial data and information made available by the Borrower to the City fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of the Borrower from that shown by any financial data or information provided to the City.

(i) Sufficient Funds. The Borrower will use best efforts to hold or secure sufficient funds and/or binding commitments for sufficient funds to pay all development expenses and all other costs for the planning and development of the Project.

ARTICLE 4.
DEFAULTS AND REMEDIES

4.1 Event of Default. The following shall constitute an event of default ("**Default**"): (i) a representation or warranty made or given in this Agreement, the Note, the Deed of Trust, or the Regulatory Agreement proves to be false or misleading; or (ii) material failure or delay by Borrower to perform any covenant, condition or provision of, or in the event of any other Default under, this Agreement, the Note, the Regulatory Agreement, the Deed of Trust or any other document affecting the Property or the Project within the timeframes required by this Agreement.

(a) Borrower shall be in Default under this Agreement if it fails to perform any material term or condition of, or in the event of any other Default under, this Agreement, the Note, the Deed of Trust, or the Regulatory Agreement, and after receipt of written notice of such failure to perform, fails to cure the breach within thirty (30) days of receipt of said notice, or in the event such breach cannot be cured within thirty (30) days, fails to immediately commence and diligently prosecute such cure until said breach has been fully remediated. If Borrower Defaults with regard to any provision of this Agreement, the City may terminate this Agreement and Borrower shall be liable to the City for repayment of all amounts due and owing under the Note and Deed of Trust plus any damages caused by such Default.

(b) Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies or deprive either such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

4.2 Remedies. Upon the happening of an event of Default, the non-defaulting party may pursue any remedy allowed at law or in equity, including but not limited to, accelerating payment under the Note or applying to any State court for specific performance of this Agreement. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative; and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Default or any other Default by the other party.

ARTICLE 5.
MISCELLANEOUS PROVISIONS

5.1 Conflict of Interest. No employee, agent, consultant, director, officer, elected or appointed official or member of the City has or may obtain a personal or financial interest in or benefit from the Borrower, the Property or the Project or in any contract or subcontract or agreement, or the proceeds thereof, relating to the Property or the Project.

5.2 No Discrimination. The Borrower covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, with respect to any or the planning or development work to be undertaken by the Borrower under this Agreement. All contracts made or entered into by the Borrower, its successors or assigns, as to any such work shall contain or be subject to substantially the nondiscrimination or nonsegregation clauses set forth in Health and Safety Code Section 33436.

5.3 No Member Liability. No member, official, director, employee or agent of the City shall be personally liable to Borrower in the event of any Default or breach by the City or for any amount which may become due to Borrower or on any obligations under the terms of this Agreement.

5.4 Legal Actions.

(a) In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions shall be instituted in the Superior Court of Napa County, State of California.

(b) In the event that any legal action is commenced by the Borrower against the City, service of process on the City shall be made by personal service upon the City Manager or City Clerk, or in such other manner as may be provided by law. In the event that any legal action is commenced by the City against the Borrower, service of process on the Borrower shall be made in such manner as may be provided by law.

5.5 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative; and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Default or any other Default by the other party.

5.6 Entire Agreement; Amendment.

(a) This Agreement may be executed in duplicate originals, each of which shall be deemed to be an original.

(b) This Agreement, the exhibits and the documents referenced in this Agreement constitute the entire understanding and agreement of the parties, and supersede all negotiations or previous agreement between the parties with respect to all or any party of the subject matter hereof.

(c) This Agreement may be amended only by a writing signed by authorized representatives of the City and the Borrower; the City Manager shall be authorized to act on behalf of the City.

ARTICLE 6.
MISCELLANEOUS

6.1 Notice. Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below:

Borrower:	Our Town St. Helena 1451 Oak Avenue St. Helena, CA 94574 Attn: Executive Director
City :	City of St. Helena 1572 Railroad Avenue St. Helena, CA 94574 Attn: City Manager

6.2 No Waiver. No failure to enforce or delay in enforcing or exercising any right or remedy available under this Agreement shall impair the exercise of such right or remedy or the exercise of a similar right or remedy on a subsequent occasion.

6.3 Severability. Should any provision of this Agreement be found invalid by a court or other body of competent jurisdiction, said invalidity or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force to the maximum extent possible.

6.4 Titles and Headings. The titles and headings in this Agreement are for convenience only and shall not be construed to affect the meaning or construction of any provision of this Agreement.

6.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6.6 Attorneys' Fees. The prevailing party shall be entitled to receive the amount of its legal expenses, including reasonable attorneys' fees, expert legal fees and other legal costs and expenses, in the event of any legal action brought under or to enforce the provisions of this Agreement.

6.7 Signs. During the development period, the City may place or require to be placed signs at the site of the Housing Project stating the City is providing financing. The signs shall indicate in a typeface and size commensurate with its funds that the City is a source of financing.

6.8 Force Majeure. In addition to specific provisions of this Agreement, performance by either party shall not be deemed to be in Default where delays or Defaults are due to war, acts of terrorism, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation or any other similar causes beyond the control or without the fault of the party claiming an extension of time to perform. Failure to obtain adequate financing for any component of the Housing Project shall not constitute grounds for an extension under this Section. An extension of time for any cause set forth in this Section will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) business days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) business days of receipt of the notice.

6.9 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by the City, the City Manager or his or her designee is authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise.

6.10 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City and the Borrower have executed this Agreement as of the date first set forth above.

CITY:
CITY OF ST. HELENA, a California municipal corporation

By: ___________________________________
Mark Prestwich, City Manager

APPROVED AS TO FORM:

By: ______________________________
Ethan Walsh, City Attorney

ATTEST:

____
Cindy Tzafopoulos, City Clerk

BORROWER:

OUR TOWN ST. HELENA,
a California nonprofit corporation

By:_________________________________

Its: _________________________________

83578.00012\34651639.2

EXHIBIT A

PROPERTY DESCRIPTION

[to be inserted]

EXHIBIT B

FORM OF PROMISSORY NOTE
[AFFORDABLE HOUSING TRUST FUND PERMANENT LOAN]

(Our Town St. Helena—963 Pope Street)

Total Not to Exceed	_________________, 2022
$250,000.00	St. Helena, California

For value received, OUR TOWN ST. HELENA, a California non-profit corporation ("**Borrower**" or "**Maker**"), promises to pay the CITY OF ST. HELENA, a California municipal corporation, or order ("**City**" or "**Payee**"), a total amount not to exceed TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00) (the "**Loan**"), or so much as may be disbursed by the City from time to time pursuant to Section 1.5 of the Agreement (defined in Section 1, below) for approved Development Costs. The Loan shall not accrue interest, except in an event of default as set forth herein.

1. <u>Purpose</u>. Borrower owns that certain real property located at 963 Pope Street, St. Helena, California (the "**Property**") that is improved with a two bedroom, one bathroom house located near the front portion of the Property (the **"Existing Unit**"), which is currently leased to a moderate income household, and upon which Borrower intends to develop four new units (the "**New Units**"), which will be leased to low income households. The Existing Unit and the New Units are collectively referred to herein as the "**Project**". The City is making the Loan from its Affordable Housing Trust Fund for the purpose of helping to fund planning and development of the Project, subject to the terms and conditions set forth in that certain Affordable Housing Trust Fund Permanent Loan Agreement, entered into by and between Borrower and City and dated ____________, 2022 (the "**Agreement**"). The terms and conditions of the Agreement, which, among other things, allow for acceleration of this Note upon the occurrence of certain events of default, are hereby incorporated by reference. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

2. <u>Loan</u>. This promissory note (this "**Note**") evidences the Loan in the amount not to exceed TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00), representing funds advanced to the Borrower, from time to time, under the Agreement.

3. <u>Security</u>. Payment of this Note is secured by a deed of trust, assignment of rents, security agreement and fixture filing (the "**Deed of Trust**") of even date herewith, from Borrower to City upon the Property and recorded in the Official Records of Napa County.

4. <u>Project</u>. The Project shall consist of five (5) total residential units: The Existing Unit and the four (4) New Units. The Existing Unit shall be made available and rented to persons or families whose income does not exceed Moderate Income (as defined in the Regulatory Agreement), and the New Units shall each be made available and rented to persons and families whose income does not exceed Low Income (as defined in the Regulatory

Agreement). The gross monthly rent for the Existing Unit shall not exceed one-twelfth of 30% of 110% of the Area Median Income, adjusted by household size appropriate for the Unit, and gross monthly rent for the New Units shall not exceed one-twelfth of 30% of 60% of the Area Median Income, adjusted by household size appropriate for the Unit. For purposes hereof, "Area Median Income" shall mean the area median income for Napa County as published by the U.S. Department of Housing and Urban Development (HUD) from time to time. The Project shall be maintained and operated in accordance with that certain Amended and Restated Affordable Housing Regulatory Agreement by and between City and Borrower, dated ________________, 2022, and recorded concurrently with the Deed of Trust (the "**Regulatory Agreement**").

5. Maturity Date. All principal and interest due hereunder shall be due and payable in full upon the earlier of (i) the occurrence of any Default under the Agreement, the Note, the Deed of Trust or the Regulatory Agreement that remains uncured after the expiration of the applicable cure period, or (ii) Borrower's abandonment of the Housing Project or sale or transfer of its interest in the Agreement, the Housing Project or any portion of the Site, other than a transfer permitted under Section 4.02 of the Regulatory Agreement; or (iii) fifty-five (55) years after the date hereof (the "**Maturity Date**").

6. Repayment. Beginning at the end of Borrower's first fiscal year following the issuance of a certificate of occupancy for the New Units, Borrower shall make annual payments of principal and interest to the City in an amount equal to the Residual Receipts Payment defined herein. The payments described hereinabove shall be paid to City no later than one hundred twenty (120) days after the end of Borrower's fiscal year. Residual Receipts Payments received by City shall be credited first to accrued but unpaid interest, then to current interest due and owing, and lastly to principal.

A. The "Residual Receipts Payment" shall equal fifty percent (50%) of the Residual Receipts, as defined below. The Residual Receipts Payment as set forth herein constitutes the cumulative annual payment due to the City under this Note.

B. For the purposes of this Note, "Residual Receipts" shall mean the sum of money computed as follows:

i. All rents, revenues, consideration or income (of any form) derived by Borrower in connection with or relating to the ownership or operation of the Project, including any net revenue derived from any refinancing of the Project and any revenue from contributions, loans or grants which is not required to meet future project obligations (but excluding tenants' security deposits, partner capital contributions and similar advances) less all of the following: all customary and reasonable costs and expenses in connection with the operation and maintenance of the Project approved by City in the budget described below, including but not limited to premiums for property and liability insurance, utility services not paid directly by tenants, maintenance and repair, security services and payments for social/supportive services, property management fees not to exceed $65 per unit per month, increasing annually by up to 3%; payments of principal and interest due on financing from sources reviewed and approved in writing by City (including on development and deficit loans made by Borrower or any partner of Borrower); provided, however, that no such written approval from City shall be required with respect to development and deficit loans made by Borrower or any partner of Borrower to prevent a Default or other material breach under any of the additional borrower financing; amounts approved by City expended to restore the Project after a casualty loss or condemnation; reasonable and customary cost for accounting and auditing the books and records of the Project; taxes; franchise tax filing fees; local, state and federal monitoring compliance fees; and deposits to Project reserves approved by City or required by any other lender.

ii. Notwithstanding the generality of the foregoing, the following items are <u>not</u> expenses or deductible in computing Residual Receipts:

(a) Payment of any fees or expenses or of any portion of the Residual Receipts to Borrower, except as expressly provided in Section 6.B.i, above;

(b) Income taxes imposed upon Borrower's income; and

(c) Payment of interest on any indebtedness of Borrower to any affiliate of Borrower (individual or entity) or to any other third-party lender or partner not otherwise approved by City;

(d) Depreciation, cost recovery, amortization and similar items which do not involve the expenditure of cash.

7. <u>Payment Location</u>. Payment shall be made in lawful money of the United States to the City at 1572 Railroad Avenue, St. Helena, CA 94574. The place of payment may be changed from time to time as the City may from time to time designate in writing.

8. The occurrence of any of the following shall constitute an event of default ("<u>Default</u>") under this Note: (i) Borrower fails to pay any amount due hereunder within fifteen (15) days of its due date; (ii) Any other Default by Borrower under this Note, or any Default by Borrower under the Agreement, the Deed of Trust or the Regulatory Agreement after the expiration of applicable notice and cure periods; (iii) Borrower becomes insolvent or the filing or initiation of bankruptcy or insolvency proceedings by or against Borrower, whether voluntary or involuntary that is not dismissed within thirty (30) days of initiation, or if Borrower makes a general assignment for the benefit of creditors or states its inability to pay its debts as they mature; or (v) Borrower dissolves or liquidates.

Borrower shall not be considered in Default under this Note until the expiration of all notice and cure periods provided to Borrower. Upon the occurrence of any uncured event of Default, or at any time thereafter, at the option of the City hereof and without notice, the entire unpaid principal and interest owing on this Note shall become immediately due and payable. However, this option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of City's option. City's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. City's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

9. Default Interest Rate. At all times when Borrower is in Default hereunder by reason of Borrower's failure to pay principal due under this Note or any amounts due under the Deed of Trust securing this Note, the interest rate on the sums as to which Borrower is in Default (including principal, if City has elected to declare it immediately due and payable), shall be the lower of (i) Ten Percent (10%) per annum, or (ii) the highest rate then allowed by law, commencing as of the date of the Default until paid in full, or until the Default has been cured, whichever is applicable.

10. Waivers. Borrower and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

11. Costs. Borrower agrees to pay immediately upon demand all reasonable costs and expenses of City including without limitation reasonable attorneys' fees:

(i) if after Default and the expiration of all notice and cure periods this Note is placed in the hands of an attorney or attorneys for collection;

(ii) if after a Default hereunder or under the Agreement, the Deed of Trust or the Regulatory Agreement, City finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Borrower, any guarantor or any other party liable therefor or to the protection of its rights under this Note, the Agreement, the Deed of Trust, the Regulatory Agreement or other loan document executed in connection with the Housing Project;

(iii) if Borrower seeks to have the Site abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of this Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court; or

(iv) if Borrower shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental entity, affecting the Site or the title thereto or the interest of the City under the Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, City shall be reimbursed by Borrower immediately upon demand for all reasonable costs, charges and reasonable attorneys' fees incurred by City in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Site.

12. Notices. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the address stated in this Note or at such address as either party may designate by written notice.

13. Successors. This Note shall be binding upon Borrower, its successors, and assigns.

14. Governing Law. This Note shall be construed in accordance with and be governed by the laws of the State of California.

15. Severability. If any provision of this Note shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first written above.

BORROWER:

OUR TOWN ST. HELENA, a California nonprofit corporation

By:____________________________

Its: ______________________

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EXHIBIT C

FORM OF DEED OF TRUST

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of St. Helena
1572 Railroad Avenue
St. Helena, CA 94574
Attn: City Clerk

Space above line for Recorder's use only
Exempt from Recording Fees pursuant to Govt. Code § 27383

CITY OF ST. HELENA

DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

This Deed of Trust is made as of _____________, 2022, among OUR TOWN ST. HELENA, a California non-profit public benefit corporation ("**TRUSTOR**"), whose address is 1451 Oak Avenue, St. Helena, CA 94574, Old Republic Title Company, whose address is ________________, CA 94574 ("**TRUSTEE**"); and the CITY OF ST. HELENA ("**BENEFICIARY**"), whose address is 1572 Railroad Avenue, St. Helena, California 94574.

Trustor irrevocably grants, conveys, transfers, and assigns to Trustee in trust, with power of sale and right of entry and possession, all of Trustor's estate, right, title, and interest in, to and under the following property (collectively, the "**Property**"): (a) the real property in Napa County, California, described on **Exhibit A** attached hereto and incorporated herein by this reference, together with all existing and future easements and rights affording access to it (the "**Land**"), (b) together with all buildings, structures, and improvements now existing or hereafter constructed thereon (the "**Improvements**"), (c) together with all articles of personal property now or hereafter attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise adjudged to be a "fixture" under applicable law (each a "**Fixture**," collectively "**Fixtures**"), (d) together with all other property and interests of any kind or character which may be reasonably necessary or desirable to promote the present and future beneficial use and enjoyment of such real property and improvements.

1. **Secured Obligations.** Trustor makes the grant, conveyance, transfer, and assignment herein for the purpose of securing the following obligations (the "**Secured Obligations**"): (a) payment of the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) with interest thereon according to the terms of a promissory note (the "**Note**") of even date

(b)

herewith, executed by Trustor in favor of Beneficiary or order and any extension or renewals thereof; (b) payment of such further sums as the then record owner of the Property may borrow from Beneficiary, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; (c) performance of each agreement and obligation of Trustor under that certain Affordable Housing Trust Fund Permanent Loan Agreement executed by Trustor and Beneficiary dated _______________, 2022 (the "**Loan Agreement**"), providing for the development and construction of improvements on the Property and operation of the Property and improvements thereon as affordable housing (the "**Project**"); and (d) obligations under the Amended and Restated Affordable Housing Regulatory Agreement dated of even date herewith (the "**Regulatory Agreement**") recorded against the Property on even date with this Deed of Trust. This Deed of Trust shall secure the Beneficiary against any default under the Regulatory Agreement for the term of the Regulatory Agreement.

2. **Maintenance and Repair.** Trustor shall (a) keep the Property in good condition and repair and not remove or demolish any building; (b) complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed; (c) pay when due all claims for labor performed and materials furnished; (d) comply with all laws affecting the Property or requiring any alterations or improvements to be made; (e) not commit or permit waste; and (f) cultivate, irrigate, fertilize, fumigate, prune, and do all other acts which from the character or use of the Property may be reasonably necessary.

3. **Insurance.** Trustor shall maintain hazard insurance against loss by fire, hazards included with the term "**extended coverage**," and any other hazards for which Beneficiary requires insurance, and liability insurance as set forth in the Regulatory Agreements. The insurance carrier and the insurance policies and amounts of coverage shall comply with the terms of the Regulatory Agreements or shall otherwise be acceptable to Beneficiary, the policies shall name Beneficiary as a loss payee or an additional insured, as applicable, the policies shall include Beneficiary as an additional insured, as applicable.

4. **Defense of Security.** Trustor shall appear in and defend any action or proceeding purporting to affect the security or the rights or powers of Beneficiary or Trustee. Trustor shall pay all costs and expenses, including costs of evidence of title and attorneys' fees, in any such action or proceeding in which Trustee or Beneficiary may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. **Payment of Taxes and Liens.** Trustor shall pay (a) at least 10 days before delinquency, all non-abated taxes and assessments affecting the Property, including water stock assessments; (b) when due, all encumbrances, charges, and liens, with interest, on the Property, which are or appear to be prior or superior to this Deed of Trust; and (c) upon demand all reasonable and documented costs, fees, and expenses of this Deed of Trust. If Trustor fails to make any payment or to do any act provided for in this Deed of Trust after written notice of such failure by Beneficiary and a reasonably opportunity to cure, then Beneficiary or Trustee may, without obligation to do so, and with or without notice to or demand upon Trustor, and without releasing Trustor from any obligation under this Deed of Trust: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; (b) appear in or

(a)

commence any action or proceeding purporting to affect the security, or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest or settle any encumbrance, charge or lien which in the judgment of either appears to be senior to this Deed of Trust; and (d) in exercising any such powers, pay allowable expenses, including attorneys' fees.

6. Reimbursement of Costs. Trustor shall pay upon demand all reasonable and documented sums expended by Beneficiary or Trustee provided for in this Deed of Trust or allowed by law, with interest from date of expenditure at the maximum rate provided in the Note.

7. No Waiver. By accepting payment of any sum after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or declare a default for failure to pay.

8. Reconveyance. That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note or notes to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals of such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "**the person or persons legally entitled thereto**."

9. Assignment of Rents. Subject to the rights of senior lenders, Trustor hereby absolutely and unconditionally assigns to Beneficiary all of the rents, issues, profits, royalties, revenues, income, and other benefits (collectively, the "**Rents**") derived from the Property, whether now due, past due or to become due, and hereby gives to and confers upon Beneficiary, either directly or through a receiver, the right, power, and authority, but not the obligation, to collect the Rents, and to sue, either in the name of Trustor or Beneficiary, for all such Rents and to apply the same to the indebtedness secured hereby in such order as Beneficiary may determine in its sole discretion. This assignment of Rents is intended to create and shall be construed to create an absolute assignment to Beneficiary of all of Trustor's right, title, and interest in the Rents. So long as no default exists by Trustor in the payment of any indebtedness secured hereby, or in any other covenant contained herein, or in said note or notes or in any other document evidencing or securing such indebtedness, Trustor shall have the right to collect all Rents from the Property and to retain, use, and enjoy the same. Upon the occurrence of such a default beyond any applicable notice and cure periods, without the necessity of demand or other notice to Trustor or any other act to enforce Beneficiary's interest pursuant to this assignment, Trustor shall have no interest whatsoever in the Rents that are received by Trustor after a default, and all such Rents shall be received and held by Trustor in constructive trust for Beneficiary and delivered promptly to Beneficiary, or to a court-appointed receiver for the Property, without the necessity for further notice to, or demand upon, Trustor. Upon the occurrence of such a default, beyond any applicable notice and cure periods, and at any time thereafter during the continuance thereof, Beneficiary may, at its option, send any tenant of the Property a notice to the effect that: (a) a default has occurred; (b) Beneficiary has elected to exercise its rights under this assignment; and (c) such tenant is thereby directed to thereafter make all payments of Rents to or for the benefit of Beneficiary or as Beneficiary shall direct. Any such tenant shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rents made pursuant to such notice, irrespective of whether a dispute exists between Trustor and Beneficiary with respect to the existence of a default or the rights of Beneficiary hereunder. Any such tenant shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this assignment. Trustor hereby agrees to indemnify, defend, and hold any such tenant harmless from and against any and all losses, claims, damages or liabilities arising from or related to any payment of Rents by such tenant made in reliance on and pursuant to such notice.

10. Default and Foreclosure. Upon default by Trustor in payment or performance of any Secured Obligation, subject to any applicable notice and cure period, Beneficiary may declare all sums secured immediately due and payable by delivery to Trustee of a declaration of default and demand for sale and of a notice of default and of a notice of sale, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said note or notes, and all documents evidencing expenditures secured by this Deed of Trust. Upon default of any obligation secured by this Deed of Trust and acceleration of all sums due, Beneficiary may instruct Trustee to proceed with a sale of the Property under the power of sale granted in this Deed of Trust, noticed and held in accordance with California Civil Code Sections 2924, et seq., as such statutes may be amended from time to time. Trustor waives all rights it may have to require marshaling of assets or to require sales of assets in any particular order, including any rights under California Civil Code Sections 2899 and 3455.

11. Distribution of Foreclosure Proceeds. The proceeds generated by any Foreclosure ("Proceeds") shall be distributed as follows: (i) First, senior liens and encumbrances (if any) on the Project shall be fully paid from the Proceeds; (ii) Second, City shall be fully paid any amounts owing under the Secured Obligations; (iii) Third, City shall be paid the difference between the appraised value of the completed Project (applicable portion thereof) as restricted by the Regulatory Agreement ("Restricted Value") and the Proceeds ("Differential"); (iii) Fourth, any remaining Proceeds shall be distributed in accordance with California Civil Code Section 2924(k). The Differential shall be deposited in City's housing fund. Borrower expressly acknowledges and agrees that the Agreement and this Deed of Trust constitutes a lien against the Project and the Differential, including in accordance with California Civil Code Sections 2872, 2924 to 2924h, inclusive ("Differential Lien"). In the event of a Foreclosure, for purposes of distribution of the Differential only, the Differential Lien shall be considered a junior lien or encumbrance within the meaning of California Civil Code section 2924k(a)(3). Borrower hereby irrevocably instructs any holder of the Differential or similar proceeds generated by Foreclosure to immediately disburse the Differential to City, and agrees to defend, indemnify and hold City and such holder harmless from any and all claims related to such distribution. As used herein, "Foreclosure" means any judicial or non-judicial foreclosure, trustee's sale, deed-in-lieu transfer, short sale, or similar transaction.

12. Substitution of Trustee. Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper

(a)

substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers, and duties. Said instrument must contain the name of the original Trustor, Trustee, and Beneficiary hereunder, the book and page where this Deed of Trust is recorded, and the name and address of the new Trustee.

13. **Successors and Assigns.** This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "**Beneficiary**" shall mean the owner and holder, including pledgees, of the secured note or notes, whether or not named as Beneficiary herein.

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

15. **Further Assurances.** Trustor shall, at its own cost and expense, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, and assurances as Trustee or Beneficiary shall from time to time reasonably require, for better assuring, conveying, assigning, transferring, and confirming unto Trustee the Property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Trustee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering, or recording this Deed of Trust. Trustor shall, on demand, execute and deliver, and hereby authorizes Trustee and Beneficiary, or either of them, to execute in the name of Trustor, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien hereof. Immediately upon the execution and delivery of this Deed of Trust, and thereafter from time to time, Trustor shall cause this Deed of Trust, and any security instruments creating a lien or evidencing the lien hereof upon any personal property and each instrument of further assurance, to be filed, registered, or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee to, the Property encumbered hereby.

16. **Condemnation and Insurance Proceeds.** Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or other taking of all or any portion of the Property, or knowledge of any casualty damage to the Property, or damage in any other manner, Trustor shall immediately notify Beneficiary thereof. Trustor hereby authorizes and empowers Beneficiary as attorney-in-fact for Trustor to make proof of loss, to adjust and compromise any claim under the insurance policies covering the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Section shall require Beneficiary to incur any expense or take any action hereunder. Trustor hereby authorizes and empowers Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in, and prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any

(a)

condemnation or other taking of all or any part of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, or for conveyances in lieu of the Property, or any part thereof, shall be paid to Beneficiary. The foregoing powers of attorney are coupled with an interest and are irrevocable. Trustor hereby authorizes Beneficiary to apply such awards, payments, proceeds or damages relating to condemnation of the Property and insurance covering the Property, after the deduction of Beneficiary's expenses incurred in the collection of such amounts, subject to the requirements of applicable law and the provisions hereof, to restoration or repair of the Property or to payment of the sums secured by this Deed of Trust. Beneficiary shall be under no obligation to question the amount of any compensation, awards, proceeds, damages, claims, rights of action, and payments relating to condemnation or other taking of the Property or insured casualty affecting the Property, and may accept the same in the amount in which the same shall be paid. Trustor shall execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking or such insurance as Beneficiary may require. Notwithstanding the above, the Beneficiary shall release all insurance and condemnation proceeds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that such restoration, repair or rebuilding is economically feasible. If such insurance proceeds shall be insufficient for such purposes, Trustor shall make up the deficiency. If the Project is subject to a partial condemnation or taking, then the proceeds received therefrom shall be applied to restore the Project taken, provided the Beneficiary determines that such restoration is economically feasible and no default exists under the Loan Documents following the expiration of all applicable cure periods. If the Project is subject to a total condemnation, or if Beneficiary determines that restoration of the Project is not feasible following a partial condemnation, or if a default exists then the proceeds from any condemnation award or claim for damages shall be used first to repay all sums under the Note, with the excess, if any, paid to Trustor, subject to the rights of the senior lender.

17. **Severability.** If any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein, but only to the extent of such invalidity.

18. **Estoppel Certificate.** Trustor shall, within thirty (30) days of a written request from Beneficiary, furnish Beneficiary with a written statement, duly acknowledged, setting forth the sums secured by this Deed of Trust and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Deed of Trust.

19. **California Uniform Commercial Code Security Agreement; Fixture Filing.** Trustor hereby grants Beneficiary a security interest in all personal property of Trustor located on the Property and wherever located and used in any way in connection with or in any way relating to the Property, and whether now owned or hereafter in existence, acquired or created (including equipment, inventory, goods, documents, instruments, general intangibles, chattel paper, accounts, accounts receivable, deposit accounts, and contract rights), and all fixtures of Trustor now owned or hereafter in existence, acquired or created on, of or relating to the Property, and all substitutions, replacements, additions, accessions, and proceeds (including insurance proceeds) of all of the foregoing (collectively, the "**Personal Property**"). Beneficiary may file this Deed of Trust, or a reproduction hereof, in the real estate records or other appropriate index, as a financing statement for the Personal Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Trustor shall execute and deliver to Beneficiary, upon Beneficiary's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to the Personal Property. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. Upon Trustor's breach of any covenant or agreement of Trustor contained in this Deed of Trust, including the covenants to pay when due all sums secured by this Deed of Trust, Beneficiary shall have the remedies of a secured party under the California Uniform Commercial Code and, at Beneficiary's option, may also invoke any remedies provided in this Deed of Trust as to the Personal Property. In exercising any of such remedies, Beneficiary may proceed against the Property and any of the Personal Property separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary's remedies under the California Uniform Commercial Code or the remedies provided in the Deed of Trust. This Deed of Trust also covers goods which are or which are to become fixtures on the Property and constitutes and is filed as a fixture filing under the California Uniform Commercial Code.

20. **Due-On-Sale or Encumbrance.** If all or any part of the Property, or any interest therein, or any beneficial interest in Trustor (if Trustor is not a natural person or persons but is a corporation, partnership, trust, limited liability company or other legal entity), is sold, transferred, mortgaged, assigned, pledged, or further encumbered, whether directly or indirectly, whether voluntarily or involuntarily, or by operational law, Beneficiary may, at Beneficiary's option, declare all of the sums secured by this Deed of Trust to be immediately due and payable, and Beneficiary may invoke any remedies permitted by this Deed of Trust.

[CONTINUED ON NEXT PAGE]

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to Trustor at Trustor's address hereinbefore set forth.

TRUSTOR:

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

By: ______________________________

Its: ______________________________

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT D

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: City of St. Helena 1572 Railroad Avenue St. Helena, CA 94574 Attn.: City Manager Exempt from recording fees pursuant to Government Code Sec. 27383	

AMENDED AND RESTATED
AFFORDABLE HOUSING REGULATORY AGREEMENT

This Amended and Restated Affordable Housing Regulatory Agreement dated ______________________, 2022 (the "Regulatory Agreement"), is between the CITY OF ST. HELENA, a California municipal corporation (the "City") and OUR TOWN ST. HELENA, a California nonprofit corporation ("Borrower").

RECITALS

A. The City has established and maintains an affordable housing trust fund (the "**Housing Fund**") into which monies are deposited to be used solely to increase and improve the supply of housing affordable to households of moderate, low and very low income households in accordance with the provisions of Section 17.146.030 of the St. Helena Municipal Code.

B. Borrower is a 501(c)(3) nonprofit corporation dedicated to providing housing opportunities in the City of St. Helena and surrounding communities for moderate, low and very low income households.

C. City and Borrower entered into a short-term Housing Trust Fund Loan Agreement in the amount of Four Hundred Fifty Thousand Dollars ($450,000.00) (the "**City Acquisition Loan**") for the purpose of acquiring that certain property located at 963 Pope Street in the City of St. Helena (the "**Property**") as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, which Property was improved with a single residential unit, which Borrower agree to rent to a moderate income household.

D. In order to ensure that the unit located on the Property would be used for affordable housing, City and Borrower entered into that certain Affordable Housing Agreement recorded in the Official Records of the County of Napa as Document No. __________________ (the "**Original Regulatory Agreement**").

D. In order to assist Borrower in the development of the four additional residential units on the Property, Borrower and City agreed to enter into that certain Affordable Housing Trust Fund Permanent Loan Agreement, of even date herewith (the "**Loan Agreement**"), pursuant to which the City agreed to increase the total amount to be loaned to Borrower for development costs associated with the Project to TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00), and Borrower has agreed to commit to restrict the four additional units to be affordable to low income households as more specifically set forth herein.

D. This Regulatory Agreement supersedes and replaces the Original Regulatory Agreement in its entirety, and shall, subject to the terms and conditions set forth herein, require that the residential units located on the Property as part of the Project shall be rented to Eligible Households, as defined herein for a minimum of fifty-five (55) years following the recordation of this Regulatory Agreement.

AGREEMENT

NOW THEREFORE, the parties acknowledge and agree as follows:

ARTICLE 1. ELIGIBLE HOUSEHOLDS

1.01 "**Low Income Households**" are defined herein as an individual or family whose income does not exceed the qualifying limits for lower income families, as established and amended from time to time by HUD, pursuant to Section 8 of the United States Housing Act of 1937 or as otherwise determined by the California Department of Housing and Community Development, pursuant to California Health and Safety Code Section 50079.5.

1.02 "**Moderate Income Households**" are defined herein as an individual or family whose income does not exceed the qualifying limits for "persons and families of low or moderate income" as defined in California Health and Safety Code Section 50093.

1.03 Households meeting the income restrictions for Low Income Households or Moderate Income Households as applicable to the specific residential units in the Project, as more specifically set forth in Section 2.01 shall be collectively referred to as "**Eligible Households**."

ARTICLE 2. AFFORDABILITY REQUIREMENTS FOR PROJECT

2.01 Rent and Income Restrictions. From the date of recordation of this Regulatory Agreement, and for fifty-five (55) years thereafter, Borrower by and for itself and any successors in interest, hereby covenants and agrees that upon recordation of this Regulatory Agreement, the Borrower shall limit the rental of the existing residential unit located on the Property to Moderate Income Households (the "**Moderate Income Unit**"). Borrower by and for itself and any successors in interest, further covenants and agrees that upon completion of the Project, Borrower shall limit the rental of the four (4) residential units to be constructed on the Property to Low Income Households (the "**Low Income Units**"). The Moderate Income Unit and the Low Income Units are collectively referred to herein as the "**Affordable Units**". The gross monthly rent (excluding any supplemental rental assistance from the State of California, the federal government or any other public agency to those tenants or on behalf of those units) for the Moderate Income Units shall not exceed one-twelfth of 30% of 110% of the Area Median Income, adjusted by household size appropriate for the unit. The gross monthly rent (excluding any supplemental rental assistance from the State of California, the federal government or any other public agency to those tenants or on behalf of those units) for the Low Income Units shall not exceed one-twelfth of 30% of 60% of the Area Median Income, adjusted by household size appropriate for the unit. For purposes hereof, "Area Median Income" shall mean the area median income for Napa County as published by the U.S. Department of Housing and Urban Development (HUD) from time to time. .

2.02 Reporting Requirements. An annual report and annual income recertifications must be submitted to the City for each of the Affordable Units. The reports, at a minimum, shall include:

A. The number of persons per unit;

B. Tenant name and initial occupancy date;

C. Gross income per year as certified by Borrower;

D. Rent paid per month and percent of rent paid in relation to income.

The annual reports and annual income recertifications submitted by Borrower shall be in the form as provided by City.

Annual income recertifications shall also contain those documents used to certify eligibility. City may from time to time during the term of this Regulatory Agreement request additional or different information and Borrower shall promptly supply such information in the reports required hereunder. Borrower shall maintain all necessary books and records, including property, personal and financial records, in accordance with requirements prescribed by the City with respect to all matters covered by this Regulatory Agreement. Borrower, at such time and in such forms as City may require, shall furnish to City statements, records, reports, data and information pertaining to matters covered by this Regulatory Agreement. Upon reasonable advance request for examination by City, Borrower, at any time during normal business hours, shall make available all of its records with respect to all matters covered by this Regulatory Agreement. Borrower shall permit City to audit, examine and make excerpts or transcripts from these records at City's sole cost.

ARTICLE 3. PROVISION OF SERVICES AND MAINTENANCE OF PROPERTY

3.01 Maintenance. During the duration of this Regulatory Agreement, Borrower shall keep the Property in good condition, order and repair and shall not commit waste or permit impairment, demolition or deterioration of the Property; shall comply with all applicable state and federal regulations addressing the physical condition of the Property and buildings located on the Property and all applicable standards of the City of St. Helena including but not limited to building standards, planning regulations, and utilities code; shall complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed and to pay when due all claims for labor performed and materials furnished; shall maintain the buildings in a habitable condition; and do all other acts which from the character or use of the Property may be reasonably necessary. City shall have the right to inspect the Property during normal business hours, provided Borrower and the occupant are given reasonable notice prior to any such inspection.

If, at any time, Borrower fails to maintain the Property, and has either failed to commence to cure such condition or to diligently prosecute to completion the condition or the condition is not corrected after expiration of thirty (30) days from the date of written notice from City to Borrower, City may perform the necessary corrective maintenance, and Borrower shall pay such costs as are reasonably incurred for such maintenance. The City shall have the right to place a lien on the Property should Borrower not reimburse City for such costs within sixty (60) days following City's written demand to Borrower for reimbursement of such costs. Borrower, on behalf of itself its heirs, successors and assigns, hereby grants to City and its officers, employees and agents, an irrevocable license to enter upon the Property to perform such maintenance during normal business hours after receipt of written notice from City as hereinabove described and Borrower's failure to cure or remedy such failure within thirty (30) days of such notice. Any such entry shall be made only after reasonable notice to Borrower, and City shall indemnify and hold Borrower harmless from any claims or liabilities pertaining to any such entry by City.

ARTICLE 4. NO TRANSFER

4.01 Prohibition. The identity and qualifications of Borrower as an experienced and successful operator of affordable housing are of particular concern to the City. It is because of this identity and these qualifications that the City has entered into this Regulatory Agreement with the Borrower. No voluntary or involuntary successor in interest of the Borrower shall acquire any rights or powers under this Regulatory Agreement by assignment or otherwise, nor shall Borrower make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Property without the prior written approval of the City pursuant to Section 4.03 hereof, except as expressly set forth herein, which approval shall not be unreasonably withheld.

4.02 Permitted Transfers. Notwithstanding any other provision of this Regulatory Agreement to the contrary, City approval of an assignment or transfer of this Regulatory Agreement, the Loan, the Loan Agreement, or conveyance of the Property or any part thereof pursuant to Section 4.03 shall not be required in connection with any of the following (the "Permitted Transfers"):

(a) The conveyance or dedication of any portion of the Property to City or other appropriate governmental agency, or the granting of easements or permits, to facilitate the construction of the Housing Project;

(b) Any requested assignment for purposes of financing the construction of improvements upon the Property;

(c) Any mortgage, deed of trust, or other form of conveyance for all or any portion of any additional financing obtained by Borrower for the Project, but Borrower shall notify City in advance of any such mortgage, deed of trust or other form of conveyance for financing pertaining to the Property;

(d) Any mortgage, deed of trust or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (c) above;

(e) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation;

(f) The lease of residential units at the Project to Eligible Households;

In the event of a transfer by Borrower under subparagraphs (a) through (f), inclusive, above, not requiring City's prior approval, Borrower nevertheless agrees that at least thirty (30) days prior to such assignment it shall give written notice to City of such transfer and satisfactory evidence that the transferee has assumed the obligations of this Regulatory Agreement, if applicable.

4.03 <u>City Consideration of Requested Transfer</u>. The City agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 4.03, provided (a) the Borrower delivers written notice to the City requesting such approval, and (b) the proposed assignee or transferee possesses comparable operational experience and capability, and comparable net worth and resources, as the proposed transferor or assignor, and (c) the assignee or transferee assumes the obligations of the Borrower under this Regulatory Agreement in a form which is reasonably acceptable to the City. Such notice shall be accompanied by evidence regarding the proposed assignee's or purchaser's qualifications and experience and its financial commitments and resources sufficient to enable the City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 4.03 and other criteria as reasonably determined by the City. The City shall approve or disapprove the request within thirty-five (35) days of its receipt of the Borrower's notice and all information and materials required herein. In no event, however, shall the City be obligated to approve the assignment or transfer of the Loan, Promissory Note or Deed of Trust pursuant to this Section 4.03, except to an approved transferee or assignee of the Borrower's rights in and to the Housing Project.

4.04 <u>Successors and Assigns</u>. This Regulatory Agreement shall run with the land, and all of the terms, covenants and conditions of this Regulatory Agreement shall be binding upon the Borrower and the permitted successors and assigns of the Borrower. Whenever the term "Borrower" is used in this Regulatory Agreement, such term shall include any other permitted successors and assigns as herein provided. In the event of a transfer or assignment under this Article 4, all rights and obligations of the transferor Borrower shall be assumed by the transferee Borrower and the transferor Borrower shall have no further obligation or liability under this Regulatory Agreement.

ARTICLE 5. MANAGEMENT

5.01 During the term of this Regulatory Agreement, Borrower shall promptly notify the City in the event there is any change in the property management company managing the Project. Borrower shall submit a copy of such agreement to the City, provided the City shall not have the right to approve or disapprove such agreement except to ensure compliance of such agreement with the provisions of this Regulatory Agreement.

ARTICLE 6. NO DISCRIMINATION

6.01 Borrower covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Borrower itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. Notwithstanding the above, with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivisions (d) of Section 51 and Section 1360 of the Civil Code and subdivision (n), (o), and (p) of Section 12955 of the Government Code shall apply to this Section.

ARTICLE 7. NONDISCRIMINATION CLAUSES

7.01 All deeds, leases or contracts made relative to the Property, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

A. In deeds: Borrower herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Borrower himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.

B. In leases: The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased.

C. In contracts: There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land.

ARTICLE 8. NO IMPAIRMENT OF LIEN

8.01 No violation or breach of the covenants, conditions, restrictions, provisions or limitation contained in this Regulatory Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted under the Loan Agreement and this Regulatory Agreement; provided, however, that any successor of Borrower to the Property shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

ARTICLE 9. GENERAL

9.01 Notices to City. Notices required to be sent to the City hereunder shall be sent by certified mail, return receipt requested, to the following address as may change from time to time:

City of St. Helena
1572 Railroad Avenue
St. Helena, CA 94574
Attn.: City Manager

9.02 Notices to Borrower. Notices required to be sent to Borrower hereunder shall be sent by certified mail, return receipt requested, to the following address as may change from time to time:

Our Town St. Helena
1451 Oak Avenue
St. Helena, CA 94574
Attn.: Executive Director

9.03 Duration. The covenants set forth in Articles 1, 2 and 3 herein shall be covenants running with the land until fifty-five (55) years from the date of recordation of this Regulatory Agreement against the Property. The covenants set forth in Articles 6 and 7 shall be covenants running with the land in perpetuity. All the covenants contained herein shall inure to the benefit of the City of St. Helena and its successors and assigns and are enforceable by the City of St. Helena or its successors or assigns, without regard to whether the City is an owner of any land or interest to which such covenants relate. The City and such aforementioned parties, in the event of any breach of any such covenants contained herein, following the expiration of all applicable notice and cure periods shall have the right to exercise all of its rights and remedies allowed by law and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants and agreements established in this Regulatory Agreement, without regard to technical classification and designation, shall be binding upon all parties having any right, title, or interest in the Property, or any portion thereof and on their heirs, successors in interest and assigns until the covenants terminate. The parties agree that all future deeds or transfers of interest shall show the applicable restrictions of this Regulatory Agreement and, during the duration of this Regulatory Agreement, any transfer of the Property shall be subject to the terms and conditions of this Regulatory Agreement.

9.04 Successors and Assigns. Borrower, by and for itself and each successor to any interest in the Property, hereby specifically acknowledges and agrees to be bound by the covenants contained herein.

9.05 Amendment. This Regulatory Agreement may be amended only in writing by the City and the owner of the Project.

9.06 Non-Liability of Officials and Employees of the City and the Borrower. No member, official or employee of the City shall be personally liable to the Borrower, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Borrower or its successors, or on any obligations under the terms of this Regulatory Agreement.

9.07 Relationship Between City and Borrower. It is hereby acknowledged that the relationship between the City and the Borrower is not that of a partnership or joint venture and that the City and the Borrower shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project. The Borrower agrees to indemnify, hold harmless and defend the City from any claim made against the City arising from a claimed relationship of partnership or joint venture between the City and the Borrower with respect to the development, operation, maintenance or management of the Property or the Project.

9.08 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by the City, the City Manager or his or her designee is authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise.

9.09 Counterparts. This Regulatory Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

9.10 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Regulatory Agreement or of any of its terms. References to section numbers are to sections in this Regulatory Agreement, unless expressly stated otherwise.

9.11 Interpretation**.** As used in this Regulatory Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Regulatory Agreement shall be interpreted as though prepared jointly by both parties.

9.12 No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Regulatory Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Regulatory Agreement.

9.13 Modifications**.** Any alteration, change or modification of or to this Regulatory Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

9.14 Severability. If any term, provision, condition or covenant of this Regulatory Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Regulatory Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

9.15 Computation of Time. The time in which any act is to be done under this Regulatory Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any, act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

9.16 Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Regulatory Agreement, and in signing this Regulatory Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Regulatory Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Regulatory Agreement, and, they have freely signed this Regulatory Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Regulatory Agreement, and without duress or coercion, whether economic or otherwise.

9.17 Time of Essence. Time is expressly made of the essence with respect to the performance by the City and the Borrower of each and every obligation and condition of this Regulatory Agreement.

9.18 Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Regulatory Agreement including, but not limited to, releases or additional agreements.

9.19 Conflicts of Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Regulatory Agreement, nor shall any such member, official or employee participate in any decision relating to the Regulatory Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

9.20 Governing Law. This Regulatory Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Contra Costa County.

[continued on next page]

9.21 Date of Regulatory Agreement. The date of this Regulatory Agreement shall be the date set forth in the first paragraph hereof.

CITY OF ST. HELENA

____
Mark Prestwich, City Manager

"CITY"

APPROVED AS TO FORM:

____
Ethan Walsh, City Attorney

OUR TOWN ST. HELENA,

a California nonprofit corporation

By: ______________________________

Its: ______________________

"BORROWER"

EXHIBIT A to
AFFORDABLE HOUSING REGULATORY AGREEMENT

Legal Description of Property

[to be inserted]

ACKNOWLEDGMENT

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

State of California
County of ______________________________)

On ________________________ before me, ___________________________, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____________________________ **(Seal)**

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ACKNOWLEDGMENT

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

State of California
County of ___________________________)

On ______________________ before me, _________________________, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature ___________________________ **(Seal)**

EXHIBIT E

DEVELOPMENT COSTS AND BUDGET

The following are the Predevelopment Costs approved by the City to be paid with proceeds of the Loan. Any costs in addition to those set forth below shall be subject to approval by the City.

CITY OF ST. HELENA

RESOLUTION NO. 2022-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA AUTHORIZING: (1) A PERMANENT LOAN TO OUR TOWN ST. HELENA (OTSH) IN AN AMOUNT OF $250,000 FOR THE DEVELOPMENT OF 963 POPE STREET; (2) USE OF MEASURE E – AFFORDABLE HOUSING TRUST FUNDS (FUND 752) FOR THIS LOAN; AND (3) THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS FOR THIS LOAN.

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

WHEREAS, The City and OTSH entered into a Housing Trust Fund Loan Agreement dated September 10, 2019, in the amount of $450,000 with zero percent interest, which funds were used to assist in the acquisition of the property; and

WHEREAS, OTSH is currently leasing the existing unit on the property to a moderate income household, and desires to develop an additional four new units on the site to be leased to low income households; and

WHEREAS, Borrower is in the process of seeking construction and permanent financing for the construction and future operation of the New Units as affordable housing. Borrower has requested, and City desires to provide, an additional long term loan of Two Hundred Fifty Thousand Dollars ($250,000.00) from the Affordable Housing Trust Fund to assist with the construction and development of the New Units subject to certain terms and conditions as agreed to between the parties; and

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 permanent loan agreement of $250,000 from the Affordable Housing Trust Fund to Our Town St. Helena for the development for four new affordable housing units on the property referenced above, pursuant to the terms and conditions set forth in the Affordable Housing Trust Fund Permanent Loan Agreement (the “Loan Agreement”) provided in the staff materials provided to Council concurrently with this Resolution..

SECTION 3. The City Manager is authorized to execute the Loan Agreement and to execute all documents and carry out such actions as necessary to make the loan and carry out Council’s direction as set forth herein.

SECTION 4. The City Council of the City of St. Helena Hereby authorizes an appropriation of $250,000 in FY 2022-23 to the Affordable Housing Trust Fund to make the loan as set forth herein.

Approved at a Regular Meeting of the St. Helena City Council on February 8, 2022, 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 - 08 Feb 2022

Agenda Section: **PUBLIC HEARINGS**

Subject: **Second reading and intention to adopt an ordinance amending the St. Helena Municipal Code Chapter 5.40 (Permits for Elder and/or Dependent Adult Caregivers) to transfer responsibility for managing the registration and background check process of individual caregivers from the County, except in special circumstances, to the California Department of Social Services (CDSS) via their Home Care Aide Registry.**

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

California State Assembly Bill AB 1217, the Home Care Services Protection Act (Act), went into effect on January 1, 2016. The Act requires the licensure and regulation of Home Care Organizations and affiliated Home Care Aides. It also provides for Independent Home Care Aides, not affiliated with a Home Care Organization, to voluntarily complete the application process and submit to, and pass, a criminal record screening in order to become registered.

In 2015, the Napa County Code was amended in response to this Act, which made those sections specific to home caregiver businesses (Home Care Organizations), unnecessary. At the time, the Area Agency on Aging Napa/Solano (AAANS) was responsible for managing the caregiver permit program. As a result of the amended County code, AAANS ceased permitting businesses but continued to manage the permitting of individual caregivers with assistance from the County.

In June 2018, Napa County took over the sole responsibility for managing the caregiver permitting program. This transition provided an opportunity for the County and the Commission on Aging to revisit the County's ordinance with a focus on enhancing efforts to enforce the ordinance and increasing protections to vulnerable elderly and dependent adults.

The County's background check process did not require fingerprinting and there was no mechanism for the County to receive subsequent arrest/conviction reports; consequently, a caregiver could commit a disqualifying crime that goes undetected until their permit is renewed. The County proposed amendments to its ordinance to address this issue by requiring Napa County caregivers to register through the California Department of Social Services (CDSS) Home Care Aide Registry. By mandating that Napa County caregivers register through the CDSS Home Care Aide Registry, caregivers will be required to pass a live scan (electronic fingerprint) criminal record screening through the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). Additionally, CDSS will receive subsequent reports of arrests and convictions from the DOJ. If notified by the DOJ, CDSS will be responsible for updating the Home Care Aide Registry accordingly. Law enforcement and community members alike will be able to access this on-line database to verify the status of a caregiver in order to determine if they have successfully completed the registration requirements and passed the criminal background check. This requirement will significantly increase protections to our vulnerable elderly and dependent adults in addition to reducing the County's administrative responsibilities.

On February 4, 2020, the Napa County Board of Supervisors adopted County Ordinance No. 1454 to amend Chapter 5.60 of the Napa County Code. The amendments adopted by the County mandate the use of the CDSS Home Care Aide Registry in order to strengthen protections to vulnerable elderly and dependent adults. Following adoption of the County's ordinance, Napa County staff began to coordinate with the cities in the County and Town of Yountville to make changes to each jurisdiction's applicable ordinance to ensure that the applicable requirements are consistent in all jurisdictions.

The City of St. Helena adopted ordinance 2010-2 "ADDING CHAPTER 5.40 TO THE ST. HELENA MUNICIPAL CODE, ADOPTING CHAPTER 5.60 OF TITLE 5 OF THE NAPA COUNTY CODE BY REFERENCE, RELATING TO REQUIREMENTS FOR PERMITS FOR ELDER AND/OR DEPENDENT ADULT CAREGIVERS" on June 22, 2010. This ordinance adopted the County Code by reference. However, the City has not updated its original ordinance to incorporate the updates made by the County since that time, including the amendments discussed above that require registration of local caregivers through the CDSS Home Care Aide Registry. Government Code Section 50022.9 allows a City to adopt provisions of a County Code by reference (as the City did here), but any amendments to the County Code must be separately adopted by the City Council and are not automatically incorporated into the City's Municipal Code. Therefore, the City's Code still reflects the County's original code adopted in 2010, without subsequent amendments. Napa County Health and Human Services contacted the City of St. Helena and requested that the City's code be updated to provide for consistent with the County's updated ordinance, to help ensure consistent regulation and enforcement of this industry in Napa County.

The first reading of the proposed ordinance was held at the January 11, 2022, regular City Council meeting.

DISCUSSION

The purpose of the proposed ordinance is to amend portions of Chapter 5.40 of the St. Helena Municipal Code by deleting the requirement that caregivers obtain a locally issued permit and adding a mandate that all Napa County caregivers register through the California Department of Social Services (CDSS) Home Care Aide Registry. This change will transfer the responsibility for background checks and permit issuance from Napa County to CDSS, except in limited situations when a care recipient chooses to hire a caregiver denied registration through CDSS due to reasons set forth in the Health and Safety code section 1796.25.

In addition, the proposed amendment would require that all registered St. Helena caregivers consent to having their first name, last name, birth day and birth month and personnel Home Care Registry ID number or limited permit holder designation, posted on the County website. This will provide law enforcement a mechanism to determine whether a caregiver is in compliance with the ordinance at any time of day or night.

Lastly, the requirement that caregivers provide proof that they have tested negative for tuberculosis will be changed from an annual requirement to a biennial requirement in order to align with the Home Care Aide Registry renewal.

FISCAL IMPACT

There is no fiscal impact.

RECOMMENDED ACTION

Approve the second reading and adopt the ordinance by title only and waive further reading.

ATTACHMENTS

2010-2 Adult Caregiver June 22
BOS 1-14-2020 Caregiver Ordinance Agenda Item
Current vs. Proposed Ordinance Summary 12.10.19
CHAPTER 5.60 Redline
Adult Caregiver Ordinance 2022-

CITY OF ST. HELENA, CALIFORNIA

Ordinance No. 2010- 2

ADDING CHAPTER 5.40 TO THE ST. HELENA MUNICIPAL CODE, ADOPTING CHAPTER 5.60 OF TITLE 5 OF THE NAPA COUNTY CODE BY REFERENCE, RELATING TO REQUIREMENTS FOR PERMITS FOR ELDER AND/OR DEPENDENT ADULT CAREGIVERS

The City Council of the City of St. Helena does ordain as follows:

Section 1. Findings.

Whereas Government Code sections 50022.2 and 50022.9 permit the City Council to adopt an ordinance adopted by the County of Napa, by reference; and

Whereas the Napa County Commission on Aging has prepared an ordinance intended to be adopted and implemented uniformly throughout Napa County, intended to promote the health and safety of elders by establishing a uniform, countywide system of issuing permits to all persons who provide caregiver services to elders; and

Whereas on May 18, 2010, the Napa County Board of Supervisors conducted the first reading of an ordinance that will add Chapter 5.60 to Title 5 of the Napa County Code of Ordinances relating to requirements for elders and or dependent adult caregivers, and on May 25, 2010, the Board of Supervisors did adopt that ordinance.

Whereas, the City Council adopts the findings set forth in the County ordinance and desires to implement the regulatory provisions of the ordinance within the City of St. Helena.

Section 2. Adoption by Reference. Chapter 5.60 of Title 5 of the Napa County Code of Ordinances relating to permit requirements for elder and or dependent adult caregivers, is hereby adopted by reference. Any fees required by the County of Napa in the processing of the permit applications required by the ordinance shall be as imposed by the Board of Supervisors by Board resolution and paid to the appropriate County designated office.

Section 3. Violation of this ordinance is a misdemeanor or infraction, punishable by a fine, imprisonment in the county jail up to one year, or a combination of both.

Section 4. Copy of County Ordinance. Consistent with the requirements of Government Code section 50022.6, upon the adoption of this ordinance, one copy of the County's ordinance adopted by reference shall be maintained by the City's enforcement officer, the Chief of Police.

Section 5. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of St. Helena hereby declares it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

The foregoing ordinance was passed and adopted at a Regular Meeting of the City Council of the City of St. Helena, State of California, held on the 22 day of June, 2010 by the following vote:

AYES: Councilmembers Sklar, Crull, Sanchez, Schoch, Mayor Britton
NOES: None
ABSENT: None

APPROVED:

Delford Britton
Mayor

ATTEST:

Delia Guijosa
City Clerk

CITY OF ST. HELENA
Incorporated March 24, 1876
Reincorporated May 14, 1889
STATE OF CALIFORNIA

A Tradition of Stewardship
A Commitment to Service

Agenda Date: 1/14/2020
Agenda Placement: 9E
Set Time: 9:50 AM PUBLIC HEARING
Estimated Report Time: 15 Minutes

NAPA COUNTY BOARD OF SUPERVISORS
Board Agenda Letter

TO:	Board of Supervisors
FROM:	JoAnn Melgar for Jennifer Yasumoto - Director Health & Human Services Administration
REPORT BY:	JoAnn Melgar, Staff Services Analyst II - 707-253-4722
SUBJECT:	Amendment to Permits for Elder or Dependent Caregivers Ordinance (1st Reading)

RECOMMENDATION

First reading and intention to adopt an ordinance amending the Napa County Code Chapter 5.60 (Permits for Elder and/or Dependent Adult Caregivers) to transfer responsibility for managing the registration and background check process of individual caregivers from the County, except in special circumstances, to the California Department of Social Services (CDSS) via their Home Care Aide Registry.

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

EXECUTIVE SUMMARY

The purpose of the proposed ordinance is to amend portions of Chapter 5.60 of the Napa County Code by deleting the requirement that caregivers obtain a locally issued permit and adding a mandate that all Napa County caregivers register through the California Department of Social Services (CDSS) Home Care Aide Registry. This change will transfer the responsibility for background checks and permit issuance from the County to CDSS, except in limited situations when a care recipient chooses to hire a caregiver denied registration through CDSS due to reasons set forth in the Health and Safety code section 1796.25.

In addition, the proposed amendment would require that all registered Napa County caregivers consent to having their first name, last name, birth day and birth month and personnel Home Care Registry ID number or limited permit holder designation, posted on the County website. This will provide law enforcement a mechanism to determine whether a caregiver is in compliance with the ordinance at any time of day or night.

Lastly, the requirement that caregivers provide proof that they have tested negative for tuberculosis will be changed from an annual requirement to a biennial requirement in order to align with the Home Care Aide Registry renewal process. A summary of these changes is attached to this Agenda item.

PROCEDURAL REQUIREMENTS

1. Open Public Hearing.
2. Staff reports.
3. Public Comments.
4. Close Public Hearing.
5. Clerk reads the Ordinance Title.
6. Motion, second, discussion and vote to waive the balance of the reading of the ordinance.
7. Motion, second, discussion and vote on intention to adopt the ordinance.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
County Strategic Plan pillar addressed:	Effective and Open Government

ENVIRONMENTAL IMPACT

The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

California State Assembly Bill AB 1217, the Home Care Services Protection Act (Act), went into effect on January 1, 2016. The Act requires the licensure and regulation of Home Care Organizations and affiliated Home Care Aides. It also provides for Independent Home Care Aides, not affiliated with a Home Care Organization, to voluntarily complete the application process and submit to, and pass, a criminal record screening in order to become registered.

In 2015, the county code was amended in response to this Act, which made those sections specific to home caregiver businesses (Home Care Organizations), unnecessary. At the time, the Area Agency Serving Napa and Solano Counties was responsible for managing the caregiver permit program. As a result of the amended County code, the Area Agency on Aging Serving Napa and Solano ceased permitting businesses but continued to manage the permitting of individual caregivers with assistance from the County.

In June 2018, the Area Agency on Aging serving Napa and Solano Counties dissolved and Napa County took over the sole responsibility for managing the caregiver permitting program. This transition provided an opportunity for the County and the Commission on Aging to revisit the ordinance with a focus on enhancing efforts to enforce the ordinance and increasing protections to vulnerable elderly and dependent adults.

The current background check process does not require fingerprinting and there is no mechanism for the County to receive subsequent arrest/conviction reports; consequently, a caregiver may commit a disqualifying crime that goes undetected until their permit is renewed. By mandating that Napa County caregivers register through the CDSS Home Care Aide Registry, caregivers will be required to pass a live scan (electronic fingerprint) criminal record screening through the DOJ and the FBI and CDSS will receive subsequent reports of arrests and convictions from the DOJ. If notified by the DOJ, CDSS will be responsible for updating the Home Care Aide Registry accordingly. Law enforcement and community members alike will be able to access this on-line database to verify the status of a caregiver in order to determine if they have successfully completed the registration requirements and passed the criminal background check. This requirement will significantly increase protections to our vulnerable elderly and dependent adults in addition to reducing the County's administrative responsibilities.

On July 22, 2019, the Napa County Commission on Aging reviewed and approved the changes outlined in this proposed ordinance to amend Chapter 5.60 of the Napa County Code. The Commission on Aging is recommending that the Board of Supervisors amend Chapter 5.60 to mandate the use of the CDSS Home Care Aide Registry in order to strengthen protections to vulnerable elderly and dependent adults. Staff plans to coordinate with the cities and Town of Yountville to make sure the changes to the ordinance are consistent in all jurisdictions.

SUPPORTING DOCUMENTS

A . Caregiver Ordinance-CLEAN

B . Caregiver Ordinance-TRACKED

C . Summary of Changes to Caregiver Ordinance

CEO Recommendation: Approve

Reviewed By: Ben Guerrieri

CAREGIVER PERMIT ORDINANCE

BACKGROUND — DECEMBER 10, 2019

May 25, 2010 Napa Caregiver Permit ordinance was adopted.

Nov. 24, 2015 Amendment in response to the Home Care Services Protection Act (AB 1217 effective 1.1.2016) which transferred the responsibility of the licensure and regulation of home care organizations and the registration of affiliated home care aides to CDSS, making provisions of the original ordinance unnecessary. The amendment also added the requirement that caregivers obtain a tuberculosis test to verify they are tuberculosis negative.

July 1, 2018 Prior to July 1, the Area Agency on Aging serving Napa and Solano was managing the caregiver permitting program. This organization closed June 30, 2018 and Napa County Health and Human Services, Comprehensive Services for Older Adults (CSOA) division, took over the management of the program.

January 2019 Convened a workgroup consisting of: CSOA staff, DA, Assessor/Recorder's Office and members of the Commission on Aging to discuss the effectiveness of the ordinance, CDSS's Home Care Aide Registry and El Dorado County's ordinance.

April 2019 Started working on an amendment to the ordinance that would incorporate the use of CDSS's Home Care Aide Registry.

July 22, 2019 Presented a "draft" amended ordinance to the Commission on Aging and they agreed to recommend the Board of Supervisors adopt the amended ordinance.

	CURRENT ORDINANCE		DRAFT AMENDED ORDINANCE	
Application Process	County/CSOA manages application process		CDSS manages application process	
Background Checks	Annual background check through vendor (National Crime Search, Inc.) with no mechanism to track subsequent arrest/conviction information.		Electronic fingerprints submitted to DOJ and FBI. Subsequent arrest/conviction information reported to CDSS Caregiver Background Check Bureau.	
Permit/ Registration	Registrar's office collects money & issues caregiver permit card.		CDSS assigns a home care aide personnel ID number and updates the home care aide registry search page (pending, registered, denied, revoked, etc).	
Disqualifying Crimes	List of disqualifying crimes (see link to list below).		Expanded list of disqualifying crimes (see link to list below).	
Fees	Background Check	$55 – $76.95 (depending on residence county)	CDSS Application	$35
	Permit	$20	Livescan	$10-$50
	Passport Photo	$5-$15.00	DOJ	$32
			FBI	$17
	Annual Cost	$80 - $111.95	Initial Registration	$94-$134
			Renewal (every 2 yrs)	$35
Tuberculosis Screening	Proof of negative TB required annually.		Proof of negative TB required every two years at the time of Home Care Aide Registry renewal.	
Limited Permit	Can be issued when an elder or disabled adult wants a caregiver who would normally be ineligible due to criminal background.		Can be issued when an elder or disabled adult wants a caregiver who would normally be ineligible due to criminal background.	
Searchable Database	**No** – community members/law enforcement need to call CSOA during business hours to determine whether a caregiver is permitted.		**Yes** – CDSS Home Care Aide Registry is searchable. Additionally, a requirement that caregivers consent to having their first & last name, birth day & birth month (but not year) and Home Care Aide Personnel ID # posted on the county website.	

ADDITIONAL RESOURCES

- CDSS Caregiver Background Check Bureau List of Non-exemptible Crimes http://www.ccld.ca.gov/res/pdf/non_exempt.pdf
- El Dorado County Elder and Dependent Adult Protection Ordinance https://www.edcgov.us/government/humanservices/senior%20services/family%20caregiver%20support%20program/documents/Ordinance%20No.%205008%20(1).pdf
- AB – 1217 Home Care Services Protection Act http://ccld.ca.gov/res/pdf/HCSB/WrittenDirectives_VersionThree.pdf
- CDSS Home Care Aide Registry https://secure.dss.ca.gov/ccld/hcsregistry/About.aspx
- CDSS Resources for Home Care Organizations https://www.cdss.ca.gov/Portals/9/CCLD/CCCS/HCSB/Fact%20Sheet%20Services%20FINAL.pdf?ver=2018-09-20-103941-860
- CDSS Home Care Services Protection Act FAQ's http://www.ccld.ca.gov/res/pdf/FAQs_for_HCSB_Site.pdf
- CDSS Home Care Services Consumer Protection Act Fact Sheet https://www.cdss.ca.gov/Portals/9/CCLD/CCCS/HCSB/Fact%20Sheet%20Program.pdf?ver=2018-09-20-103941-000

~~Chapter~~CHAPTER 5.60 - ~~PERMITS FOR~~ ELDER AND~~/OR~~ DEPENDENT ADULT ~~CAREGIVERS[2]~~PROTECTION

5.60.010 - Definitions.

"The following words and phrases, when used in this title, shall be construed as follows:

"Advertise" includes, but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building or structure, or in any newspaper, magazine, or by airwave or any electronic transmission, or in any directory under a listing as a caregiver providing in home services or a caregiver referral agency covered by this chapter.

" "Affiliated home care aide" means an individual, 18 years of age or older, who is employed by a home care organization to provide home care services or in-home services to a client.

"Caregiver~~"~~" and "home care aide" means any person that provides personal and/or ~~domestic~~home care services and/or in-home services for profit, compensation or any form of consideration for an elder and/or dependent adult.

~~"Caregiver coordinator" means the county designated organization that accepts caregiver permit applications, forwards applications to the industry specialist for background checks, and notifies applicants and the county of applicant status.~~

~~"Caregiver permit" means a permit for an individual person to work for profit as an elder and/or dependent adult caregiver.~~

"

"Caregiver Coordinator" means a Napa County employee/s responsible for verifying home care aide registration and overseeing the limited permit program.

"Caregiver referral agency~~"~~" means an individual, eighteen years or older, partnership, corporation, limited liability company, joint venture, association or other entity that offers and/or arranges caregivers for referral into the unlicensed homes of elders and/or dependent adults for the purpose of providing personal and/or domestic service and/or in-home services to the elder and/or dependent adult for compensation or any form of consideration.

" "Client" means an individual who receives home care services or in-home services from a registered home care aide or a limited caregiver permit holder.

"Dependent adult~~"~~" has the same meaning as used in Penal Code Section 368 (any person between the ages of ~~eighteen~~18 and ~~sixty-four~~64, who has physical or mental limitations which restrict ~~his or her~~their ability to carry out normal activities or to protect ~~his or her~~their rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent Adult" includes any person between the ages of ~~eighteen~~18 and ~~sixty-four~~64 who is admitted as an inpatient to a ~~twenty-four~~ 24-hour health facility).

~~"Disqualifying crimes" means a list of criminal offenses that disqualifies an applicant from obtaining a caregiver permit. The list shall be adopted by resolution on the date this ordinance is passed and may be amended by adoption of subsequent resolutions.~~

~~"~~ "Elder~~"~~" has the same meaning as used in Penal Code Section 368 (any person who is ~~sixty-five~~65 years of age or older).

~~"Home care~~ "For profit" means any type of compensation or consideration, whether in the form of current or future benefit, provided by the elder or dependent adult to the caregiver for the caregiver's services.

"Home care services or in-home services" means nonmedical services and assistance provided by a home care aide to a client who, because of advanced age or physical or mental disability, cannot perform these services. These services enable the client to remain in their residence and include, but are not limited to, assistance with the following: bathing, dressing, feeding, exercising, personal hygiene and grooming, transferring, ambulating, positioning, toileting and incontinence care, assisting with medication that the client self-administers, housekeeping, meal planning and preparation, laundry, transportation, correspondence, making telephone calls, shopping for personal care items or groceries, and companionship.

"Independent home care aide" means an individual, 18 years of age or older, who is not employed by a home care organization (as defined in Home Care Services Consumer Protection Act), but who is listed on the home care aide registry~~"~~ and is providing home care services or in-home services through a direct agreement with a client.

"Home Care Aide Registry" means the California ~~State~~ Department of Social Services~~, Home Care Services, registry of registered home care aides and home care aide applicants~~ Home Care Aide Registry.

~~"~~ "Home care organization~~"~~" means an individual, ~~eighteen~~18 years of age or older, firm, partnership, corporation, limited liability company, joint venture, association, or other entity that arranges for ~~personal and domestic~~home care services or in-home services by ~~a~~an association, or other entity that arranges for home care services or in-home services by an affiliated home care aide to a client and is licensed ~~by~~pursuant to the ~~State of California~~Health and Safety Code.

~~"Home services" or "in-home services" means providing personal and/or domestic services to an elder and/or dependent adult, or personal services and domestic services in the elder and/or dependent adult's temporary or permanent place of residence, which are intended to enable that individual to remain safely and comfortably in his or her own residence.~~

~~"Industry specialist" means a private company that enters into a contract with the caregiver coordinator to perform the background checks on individuals applying for a caregiver permit.~~

~~"~~ "Limited caregiver permit~~"~~" means a permit to work for profit as a caregiver for a single elder and/or dependent adult only (rather than for multiple clients~~).~~) when a care provider has been found ineligible for the Home Care Registry Aide.

~~"~~ "Personal and/or domestic services~~"~~" includes the following services for elders and/or dependent adults: domestic services performed on a regular basis more than one day a week such as housework, meal preparation, meal clean-up, laundry, grocery and other essential shopping, other errands, heavy house or yard cleaning; and/or personal services performed on a regular basis such as bathing, oral hygiene, grooming, dressing, feeding, assistance with ambulation and/or transfers, care and assistance with medical apparatus, taking an elder and/or dependent adult to and from medical appointments, or any other similar acts.

~~"Public authority" has the same meaning as used in Welfare and Institutions Code Section 12301.6.~~

~~"Registered home care aide" means an individual, eighteen years or older, who is listed on the home care aide registry.~~

~~"~~ "Registered means a caregiver or home care aide whose registration status on the Home Care Aide Registry search page is "registered" pursuant to the Home Care Services Consumer Protection Act, Article III, Section 90-071(a)(2).

"Undue influence" consists of any one or more of the following: (1) the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over that other, of such confidence or authority, for the purpose of obtaining an unfair advantage over the other; or, (2) taking an unfair advantage of another's weakness of mind; or, (3) taking a grossly oppressive or unfair advantage of another's necessities or distress. Whether from weakness on one side, or strength on the other, or a combination of the two, undue influence occurs whenever there results that kind of supremacy of one mind over another by which that other is prevented from acting according to ~~his or her~~their own wish or judgment, and whereby the will of the other is overborne and he/she is induced to do an act that, if left to act freely, he/she would not do.

5.60.020 ~~- Permit~~– Home Care Aide Registry—Required.

~~A. It is unlawful for any person to act as a caregiver without a valid caregiver permit. This section shall not apply to persons who are registered nurses, licensed vocational nurses, nurse practitioners, physician assistants, certified nursing assistants, physical therapists, certified home health aides, registered home care aides, or similar occupations for which the person already possesses a valid and current state license or state certificate and has passed a state and FBI background check.~~

~~B.~~

A. It is unlawful for any person, including individuals who are not employed by a home care organization but who provide home care services or in-home services to a client, unless expressly exempted by Home Care Services Consumer Protection Act and Health and Safety Code Section 1796.14 (c), to act as a caregiver and/or home care aide for profit or compensation unless such individual is listed on the home care aide registry pursuant to the Home Care Services Consumer Protection Act.

B. It is unlawful for a caregiver referral agency to arrange, promote, advertise, and/or include on a list~~,~~ a caregiver for the purpose of providing personal and/or domestic services to an elder and/or dependent adult ~~when the caregiver does not have a valid caregiver permit required pursuant to this chapter.~~ without providing a "home care aide personnel ID number".

C.~~ This section does not apply to the county Board of Supervisors, a public authority, or a non-profit consortium established to implement an In-Home Supportive Services Program as described in Welfare and Institution Code Sections 12301.6. et seq.~~

~~D. This section does not apply to a facility that is licensed and regulated by the State of California through a process that requires the facility's employees to be the subject of a background check prior to employment.~~

~~E.~~ Violation of this ~~ordinance~~chapter is a misdemeanor~~ or infraction~~, punishable by a fine, imprisonment in the county jail up to one year, or a combination of both.

5.60.030 - ~~Permit~~Registration—Application.

~~Each application for an individual permit to act as a caregiver shall contain the following information and shall be submitted to the caregiver coordinator:~~

~~A. The full true name and any other names ever used by the applicant;~~

~~B. The current residential address and telephone number of the applicant;~~

~~C. Each residential and business address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each address;~~

~~D. All fictitious business names used by the applicant and the respective addresses of those businesses;~~

~~E. Written proof that the applicant possesses a valid social security number;~~

~~F. Written proof that the applicant is at least eighteen years of age unless the particular business has a different age requirement pursuant to state or federal law, in which case proof of the applicable state or federal law requirement shall be provided;~~

~~G. Applicant's height, weight, and color of eyes and hair;~~

~~H. Submit two identification type photographs (one and one-half inches high by one inch wide);~~

~~I. Applicant's business, occupation and employment history for the five years immediately preceding the date of application, including addresses and dates of employment;~~

~~J. The name and business address of any employing individual elder and/or dependent adult or home care organization within the last five years;~~

~~K. Whether the applicant has ever had any license or permit issued by any agency or board, or any city, county, state or federal agency revoked or suspended, or has had any professional or vocational license or permit revoked or suspended within five years immediately preceding the application, and, if so, the reason for the suspension or revocation;~~

~~L. All criminal convictions of the applicant, including those dismissed pursuant to Penal Code Section 1203.4, except traffic, and a statement of the dates and places of such convictions;~~

~~M. Written proof that the applicant is free of active tuberculosis diseases; and~~

~~N. Such other identification and information as may be required to substantiate the matters required to be set forth in the application.~~

~~5.60.040 - Permit—Fees.~~

~~A. An application fee in the amount adopted by resolution of the board shall be paid by each applicant at the time of application and upon annual renewal thereafter.~~

~~B. A permit fee in the amount adopted by resolution of the board shall be paid by each applicant at the time of issuance of the permit and upon annual renewal thereafter.~~

~~5.60.050 - Permit issuance or denial; grounds for denial.~~

~~A. Upon submittal of a complete application, the caregiver coordinator shall forward the application to the industry specialist who shall conduct a background investigation to determine an applicant's fitness to conduct the occupation of caregiver.~~

~~B. Except as otherwise provided in this code, upon completion of the investigation of an individual applicant, the county shall issue a permit unless:~~

~~1. The applicant has any misdemeanor or felony conviction for violation of the Penal Code Sections included on the list of disqualifying crimes;~~

~~2. The applicant has knowingly made a false or misleading statement of a material fact or omission of a material fact in the application;~~

~~3. The applicant has had a similar type of registration, license, permit, or certificate previously denied, suspended for a total of six months, or revoked, within five years immediately preceding the date of the filing of the application, and the applicant can show no material changes in circumstances since such denial, suspension, or revocation;~~

~~4. The applicant is on informal or formal probation in any jurisdiction;~~

~~5. The applicant has had a felony conviction within ten years immediately preceding the date of the application; or~~

~~6. After request by the caregiver coordinator, the applicant fails to provide proof of any application requirement set forth in Section 5.60.030.~~

~~5.60.060 - Permit—Right to appeal.~~

~~Any applicant denied a caregiver permit shall be afforded an appeal as follows:~~

~~A. For a denial under subsections (B)(2), (3), (6) of Section 5.60.050, an appeal as prescribed by the Chapter 2.88.~~

~~B. For a denial pursuant to a disqualifying crime, an appeal as prescribed by the industry specialist.~~

Each applicant, including individuals who are not employed by a home care organization but who provide home care services or in-home services to a client in Napa County, California, unless expressly exempted by Home Care Services Consumer Protection Act, Article 2, Section 1796.14 (c) shall comply with the conditions and requirements of Home Care Services Consumer Protection Act, Health and Safety Code Sections 1796.19, 1796.21, 1796.22, 1796.23 and 1796.24. Individuals who are not employed by a home care organization but who provide home care services or in-home services to a client, unless expressly exempted by Home Care Services Consumer Protection Act, Health and Safety Code Section 1796.14 (c), shall provide the Caregiver Coordinator proof that they have tested negative for Tuberculosis.

5.60.040 – Registration – Publication

The first and last name, birth day and birth month (but not year) and home care aide personnel ID number or limited permit holder designation, for every registered caregiver and limited caregiver permit holder, will be posted on the Napa County website.

5.60.050 - Registration—Denial and revocation.

An application for registration may be denied, and registration may be revoked pursuant to Home Care Services Consumer Protection Act, Health and Safety Code Sections 1796.25 and 1796.26.

5.60.060 - Registration —Update and renewal.

To remain on the home care aide registry, each registered home care aide, including individuals who are not employed by a home care organization but who provide home care services or in-home services to a client, unless expressly exempted by Home Care Services Consumer Protection Act, Health and Safety Code Section 1796.14 (c), shall renew their registration every two years, pursuant to Home Care Services Consumer Protection Act Health and Safety Code Section 1796.31. To renew their registration, individuals who are not employed by a home care organization but who provide home care services or in-home services to a client, unless expressly exempted by Home Care Services Consumer Protection Act, Health and Safety Code Section 1796.14 (c), shall provide the Caregiver Coordinator proof that they have tested negative for Tuberculosis.

5.60.070 - Permit—Limited caregiver permit.

A. ~~—~~ A person who ~~would otherwise qualify as an applicant~~has applied for ~~a caregiver permit~~the Home Care Aide Registry but ~~cannot do so because~~was denied for any of ~~a disqualifying conviction~~the reasons set forth in the Health and Safety code section 1796.25 may request a limited caregiver permit ~~that~~ from the Caregiver Coordinator. The limited permit will authorize the applicant to perform home care services or in-home services for a single employing elder or dependent adult. An individual may possess only a single limited caregiver permit at any one time~~.~~ and a limited permit must be renewed annually from the date it was first issued.

B. ~~—~~ A limited caregiver permit may be issued, if the following conditions have been satisfied:

1. ~~—~~ There is no ongoing Law enforcement investigation or APS report for Elder Abuse.

2. Together with the application and payment of fees required to the Napa County Clerk-Recorder for a permit ~~under Sections 5.60.30 and 5.60.040~~, the applicant shall submit a notarized and/or witnessed declaration from the employing elder and/or dependent adult acknowledging the following:

a. ~~—~~ That ~~he or she is~~they are aware that the ~~elder and/or caregiver~~ applicant is not eligible for ~~an elder and/or dependent adult caregiver permit;~~ the Home Care Aide Registry.

b. —That ~~he or she has~~they have been provided, reviewed, and ~~is~~are aware of the criminal ~~exemptions~~convictions that ~~prevent an~~prevented the applicant from ~~passing~~being qualified for the ~~background check~~Home Care Aide Registry and ~~he or she understands~~they understand that the applicant has a disqualifying conviction;

c. —That ~~he or she desires~~they desire to employ the applicant as an elder and/or dependent adult caregiver notwithstanding the applicant's ineligibility to ~~obtain a non-limited permit~~be registered on the Home Care Aide Registry due to previous criminal convictions;

d. —That ~~he or she has~~they have knowingly, intelligently, and voluntarily chosen the applicant to be their caregiver;

e. —That ~~he or she understands~~they understand the possible danger and potential risk involved with hiring a caregiver who was unable ~~to pass the background check~~be registered and ~~agrees~~agree to accept any and all risks associated with the decision to hire the applicant~~;~~, and

f. —That ~~he or she~~they, to the full extent permitted by law, shall hold harmless, defend at ~~his or her~~their own expense, and indemnify the county, ~~the caregiver coordinator and the~~its officers, agents, employees, including the caregiver coordinator, and volunteers ~~of the county and the caregiver coordinator~~, from any and all liability, claims, losses, damages or expenses, including reasonable attorney fees, for personal injury (including death) or damage to property, arising from all acts or omissions of the applicant.

g. All individuals with limited caregiver permits must show proof of permit while providing home care services or in-home services.

C. —A limited caregiver permit provided under this section shall be subject to any regulatory and/or criminal action ~~as if it were a~~. Failure to provide proof of permit ~~issued~~is a violation under Chapter 5.60.~~-~~020(C)

5.60.075 ~~- Permit—Validity.~~ – [Reserved]

~~A. Upon issuance of the letter from the caregiver coordinator approving the application, the applicant shall have thirty days to submit the approval letter to the recorder-county clerk. After thirty days, the approval letter will become null and void.~~

~~B. The caregiver permit shall be valid for a period of one year. Thereafter, it may be renewed for additional one year periods by submittal of a renewal application and payment of the applicable fees.~~

~~C. A limited caregiver permit shall be valid for a period of one year. Thereafter, it may be renewed for additional one year periods by submittal of an application, a current notarized and/or witnessed declaration and payment of the applicable fee. A limited caregiver permit shall not be issued to anyone that has previously had such a permit suspended or revoked.~~

5.60.080 - Threatening, coercing, intimidating, or using undue influence—Prohibited.

It is unlawful for any person to threaten, coerce, intimidate, or use undue influence upon an elder and/or dependent adult in order to obtain a statement required under Section 5.60.070. Any person found to have threatened, coerced, intimidated, or unduly influenced an elder and/or dependent adult may be the subject of criminal prosecution ~~as provided in subsection (E) of Section 5.60.020 above~~.

5.60.085 - ~~Permit~~Registry—Advertising.

______A. —__It is unlawful for any person to advertise as a caregiver covered by this chapter unless that person ~~holds a valid permit~~is registered on the Home Care Aide Registry under this chapter~~ which is listed in the classification so advertised. ~~.
______B.~~—~~__It is unlawful for any referral agency to advertise for a caregiver covered by this chapter unless that caregiver ~~holds a valid permit~~is registered on the Home Care Aide Registry under this chapter~~ which is listed in the classification so advertised~~.
______C. —__Any person or caregiver referral agency who advertises or puts out any sign or card or other device that would indicate to the public that ~~he or she is~~they are a caregiver, or who causes ~~his or her~~their name or business name to be included in a classified advertisement ~~or~~to a directory under a classification for caregivers covered by this chapter, is required to include ~~their permit identification~~the Home Care Aide's Personnel Identification number in the advertisement.

5.60.090 ~~- Permit—Update and renewal.~~ **– [Reserved]**

~~Each individual permit holder shall apply for renewal of his or her permit prior to the expiration of said permit within one year of the issuance date. Renewal applications shall include any new information not contained in the original application.~~

Ordinance No. 2022-

AMENDING CHAPTER 5.40 TO THE ST. HELENA MUNICIPAL CODE, ADOPTING CHAPTER 5.60 OF TITLE 5 OF THE NAPA COUNTY CODE BY REFERENCE, RELATING TO REQUIREMENTS FOR PERMITS FOR ELDER AND/OR DEPENDENT ADULT CAREGIVERS

The City Council of the City of St. Helena does ordain as follows:

Section 1. Findings.

Whereas Government Code sections 50022.2 and 50022.9 permit the City Council to adopt an ordinance adopted by the County of Napa, by reference; and

Whereas in 2010, the Napa County Commission on Aging prepared an ordinance intended to be adopted and implemented uniformly throughout Napa County, intended to promote the health and safety of elders by establishing a uniform, countywide system of issuing permits to all persons who provide caregiver services to elders; and

Whereas on May 25, 2010, the Napa County Board of Supervisors adopted an ordinance that added Chapter 5.60 to Title 5 of the Napa County Code of Ordinances relating to requirements for elders and or dependent adult caregivers.

Whereas on June 22, 2010, the City Council adopted Ordinance No. 2010-2 "ADDING CHAPTER 5.40 TO THE ST. HELENA MUNICIPAL CODE, ADOPTING CHAPTER 5.60 OF TITLE 5 OF THE NAPA COUNTY CODE BY REFERENCE, RELATING TO REQUIREMENTS FOR PERMITS FOR ELDER AND /OR DEPENDENT ADULT CAREGIVERS".

Whereas on February 4, 2020, the Napa County Board of Supervisors adopted an ordinance amending Chapter 5.60 to Title 5 of the Napa County Code of Ordinances. The amendment addresses deleting the requirement that caregivers obtain a locally issued permit and adding a mandate that all Napa County caregivers register through the California Department of Social Services (CDSS) Home Care Aide Registry.

Whereas, the City desires to adopt a new ordinance to incorporate the amendments to Chapter 5.60 of Title 5 of the Napa County Code into the City's ordinance.

Whereas, the City Council adopts the findings set forth in the County ordinance and desires to implement the regulatory provisions of the updated County ordinance within the City of St. Helena.

Section 2. Adoption by Reference. Chapter 5.60 of Title 5 of the Napa County Code of Ordinances relating to permit requirements for elder and or dependent adult caregivers, is hereby adopted by reference. Any fees required by the County of Napa in the processing of the permit applications required by the ordinance shall be imposed by the Board of Supervisors by Board resolution and paid to the appropriate County designated office.

Section 3. Violation of this ordinance is a misdemeanor or infraction, punishable by a fine, imprisonment in the county jail up to one year, or a combination of both.

Section 4. Copy of County Ordinance. Consistent with the requirements of Government Code section 50022.6, upon the adoption of this ordinance, one copy of the County's ordinance adopted by reference shall be maintained by the City's enforcement officer, the Chief of Police.

Section 5. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of St. Helena hereby declares it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on the ______ day of ___________, 2022, and was adopted at a regular meeting of the St. Helena City Council on the _______ day of _____, 2022, by the following vote:

Mayor Ellsworth:	______
Vice Mayor Dohring:	______
Councilmember Chouteau:	______
Councilmember Hardy:	______
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 Ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the _____ day of _____, 2022. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the _____ day of ___________, 2022, by the following vote:

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

Report to the City Council
Regular City Council - 08 Feb 2022

Agenda Section: **OLD BUSINESS**

Subject: **Consideration of a Resolution calling a Special Election on June 7, 2022 to consider changing the Office of Mayor from a directly elected office to an office appointed by the Council.**

CEQA Determination: **Not a CEQA project**

Prepared By: Ethan Walsh, City Attorney

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND
At the January 25, 2022 Council meeting, the City Council directed City staff to return to Council with a proposed resolution that would allow the voters of the City of St. Helena to decide whether they want the Office of Mayor to continue to be a directly elected office, or instead revert to having a City Council of five members, with the Mayor appointed by the Council as a whole.

The City currently has a directly elected Mayor and a City Council consisting of four elected Councilmembers. The Mayor is a member of the City Council and serves a two-year term. Each of the Councilmembers serves a four year term.

State law allows general law cities like St. Helena, by ballot measure, to eliminate the elective office of mayor and reestablish its prior form of governance whereby a member of City Council is chosen by the other Councilmembers to act as mayor for a specified term. California Government Code, Section 34902, in relevant part, provides:

(b) After an office of elective mayor has been established, the city council may subsequently submit to the electors the question of whether or not to eliminate the elective office of mayor, pursuant to the procedures enumerated in this article, and thereby reestablish the procedure of selection of the mayor by the city council. If a majority of the votes cast on the proposition are in favor of the elimination of the office of elective mayor, the office shall be eliminated on the expiration date of the incumbent's term, and on the date the procedure of selection of the mayor by the Town council shall be reestablished.

This change in governance cannot take effect unless approved by a vote of the people. The City Council may place a measure on the ballot to allow the people to consider this change.

DISCUSSION

The next election upon which this ballot measure could be considered is the Statewide Direct Primary Election on June 7, 2022. In order to place the proposed measure on the June 7 ballot, the City Council must adopt a resolution that does the following:

(1) Calls for a special election to be held on June 7, 2022, for purposes of submitting the Proposed Measure and related ordinance to the electors;

(2) Requests the Napa County Board of Supervisors ("County") to consolidate the June 7, 2022 Statewide Direct Primary Election with the City's special election;

(3) Sets the deadlines to submit an impartial analysis of the Proposed Measure, arguments for and against the Proposed Measure, and rebuttals to those arguments; and

(4) Requests the County Clerk to prepare the City's election materials.

In order for the ballot measure to be place on the June 7, 2022 ballot, the resolution would need to be approved by the regular Council meeting of February 22, 2022.

If the Proposed Measure receives a majority of votes, the Ordinance, attached as Exhibit A to the Resolution, will be adopted. The Ordinance amends the St. Helena Municipal Code by changing the office of mayor from an elected office to an office that is selected by City Council from its members based on rules or procedures as the Council may prescribe by ordinance or resolution. This new system of governance will not start until after the November 8, 2022 General Municipal Election, after which the mayor would be selected annually from among the City Councilmembers.

FISCAL IMPACT

The estimated cost for the ballot measure to be considered at the June 7, 2022 Statewide Direct Primary Election is between $35,000 to $50,000.

RECOMMENDED ACTION

That the Council consider the enclosed resolution, and if desired, adopt the attached resolution to place the matter on the ballot for consideration by the voters of the City.

ATTACHMENTS

St. Helena - Resolution Calling Special Election to Change Elected Mayor to Appointed Position-c1

RESOLUTION NO. ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA CALLING AND GIVING NOTICE OF THE HOLDING OF A SPECIAL ELECTION ON JUNE 7, 2022 TO ASK VOTERS TO ADOPT AN ORDINANCE AMENDING SECTION 2.08.010 OF THE ST. HELENA MUNICIPAL CODE TO CHANGE THE OFFICE OF MAYOR FROM AN ELECTED OFFICE TO AN APPOINTED OFFICE; REQUESTING THAT THE NAPA COUNTY BOARD OF SUPERVISORS CONSENT TO THE CONSOLIDATION BY THE NAPA COUNTY REGISTRAR OF VOTERS OF THE SPECIAL ELECTION TO BE HELD JUNE 7, 2022 AND AUTHORIZING THE NAPA COUNTY REGISTRAR OF VOTERS TO CANVAS THE ELECTION RESULTS FOR SUCH ELECTION; AND SETTING RULES AND DEADLINES FOR THE SUBMITTAL OF ARGUMENTS FOR AND AGAINST THE MEASURE.

WHEREAS, the office of Mayor is currently an elected office in the City of St. Helena ("City"); and

WHEREAS, the office of Mayor stands for election every two years, the last election for this office being November 3, 2020 and the current term for this office expiring in November, 2022; and

WHEREAS, California Government Code section 34902(b) provides that:

> "After an office of elective mayor has been established, the city council may subsequently submit to the electors the question of whether or not to eliminate the elective office of mayor, pursuant to the procedures enumerated in this article, and thereby reestablish the procedure of selection of the mayor by the city council. If a majority of the votes cast on the proposition are in favor of the elimination of the office of elective mayor, the office shall be eliminated on the expiration date of the incumbent's term, and on the date the procedure of selection of the mayor by the city council shall be reestablished."

WHEREAS, California Elections Code section 9222 authorizes the City Council to submit local measures to the voters; and

WHEREAS, California Government Code section 34902 authorizes the City Council to submit to voters the question of whether the elective office of Mayor should be eliminated and replaced with a City Council-appointed office; and

WHEREAS, the City Council desires to submit to St. Helena voters a measure that would change the office of Mayor from an elective office to a City Council-appointed office; and

WHEREAS, the City Council desires to consolidate the special municipal election for the ballot measure described herein with the Statewide Direct Primary Election to be held on June 7, 2022; and

WHEREAS, the City Council further desires to set rules and deadlines for the submittal of written arguments and rebuttals for and against the measure; and

WHEREAS, the specific terms of the measure are provided for in the ordinance to be considered by the qualified voters, attached hereto as Exhibit "A" (the "Ballot Ordinance" or "Measure") and by this reference made an operative part hereof, and in accordance with all applicable laws.

NOW, THEREFORE, BE IT RESOLVED The City Council of the City of St. Helena, California, does resolve, declare, determine and order as follows:

SECTION 1. **Recitals.** The City Council of the City of St. Helena hereby finds and determines that the foregoing recitals are true and correct, are incorporated herein and by this reference made an operative part hereof.

SECTION 2. **Submission of Ballot Ordinance/Measure.** The City Council of the City of St. Helena, pursuant to its right and authority as contained in California Elections Code sections 9222, 10201, and 10400 et seq. and Government Code section 34902, hereby orders the Ordinance/Measure attached hereto as Exhibit "A" to be submitted to the qualified voters of the City at the Special Municipal Election to be held and consolidated with the Statewide Direct Primary Election on June 7, 2022. The proposed Ordinance shall be in the form attached hereto as Exhibit "A" to this Resolution and is incorporated by this reference as if fully set forth herein.

SECTION 3. **Ballot Question.** The City Council, pursuant to its right and authority under California Elections Code sections 10400 et seq. and Government Code section 34902, does hereby order that the ballot question shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the election to be held at the Special Municipal election to be consolidated with the Statewide Direct Primary Election on Tuesday, June 7, 2022, in addition to any other matters required by law, there shall be printed substantially the following question:

<table>
<tr><td rowspan="2">"Starting November 8, 2022, shall the position of a directly elected mayor be eliminated, so that the St. Helena City Council is composed of five members who select who will be mayor?"</td><td>YES</td><td></td></tr>
<tr><td>NO</td><td></td></tr>
</table>

SECTION 4. **Election Procedures/Request for Consolidation.**

A. The City Council consents to the consolidation of the election on this Measure with all other elections being held in the same territory on June 7, 2022, and to hold and conduct the consolidated election in the manner prescribed in Elections Code section 10418.

B. The ballots to be used at the election shall be in the form and content as required by law.

C. In accordance with Elections Code section 10002, the Board of Supervisors of Napa County is hereby requested to consent to having the Napa County Registrar of Voters render such election services to the City of St. Helena as may be requested by the City Clerk of said City, the County of Napa to be reimbursed in full for such services as are performed.

D. The election services which the City of St. Helena requests the Registrar of Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform: the preparation, printing and mailing of sample ballots and guides; the establishment or appointment of precincts, voting centers, and election officers, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for voting centers; the canvassing of the returns of the election and the furnishing of the results of such canvassing to the City Clerk of the City of St. Helena; and the performance of such other election services as may be requested by the City Clerk.

E. The City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia, or cause such actions to be made, that may be necessary in order to properly and lawfully conduct the election.

F. That the precincts, ballot drop box locations and hours of operations, vote center locations and hours of operations, vote-by-mail procedures and timing, and election officers, and all other persons and procedures for the Special Municipal Election shall be the same as those utilized by the County of Napa; and

G. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the City.

H. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.

I. All ballots shall be tallied at a central counting place and not at the precincts. Said central counting place shall be at a County center as designated by the Registrar of Voters.

J. The Napa County Registrar of Voters is hereby authorized to canvass the returns of said election.

K. The City Clerk of the City of St. Helena shall receive the canvass as it pertains to the election on the measure, and shall certify the results to the City Council, as required by law.

<u>SECTION 5.</u> **<u>Arguments and Analysis</u>**.

A. The City Council authorizes (i) the City Council or any member(s) of the City Council, (ii) any individual voter eligible to vote on the above measure, (iii) a bona fide association of such citizens or (iv) any combination of voters and associations, to file a written argument in favor of or against the City measure, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and may change the argument until and including March 18, 2022, after which no arguments for or against the measure may be submitted to the City Clerk. Arguments in favor of or against the measure shall each not exceed 300 words in length. Each argument shall be filed with the City Clerk, signed, and include the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the "Form of Statement to be filed by Author(s) of Argument" as provided by the City Clerk.

B. The City Clerk shall comply with all provisions of law establishing priority of arguments for printing and distribution to the voters, and shall take all necessary actions to cause the selected arguments to be printed and distributed to the voters.

C. Pursuant to Section 9280 of the Elections Code, the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure. The City Attorney shall transmit such impartial analysis to the City Clerk, who shall cause the analysis to be published in the ballot pamphlet along with the ballot measure as provided by law. The Impartial Analysis shall be filed by the deadline set for filing of primary arguments as set forth in subsection (A) above. The impartial analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters of by the City Council. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **"The above statement is an impartial analysis of Ordinance or Measure ____. If you desire a copy of the ordinance or measure, please call the**

election official's office at (707) 968-2742 and a copy will be mailed at no cost to you."

SECTION 6. Rebuttals.

A. That pursuant to Section 9285 of the Elections Code of the State of California, when the Clerk has selected the arguments for and against the various City initiated measures which will be printed and distributed to the voters, the Clerk shall send copies of the argument in favor of the measures to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors or persons designated by them may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the City Clerk not later than March 25, 2022, accompanied by the "Form of Statement to be filed by Author(s) of Argument" as provided by the City Clerk. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

SECTION 7. Placement on the Ballot. The full text of the Ballot Ordinance shall be printed in the voter information guide, and a statement shall be printed in the ballot pursuant to Section 9223 of the Elections Code advising voters that they may obtain a copy of this ordinance, the Ballot Ordinance and/or ballot measure, at no cost, upon request made to the City Clerk.

SECTION 8. Delivery of Resolution to County. The City Clerk shall certify to the passage and adoption of this Resolution. The City Council directs the City Clerk to deliver copies of this Resolution, including the Ballot Ordinance attached hereto as Exhibit "A", to the Clerk of the Board of Supervisors of Napa County and to the Registrar of Voters of Napa County.

SECTION 9. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

[*continued on next page*]

SECTION 10. **Effective Date of Resolution.** This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of St. Helena, California, at a regular meeting held on this 8th day of February, 2021, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

____
GEOFF ELLSWORTH, MAYOR

ATTEST:

____
CINDY TZAFOPOULOS, CITY CLERK

EXHIBIT "A"

ORDINANCE NO. 2022-____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF ST. HELENA, CALIFORNIA, AMENDING SECTION 2.08.010 OF CHAPTER 2.08 OF TITLE 2 OF THE ST. HELENA MUNICIPAL CODE TO CHANGE THE OFFICE OF MAYOR FROM AN ELECTED OFFICE TO AN APPOINTED OFFICE.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ST. HELENA DO ORDAIN AS FOLLOWS:

SECTION 1. Subject to the approval of a majority of the voters of the City of St. Helena at the scheduled election so designated by the City Council in a separate resolution placing this proposal on the ballot for such election, the first sentence of Section 2.08.010 of Chapter 2.08 of Title 2 of the St. Helena Municipal Code is hereby amended to read as follows:

"**2.08.010 – Mayor's term of office and duties.**

> Commencing with the November 8, 2022 General Municipal Election, the Office of Mayor in the City of St. Helena shall cease to be an elective office and shall become an appointive office, and the City Council shall annually choose one of its members to act as Mayor, through those rules and procedures it may prescribe by ordinance or resolution."

The remainder of Section 2.08.010 shall remain unchanged by this ordinance.

SECTION 2. If any portion of this Ordinance is declared invalid by a court of law or other legal body with applicable authority, the invalidity shall not affect or prohibit the force and effect of any other provision or application of the Ordinance that is not deemed invalid. The voters of the City hereby declare that they would have circulated for qualification and/or voted for the adoption of this section, and each portion thereof, regardless of the fact that any portion of the initiative may be subsequently deemed invalid.

SECTION 3. To the fullest extent allowed by law, the provisions of this Ordinance shall prevail over, and supersede, all other provisions of the Municipal Code and any ordinances, resolutions or administrative policies of the City of St. Helena which are in conflict with any provision of this Ordinance.

SECTION 4. This section shall not be repealed or amended except by a measure approved by a majority of the electors voting on the issue at a General Municipal Election, or at a special election called for that purpose.

SECTION 5. This Ordinance shall take effect only if approved by a majority of the eligible voters of the City of St. Helena voting at a Special Municipal election to be held on June 7, 2022, and shall take effect ten (10) days after the City Council has certified the results of the Special Municipal election by resolution.

SECTION 6. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the People voting thereon on June 7, 2022, by signing where indicated below.

I hereby certify that the foregoing Ordinance was passed, approved and adopted by the People of the City of St. Helena on the 7th day of June, 2022.

Dated: ________________________

____
GEOFF ELLSWORTH, MAYOR

ATTEST:

____
CINDY TZAFOPOULOS, CITY CLERK

Report to the City Council
Regular City Council - 08 Feb 2022

Agenda Section: **NEW BUSINESS**

Subject: **Informational Update on Conceptual 1/4 Cent Countywide Wildfire Prevention and Suppression Transactions and Use Tax**

CEQA Determination: **Not a CEQA project**

Prepared By: Mark T. Prestwich, City Manager

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The County of Napa has notified the City of St. Helena that it is considering placement of a 1/4 cent transactions and use (sales) tax on the June 7, 2022 statewide direct primary election. The sales tax would be applied to all eligible purchases countywide, including within its cities and town.

The conceptual sales tax is estimated to generally approximately $10 million annually to implement fire prevention, education, and enhanced fire services and programs throughout the county. Funds are proposed to be distributed between the county and cities and town as follows:

Years 1-5

Napa County	80.00%
City of Napa	13.76%
American Canyon Fire Protection District	3.79%
City of St. Helena	0.94%
City of Calistoga	0.91%
Town of Yountville	0.60%

Years 6-8

Napa County	70.00%
City of Napa	20.64%
American Canyon Fire Protection District	5.69%
City of St. Helena	1.41%
City of Calistoga	1.36%
Town of Yountville	0.89%

Years 9-10

Napa County	60.00%
City of Napa	27.52%
American Canyon Fire Protection District	7.58%
City of St. Helena	1.89%
City of Calistoga	1.82%
Town of Yountville	1.19%

FISCAL IMPACT

Ten million dollars is estimated to be generated annually through a 1/4 cent sales tax on taxable purchases. Under the conceptual methodology, the City of St. Helena would receive approximately $94,000 annually in years 1-5, $141,000 annually in years 6-8, and $189,000 in years 9-10.

RECOMMENDED ACTION

Receive and file.

ATTACHMENTS

Draft Countywide Sales Tax Measure

ORDINANCE NO._________

AN ORDINANCE OF NAPA COUNTY, KNOWN AS THE NAPA COUNTY WILDFIRE PREVENTION AND SUPPRESSION MEASURE, IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

The Board of Supervisors of Napa County, State of California, ordains as follows:

SECTION 1. Overview. Recent catastrophic fires in Napa County have made it evident that there is a need for a coordinated effort throughout the communities of Napa County to address risks of wildfires. In 2020 alone, the LNU Complex and the Glass fire burned hundreds of thousands of acres, destroying hundreds of buildings, structures and facilities. There continues to be a growing wildfire risk in Napa County that does not respect jurisdictional boundaries. Intensifying climate change and extensive fuel build-up are contributing to the increasing threat of wildfire throughout the County. This risk needs immediate action and sustained commitment to better protect Napa County residents, homes and businesses. Local fire agencies, communities, emergency service providers, city and town governments and the County must coordinate wildfire prevention and disaster preparedness and mitigation, including maintaining defensible space, reducing combustible vegetation, and making homes fire resistant.

The goal of this Ordinance is to provide more efficient, effective, and enhanced fire services and programs, emergency alert, and wildfire prevention capabilities that protect the health and safety of the public throughout Napa County. The Ordinance does this by establishing (subject to voter approval) a dedicated source of funds to implement fire prevention, education and enhanced fire services and programs throughout the county.

Funds come from a one-quarter percent transaction and use tax (commonly referred to as a sales tax). Ten million dollars is estimated to be generated annually through the sales tax and will be distributed between the county and the cities and town in Napa County, to be used by their respective fire agencies for wildfire prevention, education, and enhanced fire services and programs. In recognition of the needs of each local community, the Cities of Napa, St. Helena, Calistoga, the Town of Yountville and the American Canyon Fire Protection District are given the flexibility to use tax proceeds to enhance fire prevention, education and suppression and in accordance with their local fire protection plans as long as they are consistent with the expenditure plan.

The Ordinance requires independent citizen oversight, mandatory financial audits and yearly reports to the public. Tourists will be contributing toward the total funds generated. The tax authorized by this Ordinance shall terminate in ten years unless renewed by a two-thirds majority of the voters of Napa County.

SECTION 2. A new Chapter 3.38 (Napa County Wildfire Prevention and Suppression Transactions and Use Tax Ordinance) is hereby added to the Napa County Code to read in full as follows:

Chapter 3.38

NAPA COUNTY WILDFIRE PREVENTION AND SUPPRESSION TRANSACTIONS AND USE TAX ORDINANCE

Sections:

3.38.010. Title.

This ordinance shall be known as the **Napa County Wildfire Prevention and Suppression Transactions and Use Tax Ordinance**. This ordinance shall be applicable in the incorporated and unincorporated territory of Napa County.

3.38.020 Effective Date; Operative Date.

A. This ordinance shall become effective upon the occurrence of both of the following (1) approval of the ordinance by a two-thirds (2/3) majority vote of the electors of Napa County voting on the measure, at an election called for that purpose and upon and (2) ten days after the Board of Supervisors declares the vote pursuant to Elections Code Section 9122.

B. The operative date of this ordinance shall be October 1, 2022, which is the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance.

3.38.030 Purpose.

This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.5 of Part 1.7 of Division 2 which authorizes the County to adopt this tax ordinance which shall be operative if two thirds (2/3) of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the California Department of Tax and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

E. To establish a local funding source for wildfire prevention, emergency alerts, vegetation management, education, and enhanced fire services and programs provided by Napa County and the fire agencies throughout the incorporated and unincorporated territory of the County, as set out in detail in the expenditure plan.

F. To increase the appropriations limit for the County to ensure that the proceeds of the proposed special tax may be expended for their intended purposes.

G. To authorize issuance of limited tax bonds to finance projects in accordance with the Expenditure Plan.

3.38.040 Contract With State.

Prior to the operative date, the County shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the County shall not have contracted with the California Department of Tax and Fee Administration prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

3.38.050 Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the County at the rate of one quarter of one percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

3.38.060 Place of Sale.

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

3.38.070 Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the County of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate o of the sales f one quarter of one percent of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

3.38.080 Adoption of Provisions of State Law.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

3.38.090 Limitations on Adoption of State Law and Collection of Use Taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this County shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this County or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "County" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

1. “A retailer engaged in business in the County” shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars ($500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

3.38.100 Permit Not Required.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

3.38.110 Exemptions and Exclusions

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the County which is shipped to a point outside the County, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the County shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-County address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-County and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this County of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the County shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the County or participates within the County in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the County under the authority of the retailer.

7. "A retailer engaged in business in the County" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the County.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a county imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.38.120 Amendments.

All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

3.38.130 Enjoining Collection Forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the County, or against any officer of the State or the County, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.38.140 Termination Date.

The authority to levy the tax imposed by this ordinance shall expire ten years after the operative date, on September 30, 2032.

3.38.150 Receipt of Proceeds

All revenue generated by this ordinance shall be deposited in a special fund, used solely for the identified projects as provided herein, and made available to the County and to the agencies responsible for the implementing the projects set forth in the expenditure plan in Section 3.38.180.

3.38.160 Use of Proceeds.

The proceeds of the taxes imposed by this ordinance shall be used solely for the projects and purpose set forth in the expenditure plan, generally to improve the capabilities of the fire agencies to provide enhanced fire response and fuels mitigation within Napa County. Pursuant to the requirements of Government Code §50075.1, (1) the expenditure plan constitutes the statement of the specific purposes for which the revenue generated by this ordinance may be expended, (2) the expenditure of the revenue generated by this ordinance shall be restricted to the purposes stated in the expenditure plan.

3.38.170 Appropriations Limit.

The appropriations limit for the County shall be increased for the maximum period permitted by law to allow for the use of all proceeds raised by the special tax imposed by this ordinance.

3.38.180 Expenditure Plan

A. The purpose of this ordinance is to establish a local funding source for enhanced fire services and programs, including wildfire prevention, emergency alerts, vegetation management, and education provided by Napa County and the fire agencies throughout the incorporated and unincorporated territory of the county, as set out in detail in this expenditure plan. Accordingly, the expenditure plan set forth in this section allocates the proceeds established by this ordinance to five categories: fuel management, wildfire response support, communication and education, critical infrastructure, and planning. Subsection __ below describes each program categories and the types of projects and activities that the funding would support.

B. Use of Revenues: The revenues generated pursuant to this ordinance, after deduction of the required California Department of Tax and Fee Administration costs for administering and collecting the tax, costs of the independent oversight committee, and costs for services provided by the Napa County Auditor-Controller, including costs of any required audits by the County Auditor-Controller under this ordinance, shall be used to fund the improvements ("projects" or "programs") set forth herein.

C. Allocation: Tax proceeds, including any interest thereon, will be allocated to the following agencies: Napa County, City of Napa, City of St. Helena, City of Calistoga, and Town of Yountville for use by their fire departments, and to the American Canyon Fire Protection District (collectively "fire agencies"), to be utilized in furthering the purposes of this ordinance. The term "revenue" or "revenues" means the proceeds from the tax, and any interest accruing thereon.

Revenues shall be allocated to each fire agency pursuant to the following distribution formula:

Years 1-5

1. American Canyon Fire Protection District: 3.79% of the annual revenues available
2. Napa County: 80% of the annual revenues available
3. City of Calistoga: .91% of the annual revenues available
4. City of Napa: 13.76% of the annual revenues available
5. City of St. Helena: .94% of the annual revenues available

6. Town of Yountville: .60% of the annual revenues available
<u>Year 6-8</u> 1. American Canyon Fire Protection District: 5.69% of the annual revenues available 2. Napa County: 70% of the annual revenues available 3. City of Calistoga: 1.36% of the annual revenues available 4. City of Napa: 20.64% of the annual revenues available 5. City of St. Helena: 1.41% of the annual revenues available 6. Town of Yountville: .89% of the annual revenues available
<u>Year 9-10</u> 1. American Canyon Fire Protection District: 7.58% of the annual revenues available 2. Napa County: 60% of the annual revenues available 3. City of Calistoga: 1.82% of the annual revenues available 4. City of Napa: 27.52% of the annual revenues available 5. City of St. Helena: 1.89% of the annual revenues available 6. Town of Yountville: 1.19% of the annual revenues available

Net revenues, plus interest earned, shall be apportioned to the fire agencies' designated wildfire prevention and suppression special account on a quarterly basis.

D. Local fire agencies may use the revenues to implement fire prevention, education, and enhanced fire services and programs in accordance with their local fire protection plans or their local fire safe councils within their jurisdictional boundaries so long as the expenditures are consistent with the guidelines of this expenditure plan and the purposes of this ordinance. Additionally, local fire agencies may use the revenues to pay for actual costs they incur to conduct any audits required of them by this ordinance.

E. Sales tax proceeds shall be used to pay the following administrative costs prior to allocations being made under the expenditure plan:

1. Actual costs incurred for any annual audits required to be conducted by the Auditor-Controller or by an independent certified public accountant, who is contracted with Napa County, that outlines the amount of funds collected and expended from the special tax and the purposes for which such funds were expended.

2. Actual costs incurred in the administration of the oversight committee set forth in Section 3.38.200.

3. Actual costs incurred by the Napa County Auditor-Controller in the distribution and receipt of tax proceeds.

4. Revenues received by the fire agencies will be less than the gross revenue actually collected because the fees that the California Department of Taxes and Fee Administration charges to collect the sales tax will be deducted before the revenues are transferred to the County Auditor-Controller.

F. Program Expenditure Categories

The intent of this ordinance is that sales tax proceeds, including any interest accruing thereon, be used to implement enhanced fire services and programs within the incorporated and unincorporated areas of the county. Sales tax proceeds shall be used only to supplement existing services and shall not be used to pay for existing operations. Accordingly, tax proceeds must be spent for the purposes authorized in this expenditure plan and may not be used for other purposes. Notwithstanding the above, hiring of staff where necessary to implement the services and programs under this expenditure plan is contemplated and is an allowed use of funds.

1. <u>Fuels Management Program and Subcategories.</u>

a. Protect drinking water reservoirs and facilities through vegetation management in the immediate sub-watershed to limit sediment movement into reservoirs. Create defensible space around all facilities.

b. Protect evacuation routes by removing hazardous trees and reducing fuel volumes within 100- feet on both sides of emergency access and evacuation routes as defined by Napa County and in the Napa County Community Wildfire Protection Plan 2021.

c. Create perimeter fuel breaks around communities by treating vegetation, linking low fuel volume locations, and working with large landowners.

d. Treat roadside vegetation to provide emergency access and egress; remove hazard trees and thin understory and coniferous canopy.

e. Improve forest health and resiliency by managing vegetation to reduce fuel volume, vegetation density and creating a forest structure that mimics that found in a natural fire regime.

f. Promote containment by treating vegetation along strategic containment locations to reduce fuel loads and restore fuel conditions and fire regimes. Identify as boundaries key ridgelines and access roads.

g. Restore and rehabilitate wildlands and defensible space in communities that have burned.

h. Prevent Ignitions from powerlines by removing vegetation from within striking distance and around selected power poles.

i. Treat vegetation augment containment opportunities.

j. Purchase of equipment required for fuels mitigation projects or to enhance fire protection services. Examples of allowable purchases include, but are not limited to the following: chippers, masticators, dozers, water tenders, fire engines, wildland hand tools, weeders, backpack blowers.

k. Engineering and environmental review that may be required to implement any of the above.

2. <u>Wildfire Response Support Program and Subcategories.</u>

The tax measure will provide 24/7 wildfire detection and alert system that covers at least 90% of the land area of Napa County during the fire season, and in more depth than the existing ALERT Wildfire camera. Wildfire Response Support priorities include the following:

a. Support fire containment by maintaining select dozer lines installed during wildfires. Realign select dozer lines to limit environmental impacts.

b. Install 911 signs and address badges that indicate access and water supply.

c. Install Knox Box facilities at base of roads with information (water supply, access, power shutoff) to assist emergency responders.

d. Establish agreements, including easements, with landowners/neighbors/law authorities, to allow access in emergency.

e. Improve roads by creating turnouts along roads through vegetation removal or minor dirt removal or improving road surface.

f. Engineering and environmental review that may be required to implement any of the above.

3. <u>Communication and Education Program and Subcategories.</u>

a. Educate and promote creation and maintenance of defensible space.

b. Augment current notification systems during emergency.
c. Educate residents about criteria of locations suitable for emergency refuge.
d. Prevent ignitions from mechanical devises by informing workers of best practices.

4. Critical Infrastructure Program and Subcategories.
a. Protect critical infrastructure (e.g., cameras, communication towers, hospitals, schools, water treatment plants) from wildfire damage through creation of defensible space and ignition resistant construction.
b. Protect drinking water facilities by creating defensible space around all facilities and retrofitting structures with ignition-resistant construction.
c. Engineering and environmental review that may be required to implement any of the above.

5. Planning Program and Subcategories.
a. Develop a geodatabase to track project implementation and maintenance.
b. Participate fully in General Plan and Local Multi-hazard Mitigation Plan revisions.
c. Engineering and environmental review that may be required to implement any of the above.

3.38.190 Implementation of the Expenditure Plan

Implementation of the expenditure plan shall be guided by the following procedures to ensure that the revenue generated by the ordinance is spent in the most efficient and effective manner possible, consistent with serving the public interest in Napa County, and the desires of the voters of Napa County. The implementation of this ordinance will be the responsibility of Napa County.

A. The County Auditor-Controller shall transfer all revenues generated by the ordinance to the special fund as they are received by the County and shall allocate funds to the fire agencies in accordance with the percentages outlined in the expenditure plan on a calendar quarter basis, together with any accrued interest, by the 20th day of the month following the end of the quarter.

B. The Auditor-Controller shall be reimbursed actual costs associated with the collection, distribution and reporting of revenues and expenses.

C. Accounting Records.

1. Each fire agency receiving the tax revenues pursuant to this ordinance shall have its revenues deposited in a separate special interest-bearing revenue fund. Interest earned on revenues allocated pursuant to this ordinance shall be expended only for those purposes permitted by this ordinance. All revenue sources and expenditures using the revenue sources shall be fully accounted for and subject to review at any time. A special revenue fund is a governmental fund type used to account for the proceeds of specific revenue sources that are restricted or committed to expenditure for specified purposes other than debt service or capital projects. The use of a special revenue fund ensures segregation of restricted funds, the ability to allocate proper interest earnings and ease of tracking the inflows and outflows of the revenues.

2. Each fire agency receiving tax proceeds should record the proceeds as "Other Governmental Revenue" on the general ledger. All project expenditures should be budgeted for and disbursed from these funds so that a full accounting is captured, within proper accounting categories.

3. Each agency must provide a full accounting of all revenues and expenses attributed to each specific project.

4. Agencies shall keep the records using accrual accounting, setting up both receivables and payables as of June 30 of each year.

D. Financial Reporting Requirements. Every expenditure will have supporting documentation, including invoices and authorizations to ensure that all costs charged to the funds are eligible and in full compliance with this expenditure plan and ordinance. This documentation shall be maintained by each agency and shall be made available for inspection and audits upon request by either the board of supervisors, Auditor-Controller and the oversight committee

1. Semi-Annual Progress Reports are due March 1st (for the period of July – December) and September 1st (for the period of January – June). Each progress report shall provide a summary listing consisting of the following:

- Project Name,
- Approved Budget,
- Amount spent-to-date,
- Remaining Balance,
- Percentage of Completion,
- Date Completed or Estimated Completion Date

2. Attached to each summary shall be a system generated trial balance report and detailed expenditure listing for the special revenue funds. If is determined that an ineligible expense was made, the jurisdiction will be directed to return the funds to the special revenue fund(s) for a future eligible expense. Once the agency's books are closed for the fiscal year and a comprehensive audit is completed, by January 1st of the following year, each agency will provide a copy of the Comprehensive Annual Financial Report to the Napa County Auditor-Controller. Due to the timing of these reports, where numbers vary, the agency shall provide a reconciliation explaining the differences.

E. Audits.

1. All audits and record keeping will be performed in accordance with generally accepted accounting principles (GAAP) and Generally Accepted Government Accounting Standards (GAGAS). The Auditor-Controller will oversee the annual accounting and fiscal process through review of quarterly and annual reports submitted by each agency. The oversight committee will oversee project performance through review of semi-annual reports submitted by each agency.

2. Each member agency will procure an independent certified public accountant to conduct an annual financial audit that includes all transactions regarding use of the tax proceeds, including any accrued interest. This will not be an additional audit on top of their Comprehensive Annual Financial Report, as these funds are included in their overall agency operations for specified projects. Any findings will be communicated to the Napa County Auditor-Controller, who will then present to the oversight committee and the board of supervisors.

F. The County is charged with a fiduciary duty in administering the tax proceeds in accordance with applicable laws and this ordinance. Receipt of tax proceeds may be subject to appropriate terms and conditions as determined by the County in its reasonable discretion, including, but not limited to, the right to require recipients to execute funding/grant agreements and the right to audit recipient's use of the tax proceeds. Funding or grant agreements shall be required before any tax proceeds are distributed. The agreements will acknowledge that the ordinance provides funding to achieve effective and efficient wildfire fuels mitigation and prevention. Local agencies receiving tax proceeds must certify that use of tax measure proceeds are consistent with the purposes of this ordinance, including the expenditure plan, and that the tax measure expenses will result in a higher level of service than would otherwise be provided by the local agency(ies).

E. All funds generated by this ordinance shall only be used for projects that are consistent with applicable general plans, specific plans, master plans and zoning ordinances. Environmental reporting, review and approval procedures as provided for under the National Environmental Policy Act, and/or California Environmental Quality Act, or other applicable laws will be adhered to as a prerequisite to the implementation of any project.

F. Actual tax proceeds may be higher or lower than estimated over the duration of this ordinance due to variability in annual receipts caused by changes in the economy generally and the level of tourism spending in Napa County.

G. Revenue may be accumulated over multiple years so that sufficient funding is available for larger and long-term projects. All interest income shall be used for the purposes identified in this expenditure plan.

H. Revenues generated by the ordinance shall not be used to incur bonded indebtedness.

3.38.200 Independent Oversight Committee.

A. To promote transparency and accountability, an Oversight Committee ("committee") shall be created within six months of the effective date of this ordinance and shall remain in existence for as long as the transactions and use tax is in effect. The committee shall review the receipt and expenditures of the revenue from the transactions and use tax.

B. Membership and Meeting Requirements

1. The committee shall consist of seven at-large members, the composition and qualifications of which will be determined by the board of supervisors, with at least five committee members selected by the board of supervisors from a list of names provided by the mayors of the cities and town in Napa County. All members of the committee shall be appointed by the board of supervisors and shall serve terms of office as established by the board of supervisors. The County Auditor-Controller shall serve as a non-voting ex-officio member of the committee. The board of supervisors shall adopt a resolution regarding any additional duties of the committee and shall also approve bylaws related to the conduct of committee meetings and business. Meetings of the committee shall be open to the public and shall be held in compliance with the Ralph M. Brown Act, California's open meeting law.

2. Members of the committee shall be individuals who live in the incorporated or unincorporated areas of Napa County who are neither elected officials of any government within Napa County, nor employees from any agency or organization that either oversees or benefits from the proceeds generated by this ordinance. Committee members shall not have direct and/or indirect commercial interest or employment with any public or private entity which receives transactions and use tax revenues authorized by this ordinance. Participants on the committee will be required to submit a statement of financial disclosure; and participation will be restricted to individuals without economic interest in any of the projects or improvements funded by the tax. No salary or stipend shall be paid to committee members.

C. Responsibilities.

1. Provide the board of supervisors and the public with information regarding the manner in which the expenditure of the transactions and use tax proceeds has occurred.

2. Review the receipt and expenditures of the revenue from the transactions and use tax, including the independent audit of each agency's use of the tax, to ensure they conform to the expenditure plan.

3. Review the annual audit by an independent certified public accountant that outlines the amount of funds collected and expended from the transactions and use tax and the purposes for which such funds were expended.

4. Inform the public and advise the board of supervisors if there is an expenditure of the transactions and use tax which is inconsistent with the purpose and intent of this chapter.

5. To preserve the integrity and independence of the oversight process, the committee's responsibilities shall not include decision-making on spending priorities, financing plans or tax rate projections or assumption and the committee shall have no authority to direct, nor shall it direct County, city, town or fire agency staff or officials.

D. Role of the County Auditor-Controller

1. Receive the tax revenues from the State and transfer them into an account specifically created for the transactions and use tax established by this ordinance.

2. File an annual report with the Napa County Board of Supervisors no later than January 1 of each year that contains the amount of funds collected and expended and the status of any project required or authorized to be funded as identified in the expenditure plan as required by Government Code Sections 50075.1 and 50075.3. All reports and audits provided by the Auditor- Controller are reimbursable through tax proceeds as set forth in the expenditure plan. This report from the Auditor-Controller shall be in addition to the annual county audit prepared by an independent auditor.

3.38.210 Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

3.38.220 Technical Amendments.

Technical amendments to this ordinance may be enacted by the Board of Supervisors without a vote of the people if required by the California Department of Tax and Fee Administration to enable the tax to be collected so long as such changes do not increase the rate of the tax or the length of time the tax will remain in effect.

SECTION 3. The board of supervisors may adopt implementing ordinances, resolutions, rules and policies that not inconsistent with the intent of this ordinance and take such other actions as may be necessary and appropriate to carry out the County's responsibilities under this ordinance.

SECTION 4. The Board of Supervisors finds that pursuant to the State CEQA Guidelines section 15378(b)(4), adoption of this transaction and use tax ordinance and expenditure plan is not a project, subject to the requirements of CEQA. Additionally, and in the alternative, it can be seen with certainty that there is no possibility the proposed Ordinance may have a significant adverse effect on the environment and therefore CEQA is not applicable. (See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3).) Prior to commencement of any project included in the expenditure plan, any necessary environmental review required CEQA shall be completed.

SECTION 5. An election shall be ordered to enable the voters of Napa County to approve or reject this ordinance. The date of the election shall be June 7, 2022.

SECTION 6. A summary of this ordinance shall be published at least once five days before adoption and at least once before the expiration of 15 days after its passage in the Napa Register, a newspaper of general circulation published in the County of Napa, together with the names of members voting for and against the same.

The foregoing ordinance was duly passed and adopted at a regular meeting of the Board of Supervisors of Napa County, State of California, held on the __day of ___ 2022, by the following vote, which is no less than a two-thirds vote of all members of the Napa County Board of Supervisors as required by Government Code Section 53724(b) and Revenue and Taxation Code Section 7285.5.

AYES: SUPERVISORS ______________________________

____

NOES: SUPERVISORS ______________________________

ABSTAIN: SUPERVISORS ______________________________

ABSENT: SUPERVISORS ______________________________

____
RYAN GREGORY, Chairman
Napa County Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: Date:	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: Processed By: ______________________ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: ______________________

This ordinance shall be considered as adopted upon the date the vote is declared by the Board of Supervisors and shall go into effect ten (10) days after that date, all pursuant to Section 9122 of the California Elections Code.

As required by Revenue and Transactions Code Section 7285.5, the foregoing ordinance was approved by no less than a two-thirds vote of the people of Napa County, on June 7, 2022

AYES: ___________________________

NOES:____________________________

The vote on this ordinance was declared by the Board of Supervisors on July __, 2022.

____
Ryan Gregory, Chairman
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: Date:	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: Processed By: _________________________ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: ___________________________

Report to the City Council
Regular City Council - 08 Feb 2022

Agenda Section: **NEW BUSINESS**

Subject: **Initiate Proceedings to Place a General Obligation Bond (GO Bond) Measure on the June 7, 2022 Ballot, by Adopting a Resolution of Necessity and Introducing an Ordinance Ordering the Submission of a Proposition to Incur Bonded Indebtedness to the Voters**

CEQA Determination: **Exempt**

Prepared By: April Mitts, Administrative Services Director

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

As discussed at prior public meetings of the City Council, including most recently on January 24, 2022 and January 31, 2022, the City has approximately $19,150,000 of critical infrastructure projects for its utility systems that need funding sources. Attachment 1 provides a summary of the information presented at the recent Council Workshops. A general obligation bond measure, if approved by the voters, would authorize the City to levy an ad valorem property tax on taxable property in the City to generate funds sufficient to pay the debt service on bonds issued for this purpose. Various approvals are necessary before the City could issue a general obligation bond, including 2/3 approval of the voters in the City.

DISCUSSION

St. Helena faces a very serious water crisis that affects the future water security of all residents. California's extended drought impacts the whole state, but our community has water insecurity as extreme as anyone's, due to the age of our infrastructure and the scarcity of water sources.

Many of the unfunded CIP projects relate to 1940's era water infrastructure. Repairs and upgrades are essential to securing our water future.

A general obligation bond measure could raise up to $19,150,000 to fund critical infrastructure projects for the City's aging drinking water, sewage, recycled water and stormwater systems in order to protect water quality and supply, improve drought resilience, keep sewage, pollution, trash and chemicals out of local rivers and creeks, and otherwise protect safe, sustainable local water sources.

Funds could only be spent on projects within the City limits. Some needed water system improvements are outside City limits, and in those cases costs must be shared by ratepayers who are outside the City limits.

The projects are set forth in more detail in the Ordinance.

The steps required to have a general obligation bond approved are as follows:

1. City Council to adopt a Resolution of Necessity, setting forth the City Council's finding that issuing general obligation bonds is necessary to pay for municipal improvement projects (must be adopted by 2/3 vote of City Council).
2. City Council to introduce, and at a subsequent regular meeting adopt, an Ordinance Ordering the Submission of a Proposition to Incur Bonded Indebtedness to the Voters, setting forth the objects and purposes of the general obligation bond, the maximum principal amount and interest rate that may apply to the bond and bond election provisions (must be adopted by 2/3 vote of City Council).
3. City Council to adopt a Resolution Placing Bond Measure on Ballot, directing the Napa County Registrar of Voters to add the General Obligation Bond measure to the June 7, 2022 state-wide election ballot, and approving a tax rate statement and bond election-related deadlines.
4. Bond Election held on June 7, 2022, at which the qualified voters within the City vote on the bond measure (measure must be approved by 2/3 of votes cast).

Assuming a successful bond election in June 2022, the City would be authorized to issue up to $19,150,000 of General Obligation Bonds payable solely from ad valorem property taxes levied on taxable property in the City. Thereafter, the City's financing team (including Del Rio Advisors, LLC, as municipal advisor, and Jones Hall, as bond counsel and disclosure counsel) would prepare the financing documents necessary to obtain a rating on the bonds and then market and sell the bonds to investors.

If $19,150,000 of general obligation bonds were approved by the voters, it is currently contemplated that 3 separate series of 30-year bonds would be issued, so that bond proceeds would be available as needed for projects. As shown in the materials presented to the City Council on January 31, 2022, given current interest rates (plus a buffer for future uncertainty), issuance of $19,150,000 of bonds would result in an average ad valorem tax rate of approximately $14.82 per $100,000 of assessed valuation.

The two items being considered by the City Council would initiate the general obligation bond proceedings. Further actions would need to be taken at the next City Council meeting, as detailed above.

FISCAL IMPACT

Staff anticipates the cost of preparing the legal documents and financial analyses necessary to place the General Obligation Bond measure on the June 7, 2022 ballot is $30,000 (for municipal advisor and bond counsel). The estimated cost for the ballot measure to be considered at the June 7, 2022 Statewide Direct Primary Election is between $35,000 to $50,000. If the election is successful and bonds are issued, some of these costs may be paid from the proceeds of the bonds, instead of the General Fund.

If the bond measure is approved by the voters and bonds are issued, the costs of issuing the bonds would be paid from bond proceeds and all debt service payable on the bonds would be payable from the dedicated ad valorem property tax. There would be no General Fund impact.

RECOMMENDED ACTION

(1) Adopt the Resolution of Necessity for the General Obligation Bond and (2) Introduce the Ordinance Ordering the Submission of a Proposition to Incur Bonded Indebtedness to the Voters

ATTACHMENTS

Attachment 1 - Council Workshop Summary
Attachment 2 - Resolution of Necessity for GO Bond
Attachment 3 - Ordinance Ordering Bond Measure Submitted to the Voters
Attachment 4 - redline - Ordinance

City Council Workshop Summary

Overview

The City Council held two workshops to discuss and provide direction for funding options for needed water, sewer, and storm drain infrastructure projects and consideration of potential general obligation bond on the June 7, 2022 ballot. The first workshop was held on January 24, 2022 and the second workshop was held on January 31, 2022.

Workshop Objectives

- Review needed near-term water, sewer, and stormwater projects and discuss funding options to address infrastructure deficiencies.
- Consider options for possible placement of a General Obligation Bond on the June 7, 2022 ballot.
- Consider ballot language for a General Obligation Bond on the June 7, 2022 ballot.

Background

Recognizing the deterioration of the City's assets, the City Council set in motion a series of studies, working committees, and reports to categorize assets, provide costs estimates for replacement/repair, and develop funding strategies for the replacement/repair of assets.

Below provides a summary events to-date.

2017: Facilities Condition and Need Assessment

In 2017, the City of St. Helena requested proposals for facilities condition and needs assessment services. City staff and the Council subcommittee reviewed the proposals received and unanimously selected EMG as the best firm suited to meet the City's needs and on October 24, 2017, the City Council authorized an agreement for their services. On March 14, 2018, the City was presented the final report from EMG which identified just short of $6 million in replacement costs over a 10 year period – not including the replacement of City Hall.

Replacement Reserves Report Summary: Click Here

2018: The St. Helena Assets Planning Engagement (SHAPE) Committee Report

The general purpose of the SHAPE Committee was to identify alternatives to address deficiencies and opportunities identified in the Facilities Condition and Need Assessment, challenges identified in the Long Range Financial Forecast (LRFF), and feasibility concepts identified in the 2009 Visioning Statement. Additionally, the SHAPE Committee identified financial strategies for City Council consideration to address identified deficiencies, opportunities and/or utilization of community assets.

SHAPE Committee Website: Click Here

Final SHAPE Report: Click Here

2020: Financing Civic Infrastructure Task Force Report

The purpose of the Financing Civic Infrastructure Task Force was to review and analyze the financing options for the possible construction of new or remodeled civic institutions in St. Helena as well as other infrastructure, such as storm drains and downtown streetscape, and provide recommendations to the City Council. The Task Force provided a narrative report that described recommendations to the City Council regarding:

- Evaluation of the City's financial capacity, financing vehicles, and revenue producing potential and options; and
- Funding strategies to ensure cash flow stability and General Fund stability

Financing Civic Infrastructure Task Force Committee Website: Click Here

Final Financing Civic Infrastructure Task Force Report: Click Here

2021: Underground Utilities Master Plan

The City was in need of updating its citywide water, wastewater, and stormwater master utility plans. Instead of having multiple master plans, the City opted for one Integrated Utility Master Plan that updated, replaced, and expanded upon prior plans, studies, and policies. In March 2018, the City issued a request for proposals for an Integrated Utility Master Plan. On August 14, 2018, City Council awarded a contract to Carollo Engineers, Inc. for this work.

In June 2020, Carollo presented an update on the City's nearly completed Underground Utilities Master Plan and noted that investments in the City's water, wastewater, and storm drain systems between now and the year 2030 total at least $34.7 million, with more than $22 million needed between now and 2025. The Draft report was presented and discussed by City Council at a special meeting held on July 20, 2020.

Special City Council Meeting – Underground Master Plan Workshop: Click Here

2021: Council Goal to Identify Financing & Revenue Options to Address City Infrastructure Deficiencies

City Council Goal 4.B. calls for the City to prepare financing and revenue options for City Council review and consideration to address City infrastructure deficiencies. On June 8, 2021, a report was brought to City Council for discussion and direction regarding financing and revenue options. Direction was provided to secure professional opinion research services as an initial step in developing a community supported funding strategy or other alternatives that could be deployed to accelerate investment in the City's infrastructure and to address operational challenges.

June 8, 2021 City Council Meeting: Click Here

2021: Opinion Research on Revenue Options

FM Research completed public opinion research related to three potential ballot measure alternatives for City Council Consideration. On January 11, 2022, a report was presented to City Council and direction was provided to proceed with exploration of a GO Bond for the June 2022 election. Following the January 11, 2022 meeting, the City Council held two workshops to further discuss GO Bond Scenarios. The first meeting was held on January 24, 2022 and the second meeting was held on January 31, 2022. At the January 31, 2022 meeting, City Council provide direction to move forward with preparing a staff report and necessary documentation for the February 8, 2022 meeting for adoption.

January 11, 2022 City Council Meeting: Click Here

January 24, 2022 Special City Council Workshop: Click Here

January 31, 2022 Special City Council Workshop: Click Here

Near Term Water, Sewer, and Storm Drain CIP Needs

Though the work of the SHAPE Committee, Financing Civic Infrastructure Task Force, the Underground Utilities Master Plan, and input from the City's Public Works Director/City Engineer, the City has identified approximately $54 million dollars in near-term CIP needs. Table 1 provides a brief background and funding options for each project type and Table 2 provides additional project details.

Table 1 – Background and Funding Options

Project Type	Background	Funding Options
Storm Drain	All Storm Drain projects are located inside City limits There is no existing revenue source	General Fund, GO Bond
Water	Water projects are located inside and outside City limits	Water Rates/Revenue Bond, GO Bond, or Combination
Sewer	All sewer projects located inside City limits	Sewer Rates/Revenue Bond GO Bond, or Combination

Table 2 – Near Term Water, Sewer, and Storm Drain CIP Needs

CIP Project	Budget Needed (000)
Storm Drain	
Stormwater Collection System Improvements	$9,580
Stormwater Rehabilitation/Replacement	$950
Subtotal	***$10,530***
Water	
Bell Canyon Intake Tower Replacement	$4,130
Rutherford Pump Station Interim Upgrades	$690
Dwyer Road Booster Pump Station	$1,360
Rutherford Pipeline Replacement	$6,830
Smart Water Meters	$1,970
Unfunded CIP Projects (W21-01 Kearney & Andrea Water Main)	$1,100
Spring Mountain Pressure Zone Improvements (Holmes Tank Upgrade)	$1,000
Rehabilitate Tank 2 at Lower Reservoir	$940
Rutherford Pump Station Replacement	$3,700
New Water Treatment Plant	$8,000
Water Treatment Plant Transmission Main Replacement	$5,070
Bell Canyon Spillway Repairs	$130
Water Main Replacement Program	$1,440
Unfunded CIP Projects W-85 Bell House Valve Replacement; W18-120 Bell Canyon Phreatic Surface Monitoring; W-108 Lower Reservoir Rehab	$620
Water Distribution Fire Flow Improvements	$1,500
Subtotal	***$38,480***
Sewer	
Sewer Replacement Program	$2,070
Crinella Lift Station Improvements	$1,140
WWTP Recycled Pipeline and Pump Station	$1,719
Subtotal	***$4,929***
TOTAL	***$53,939***

Types of Debt – General Obligation Bond and Revenue Bond

At the January 24, 2022 Workshop, staff presented two debt options available for funding the projects in Table 2.

1. General Obligation Bonds (GO Bond)

GO Bonds are secured by a promise to levy ad valorem property taxes (property taxes based on the value of the property) in an unlimited amount as necessary to pay debt service. Voters approve the maximum amount of debt (bonds) that can be issued. The ad valorem taxes levied to pay debt service on City GO Bonds are in addition to the one percent general ad valorem property tax.

2. Revenue Bonds

   Revenue Bonds are issued to acquire, construct or expand public projects for which fees, charges or admissions are charged. The bonds are evidence of direct municipal debt incurred in purchasing or constructing a revenue-producing project and are repaid from the income by use of that project or system. Revenue Bonds are designed to finance facilities that provide benefits to a group of readily identifiable users. They are secured primarily by a pledge and lien on gross or net revenues received from the operation of the project or system.

Conceptual Bond

Upon analysis of the near-term needs, projects were categorized by funding options for City Council discussion and direction for a conceptual GO Bond measure. Table 3 provides a summary of the water projects which are currently supported by water rates and are proposed projects for rate funding.

Table 3 – Water Projects Supported by Water Rates

CIP Project	Budget Needed (000)
Funded through the Current Rates	
Bell Canyon Intake Tower Replacement	$4,130
Rutherford Pump Station Interim Upgrades	$690
Dwyer Road Booster Pump Station	$1,360
Subtotal	***$6,180***
Water Rate Adjustments (2022 Rate Adjustments)	
Rutherford Pipeline Replacement	$6,830
Smart Water Meters	$1,970
Unfunded CIP Projects (W21-01 Kearney & Andrea Water Main)	$1,100
Spring Mountain Pressure Zone Improvements (Holmes Tank Upgrade)	$1,000
Rehabilitate Tank 2 at Lower Reservoir	$940
Subtotal	***$11,840***
Water Rate Adjustments (2027 Rate Adjustments)	
Rutherford Pump Station Replacement	$3,700
New Water Treatment Plant	$8,000
Water Treatment Plant Transmission Main Replacement	$5,070
Subtotal	***$16,770***

TOTAL	**$34,780**

The remaining projects were placed in the model for the Conceptual GO Bond model as shown in Table 4 and as discussed at the January 31, 2022 Workshop. The conceptual GO Bond project list is comprised of stormwater system improvements, wastewater recycled pipeline and pump station, and select water and wastewater projects totaling $19.15 million in projects. Of this amount $10.5 million is for stormwater system improvements, $3.69 million for water system improvements, $3.2 million for wastewater improvements, and $1.7 million for wastewater treatment recycled pipeline and pump station.

Table 4 – Conceptual GO Bond Model

Stormwater System Improvements	Replace undersized portions of the stormwater collection system	**$9,580**
Stormwater System Rehabilitation and Replacement	Replacement of approximately 15,200 ft of the stormwater collection system	**$950**
Bell Canyon Spillway Repairs	Repair spillway	**$130**
Water Main Replacement Program	Complete 20,700 feet of water main rehabilitation and replacement projects	**$1,440**
Unfunded CIP Projects	Projects include: W-85 Bell House Valve Replacement; W18-120 Bell Canyon Phreatic Surface Monitoring; W-108 Lower Reservoir Rehab;	**$620**
Water Distribution Fire Flow Improvements	Replace smaller diameter (typ. 6-inch or less) pipelines with larger diameter pipes; In total, 4,900 linear feet (0.9 miles) of fire flow improvements are recommended	**$1,500**
Sewer Replacement Program	High-priority replacement of 9,500-feet of gravity sewage collection system	**$2,070**
Crinella Lift Station Improvements	Update the structure and pumping systems as well as including an air filter system to control odors	**$1,140**
WWTP Recycled Pipeline and Pump Station	Provide pump station to distrubute recycled water through a network of about 9,000 feet of pipeline	**$1,719**
SUBTOTAL		$19,149

GO Bond Scenarios

In working with City's Municipal Financial Advisor, Ken Dieker at Del Rio Advisors, the City modeled three GO Bond scenarios to determine the estimated tax rate per $100k of Assessed Value (AV). The following assumptions were made for the scenarios:

1. 30-Year Term
2. Layered Debt – 3 Debt Issuances
3. 4% Annual Assessed Valuation (AV) Growth
4. Declining Tax Rate
5. Market + .50

The percentage of Annual Assessed Valuation (AV) Growth is based on the historical trend. Table 5 provides a summary of the AV growth as found in the City's FY 2020 annual audited financial statements.

Table 5 – Assessed Value Average Growth

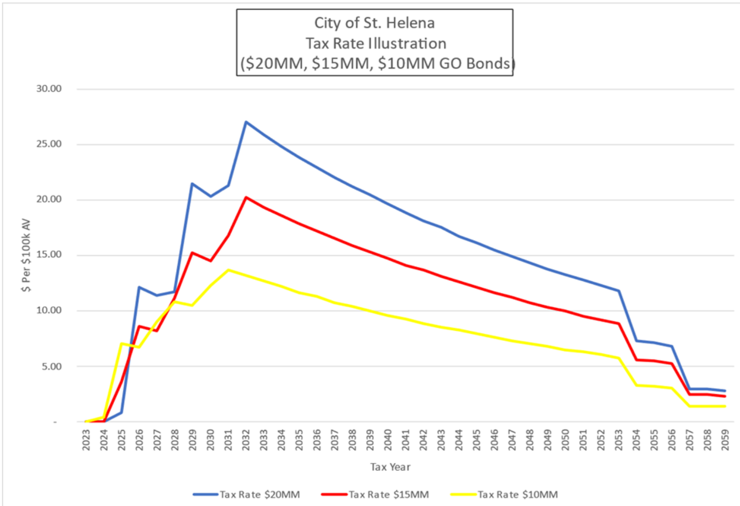
Fiscal Year Ended June 30	Assessed Taxable Values: Real Property	Personal Property	Totals	Total Direct Tax Rate	Estimated Actual Taxable Value	Assessed Value as a Percentage of Actual Value	% change	
2001-2002	917,733	36,700	954,433	1.00%	2,346,761	40.67%		
2020	$ 2,620,400	$ 63,332	$ 2,683,732	1.00%	$ 6,641,474	40.41%	6%	
2019	2,468,796	64,819	2,533,615	1.00%	6,264,589	40.44%	7%	
2018	2,303,468	71,614	2,375,082	1.00%	5,860,976	40.52%	7%	
2017	2,156,770	72,093	2,228,863	1.00%	5,494,915	40.56%	8%	
2016	1,988,547	80,112	2,068,659	1.00%	5,085,813	40.68%	5%	
2015	1,878,049	91,624	1,969,673	1.00%	4,826,014	40.81%	2%	
2014	1,858,565	74,771	1,933,336	1.00%	4,753,228	40.67%	9%	
2013	1,695,701	74,401	1,770,102	1.00%	4,345,539	40.73%	2%	
2012	1,651,354	78,586	1,729,940	1.00%	4,240,651	40.79%	2%	Average
2011	1,613,048	74,155	1,687,203	1.00%	4,138,556	40.77%		5%

The three GO Bond scenarios are summarized in Table 6 and in Graph 1. The summaries include GO Bond issuance in the amount of $10 Million, $15 Million, $20 Million and presents the first year tax rate, average tax rate, and maximum tax rate for all three scenarios.

Table 6 – GO Bond Scenarios

	Tax Rate per $100k of Assessed Value (AV)		
GO Bond Amount	First Year Tax Rate	Average Tax Rate	Maximum Tax Rate
$10 Million	$0.38	$ 7.84	$13.71
$15 Million	$3.62	$11.55	$20.24
$20 Million	$0.44	$15.22	$26.99

Graph 1 – GO Bond Scenarios Tax Rate Illustration



Isolated Water/Sewer Analysis

The Conceptual GO Bond includes $3.69 million in water projects and $3.21 million in wastewater projects. In an effort to compare estimated impact of adding $3.69 million in water projects to the current water rate structure and $3.21 million in wastewater projects to the current wastewater rate structure, staff worked with the City's Municipal Financial Advisor, Ken Dieker, to provide a comparison of the estimated increase in water/sewer rates over a five-year period with the estimated cost of a GO Bond over the same time period.

The following assumptions were made in this analysis:

1. GO Bond issuance of $6.9 million
    a. 30-Year Term
    b. Layered Debt – 3 Debt Issuances
    c. 4% Annual Assessed Valuation (AV) Growth
    d. Declining Tax Rate
    e. Market + .50
2. Water Rates/Sewer Revenue Need – total $6.9 million
    a. Revenue increase of $3.69 million for water projects and $3.21 million for the wastewater projects
    b. Utilizes FY 2020 audited financials, 2021 estimated financials, and 2022 estimates
    c. Inflation rate of 7%
    d. Both PAYGO and debt financing
    e. Maintaining City Council policy for debt coverage and months of operating cash reserves
3. Estimated Water/Sewer Rates

a. Utilized the estimated monthly water bill for a Single-Family Home shown in the 2017 Proposed Water Rates on page 4. Click Here for document.
b. Utilized the estimated monthly wastewater bill for a Single-Family Home shown in the 2017 Proposed Wastewater Rates on page 4. Click Here for document.

The estimated water/sewer rates is based off of the 2017 rate study and average household use at that time for a single family residential property, which assume a non-drought period. However, it is important to note the City's water rates include drought rates to offset revenue loss during periods of water conservation. So, while the customer used less water, they paid a higher price for the water they used.

The GO Bond scenario being issued at $6.9 million has an average tax rate of $5.84 per $100k of AV. This analysis assumes a home with a $1,000,000 AV.

Table 7 is a summary of the isolated water/sewer analysis utilizing the assumptions outlined above. This table has been updated since the meeting on January 31, 2022. The original table applied a 5% increase during the off-peak water use when the increase should have been 3%. This update has decreased the 5-year estimated increase from $793 to $712 as noted in Table 7.

Table 7 – Isolated Water/Sewer Analysis

Required Water/Sewer Rates		**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**5 Year Increase**
$3.69 million	**Per Year Increase**	**3%**	**3%**	**3%**	**3%**	**3%**	
Water	Current						
Peak (17 HCF)	$ 1,158	$ 1,193	$ 1,229	$ 1,265	$ 1,303	$ 1,342	
Off-Peak (7 HCF)	$ 690	$ 711	$ 732	$ 754	$ 777	$ 800	
Total	$ 1,848	$ 1,903	$ 1,961	$ 2,019	$ 2,080	$ 2,142	
Difference		***$ 55***	***$ 57***	***$ 59***	***$ 61***	***$ 62***	***$ 294***
$3.21 million	**Per Year Increase**	**6%**	**6%**	**6%**	**6%**	**6%**	
Sewer	Current						
	$ 1,236	$ 1,310	$ 1,389	$ 1,472	$ 1,560	$ 1,654	
Difference		***$ 74***	***$ 79***	***$ 83***	***$ 88***	***$ 94***	***$ 418***
5-Year Costs - SFR Water/Sewer Combined							***$ 712***
GO Bond - $6.9M	**Per $100k Assessed Valuation Year 1 $0.98, Average $5.84, Maximum $12**						**5 Year Increase**
$ 1,000,000		$ 58	$ 58	$ 58	$ 58	$ 58	**$ 292**

City Council Policy

On January 31, 2022, staff and City Council reviewed the City's current Financial Policy - P-FI-0016 as it pertains to issuance of debt and Capital Improvement Programs. The current policy Section III. Policy C. Capital Improvement Program subsection 4 states, "Capital improvements that specifically benefit a fee-for-service enterprise operation (such as Water/Wastewater) are to be financed through the service fees generated within that operation and fund. Such fees should be supported by periodic updates to the related utility master plan."

Additionally, Section III. Policy G. Debt Management subsection 4.(iii) states, "total debt does not constitute an unreasonable burden to the City or its taxpayers and ratepayers."

At this meeting it was recognized that in the current form, the Policy does not allow for other funding mechanisms in the enterprise funds to support critical infrastructure projects which are in need of short-term repair, repair in emergency circumstances, or under government regulations in which the current rate structure may not support the cost of the project or, if included in the current rate structure, may present an unreasonable burden to the City or its taxpayers and ratepayers. Based on Council direction, a revised policy was drafted for Council consideration on the meeting of February 8, 2022.

CITY OF ST. HELENA

RESOLUTION NO. 2022-____

Resolution Determining: that the public interest and necessity demand the acquisition, construction and improvement of municipal improvement projects, and their financing through the issuance of general obligation bonds

RECITALS

A. WHEREAS, the City of St. Helena (the "City") is a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California; and

B. WHEREAS, the City is authorized to call an election for the proposition of incurring a bonded indebtedness and to issue such bonds to finance municipal improvements pursuant to certain provisions of the California Government Code, including Article 1 of Chapter 4 of Division 4 of Title 4 (commencing with Section 43600) and Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 (commencing with Section 53506) (collectively, the "Bond Law"); and

C. WHEREAS, the City intends to issue its general obligation bonds (the "Bonds") under and pursuant to the Bond Law to finance the cost of the acquisition, construction and improvement of municipal improvement projects of the City (the "Improvements"), consisting of drinking water system improvements, including but not limited to Bell Canyon Spillway repairs, water main rehabilitation and replacements, valve replacements, Bell Canyon Phreatic Surface Monitoring, lower reservoir rehabilitation, and replacing pipes to increase fire flow, sewer system improvements, including but not limited to replacing pipes and making Crinella Lift Station improvements, stormwater system improvements, including but not limited to replacing pipes, drains, culverts and other components of the system, and recycled water system improvements, including but not limited to providing pump station and pipes to distribute recycled water; and

D. WHEREAS, in order to initiate proceedings under the Bond Law to provide for the issuance of general obligation bonds, the City Council of the City (the "City Council") must make certain findings and determinations;

RESOLUTION

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

Section 1. Declaration of Necessity to Issue Bonds. The public interest and necessity demand, and it is the intention of the City Council to require, the acquisition, construction and improvement of the Improvements, and to issue the Bonds to finance the cost thereof, subject to completion of the proceedings required by the Bond Law.

Section 2. Findings. The City Council hereby finds and determines that the estimated costs of the Improvements will require an expenditure by the City greater than the amount allowed for it by the annual tax levy of the City. The principal amount of the Bonds will not exceed the estimated cost of the Improvements.

Section 3. Issuance of the Bonds. This Resolution is adopted, and the Bonds, if approved by two-thirds of all qualified voters voting on the issuance of the Bonds, are to be issued pursuant to the Bond Law.

Section 4. Appointment of Consultants. In connection with the proposed issuance of the Bonds and related election matters, the City Council hereby authorizes and ratifies the appointment of Del Rio Advisors, LLC, as municipal advisor to the City, and Jones Hall, A Professional Law Corporation, as Bond Counsel and Disclosure Counsel to the City. Each of the City Manager and the Administrative Services Director is hereby authorized and directed to execute, on behalf of the City, a professional services agreement with each such firm, to the extent they deem necessary.

Section 5. Effective Date. This Resolution shall take effect upon its adoption by two-thirds of all members of the City Council.

* * * * * * * * * * *

Approved at a Regular Meeting of the St. Helena City Council on ____________, 2022, by the following vote:

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

APPROVED:

____
Geoff Ellsworth, Mayor

ATTEST:

____
Cindy Tzafopoulos, City Clerk

CITY OF ST. HELENA

ORDINANCE NO. _____________

AN ORDINANCE ORDERING THE SUBMISSION OF A PROPOSITION INCURRING BONDED INDEBTEDNESS TO THE QUALIFIED VOTERS OF THE CITY OF ST. HELENA AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON JUNE 7, 2022, FOR THE PURPOSE OF FINANCING THE COST OF THE ACQUISITION, CONSTRUCTION AND IMPROVEMENT OF CERTAIN MUNICIPAL IMPROVEMENT PROJECTS

The City Council (the "City Council") of the City of St. Helena (the "City") hereby ordains as follows:

SECTION 1. PURPOSE AND INTENT

Pursuant to the authority provided by the California Government Code and California Elections Code, the City Council proposes to order the submission of a proposition authorizing the City to issue general obligation bonds (the "Bonds") to the qualified voters of the City at the general municipal election to be held on June 7, 2022.

SECTION 2. FINDINGS

The City Council hereby makes the following findings with respect to the proposed measure for the Bonds:

A. On February 8, 2022, the City Council adopted, by a two-thirds vote of all its members, a resolution entitled "Resolution Determining that the Public Interest and Necessity Demand the Acquisition, Construction and Improvement of Municipal Improvement Projects, and Their Financing Through the Issuance of General Obligation Bonds," pursuant to which the City Council has found and determined that the public interest and necessity demand the issuance of general obligation bonds to finance the cost of municipal improvement projects.

B. In order to provide for the issuance by the City of general obligation bonds to provide financing for the municipal improvement projects, it is necessary for the City Council to adopt an ordinance ordering the submission of the proposition of incurring bonded indebtedness for such purpose to the qualified voters of the City at a municipal election.

C. The City Council desires to submit said ballot measure to the qualified voters of the City at the regular election to be held in the City on June 7, 2022, and to consolidate the bond election with other elections held within the City on that date.

SECTION 3. CALL FOR ELECTION

The City Council hereby orders that there be submitted to the qualified voters of the City a proposition on incurring bonded indebtedness for the purposes set forth in this Ordinance, at the regular election to be held on June 7, 2022.

SECTION 4. BALLOT PROPOSITION

The City Council hereby submits to the qualified voters of the City, at the regular election to be held on June 7, 2022, a proposition on issuing the Bonds. The statement of the measure shall be in substantially the form set forth in the resolution of the City placing the measure on the ballot.

SECTION 5. OBJECT AND PURPOSE OF BONDS

The object and purpose of the Bonds is to finance the costs of municipal improvement projects of the City (the "Improvements"), consisting of drinking water system improvements, including but not limited to Bell Canyon Spillway repairs, water main rehabilitation and replacements, valve replacements, Bell Canyon Phreatic Surface Monitoring, lower reservoir rehabilitation, and replacing pipes to increase fire flow, sewer system improvements, including but not limited to replacing pipes and making Crinella Lift Station improvements, stormwater system improvements, including but not limited to replacing pipes, drains, culverts and other components of the system, and recycled water system improvements, including but not limited to providing pump station and pipes to distribute recycled water, all as acquired or constructed by the City to protect local water quality/supply, improve drought resilience, keep sewage, pollution, trash and chemicals from local rivers, creeks and streams, and protect safe, sustainable, local water sources.

The authorized Improvements also include all work, facilities and expenditures necessary and incidental to the projects described above. Examples of such work, facilities, and expenditures include, but are not limited to: costs of design, engineering, architect and other professional services, inspections, site preparation, utilities, landscaping, construction management and other planning and permitting, legal, accounting and similar costs; a customary construction contingency; demolition and disposal of existing structures; rental or construction of storage facilities and other space on an interim basis for materials and other equipment and furnishings displaced during construction; addressing unforeseen conditions revealed by construction or renovation, and other necessary improvements required to comply with existing building codes and other applicable law, including the Americans with Disabilities Act; costs of the bond election; bond issuance costs; project administration during the duration of such projects; and financing and interest costs on the Bonds.

The final costs, locations, designs, layouts and other components of the Improvements will be determined as plans are finalized, construction bids are awarded, and projects are completed. Therefore, the City Council cannot guarantee that the Bonds will provide sufficient funds to allow completion of all needed Improvements.

SECTION 6. ESTIMATED COST OF IMPROVEMENTS

The estimated cost of the Improvements is $19,150,000. The estimated cost includes legal or other fees, the costs of printing the Bonds, and other costs and expenses incidental to or connected with the authorization, issuance and sale of the Bonds. To the extent the

Improvements financed are revenue-producing public works, the cost of the Improvements may also include bond interest estimated to accrue during the construction period and for a period of not to exceed 12 months after completion of construction.

SECTION 7. PRINCIPAL AMOUNT OF BONDS

The amount of the principal of the Bonds shall not exceed $19,150,000.

SECTION 8. MAXIMUM INTEREST RATE

The maximum rate of interest to be paid on the Bonds shall be the statutory maximum of 12% per annum. Said interest shall be payable semiannually, except that interest for the first year after the date of the Bonds may be made payable at the end of said year.

SECTION 9. ISSUANCE AND SALE OF BONDS

The City proposes to issue and sell the Bonds pursuant to Article 1, commencing with Section 43600, of Chapter 4 of Division 4 of Title 4 of the California Government Code, or Article 4.5, commencing with Section 53506, of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, in one or more series, in the maximum amount and for the objects and purposes set forth above if two-thirds of all qualified voters voting on the proposition set forth above vote in favor thereof. The Bonds will be general obligations of the City payable from and secured by ad valorem taxes levied and collected in the manner prescribed by the laws of the State of California. The revenue generated from the ad valorem tax levied and collected will be used for the payment of debt service on the Bonds. All of the Bonds shall be equally and ratably secured, without priority, by the taxing power of the City.

SECTION 10. MANNER OF CONDUCTING ELECTION

The election on the Bonds held on June 7, 2022 shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted, and returned, returns canvassed, results declared, and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the election with which it is consolidated.

SECTION 11. PROCEDURE FOR VOTING ON PROPOSITION

Ballots for the election shall be provided in the form and in the number provided by law. Voters shall be provided an opportunity to vote for or against the proposition on the ballot, in accordance with procedures to be adopted by the authorized officers of the County of Napa (the "County") charged with conducting the election.

SECTION 12. ACCOUNTABILITY REQUIREMENTS

In accordance with Sections 53410 and 53411 of the California Government Code, the City Council hereby adopts the following accountability requirements relating to the Bonds:

(a) A separate account shall be created and held by the City, into which the proceeds of the Bonds are deposited and applied solely for the purpose of financing the Improvements.

(b) The Administrative Services Director of the City shall file a report with the City Council at least annually showing the amount of Bond proceeds collected and expended, and the status of the Improvements.

SECTION 13. IDENTIFICATION OF TAX

The tax imposed by this measure is an ad valorem tax levied upon taxable real property in the City, and will be used to pay the principal and interest on the Bonds.

SECTION 14. ESTABLISHMENT OF OVERSIGHT COMMITTEE

In the event the ballot proposition is passed by two-thirds of all qualified voters voting on the proposition and the Bonds are issued, the City Council shall establish and appoint members to an oversight committee, which shall have responsibility for reviewing and reporting on the expenditure of the proceeds of the Bonds.

SECTION 15. OFFICIAL ACTIONS

The Mayor, the City Manager, the Administrative Services Director, the City Clerk, and any of their designees, are hereby authorized to execute any documents and to perform all acts necessary to place the bond measure on the ballot.

SECTION 16. INTERPRETATION

The provisions of this Ordinance, being necessary for the health, welfare, and safety of the City and its residents, is to be liberally interpreted to carry out its purposes. No error, irregularity or informality, and no neglect or omission of any officer, in any proceeding taken related to the submission of the proposition incurring bonded indebtedness to the qualified voters of the City shall void or invalidate any such proceeding, any Bonds issued by the City or any levy of ad valorem taxes to pay principal of and interest on the Bonds.

SECTION 17. SEVERABILITY

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or applications, and to this end the provisions this Ordinance are declared to be severable.

SECTION 18. PUBLICATION OF ORDINANCE

This Ordinance shall be published once a day for at least seven days in a newspaper published at least six days a week in the City, or once a week for two weeks in a newspaper published less than six days a week in the City. The first of said publications shall, in either event, be within 15 days after the adoption of this Ordinance. If there are no such newspapers, it shall be posted in three public places in the City for two succeeding weeks. No other notice need be given.

SECTION 19. EFFECTIVE DATE

In accordance with Section 36937(a) of the California Government Code, this Ordinance shall become effective immediately, as an ordinance relating to an election, upon its adoption by two-thirds vote of all the members of this City Council.

Ordinance No. ______

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on the ___ day of _________, 2022, and was adopted at a regular meeting of the St. Helena City Council on the ___ day of _________, 2022, by the following vote:

Mayor Ellsworth: _______
Vice Mayor Dohring: _______
Councilmember Chouteau: _______
Councilmember Hardy: _______
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 Ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the ___ day of _________, 2022. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the ___ day of _________, 2022, by the following vote:

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

CITY OF ST. HELENA

ORDINANCE NO. _____________

AN ORDINANCE ORDERING THE SUBMISSION OF A PROPOSITION INCURRING BONDED INDEBTEDNESS TO THE QUALIFIED VOTERS OF THE CITY OF ST. HELENA AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON JUNE 7, 2022, FOR THE PURPOSE OF FINANCING THE COST OF THE ACQUISITION, CONSTRUCTION AND IMPROVEMENT OF CERTAIN MUNICIPAL IMPROVEMENT PROJECTS

The City Council (the "City Council") of the City of St. Helena (the "City") hereby ordains as follows:

SECTION 1. PURPOSE AND INTENT

Pursuant to the authority provided by the California Government Code and California Elections Code, the City Council proposes to order the submission of a proposition authorizing the City to issue general obligation bonds (the "Bonds") to the qualified voters of the City at the general municipal election to be held on June 7, 2022.

SECTION 2. FINDINGS

The City Council hereby makes the following findings with respect to the proposed measure for the Bonds:

A. On February 8, 2022, the City Council adopted, by a two-thirds vote of all its members, a resolution entitled "Resolution Determining that the Public Interest and Necessity Demand the Acquisition, Construction and Improvement of Municipal Improvement Projects, and Their Financing Through the Issuance of General Obligation Bonds," pursuant to which the City Council has found and determined that the public interest and necessity demand the issuance of general obligation bonds to finance the cost of municipal improvement projects.

B. In order to provide for the issuance by the City of general obligation bonds to provide financing for the municipal improvement projects, it is necessary for the City Council to adopt an ordinance ordering the submission of the proposition of incurring bonded indebtedness for such purpose to the qualified voters of the City at a municipal election.

C. The City Council desires to submit said ballot measure to the qualified voters of the City at the regular election to be held in the City on June 7, 2022, and to consolidate the bond election with other elections held within the City on that date.

Ordinance No. ______

SECTION 3. CALL FOR ELECTION

The City Council hereby orders that there be submitted to the qualified voters of the City a proposition on incurring bonded indebtedness for the purposes set forth in this Ordinance, at the regular election to be held on June 7, 2022.

SECTION 4. BALLOT PROPOSITION

The City Council hereby submits to the qualified voters of the City, at the regular election to be held on June 7, 2022, a proposition on issuing the Bonds. The statement of the measure shall be in substantially the form set forth in the resolution of the City placing the measure on the ballot.

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The object and purpose of the Bonds is to finance the costs of municipal improvement projects of the City (the "Improvements"), consisting of ~~stormwater system improvements, including but not limited to replacing pipes, drains, culverts and other components of the system, potable~~ drinking water system improvements, including but not limited to Bell Canyon Spillway repairs, water main rehabilitation and replacements, valve replacements, Bell Canyon Phreatic Surface Monitoring, lower reservoir rehabilitation, and replacing pipes to increase fire flow, sewer system improvements, including but not limited to replacing pipes and making Crinella Lift Station improvements, stormwater system improvements, including but not limited to replacing pipes, drains, culverts and other components of the system, and recycled water system improvements, including but not limited to providing pump station and pipes to distribute recycled water, all as acquired or constructed by the City to protect local water quality/supply, improve drought resilience, keep sewage, pollution, trash and chemicals from local rivers, creeks and streams, and protect safe, sustainable, local water sources.

The authorized Improvements also include all work, facilities and expenditures necessary and incidental to the projects described above. Examples of such work, facilities, and expenditures include, but are not limited to: costs of design, engineering, architect and other professional services, inspections, site preparation, utilities, landscaping, construction management and other planning and permitting, legal, accounting and similar costs; a customary construction contingency; demolition and disposal of existing structures; rental or construction of storage facilities and other space on an interim basis for materials and other equipment and furnishings displaced during construction; addressing unforeseen conditions revealed by construction or renovation, and other necessary improvements required to comply with existing building codes and other applicable law, including the Americans with Disabilities Act; costs of the bond election; bond issuance costs; project administration during the duration of such projects; and financing and interest costs on the Bonds.

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SECTION 6. ESTIMATED COST OF IMPROVEMENTS

The estimated cost of the Improvements is $~~20,000,000~~19,150,000. The estimated cost includes legal or other fees, the costs of printing the Bonds, and other costs and expenses incidental to or connected with the authorization, issuance and sale of the Bonds. To the extent the

Improvements financed are revenue-producing public works, the cost of the Improvements may also include bond interest estimated to accrue during the construction period and for a period of not to exceed 12 months after completion of construction.

SECTION 7. PRINCIPAL AMOUNT OF BONDS

The amount of the principal of the Bonds shall not exceed $~~20,000,000~~19,150,000.

SECTION 8. MAXIMUM INTEREST RATE

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SECTION 10. MANNER OF CONDUCTING ELECTION

The election on the Bonds held on June 7, 2022 shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted, and returned, returns canvassed, results declared, and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the election with which it is consolidated.

SECTION 11. PROCEDURE FOR VOTING ON PROPOSITION

Ballots for the election shall be provided in the form and in the number provided by law. Voters shall be provided an opportunity to vote for or against the proposition on the ballot, in accordance with procedures to be adopted by the authorized officers of the County of Napa (the "County") charged with conducting the election.

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(a) A separate account shall be created and held by the City, into which the proceeds of the Bonds are deposited and applied solely for the purpose of financing the Improvements.

Ordinance No. ______

(b) The Administrative Services Director of the City shall file a report with the City Council at least annually showing the amount of Bond proceeds collected and expended, and the status of the Improvements.

SECTION 13. IDENTIFICATION OF TAX

The tax imposed by this measure is an ad valorem tax levied upon taxable real property in the City, and will be used to pay the principal and interest on the Bonds.

SECTION 14. ESTABLISHMENT OF OVERSIGHT COMMITTEE

In the event the ballot proposition is passed by two-thirds of all qualified voters voting on the proposition and the Bonds are issued, the City Council shall establish and appoint members to an oversight committee, which shall have responsibility for reviewing and reporting on the expenditure of the proceeds of the Bonds.

SECTION 15. OFFICIAL ACTIONS

The Mayor, the City Manager, the Administrative Services Director, the City Clerk, and any of their designees, are hereby authorized to execute any documents and to perform all acts necessary to place the bond measure on the ballot.

SECTION 16. INTERPRETATION

The provisions of this Ordinance, being necessary for the health, welfare, and safety of the City and its residents, is to be liberally interpreted to carry out its purposes. No error, irregularity or informality, and no neglect or omission of any officer, in any proceeding taken related to the submission of the proposition incurring bonded indebtedness to the qualified voters of the City shall void or invalidate any such proceeding, any Bonds issued by the City or any levy of ad valorem taxes to pay principal of and interest on the Bonds.

SECTION 17. SEVERABILITY

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or applications, and to this end the provisions this Ordinance are declared to be severable.

SECTION 18. PUBLICATION OF ORDINANCE

This Ordinance shall be published once a day for at least seven days in a newspaper published at least six days a week in the City, or once a week for two weeks in a newspaper published less than six days a week in the City. The first of said publications shall, in either event, be within 15 days after the adoption of this Ordinance. If there are no such newspapers, it shall be posted in three public places in the ~~city~~ City for two succeeding weeks. No other notice need be given.

SECTION 19. EFFECTIVE DATE

In accordance with Section 36937(a) of the California Government Code, this Ordinance shall become effective immediately, as an ordinance relating to an election, upon its adoption by two-thirds vote of all the members of this City Council.

Ordinance No. ______

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on the ___ day of _________, 2022, and was adopted at a regular meeting of the St. Helena City Council on the ___ day of _________, 2022, by the following vote:

Mayor Ellsworth:	________
Vice Mayor Dohring:	________
Councilmember Chouteau:	________
Councilmember Hardy:	________
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 Ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the ___ day of _________, 2022. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the ___ day of _________, 2022, by the following vote:

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

Cindy Tzafopoulos

From: Mark Smithers <msmithers@tfewines.com>
Sent: Saturday, February 5, 2022 2:09 PM
To: Geoff Ellsworth; Paul Dohring; Lester Hardy; Eric Hall; Anna Chouteau
Cc: Cindy Tzafopoulos
Subject: [External] February 8 Agenda item 12.2 General Obligation Bond - please post to agenda

To our mayor and city council persons,

In as much as I'm completely against a General Obligation Bond financing Water Enterprise capital projects as this results in the inequality of water charges for all customers living in St Helena as a result of differing constituents and even assessed values, I need to bring to your attention the manipulative slide presenting the "isolated water / sewer analysis." It is misleading at best. Please refer to the staff report Attachment 1 page 9.

1. The slide presents a water customer using 24 HCF monthly. That represents approximately 18,000 gallons a month or 215,000 gallons annually. Assuming a standard family of four the usage should be 109,000 gallons annually (65 gallons x 4 x 365 days plus 2,500 gallons for six months outdoor allocation). We have to assume we will be in phase II water restrictions or at least have locked in water conservation behavior. Note, we have many households of less than four persons which would result in much less water use and associated cost increases. Did any of you use 18,000 a month over the last twelve months?

2. There was no presentation of the 3% annual increase; no idea how they got there and whether or not it is valid.

3. Using the presented annual rate increases of 3%, the increased water use cost should be $190 over five years and approximately $419 over 10 years.

4. The sewer costs are similarly manipulated due to the high water use assumption. Again, not sure where the 6% increase came from?

5. Adjusting the sewer charges to water use of a standard family of 4, the increased cost (using the 6% increases) should be $212 over five years and approximately $495 over 10 years.

6. Total 10 year costs of $914.

7. The comparison to the GO Bond costs is where the more significant manipulation occurs. As you can see they presented five years and these are ridiculously low tax rates years. If the presentation is calculated over the first 10 years, the GO Bond cost is $1,337. Clearly the Revenue Bond scenario is less costly to the average family.

8. The 4% assessed value annual increase assumption is in consistent with the current LRFF property base assessed value increase of 3.5%. The higher assumption lowers the tax rate. If 3.5% was used the GO Bond burden would be higher.

It was not discussed or pointed out last night that there are many residences in St Helena that are not hooked up to our sewer system. So you will be charging them for a service they don't receive.

I'm not sure what the rush is for the water and waste water funding given the Public Works Director's comments and the already funded projects. I think council can sell a separate $10 million storm drain bond now. Let's prepare the rate study with three different scenarios associated with varying capital projects, adjustments for certain water users that are supported by prop 218 regulations, and look at adjusting the general rate structure (service vs use charges). Given that 50% of our water is consumed by a few hundred industrial, business, and winery customers in conjunction with 65% of the water enterprise revenue coming from use charges (as opposed to service charges; i.e. fixed costs) a rate study resulting in a change to the rate structure may result in no significant rate increases burdening residential customers.

If you move forward with the manipulated and bad analysis that was presented, the correct information and a correct analysis will find its way to the public. Most likely presented by the Taxpayers of Napa Valley and that will be terribly unfortunate as it will not help support the GO Bond and any future tax or rate requests. <u>I don't see how in all good conscience you can saddle St Helena residents with a higher cost option when a lower cost option exists.</u>

Best to you all and thanks for your continued service.

Mark

Mark Smithers | Senior Vice President, Finance
Trinchero Family Estates
Office: 1-707-302-3027 | Ext. 2612 | Mobile: 1-707-290-4508
msmithers@tfewines.com

PUBLIC COMMENT Item 12.2

February 7, 2022

Dear City Council,

The "Voter Attitudes Toward a St. Helena Finance Measure" survey you paid at least $30,000 for was flawed and the slide presentation was riddled with problems. I won't go into all that here however I will highlight some of the statistics it generated.

When one eliminates the "probably yes" and "undecided" responses from the survey you are left with only 37% who say they would *definitely* vote yes on a bond measure.

Add 27% "probably yes" and you reach 64%.

"Definitely no" or "probably no" came in at 25%.

Who knows what the other 11% are thinking.

Apply your ±5% margin of error with its 95% confidence rate and this looks like a crap-shoot, particularly when you understand the survey is not able to factor in what percent of people will vote NO even if they want a bond simply because they were excluded from the process and object to the way this political maneuver is playing out.

It is my understanding all methods of distribution for this survey were electronic. Had you placed the (flawed) survey in every water customers bill so they would be sure to get it, or better yet do a direct mailing to every registered voter, and garnered just 266 more responses you could have reduced the ±5.0% margin of error to ±3% with the same 95% Confidence Level, or a ±4% margin of error with a heightened 99% Confidence Level. Plus you would have garnered good will rather than offending the great many people who *are* offended because they did not get a chance to weigh in.

While the proposed bond might pass, a failed attempt will be *extremely* counterproductive and almost certainly carry a painful backlash. Further, if it does pass you will have succeeded in putting something in place that is very problematic while firming up the resentments this process has already generated.

I urge you to NOT approve this measure and work closer with the community to come up with a better offering for November.

Sincerely,
Nancy Dervin

Report to the City Council
Regular City Council - 08 Feb 2022

Agenda Section: **CONSENT ITEMS**

Subject: **Consideration and Proposed Approval of a Resolution Appointing James C. McCann as Interim City Manager and approval of an Employment Agreement for an Interim City Manager**

CEQA Determination: **Not a CEQA project**

Prepared By: Mark T. Prestwich, City Manager

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

City Manager Mark Prestwich is resigning from the City effective February 21, 2022 to begin employment with another public agency. The City of St. Helena has retained Bob Murray & Associates to assist with recruitment for a permanent City Manager. It is estimated that completing the selection process may take four to six months. As such, an Interim City Manager is necessary to fill this critical administrative role until a new City Manager is selected.

DISCUSSION

The City Council considered candidates for an Interim City Manager and selected James McCann to perform the duties of City Manager during the completion of the recruitment process and ensure the continuity of vital public services. Mr. McCann has more than 35 years of municipal government experience. He previously served 12 years as City Manager of the City of Calistoga and nearly 10 years as City Manager of Mill Valley before retiring in 2020.

The proposed employment agreement for Interim City Manager services will allow Mr. McCann to perform the duties as City Manager on an interim basis. The interim appointment is in compliance with Government Code Sections 7522.56 and 21221(h), which allow retired annuitants of the California Public Employees' Retirement System (CalPERS) to work in a limited term appointment under specific rules.

During the interim period, Mr. McCann is expected to pursue the completion of objectives established by City Council and lead the organization in an effective manner. As such, approval of the attached Employment Agreement providing Interim City Manager McCann a salary of $94.48 per hour is recommended There are no proposed benefits for Mr. McCann in accordance with CalPERS requirements.

In conformance with Senate Bill 1436, enacted as Chapter 175 of the Statutes of 2016, effective January 1, 2017, City Council is required to make an oral report of any recommended actions to increase compensation and/or benefits for an executive prior to final action.

FISCAL IMPACT

The City Manager is a regularly allocated position within the City's annual fiscal year budget and costs associated with an Interim City Manager will be covered within the existing budget.

RECOMMENDED ACTION

Approve resolution.

ATTACHMENTS

St. Helena Interim CM _21221 resolution-c1
Employment Agreement for Interim City Manager_Annuitant-c1

RESOLUTION 2022-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA APPOINTING INTERIM CITY MANAGER AND APPROVING EMPLOYMENT AGREEMENT

WHEREAS, Government Code Section 21221(h) permits the City Council to appoint a retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the position of City Manager will become vacant at close of business on February 21, 2022; and

WHEREAS, the St. Helena City Council desires to appoint James McCann as an interim appointment retired annuitant to the vacant position of City Manager for the City of St. Helena under Government Code Section 21221(h), effective February 22, 2022; and

WHEREAS, James McCann is a CalPERS annuitant, having retired in approximately 2020, who has extensive experience in city management; and

WHEREAS, an appointment under Government Code Section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

WHEREAS, the City has retained a recruiting firm to assist with filling the City Manager position permanently, has posted the vacancy on its website and has begun accepting applications; and

WHEREAS, this Section 21221(h) appointment shall only be made once and therefore will end on the date immediately preceding the date on which the regular replacement for the vacant position of City Manager for the City of St. Helena commences his or her employment or, if earlier, the date that this appointment is terminated by the City or McCann; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum compensation for this position is $196,518.40; and

WHEREAS, the hourly rate to be paid to James McCann is $94.48; and

WHEREAS, McCann has not and will not receive any other benefit, incentive compensation in lieu of benefits or any other form of compensation in addition to this hourly pay rate.

WHEREAS, the entire employment agreement between McCann and the City of St. Helena has been reviewed by this body and is attached hereto as **Exhibit A**; and

NOW, THEREFORE, **BE IT RESOLVED** by the City Council of the City of St. Helena, as follows:

SECTION 1. The City Council has considered the full record before it, which may include but is not limited to such things as the agenda staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. The City Council hereby appoints James McCann as interim City Manager effective February 22, 2022 pursuant to the authority provided under Government Code Section 21221(h) and 7522.56, during the recruitment, selection and employment of a regular City Manager to provide the critically-needed, specialized skills necessary to run the City of St. Helena.

SECTION 3. The employment agreement with McCann, a copy of which is incorporated herein as **Exhibit A**, is approved by the City Council, effective February 22, 2022.

SECTION 4. The Mayor is authorized to execute said agreement on behalf of the City, with such technical amendments as may be deemed appropriate by the City Manager and City Attorney.

SECTION 5. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of St. Helena, California, at a regular meeting held on this 8th day of February, 2022.

AYES:

NOES:

ABSENT:

ABSTAIN:

____
Geoff Ellsworth, Mayor

ATTEST:

____
Cindy Tzafopoulos, City Clerk

EXHIBIT A

**EMPLOYMENT AGREEMENT FOR
INTERIM CITY MANAGER SERVICES**

AGREEMENT FOR TEMPORARY EMPLOYMENT

THIS AGREEMENT is between the City of St. Helena, a California municipal corporation ("City"), and James C. McCann, an individual ("Employee") (collectively, the "Parties") and is effective at 12:00 a.m. on February 22, 2022.

RECITALS

WHEREAS, the City has a vacancy at the position of City Manager, a regular position for which the City is conducting a recruitment for a permanent appointment; and

WHEREAS, the City has an immediate need for an employee to temporarily perform the position of City Manager, a position involving specialized skills and training and which is critically necessary to the on-going duties and functions of the City;

WHEREAS, Employee is competent and qualified to perform the services required by this Agreement, and City wishes to have Employee perform the City Manager duties on an interim basis; and

WHEREAS, Employee's employment as interim City Manager is authorized by Government Code section 21221(h), which permits the City to appoint a CalPERS retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent replacement.

WHEREAS, pursuant to action by the City Council during its regular meeting on February 8, 2022, Employee has been appointed on an interim basis to the vacant position of City Manager subject to the requirements of Government Code sections 7522.56 and 21221(h).

NOW, THEREFORE, the parties do mutually agree as follows:

AGREEMENT

1. Appointment and Scope of Services. Employee has been appointed as interim City Manager by the City Council, and shall temporarily perform the functions of City Manager, a position involving highly-specialized and critically-needed skills set forth in the attached job description, in the City's Municipal Code, and as provided by law. Such employment is "at will," subject to the terms of this Agreement, and Employee shall perform said duties at the pleasure of and under the direct supervision of the City Council.

2. Term. This Agreement shall be effective on February 22, 2022 ("Effective Date"). This Agreement shall expire as of the first of the following to occur: (i) upon the employment commencement date of a permanent City Manager employed by City; or (ii) upon termination of the Agreement by either Employee or City as provided in Section 6 of this Agreement. Employment under this Agreement is temporary, at-will, and may be terminated with or without cause and with or without notice at any time by the Employee or the City. Employee is not eligible for any severance payment or benefit relating to or arising out of the termination of this Agreement.

3. Compensation and Work Schedule.

A. Rate of Pay. Employee shall be paid at the rate of $94.48 per hour. The City has confirmed that this rate is not less than the minimum, nor in excess of the maximum, paid by the City to other employees performing comparable duties (divided by 173.333 to equal an hourly rate) as listed on the City's publicly-available pay schedule. Payments will be made on regularly scheduled City payroll dates, and shall be subject to all applicable payroll taxes and withholdings. Such compensation shall be the sole compensation for Employee's services under this Agreement.

B. Work Schedule and 960-hour Limitation. Employee is expected to devote necessary time, within and outside normal business hours, to the business of the City. Pursuant to Government Code sections 21221(h) and section 7522.56, however, Employee's performance of services as a retired annuitant, whether compensated or on a volunteer basis, shall not exceed 960 hours per fiscal year in all positions for all public employers that contract with CalPERS for retirement benefits. The City retains the right to designate, reduce, change, or amend the number of hours assigned to Employee consistent with the City's workload and other needs. If Employee's hours are approaching 960, then the City retains the right to summarily suspend Employee's duties under this Agreement and to reassign any scheduled hours, as needed, to ensure that Employee does not exceed the maximum hours allowed by this Agreement.

i. Employee will be responsible for keeping track of the number of hours worked on a time sheet form provided by the City and submitting them at least every two weeks.

ii. The position to which Employee is appointed is a temporary, hourly assignment which shall not exceed 40 hours per week. The City, through the City Council, will assign Employee hours to work. Due to the nature of the position, it is understood that the work day and work week hours may vary, however Employee shall not work overtime (i.e. hours in excess of 40 per week) without specific authorization by the Mayor.

iii. The City and Employee anticipate that Employee will primarily work a three day (Monday-Wednesday) schedule, with additional work as necessary to provide reasonable availability to County Council and to address urgent matters within a 32-40 hour per week time frame. The City and Employee acknowledge that this work will include hours outside of regular business hours including, without limitation, attendance at regular and special City Council meetings and attendance at such community events and City functions at the Council may direct.

4. Employment Status and Benefits.

A. Benefits. Other than the compensation described above in Section 3, Employee will receive no other benefits, incentives, compensation in lieu of benefits, or any other form of compensation. Employee understands and agrees that he is not, and will not be, eligible to receive any benefits from the City, including any City group plan for hospital, surgical, or medical insurance, any City retirement program, or any paid holidays, vacation, sick leave, or other leave, with or without pay, or any other job benefits available to an employee in the regular service of the City, except for Worker's Compensation Insurance coverage or benefits required by state or federal law.

B. No Property Right in Employment. Employee understands and agrees that the terms of his employment are governed only by this Agreement and that no right of regular employment for any specific term is created by this Agreement. Employee further understands that he acquires no property interest in his employment by virtue of this Agreement, that the employment is "at will" as defined by the laws of the State of California (meaning that he can be terminated at any time for any reason or for no reason), and that he is not entitled to any pre- or post-deprivation administrative hearing or other due process upon termination or any disciplinary action except as otherwise provided by law.

D. Employment of a Retiree. Employee understands that CalPERS retired annuitants may be employed by any CalPERS public agency employer, by temporary appointment to position(s) not to exceed 960 hours in any fiscal year for all such employers; either (1) during an emergency to prevent stoppage of public business, or (2) because the retired employee has skills needed in performing work of limited duration. **In the event Employee is providing services to any other CalPERS public agency employer during the term of this Agreement, Employee must notify the City of commencing such employment and disclose on a periodic basis (at a frequency determined by the City) the number of hours Employee is performing for that other public agency to ensure that the maximum number of hours is not exceeded**.

5. Representation of Employee.

A. Employee represents that he is properly trained and certified to perform the duties required of the interim City Manager position and this Agreement.

B. Employee further represents that he has not worked any hours as a retired annuitant for a CalPERS employer in the 2022 fiscal year (July 1, 2021 — June 30, 2022) and will immediately notify the City if he works any hours for another CaIPERS employer. Consistent with current Government Code provisions, the City shall not provide any benefits, leave time or compensation in lieu of benefits.

C. Employee represents that he has not received any unemployment insurance payments for prior retired annuitant work for any CalPERS employer within twelve months of the effective date of this Agreement.

D. Employee represents that more than 180 days have passed since his date of his bona fide CalPERS retirement.

6. Termination.

A. By City. This Agreement may be terminated by City for any reason thirty (30) days after providing written notice to Employee of such termination. City's only obligation in the event of such termination will be payment to Employee of all compensation then due and owing as set forth in Section 3.A up to and including the effective date of termination. However, this Agreement may be terminated immediately upon appointment of a permanent City Manager, or if necessitated by changes to CalPERS statutory or regulatory requirements, or if doing so will preclude a violation of Government Code Sections 7522.56 or 21221(h).

B. By Employee. This Agreement may be terminated by Employee for any reason thirty (30) days after providing written notice to City of such termination. City shall have the option, in its complete discretion, to make Employee's termination effective at any time prior to the end of such period, provided City pays Employee all compensation as set forth in Section 3.A. then due and owing him through the last day actually worked.

C. No Notice for Expiration. Nothing in this Section 6 shall be construed to require either party to give advance written notice in order for the Agreement to expire as set forth in Section 2.

D. Termination Obligations. Employee agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to City and shall be returned promptly to City upon termination of Employee's employment. Employee's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

7. Non-Assignment of Agreement. This Agreement is intended to secure the individual services of the Employee and is not assignable or transferable by Employee to any third party.

8. Governing Law/Venue. This Agreement shall be interpreted according to the laws of the State of California. Venue for any action or proceeding regarding this contract shall be in Napa County.

9. Enforceability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

10. Conflict of Interest. Employee agrees that during the term of this Agreement, he will not maintain any financial interest or engage in any other contract employment, occupation, work, endeavor or association, whether compensated or not, that would in any way conflict with, or impair Employee's ability to perform the duties described in this Agreement. Any work performed for the City outside the terms of this Agreement must be approved in advance in writing by the City Council. Employee agrees to disclose whether he is performing work for any other CalPERS public agency employer as required by section 4.D. of this Agreement.

11. Entire Agreement and Modification. This Agreement constitutes the entire understanding of the parties hereto. This Agreement supersedes any previous contracts, agreements, negotiations or understandings, whether written or oral, between the parties. Employee shall be entitled to no other compensation or benefits than those specified herein, and

Employee acknowledges that no representation, inducements or promises not contained in this Agreement have been made to Employee to induce Employee to enter into this Agreement.

No changes, amendments, or alterations hereto shall be effective unless in writing and signed by both parties. Employee understands that no oral modification of this Agreement made by any officer, agent, or employee of the City is effective. Employee specifically acknowledges that in entering into and executing this Agreement, he relies solely upon the provisions contained herein and no others.

12. Support Services and Equipment. Employee shall be provided office space and the equipment needed to perform his duties and sufficient to fulfill obligations under this Agreement, as determined by the City Council, at no cost to Employee. In accordance with Government Code Section 21221(h), personal use of such equipment is not permitted.

13. Reimbursement for Expenses. City recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses, including without limitation reimbursement for Employee's use of his personal automobile for City related business which reimbursements shall be made in accordance with City policy, IRS regulations, and other applicable state or federal laws. Other than as specifically provided herein, Employee shall receive no other compensation or reimbursements for expenses incurred by him in the performance of this Agreement.

14. Notices. All notices permitted or required under this Agreement shall be given to the respective parties by hand-delivery or by mail at the following address, or at such other address as the respective parties may provide in writing for this purpose, by deposit in the U.S. Mail, postage pre-paid, addressed as follows:

CITY:
City of St. Helena
1572 Railroad Avenue
St. Helena, CA 94574
ATTN: Administrative Services Director

EMPLOYEE:
James C. McCann
1055 Second Avenue
Napa, CA 94558

15. Indemnification. In accordance with and subject to the limitations of the California Government Claims Act and California Labor Code, the City shall defend, save harmless and indemnify Employee against any tort, professional liability, claim or demand or other legal action, arising out of an alleged act or omission occurring in the performance of Employee's services as interim City Manager, except that this provision shall not apply with respect to any intentional tort or crime committee by Employee, or any actions outside the course and scope of his employment as interim City Manager. The duty of defense shall include reimbursement of any out-of-pocket expenses incurred by Employee in connection with his service as a witness, party or other participant in litigation, whether such service occurs during or after the termination of Employment. Said duties of defense and indemnity shall survive the termination of employment under this Agreement.

16. No Presumption of Drafter. The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

17. Assistance of Counsel. Each party to this Agreement warrants to the other party that the party has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

18. Bonding. The City shall bear the full cost of any fidelity or other bond required under any law or ordinance.

EMPLOYEE:

Dated: ________________________

____
James C. McCann

CITY:

Dated: ________________________

____
Geoff Ellsworth, Mayor

Approved as to Form:

____
Ethan Walsh
City Attorney